

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 782

HB411

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/10/92

FURTHER:

DATE TURNED INTO OFFICE: 5-12-92

The Finance Committee considered CS FOR HOUSE BILL NO. 411 (FINANCE) am (efd fld)  
"An Act making appropriations for restoration projects relating to the Exxon Valdez oil spill."

and recommends:

replace with 5 CS CS HB 411 (FINANCE)  
or  adopt previous CS ( )  
 attaches amendment(s)

same title  
 new title  
 technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent  
 further referral to the \_\_\_\_\_

- do pass
- do not pass
- no recommendation
- individual recommendations

**NEW FISCAL NOTES:** Dept/Date  
 zero fiscal notes \_\_\_\_\_

**PREVIOUS FISCAL NOTES:** Dept/Date  
 zero fiscal notes \_\_\_\_\_

fiscal notes \_\_\_\_\_

fiscal notes \_\_\_\_\_

appropriation--no fiscal note

DO PASS:

OTHER RECOMMENDATIONS:

1. [Signature]  
Co-Chair: Signature/Recommendation

[Signature] No Rec.  
2. [Signature]  
Co-Chair: Signature/Recommendation

SENATE CS FOR CS FOR HOUSE BILL NO. 411 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES DAVIDSON, Navarre, Gruenberg, Finkelstein, Ellis, Mackie, Kubina

A BILL

FOR AN ACT ENTITLED

1 "An Act making appropriations for restoration projects relating to the Exxon Valdez oil  
2 spill; and providing for an effective date."

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

4 \* Section 1. FINDINGS. The Seventeenth Alaska State Legislature finds that

5 (1) Under the recently approved criminal plea agreement between the United States and  
6 Exxon Shipping Company and Exxon Corporation (United States of America v. Exxon Corporation and  
7 Exxon Shipping Company, United States District Cour , District of Alaska, case No. A90-015 CR.), the  
8 State of Alaska received \$50,000,000 as "remedial and compensatory payments." The payments received  
9 by the state "are to be used by the State of Alaska . . . exclusively for restoration projects, within the  
10 State of Alaska, relating to the 'Exxon Valdez' oil spill. Restoration includes restoration, replacement  
11 and enhancement of affected resources, acquisition of equivalent resources and services, and long-term  
12 environmental monitoring and research programs directed to the prevention, containment, cleanup and  
13 amelioration of oil spills."

14 (2) The expeditious appropriation of remedial and compensatory payments for the

1 acquisition and protection of high value resources and services and action on appropriations for  
2 additional restoration, replacement, and enhancement activities will provide interim protection needed  
3 to allow the Exxon Valdez Trustee Council time to develop a systematic restoration plan. The  
4 appropriations made by this Act complement the process being established by the Exxon Valdez Trustee  
5 Council.

6 (3) As stated by the United States Department of Justice in recommending that the United  
7 States District Court accept the criminal plea agreement, "[t]his oil spill was a catastrophe, and it was  
8 also an environmental crime. The criminal remedy should, likewise, in substantial part, be environmental  
9 in nature; . . . The environment, as a victim, must be aided quickly through efforts funded by  
10 restitutionary payments."

11 (4) The health of damaged coastal and near-shore habitats is substantially related to  
12 activities on adjacent uplands. Economically important fish species, including herring and halibut, utilize  
13 near-shore areas, and anadromous species, including five species of salmon, rely on continued access  
14 to both clean streams and unpolluted estuaries for spawning and rearing.

15 (5) Sea otter pups are particularly dependent on pristine water quality, a productive near-  
16 shore and shallow subtidal ecosystem, and a disturbance free environment.

17 (6) Populations of aquatic birds, including the tree-nesting marbled murrelet and bald  
18 eagle and the fresh water nesting species such as harlequin ducks, were severely damaged by the Exxon  
19 Valdez oil spill.

20 (7) Recreational, aesthetic, and subsistence services provided by the prespill environment  
21 were severely damaged. Residents who relied upon these services desire to have these damaged services  
22 replaced through the acquisition and retention of comparable threatened resources.

23 (8) The quality of fresh water entering the estuarine environment is critical to satisfactory  
24 restoration and recovery of the physical and biotic environment in the region affected by the Exxon  
25 Valdez oil spill.

26 (9) Recovery of the coastal estuaries affected by the Exxon Valdez oil spill is placed at  
27 risk by further environmental stress resulting from timber harvesting and other industrial activities that  
28 involve substantial environmental disturbance. In order to minimize the potential for further  
29 environmental stress and to encourage and enhance the natural recovery and restoration of the affected  
30 region, acquisition of coastal related uplands in the affected region, including Prince William Sound, the  
31 Kenai Peninsula, the Kodiak Archipelago, and adjacent biologically related areas, is an important use

1 of "remedial and compensatory payments" received by the state under the criminal plea agreement.

2 (10) Continued citizen involvement and education of residents and nonresidents are  
3 essential to the expeditious and effective restoration of the areas affected by the Exxon Valdez oil spill,  
4 and to the prevention of future oil spills and the restoration of public confidence in the ability of the  
5 state to protect the environment.

6 \* Sec. 2. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
7 \$4,350,000 is appropriated from the remedial and compensatory payments to the Department of Natural  
8 Resources for the acquisition of land, development rights in land, including timber rights, or moratoria  
9 on timber harvesting from willing sellers in the areas of Eyak Lake, Nelson Bay, Simpson Bay, and  
10 Sheep Bay in Township 15 South, Range 2 West; Township 15 South, Range 3 West; Township 14  
11 South, Range 3 West; and Township 14 South, Range 4 West, Copper River Meridian.

12 \* Sec. 3. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
13 \$1,675,000 is appropriated from the remedial and compensatory payments to the Department of Natural  
14 Resources for the acquisition of land, development rights in land, including timber rights, or moratoria  
15 on timber harvesting from willing sellers in the areas of Port Fidalgo and Bligh Island in Township 12  
16 South, Range 6 West; Township 12 South, Range 7 West; and Township 12 South, Range 9 West,  
17 Copper River Meridian.

18 \* Sec. 4. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
19 \$1,675,000 is appropriated from the remedial and compensatory payments to the Department of Natural  
20 Resources for the acquisition of land, development rights in land, including timber rights, or moratoria  
21 on timber harvesting from willing sellers in the areas of Eshamy Bay, Paddy Bay, Ewan Bay, Jackpot  
22 Bay, Chenega Island, Evans Island, and southern Knight Island in Township 1 South, Range 9 East;  
23 Township 1 North, Range 9 East; Township 1 South, Range 8 East; Township 1 North, Range 8 East;  
24 Township 1 North, Range 10 East; Township 2 North, Range 8 East; Township 3 North, Range 7 East;  
25 Township 3 North, Range 8 East; Township 4 North, Range 7 East; Township 4 North, Range 8 East;  
26 Township 4 North, Range 9 East; Seward Meridian.

27 \* Sec. 5. (a) In order to achieve the purposes of the remedial and compensatory payments, the sum  
28 of \$8,000,000 is appropriated from the remedial and compensatory payments to the endowment trust  
29 fund established under AS 14.40.400 upon the completion of an agreement before January 1, 1993,  
30 between the Department of Natural Resources and the Board of Regents of the University of Alaska for

31 (1) the transfer of timber rights on land between Seal River and Cape Suckling (as

1 conveyed under ADL 223456 and known as the Cape Suckling parcel) to the Department of Natural  
2 Resources under the terms of ch. 143, SLA 1990; and

3 (2) a moratorium on the sale, harvesting, or other development by the University of  
4 Alaska or its agents or contractors of the land described in (1) of this subsection that is subject to timber  
5 rights held by the University of Alaska until December 31, 2002.

6 (b) It is the intent of the legislature that the agreement between the Department of Natural  
7 Resources and the Board of Regents of the University of Alaska described in (a) of this section must  
8 provide that

9 (1) the value of the timber rights on the Cape Suckling parcel is established as the fair  
10 market value of those rights on July 1, 1992, under the process for appraisal and repurchase developed  
11 under ch. 143, SLA 1990, provided that if the Department of Natural Resources and the Board of  
12 Regents are unable to reach agreement as to the fair market value, the Department of Natural Resources  
13 and the Board of Regents shall each submit a final offer that is between the two appraisals and a  
14 mutually acceptable arbitrator shall determine the value of the timber rights by selecting the more  
15 reasonable of the offers submitted by the Board of Regents or the Department of Natural Resources;

16 (2) if the fair market value of the timber rights exceeds \$8,000,000, the Department of  
17 Natural Resources shall seek additional appropriations or provide additional assets necessary to complete  
18 the acquisition of the timber rights; if the University of Alaska has received more than two-thirds of the  
19 total value of the timber rights before December 31, 1997, then the moratorium described in (a)(2) of  
20 this section shall be extended to December 31, 2007; interest shall accrue on the unpaid balance owing  
21 the endowment trust fund at the rate prescribed by AS 09.30.070 and shall be included in the total  
22 purchase price for the timber rights;

23 (3) if timber rights remain to be purchased at the conclusion of the moratorium, the  
24 Department of Natural Resources and the Department of Fish and Game shall select timber rights for  
25 those areas of the Cape Suckling parcel that are most valuable for fish and wildlife habitat and most  
26 desirable for inclusion in the Yakataga State Game Refuge, up to the value of funds already paid to the  
27 endowment trust fund plus an amount for imputed interest at the rate prescribed by AS 09.30.070 from  
28 the date of payment; all timber rights selected by either department shall be valued at the fair market  
29 value on July 1, 1992, plus an adjustment for interest at a rate prescribed in AS 09.30.070; in making  
30 their selections, the departments shall assure that the University of Alaska retains reasonably accessible,  
31 harvestable, and economically viable areas in which to harvest its remaining timber;

1 (4) in the event that the title of the University of Alaska to timber on the Cape Suckling  
2 parcel is determined to be invalid before the end of the moratorium, the terms of this subsection shall  
3 no longer apply and each party to the agreement shall retain the timber rights or funds it possesses on  
4 the date of the determination.

5 \* Sec. 6. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
6 \$9,274,315 is appropriated from the remedial and compensatory payments, and the interest accrued  
7 before July 1, 1992, on the \$50,000,000 remedial and compensatory payments while held in trust by the  
8 state treasury is appropriated from a revenue account in the general fund (collocation code No. 03-971-  
9 418), to the Department of Natural Resources for the purchase of the inholdings of the Seldovia Native  
10 Association and of the Timber Trading Company, within the Kachemak Bay State Park as identified in  
11 the Preliminary Exchange Agreement dated June 30, 1989, as amended as of the effective date of this  
12 Act, between the state, the Seldovia Native Association, and the Timber Trading Company; and for the  
13 purchase of the inholdings of the Cook Inlet Region, Inc., within Kachemak Bay State Park.

14 \* Sec. 7. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
15 \$2,800,000 is appropriated from the remedial and compensatory payments to the Department of Natural  
16 Resources for the acquisition of development rights or conservation easements in aquatic, wetland, and  
17 riparian areas important to the maintenance of important commercial and sport fish populations within  
18 the Kenai River watershed, in consultation with the Cook Inlet Aquaculture Association.

19 \* Sec. 8. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
20 \$800,000 is appropriated from the remedial and compensatory payments to the Department of  
21 Environmental Conservation for payment as a grant under AS 37.05.316 to the Prince William Sound  
22 Science Center for facility renovation, long-term damage assessment and aquatic ecosystem monitoring,  
23 and development of an ecosystem database using a geographic information system for the greater Prince  
24 William Sound ecosystem.

25 \* Sec. 9. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
26 \$75,000 is appropriated from the remedial and compensatory payments to the Department of Natural  
27 Resources for payment as a grant under AS 37.05.316 to the Cook Inlet Aquaculture Association for  
28 acquisition of 33 acres of land (Kenai Peninsula Borough tax number 125-010-32; North 1/2 of the  
29 Northeast 1/4 of Section 13, Township 1 North, Range 1 West, Seward Meridian) adjacent to the Cook  
30 Inlet Aquaculture Association Bear Creek weir site.

31 \* Sec. 10. (a) In order to achieve the purposes of the remedial and compensatory payments, the sum

1 of \$7,000,000 is appropriated from the remedial and compensatory payments to the Department of  
2 Natural Resources for the acquisition from willing sellers of land surrounding Pauls Lake and Malina  
3 Lake on Afognak Island. One-half of this appropriation shall be used to acquire land in Township 20  
4 South, Range 18 West, Seward Meridian, Sections 30 and 31; Township 20 South, Range 19 West,  
5 Seward Meridian, Sections 24, 25, 26, and 36; and Township 21 South, Range 19 West, Seward  
6 Meridian, Sections 1, 2, 3, 10, 11, and 12; the balance of this appropriation shall be used to acquire land  
7 on Afognak Island in watersheds draining into Muskomee Bay and into Malka Bay and land westward  
8 of the watersheds draining into Muskomee Bay and into Malka Bay in Township 23 South, Range 23  
9 West; Township 23 South, Range 24 West; Township 24 South, Range 23 West; and Township 24  
10 South, Range 24 West, Seward Meridian.

11 (b) It is the intent of the legislature that the land acquired under this section be comprised of not  
12 more than two reasonably compact parcels.

13 \* Sec. 11. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
14 \$1,300,000 is appropriated from the remedial and compensatory payments to the Department of Natural  
15 Resources for the acquisition of land or development rights from willing sellers on eastern Afognak  
16 Island in Township 21 South, Range 18 West, Seward Meridian.

17 \* Sec. 12. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
18 \$350,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
19 Game for the acquisition from willing sellers of land, leases, or development rights in land at weir sites  
20 important to anadromous fisheries in the Kodiak Archipelago.

21 \* Sec. 13. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
22 \$175,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
23 Game for a herring spawn deposition program in Prince William Sound.

24 \* Sec. 14. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
25 \$560,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
26 Game for a four-fold increase in test fishing at the boundary of the Cook Inlet Central District to  
27 improve estimates of sockeye salmon run timing in the district.

28 \* Sec. 15. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
29 \$100,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
30 Game to provide "in season" estimates of the contributions of Kenai River, Susitna River, and Kasilof  
31 River sockeye salmon stocks to the total sockeye salmon run at the boundary of the Cook Inlet Central

1 District by using stock identification techniques.

2 \* Sec. 16. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
3 \$30,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
4 Game for a study to verify the forecast for 1993 and 1994 five year old Kenai River sockeye salmon  
5 through analysis of the 1992 and 1993 returns of four year old sockeye salmon.

6 \* Sec. 17. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
7 \$300,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
8 Game for a study to provide a total return estimate of the Kenai River sockeye salmon runs in 1993 and  
9 1994 by considering genetic stock identification estimates for the East Side set net fishery.

10 \* Sec. 18. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
11 \$250,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
12 Game for payment as a grant under AS 37.05.316 to the Cook Inlet Aquaculture Association for an  
13 accelerated growth sockeye salmon smolt program in Thumb Cove in Resurrection Bay.

14 \* Sec. 19. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
15 \$60,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
16 Game for a contract to continue long-term research and monitoring of killer whales in Prince William  
17 Sound.

18 \* Sec. 20. In order to restore, replace, and enhance subsistence resources and services in southwestern  
19 Prince William Sound, particularly areas in or around Chenega Bay including Eshamy Bay, Granite Bay,  
20 Chenega Island, Evans Island, Elrington Island, Bainbridge Island, Latouche Island, and Knight Island,  
21 the sum of \$200,000 is appropriated from the remedial and compensatory payments to the Department  
22 of Environmental Conservation for payment as a grant under AS 37.05.316 to the Chenega Bay Local  
23 Response Program for restoration of subsistence resources and services, including removal of oiled  
24 sediment, oil, and oil debris and revegetation of beach rye grass.

25 \* Sec. 21. (a) In order to achieve the purposes of the remedial and compensatory payments, the sum  
26 of \$800,000 is appropriated from the remedial and compensatory payments to the Department of Natural  
27 Resources for contracts to assess, inventory, and map the archeological resources of the area affected  
28 by the Exxon Valdez oil spill.

29 (b) It is the intent of the legislature that contractors employed under (a) of this section agree to  
30 comply with federal and state laws, including the Archeological Resources Protection Act of 1979 (16  
31 U.S.C. 470aa - 470ll) and AS 41.35.010 - 41.35.240, and the terms and conditions of the consent decree

1 entered by the United States District Court in Native Village of Chenega Bay v. United States and State  
2 of Alaska, United States District Court, District of Alaska, case No. A91-454 Civ.

3 \* Sec. 22. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
4 \$100,000 is appropriated from the remedial and compensatory payments to the University of Alaska,  
5 Fairbanks, Fishery Industrial Technology Center for design and planning of a fishery technology and  
6 research facility.

7 \* Sec. 23. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
8 \$1,140,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
9 Game for salmon projects in Prince William Sound.

10 \* Sec. 24. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
11 \$65,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
12 Game for restoration of the Coghill Lake sockeye salmon run.

13 \* Sec. 25. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
14 \$30,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
15 Game to monitor the early marine growth of juvenile salmon in Prince William Sound.

16 \* Sec. 26. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
17 \$1,285,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
18 Game, division of fisheries rehabilitation, enhancement and development, for construction of a heated  
19 water pipeline to the Fort Richardson Hatchery, for improvements to Sikusuilaq Hatchery on the Noatak  
20 River, and for sockeye salmon smolt production at the Big Lake Hatchery.

21 \* Sec. 27. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
22 \$585,000 is appropriated from the remedial and compensatory payments to the Department of  
23 Environmental Conservation for removal and cleanup of the Chenega Bay herring saltery.

24 \* Sec. 28. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
25 \$800,000 is appropriated from the remedial and compensatory payments to the Department of  
26 Community and Regional Affairs for payment as a grant under AS 37.05.316 to the North Pacific Rim  
27 Corporation for establishment and operation of an aquatic farm shellfish hatchery.

28 \* Sec. 29. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
29 \$500,000 is appropriated from the remedial and compensatory payments to the Department of  
30 Administration for payment as a grant under AS 37.05.315 to the City of Seward for development of  
31 the Alaska Sea Life Center for work associated with endangered species in the region affected by the

1 Exxon Valdez oil spill.

2 \* Sec. 30. In order to achieve the purpose of the remedial and compensatory payments, the sum of  
3 \$215,000 is appropriated from the remedial and compensatory payments to the Department of  
4 Administration for payment as a grant under AS 37.05.315 to the City of Valdez to install oil and grease  
5 separators on the storm drains.

6 \* Sec. 31. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
7 \$1,000,000 is appropriated from the remedial and compensatory payments to the Department of  
8 Commerce and Economic Development for payment as a grant under AS 37.05.316 to the Prince  
9 William Sound Aquaculture Corporation for upgrading the Main Bay hatchery.

10 \* Sec. 32. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
11 \$130,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
12 Game for payment as a grant under AS 37.05.316 to the Valdez Fisheries Development Association, Inc.,  
13 for a study of the migration behavior of juvenile Prince William Sound salmon.

14 \* Sec. 33. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
15 \$85,000 is appropriated from the remedial and compensatory payments to the Department of Fish and  
16 Game for payment as a grant under AS 37.05.316 to the Valdez Fisheries Development Association, Inc.,  
17 for a remote release fry transport study.

18 \* Sec. 34. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
19 \$4,000,000 is appropriated from the remedial and compensatory payments to the Department of Revenue  
20 for establishment of a commercial fisheries development endowment for the Alaska Fisheries  
21 Development Foundation for the purpose of fisheries development and research, including research on  
22 the effects of the Exxon Valdez oil spill on commercial fisheries. The appropriation made by this  
23 section is contingent upon the enactment into law of a bill passed by the Seventeenth Alaska State  
24 Legislature establishing the commercial fisheries development endowment.

25 \* Sec. 35. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
26 \$190,685 is appropriated from the remedial and compensatory payments to the Department of Fish and  
27 Game for the development of a commercial sockeye salmon fishery at Kodiak Island to replace damaged  
28 Red Lake stocks.

29 \* Sec. 36. In order to achieve the purposes of the remedial and compensatory payments, the sum of  
30 \$100,000 appropriated from the remedial and compensatory payments to the Department of  
31 Environmental Conservation for payment as a grant under AS 37.05.316 to the Bristol Bay Buy-Back

1 Coalition to work with the Congress to develop mechanisms for the future purchase of the federal  
2 offshore oil and gas leases in Bristol Bay.

3 \* Sec. 37. In this Act, "remedial and compensatory payments" means the remedial and compensatory  
4 payments received by the state under the criminal plea agreement between the United States and Exxon  
5 Shipping Company and Exxon Corporation in United States of America v. Exxon Corporation and Exxon  
6 Shipping Company, United States District Court, District of Alaska, case No. A90-015 CR.

7 \* Sec. 38. The appropriations made by secs. 2 - 7, 9 - 12, and 20 of this Act replace resources and  
8 services injured by the Exxon Valdez oil spill with equivalent resources and services.

9 \* Sec. 39. The appropriations made by secs. 2 - 4, 6, 7, 9 - 12, 21, 22, 30, and 31 of this Act are for  
10 capital projects and lapse under AS 37.25.020.

11 \* Sec. 40. The appropriations made by secs. 8, 18, 23, 26 - 29, 32, 33, and 35 of this Act lapse into  
12 the fund from which they were appropriated June 30, 1995.

13 \* Sec. 41. The unexpended and unobligated balances of the appropriations made by secs. 14 - 17,  
14 19, 20, 24, 25, and 36 of this Act lapse into the fund from which they were appropriated December 31,  
15 1994.

16 \* Sec. 42. The unexpended and unobligated balances of the appropriations made by secs. 5 and 13  
17 of this Act lapse into the fund from which they were appropriated June 30, 1993.

18 \* Sec. 43. The appropriation made by sec. 34 of this Act is for the establishment of an endowment  
19 and does not lapse.

20 \* Sec. 44. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

OFFERED IN THE SENATE

BY HOFFMAN

Corrected  
amendments  
for work draft:  
7-LS1718\F

TO SENATE FINANCE CS FOR HB 411  
WORK DRAFT 7-LS1718\F  
5/12/92

Page 3, line 28

Delete "\$8,100,000"  
Insert "\$8,000,000"

Page 4, line 26

Delete "\$8,100,000"  
Insert "\$8,000,000"

PAGE 9, following line 25:

Insert a new bill section to read:

"\*Sec. 36. In order to achieve the purposes of the remedial and compensatory payments, the sum of \$100,000 is appropriated from the remedial and compensatory payments to the Department of Environmental Conservation for payment as a grant under AS 37.05.316 to the Bristol Bay Buy-Back Coalition to work with the Congress to develop mechanisms for the future purchase of the federal offshore oil and gas leases in Bristol Bay."

Renumber the following bill sections accordingly.

5-12-92  
LH  
Adopted.  
#1  
LH

AMENDMENT

OFFERED IN THE SENATE

BY HOFFMAN

TO SENATE FINANCE CS FOR HB 411  
WORK DRAFT 7-LS1718\Z  
5/11/92

Page 3, line 28      *8,100*  
Delete              "~~\$9,000,000~~"  
Insert               "~~\$8,900,000~~"  
                         *8,000,000*

PAGE 9, following line 25:

Insert a new bill section to read:

"\*Sec. 36. In order to achieve the purposes of the remedial and compensatory payments, the sum of \$100,000 is appropriated from the remedial and compensatory payments to the Department of Environmental Conservation for payment as a grant under AS 37.05.316 to the Bristol Bay Buy-Back Coalition to work with the Congress to develop mechanisms for the future purchase of the federal offshore oil and gas leases in Bristol Bay."

Renumber the following bill sections accordingly.

AMENDMENT

Corrected  
amendments  
for work draft  
7-LS1718\F

By: Adams

To: SCS CSHB 411 (Fin) Work Draft "F" 5/12/92

Section 26, page 8, lines 16-20 is amended to read:

\*Sec. 26. In order to achieve the purposes of the remedial and compensatory payments, the sum of \$1,285,000 is appropriated from the remedial and compensatory payments to the Department of Fish and Game, division of fisheries rehabilitation, enhancement and development, for construction of a heated water pipeline to the Fort Richardson Hatchery and for sockeye salmon smolt production at the Big Lake Hatchery and improvements to Sikusuilag Hatchery on the Noatak River.

5-12-92  
# 1  
Adams  
Z  
Adopted

A M E N D M E N T

By: Adams

To: SCS CSHB 411 (Fin) Work Draft "Z" 5/11/92

Section 26, page 8, lines 14-18 is amended to read:

\*Sec. 26. In order to achieve the purposes of the remedial and compensatory payments, the sum of \$1,785,000 is appropriated from the remedial and compensatory payments to the Department of Fish and Game, division of fisheries rehabilitation, enhancement and development, for construction of a heated water pipeline to the Fort Richardson Hatchery and for sockeye salmon smolt production at the Big Lake Hatchery and improvements to Sikusuilaq Hatchery on the Noatak River.

1,285,000

5-12-92  
Adopted  
#2

AMENDMENT TO HB 411

Offered by Senator Jay Kerttula

Page 5, line <sup>18</sup>~~16~~, add language to read "the Kenai River  
watershed, in consultation with the Cook Inlet Aquaculture  
Association

5-12-92  
Adopted  
#1  
JK ✓

AMENDMENT TO SCS CSHB 411 (FIN)

Offered by Senator Jay Kerttula

page 8, line 30, delete [research by ] and add development of

And ~~also~~?

page 8, line 31

After "Center" Delete: ["on"]

Insert: "for work associated with,

5-12-92  
Adams  
#2

Failed

AMENDMENT

OFFERED IN THE SENATE  
TO HOUSE BILL CS FOR SB 411 (SENATE FINANCE)

SEC. \_\_\_\_\_

In order to achieve the purposes of studying the effects of oil spills in cold water environments and the training of personnel in the methods to respond to cold water spills, the sum of \$1,000,000 is appropriated to the University of Alaska for the purposes of establishing a Cold Weather Oil Spill School and Training Center at the Prince William Sound Community College in Valdez, Alaska.

Delete from Section 26 [\$1,785,000]; replace with \$785,000

SUBJECT: Proposed Senate CS for CS for House Bill 411(FIN) (7-  
LS1718 (F))

Following is a summary of the provisions of proposed Senate CS for CSHB 411(FIN). Changes from the Senate Resources Committee substitute are underlined.

Section 1 Findings and Purposes

Section 2 Acquisition of key fish and wildlife habitat in Prince William Sound - \$4,350,000

~~Section 3 Acquisition of key fish and wildlife habitat in Prince William Sound - Delete: \$2,175,000. Insert: \$1,675,000~~

~~Section 4 Acquisition of key fish and wildlife habitat in Prince William Sound - Delete: \$2,175,000. Insert: \$1,675,000~~

~~Section 5 Acquisition of and title to abutment on Cape Suckling parcel near Cordova - Delete: \$9,000,000. Insert: \$8,700,000~~

~~Section 6 Kachemak Bay acquisition - Delete: \$5,809,315. Insert: \$9,272,315 plus related expenses from December 1, 1991 to June 30, 1992 (estimated to be \$1,200,000 = \$1,700,000)~~

Section 7 Conservation easement acquisition along Kenai River - \$2,800,000

Section 8 Prince William Sound Science Center - \$800,000

Section 9 Weir site acquisition near Seward - \$75,000

Section 10 Acquisition of key fish and wildlife habitat in two key watersheds on Afognak Island, Kodiak - \$7,000,000

Section 11 Acquisition of key fish and wildlife habitat in one watersheds on Afognak Island, Kodiak - \$1,300,000

Section 12 Kodiak weir site acquisition - \$350,000

Section 13, 23, 24, 25  
Prince William Sound fishery restoration projects - \$1,410,000

Section 14-17 Cook Inlet fishery restoration projects - \$990,000  
Section 18 Fishery restoration project near Seward - \$250,000  
Section 19 Prince William Sound killer whale research - \$50,000  
Section 20 Subsistence restoration near Chenega Bay - \$200,000  
Section 21 Archeology work throughout the spill area - \$800,000  
Section 22 Research for Fisheries Industrial Technology Center, Kodiak - \$100,000

~~Section 25 Ex. 1000 Sport fish hatchery and Bldg. Delete (\$1,785,000) Insert \$1,415,000~~

Section 27 Cleanup of Chenega Bay herring saltry - \$585,000

Section 28 Oyster hatchery, Seward - \$800,000

~~Section 29 Alaska Sea Chure Center, Seward - Delete (\$565,000) Insert \$500,000~~

Section 30 Oil/grease separators on Valdez storm drains - \$215,000

Section 31 Upgrading Prince William Sound hatchery - \$1,000,000

Section 32, 33 Prince William Sound fishery restoration projects - \$215,000

~~Section 34 Endowment to Alaska Fisheries Developmental Corporation - Delete (\$5,000,000) Insert \$4,000,000~~

Section 35 Kodiak fishery restoration project - \$190,685

Section 36-42 Effective date clauses

~~Section 42 Add an immediate effective date clause~~

HB416

(11)

Date Referred: March 6, 1992

HOUSE COMMITTEE REPORT  
FURTHER REFERRALS:

Date of Committee Action: 3/16/92

The FINANCE Committee considered:

HB 416

HOUSE BILL NO. 416

RATIFY SETTLEMENT W/ ARCTIC SLOPE REG COR

"An Act ratifying an agreement settling litigation between the State of Alaska and the Arctic Slope Regional Corporation; establishing procedures for implementing the agreement; and providing for an effective date."

RECOMMENDATIONS:

[ ] the same title  
be replaced with \_\_\_\_\_ [ ] a new title

[ ] have attached amendments(s)

do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note DNR 2/13/92

zero fiscal note(s) DNR 1/24/92 LAW 3/6/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Robert P. Mackinnon	✓				
Mike Young	✓				
Mark Boyer	X				
Jay Brown	✓				
<del>Thomas</del>	✓				
Steve Taylor	✓				
Barbara King	✓				
ROBERT KING	✓				
Barbara King	X				
John King	X				
Geneva Barnes	X				

M. E. Young, E.P. Mackinnon

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

No. 1  
Bill Version: HB 416  
(H) Publish Date: 1/24/92

Revision Date: \_\_\_\_\_ Department Affected: Natural Resources & Law  
Title: Short Title: ASRC Settlement BRU: Division of Oil & Gas  
Components: \_\_\_\_\_  
Sponsor: Rules Committee  
Requestor: Governor COMPONENT SERIAL NO. 439

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
Funding Source:	N/A					

FUNDING: (Thousands of Dollars)

GENERAL FUND	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	N/A	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0					
PART-TIME	0.0					
TEMPORARY	0.0					

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attachment

Prepared by: Bob Loeffler Phone: 762-2578  
Division: Oil & Gas Date: 15-Jan-92

Approved by Commissioner: Harold C. Heinz Date: \_\_\_\_\_  
Agency: Department of Natural Resources 1/13/92

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



## Attachment

### Arctic Slope Regional Corporation Settlement Agreement

If the agreement is approved by the Legislature, no additional funds or positions will be needed to implement it.

If the agreement is not approved by the Legislature, the Department of Law would expend significant funds litigating the dispute. The Department of Natural Resources would need a portion of a position to support the litigation.

In addition, the settlement is needed if the state is to lease lands in the Nuiqsut area now scheduled for sale Oil and Gas Lease Sale 75 during December, 1992. If the agreement is approved this year, the lease sale could include approximately 60,000 acres of land covered in the agreement (about one quarter of the total acreage of Sale 75). If the agreement is not approved this session, the Nuiqsut acreage (assuming the litigation is settled) could not be leased until 1995 because of oil and gas lease sale procedural requirements. The Nuiqsut area lands have moderate oil and gas potential. Including them in the lease sale would bring significant new revenues to the state.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 416

Revision Date: \_\_\_\_\_  
Title: "...settling litigation between the State...Arctic Slope Regional Corporation..."  
Sponsor: House Rules/Request of the Governor  
Requestor: House Judiciary Committee

Department Affected: Department of Law  
BRU: Legal Services  
Component: Operations

COMPONENT SERIAL 

		9	3
--	--	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director  
Division: Administrative Services  
Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Phone: 465-3672  
Date: February 21, 1992  
Date: February 21, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 416

This bill approves and ratifies the 1991 settlement between the State of Alaska and the Arctic Slope Regional Corporation to settle claims raised in litigation involving lands in the Nuiqsut and Point Lay areas. Approval of this bill will have the effect of preventing other parties from making claims in this matter. Failure to ratify the settlement could result in the department having to defend against claims potentially costing tens of millions of dollars.

## HOUSE BILL NO. 416

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/24/92

Referred: Resources, Judiciary, Finance

## A BILL

## FOR AN ACT ENTITLED

1 "An Act ratifying an agreement settling litigation between the State of Alaska and the  
2 Arctic Slope Regional Corporation; establishing procedures for implementing the agreement;  
3 and providing for an effective date."

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

5 \* Section 1. PURPOSE. The purpose of this Act is to provide for the settlement of certain claims  
6 raised in litigation between the State of Alaska and the Arctic Slope Regional Corporation (ASRC) in  
7 "State of Alaska v. Arctic Slope Regional Corporation," Alaska Superior Court, Third Judicial District,  
8 Case No. 3AN-85-15523, and to improve the marketability of certain land titles in the Nuiqsut and Point  
9 Lay areas. The litigation arose over a 1974 agreement under which ASRC and the state were to  
10 exchange certain potentially valuable mineral lands in the Point Lay and Nuiqsut areas in exchange for  
11 which the state was to withdraw challenges to the eligibility, under the Alaska Native Claims Settlement  
12 Act (ANCSA), of the villages of Nuiqsut (Kuukpik Corporation) and Point Lay (Cully Corporation).  
13 For reasons that the State and ASRC disputed, the land exchanges of the 1974 agreement were never  
14 completed. Under the 1991 Settlement Agreement that this Act ratifies, the state and ASRC will

1 exchange undivided interests in the subsurface of submerged lands and uplands in the Point Lay and  
2 Nuiqsut areas and establish a fixed revenue sharing percentage for those lands.

3 \* Sec. 2. RATIFICATION. Notwithstanding any provision of AS 38 or any other provision of state  
4 law, the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and the State of  
5 Alaska" (including the exhibits to it) is hereby ratified as to the rights, duties, agreements, and  
6 obligations of the state provided for or contemplated in it.

7 \* Sec. 3. RULES AGAINST PERPETUITIES AND RESTRAINTS ON ALIENATION. No statutory  
8 or common law rules against perpetuities, including AS 34.27.010, or restraints on alienation of property  
9 apply to the settlement agreement ratified by this Act or to any interest or power created by it.

10 \* Sec. 4. COMMISSIONER AUTHORITY. The commissioner of natural resources is authorized and  
11 directed to implement the terms of the settlement agreement ratified by this Act, including, without  
12 limitation, to execute and deliver patents to ASRC as provided for in the settlement agreement,  
13 notwithstanding any procedural requirement or other provision of Alaska law that might otherwise be  
14 deemed a restriction on the commissioner's authority to implement the agreement. The commissioner  
15 may not materially amend the settlement agreement without legislative approval.

16 \* Sec. 5. RECORDATION. (a) The commissioner of natural resources shall record a true and  
17 authenticated photocopy of the settlement agreement ratified by this Act, and any conveyance document  
18 required by it, in the recording office of the appropriate recording district, and shall incorporate the  
19 settlement agreement in the land records system maintained by the Department of Natural Resources.

20 (b) The commissioner of natural resources shall deliver a signed original of the settlement  
21 agreement to the archivist in the Department of Administration, for preservation.

22 \* Sec. 6. ACTIONS. (a) Notwithstanding any other provision of Alaska law, no person may bring  
23 an action challenging the legality of the settlement agreement ratified by this Act, in whole or in part,  
24 or the legality of a provision of this Act, unless the action is commenced in a state superior court within  
25 six months after the effective date of this Act.

26 (b) Nothing in this Act is intended to create a right in any person to challenge the legality of  
27 the settlement agreement ratified by this Act, in whole or in part, or the legality of a provision of this  
28 Act.

29 \* Sec. 7. WAIVER OF SOVEREIGN IMMUNITY. The State of Alaska waives its sovereign  
30 immunity from suit by ASRC and its successors or assigns seeking to enforce or protect rights conferred  
31 on ASRC under the settlement agreement ratified by this Act, but only if that action is brought in state

- 1 superior court. Nothing in this Act is intended to waive the state's immunity from suit in federal court
- 2 under the eleventh amendment of the Constitution of the United States.
- 3 \* Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

F  
WALTER J. HICKEL, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES**

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FACSIMILE: (907) 586-2754

February 3, 1992

The Honorable Cliff Davidson, Chair  
House Resources Committee  
State Capitol  
Juneau, AK 99811-1182

Dear Representative Davidson:

Subject: HB 416, relating to the Legislature's ratification of the 1991 settlement agreement between the Arctic Slope Regional Corporation (ASRC) and the State of Alaska.

Position: The Department of Natural Resources supports this bill. It will ratify an agreement that resolves protracted litigation between the state and the ASRC over potentially valuable North Slope mineral lands, allowing some of these lands to be leased in a December, 1992 state oil and gas lease sale.

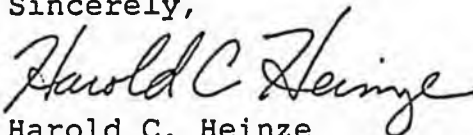
Background: The litigation stemmed from a 1974 agreement between ASRC and the state which was intended to resolve a dispute over the Alaska Native Claims Settlement Act eligibility of the villages of Nuiqsut and Point Lay. Under the 1974 agreement, for withdrawing its challenges to these villages eligibility and transferring certain state lands in the Point lay area to ASRC, the state was to receive the subsurface estate to certain lands near Nuiqsut. The dispute became a lawsuit in 1985 after Texaco announced an oil strike northeast of the Nuiqsut lands.

Under the new settlement agreement, the state and ASRC would jointly own undivided interests in the mineral estate of approximately 84,000 acres near Point Lay and over 100,000 acres near Nuiqsut. The state would hold joint oil and gas lease sales for itself and ASRC. If the two disagree about terms for the lease sales, such as minimum bid and royalty rate, a dispute resolution process agreed to in the settlement would be used instead of the courts.

Recommendation: Approve the settlement agreement.

Please let me know if you need additional information about the settlement agreement.

Sincerely,



Harold C. Heinze  
Commissioner

cc: Committee Members  
Paul Fuhs, Legislative Liaison, Office of the Governor  
Charles E. Cole, Attorney General, Department of Law  
Jim Eason, Director, Division of Oil and Gas

Questions and Answers  
HB 416 House Resources Committee Hearing  
February 5, 1992

Why does the legislature have to approve this settlement? It doesn't approve most settlements.

First, the settlement requires the state to convey a portion of its mineral interest to ASRC. Alienation of the state's mineral interest is prohibited by Section 6(i) of the Alaska Statehood Act. In 1976, however, Congress amended Section 22(f) of ANCSA to permit the state to enter into exchanges of land "for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes." Exchanges must be of equal value unless found to be in the public interest "by the appropriate Secretary." The United States has confirmed that its consent to the exchange is not required and that the requirements of Section 6(i) of the Statehood Act and 22(f) of ANCSA will be satisfied as long as the legislature finds the exchange to be in the public interest.

Second, AS 38.50 which provides authority for exchanges of interests in state lands does not provide an appropriate vehicle for the settlement of litigation. Among other things, Chapter 50 contemplates a voluntary exchange for equal values, and requires appraisals and a series of public hearings on proposed exchanges. Although the state and ASRC believe that the consideration given and received in the exchange is roughly equal, no effort has been made to appraise the lands. The terms of the exchange are influenced by factors other than land values (which are highly speculative, in any event), including each side's assessment of the risks of litigation. Because the agreement does not fit the process of AS 38.50, legislative approval provides the authority necessary to effectuate the exchange.

Third, Article VIII, Section 10 of the Alaska Constitution requires that "[n]o disposals...of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interests as may be prescribed by law." Public involvement in the settlement is provided through the process of legislative ratification, in order to avoid any potential constitutional infirmity.

**How are funds accounted for? Does this settlement evade the legislature's appropriation authority?**

Funds accruing to the state from oil and gas leases on state land go in part to the general fund and in part to the permanent fund. Leases issued under the ASRC agreement are no different. The agreement divides interests in land, but all revenue from the state's interest belongs to the state and is handled like "normal" state revenues. In addition, it is the lessee's responsibility to pay the appropriate share directly to the state and to ASRC. This divided payment is unusual for Alaska, but is a frequent occurrence in other parts of the United States where land status is more complex.

If, for example, the lessee owes \$100 in rent under the lease made under this agreement, and that lease happens to be on land that the state owns a 60% undivided interest and ASRC owns a 40% undivided interest, then the lessee must send \$60 to the state, and \$40 to ASRC. That \$60 is accounted for like other oil and gas revenues. Part goes to the general fund and part goes to the permanent fund.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

1031 W 4th AVENUE SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550  
FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 456-1317

P.O. BOX K— STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

February 28, 1992

The Honorable Pat Parnell  
Alaska House of Representatives  
P. O. Box V  
Juneau, Alaska 99801-1182

Dear Representative Parnell:

This letter responds to your inquiries regarding the language in HB 416 (17th Legislature, second session) which ratifies a settlement agreement between the Arctic Slope Regional Corporation and the State of Alaska. Specifically, you questioned whether the language in section 2 (ratification) could be misconstrued by a court in two ways: first, could the provision in lines 5 and 6 that the settlement agreement is ratified "as to the rights, duties, agreements, and obligations of the state" be read to mean that something less than the whole agreement is ratified (i.e., only the enumerated items would be ratified); and second, does the language at line 6 which refers to the rights, duties, agreements, and obligations of the state "provided for or contemplated in" the settlement agreement suggest that some rights, duties, agreements, or obligations "contemplated" by someone at a future date become ratified?

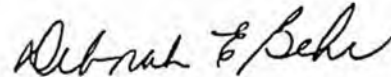
Both the state's and ASRC's attorneys have discussed your question, and we believe that as a matter of law section 2 is clear in specifying that by enacting the bill the legislature is ratifying the agreement in toto and nothing more. The term "contemplated" refers only to those provisions expressly referred to in the settlement agreement, not to any future or undefined provisions. The terms "rights, duties, agreements, or obligations" is intended only to make clear that the settlement agreement does include those responsibilities, and the enumerated terms are broad enough to encompass all the provisions of the settlement agreement. We do not believe that it is necessary to edit the bill at this point to avoid a possible ambiguity or misconstruction. We believe that a court would interpret section 2 to mean that the settlement agreement is ratified in whole and that only what is in the settlement agreement is ratified; we believe a court would reach this conclusion regardless of whether the language after the word "ratified" in line 5 were deleted or left as is. The inclusion of this letter in the legislative history file, if nothing else, should insure that result.

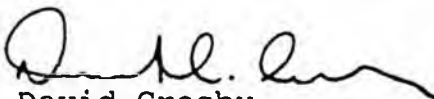
We appreciate your careful scrutiny of the bill and attention to good drafting style; you have certainly raised valid questions regarding proper English usage. As you are aware, the bill and the settlement agreement were the product of years of negotiations that involved a number of lawyers, oil and gas experts, and land managers, each of whom made editorial changes to the documents. That process necessarily entails certain sacrifices of prose style in the interest of achieving conceptual agreement. In the instance you have highlighted, we believe the language agreed upon does clearly, from a legal if not a stylistic perspective, express the intent of the drafters -- ratification of the 1991 settlement agreement. As Commissioner Heinze, Oliver Levitt, and many others have testified, we believe this bill and the agreement it ratifies constitute a positive step forward for all the citizens of this state, and we hope we will have your continued support for this legislation. If there are any other questions that we could address for you, please let us know.

Sincerely,

CHARLES E. COLE  
ATTORNEY GENERAL

WICKWIRE, GREENE, CROSBY &  
SEWARD

By:   
*for* Sarah Elizabeth Gay  
Assistant Attorney General

By:   
David Crosby  
Attorneys for ASRC

cc: Paul Fuhs  
Deborah Behr

# STATE OF ALASKA

**DEPT. OF NATURAL RESOURCES**

*DIVISION OF OIL AND GAS*

RECEIVED JAN 13 1992

WALTER J. HICKEL, GOVERNOR

P.O. BOX 107034  
ANCHORAGE, ALASKA 99510-7034  
PHONE: (907) 762-2553

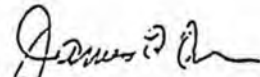
January 3, 1992

Dear Sir or Madame:

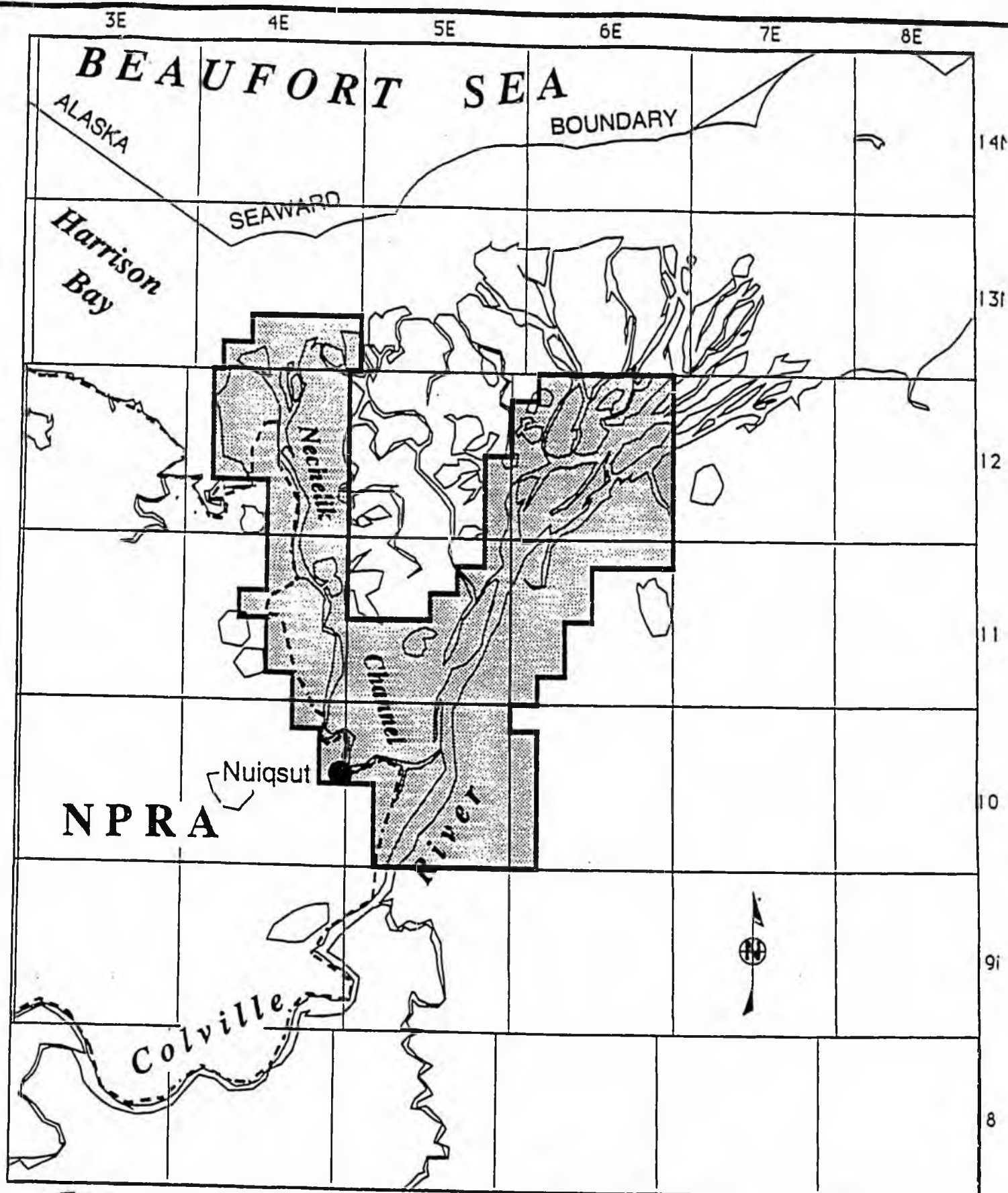
I am writing to inform you of a settlement agreement concerning certain mineral resources on the north slope. In December 1991, the State of Alaska and the Arctic Slope Regional Corporation (ASRC) settled a long-running legal dispute concerning land ownership on the north slope near Nuiqsut and Point Lay. The mineral estate of this land is potentially valuable for oil, gas, or coal. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange lands near Nuiqsut and Point Lay. The settlement is not effective until approved by the legislature. The Governor will submit the settlement agreement to the legislature at the beginning of the legislative session in January. Much of the Nuiqsut-area lands have existing oil and gas leases. Certain unleased portions of that area are scheduled to be offered for competitive leasing in Oil and Gas Lease Sale 75 in December 1992.

I am enclosing a copy of the settlement, and a summary of its terms prepared by the Division of Oil and Gas. If you would like more information, please contact Bob Loeffler of my staff at the address on the letterhead. He can be reached at 762-2578.

Sincerely,

  
James E. Eason  
Director

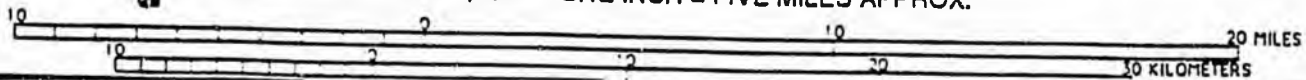
Enclosures



## Nuiqsut Subsurface

SCALE 1: 317,000 ONE INCH = FIVE MILES APPROX.

Alaska  
Department of  
Natural Resources  
Division of Oil and Gas  
12-4-91



# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

# STATE OF ALASKA

## DEPT. OF NATURAL RESOURCES

### DIVISION OF OIL AND GAS

RECEIVED JAN 13 1992

WALTER J. HICKEL, GOVERNOR

P.O. BOX 107034  
ANCHORAGE, ALASKA 99510-7034  
PHONE: (907) 762-2553

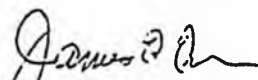
January 3, 1992

Dear Sir or Madame:

I am writing to inform you of a settlement agreement concerning certain mineral resources on the north slope. In December 1991, the State of Alaska and the Arctic Slope Regional Corporation (ASRC) settled a long-running legal dispute concerning land ownership on the north slope near Nuiqsut and Point Lay. The mineral estate of this land is potentially valuable for oil, gas, or coal. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange lands near Nuiqsut and Point Lay. The settlement is not effective until approved by the legislature. The Governor will submit the settlement agreement to the legislature at the beginning of the legislative session in January. Much of the Nuiqsut-area lands have existing oil and gas leases. Certain unleased portions of that area are scheduled to be offered for competitive leasing in Oil and Gas Lease Sale 75 in December 1992.

I am enclosing a copy of the settlement, and a summary of its terms prepared by the Division of Oil and Gas. If you would like more information, please contact Bob Loeffler of my staff at the address on the letterhead. He can be reached at 762-2578.

Sincerely,

  
James E. Eason  
Director

Enclosures

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPT. OF NATURAL RESOURCES

P.O. BOX 107034  
ANCHORAGE, ALASKA 99510-7034  
PHONE: (907) 762-2553

### DIVISION OF OIL AND GAS

## SUMMARY OF THE 1991 SETTLEMENT AGREEMENT between ARCTIC SLOPE REGIONAL CORPORATION & STATE OF ALASKA January 1992

### INTRODUCTION

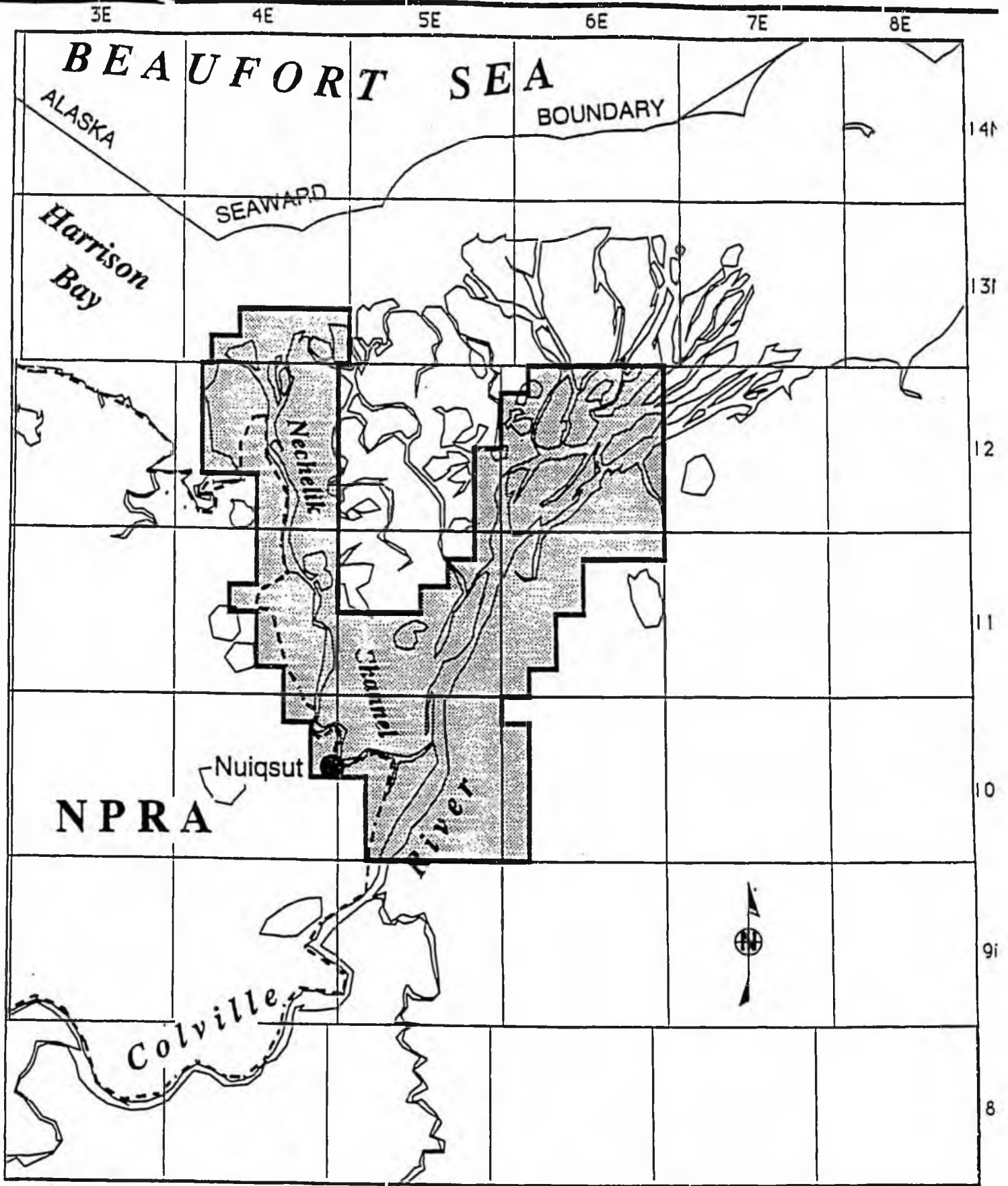
In December 1991, the State of Alaska and the Arctic Slope Regional Corporation (ASRC) settled a long-running legal dispute concerning north slope mineral ownership near Nuiqsut and Point Lay. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange lands near Nuiqsut and Point Lay. The settlement is not effective until approved by the legislature. The Governor will submit the settlement agreement to the legislature at the beginning of the legislative session in January. The area affected by the settlement is displayed in the maps on the next pages.

Under the settlement, the state and ASRC agree to jointly own undivided interest in the mineral estate of the disputed lands. The settlement also grants the state the right to hold oil and gas lease sales jointly for itself and for ASRC. Once a lease has been signed, the state and ASRC each separately administer its lease with respect to its own undivided interest in the subsurface.

Under the settlement agreement, the state does not give up any of its duties to the public imposed by law. The state would still have to determine whether a sale would be in the best interest of the state, and would follow relevant procedural requirements for leasing and for permitting the subsequent exploration for natural resources. The state retains all rights under state law to ensure that development of the subsurface complies with laws governing natural resource management and protection.

The agreement involves only mineral estate; it does not change the surface ownership. The surface estate of the Point Lay lands is state-owned; the Nuiqsut surface is owned by the village corporation for Nuiqsut, Kuukpik Corporation.

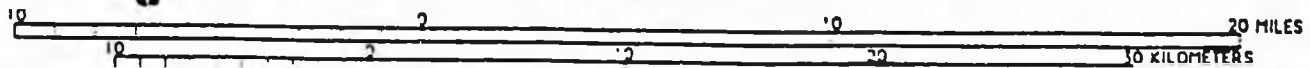
The land dispute began in 1973 when the federal government allowed the village corporations for Nuiqsut and Point Lay to select lands that had previously been transferred to the state. The state then protested the eligibility of those villages under the Alaska Native Claims Settlement Act. One year later, the state withdrew its protest and agreed to give up ownership of Point Lay mineral estate in return for ownership of the Nuiqsut mineral estate. For various reasons, the land exchanges expected by the 1974 agreement were never completed. This smoldering dispute erupted into lawsuits in 1985 after Texaco announced an oil discovery northeast of the Nuiqsut lands.



# Nuiqsut Subsurface

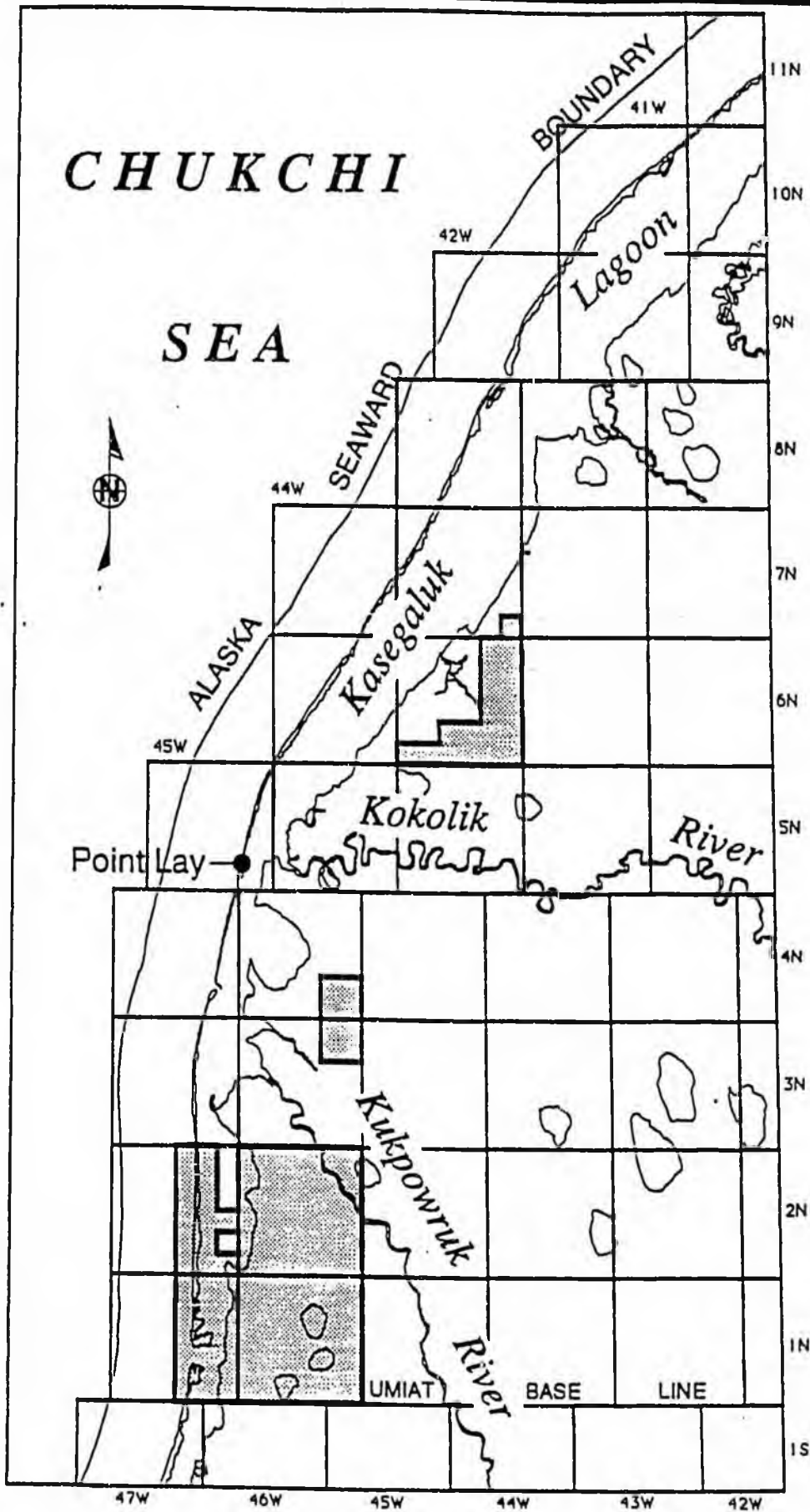
SCALE 1: 317,000 ONE INCH = FIVE MILES APPROX.

Alaska  
 Department of  
 Natural Resources  
 Division of Oil and Gas  
 12-4-91



CHUKCHI

SEA



Point Lay

UMIAT BASE LINE

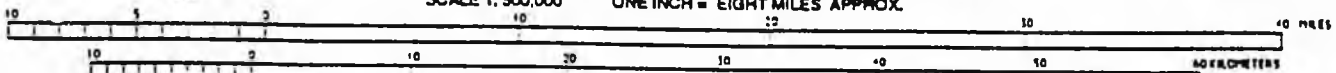


MAP AREA

# Point Lay Subsurface

SCALE 1: 500,000 ONE INCH = EIGHT MILES APPROX.

Alaska  
Department of  
Natural Resources  
Division of Oil and Gas  
12-4-91



The Point Lay area includes the mineral estate beneath approximately 84,000 acres (including all lands -- both the disputed uplands and the state-owned submerged lands). The Nuiqsut area includes the mineral estate beneath approximately 111,000 acres. However, the Nuiqsut-area acreage will eventually be reduced. The agreement concerns the subsurface estate conveyed to ASRC by the federal government. Conveyances in that area are not complete. The Nuiqsut area includes overselections, all of which will not be conveyed to ASRC. Sections not conveyed to ASRC will eventually be eliminated from the area affected by the agreement.

## SUMMARY OF THE ISSUES

**Land Ownership.** The dispute concerns the ownership of the subsurface estate beneath the uplands in the Nuiqsut and Pt. Lay areas. The agreement resolves the location and amount of the subsurface estate attributable to upland ownership. In concept, the state and ASRC agreed that submerged lands and the subsurface below them were state-owned. However, the location and amount of submerged lands were hotly disputed and difficult to resolve.

The agreement fixes the amount of submerged lands -- for purposes of oil and gas leasing -- for all time. This will eliminate administrative complexity for the state and ASRC, and for lessees who might otherwise be unsure who owns their lease tracts. The agreement also provides that the amount of submerged lands is agreed to for purposes of resolving this litigation only and has no further implication for the many other submerged lands disputes in which the state is involved.

According to the agreement, the state and ASRC own undivided interests in the subsurface estate of each section of land in the Nuiqsut and Pt. Lay areas. The interest that each owns reflects a 50/50 split of the uplands plus a state credit for 100% of the agreed-to submerged land acreage. The agreement establishes percentages for all times; the percentages will not change with changes in the extent of submerged lands (i.e., due to accretion, reliction, or erosion). Boundaries are "squared off" along the coast and along the NPRA border (i.e., the boundary includes entire sections). The squaring off allows for more efficient leasing. It also has the effect of giving ASRC a small share of lands in Harrison Bay which are already leased, and the state a small share of NPRA lands.

$$\text{State \%} = \frac{(\text{upland acres} * 50\%) + (\text{submerged land acres} * 100\%)}{\text{number of acres in the section (usually 640)}}$$

Crucial to the agreement is an exhibit that lists for each disputed section the state and the ASRC percentage ownership in that section. Revenue is calculated by section; it accrues according to the percentage ownership listed by section.

**Land Management.** The state and ASRC agreed to a system where the state manages the land for both parties up to the point of leasing. In return for that management, the state owes ASRC a certain standard of performance. Once the lease has been signed, the state has for the most part

discharged its duty to ASRC. Thereafter, the state and ASRC each separately administers its lease with respect to its own undivided interest in the subsurface. The exception is that in some situations, the commissioner has the power to establish the royalty value of oil for the state. If that occurs the commissioner's decision will also establish the value for purposes of ASRC.

## TERMS OF THE AGREEMENT

**The State's Right to Lease on Behalf of ASRC: *The Grant of Executive Rights.*** Under the agreement, ASRC grants the state "executive rights" to lease the jointly held land on behalf of itself and ASRC. Thus, the state holds the lease sale, accepts bids, and signs the lease agreement with the lessee. The lease binds both the state and ASRC. In return for these executive rights, the state agrees to comply with a standard of performance with respect to ASRC's interest in the land. By this standard, the state agrees to act with "the degree of diligence and discretion that would be exercised by an average landowner, acting as a reasonable and prudent person...in seeking to cause his subsurface to be explored and developed..." The state and ASRC also agree that this standard of performance does not apply "to the extent that the state is prevented from complying with such standard because of its duties and obligations as sovereign or because of applicable federal or state statutes, regulations and constitutional provisions including, but not limited to, those that govern protection of natural resources and procedural requirements for disposal of interests in state lands..."

In other words, the state agrees to a standard of care, but does not give up any of its duties to the public imposed by law (i.e., we still have to determine whether a sale would be in the best interests of the state, etc.). If, for example, it is not in the state's best interest to lease because of potential environmental harm or another reason, the state can decline to lease (can decline to exercise its executive rights). In that case, ASRC has the same rights as any member of the public to appeal the state's finding, but cannot compel the state to act by virtue of this agreement. If the state refuses to lease, ASRC has the right to lease its own interest under the laws of mineral cotenancy. Finally, the state agrees to "treat ASRC's interest in the same manner as it treats its own interest and shall not act in a manner intended to benefit itself at the expense of ASRC."

The state's liability under this standard could, in some circumstances, be quite significant. With knowledge gained by exploration, it is always possible to second-guess the terms of a past lease sale. To avoid claims made in hindsight that the state should have acted differently and did not live up to its promised standard, the parties agreed upon a dispute resolution process to resolve differences before the sale (and without going to court).

In this process, the state proposes "substantive terms and conditions" for a lease sale to ASRC. These terms include such variables as royalty rate and minimum bid, but they do not include sovereign powers of the state such as those that are exercised in best interest findings or in stipulations attached to land use permits. If they cannot agree on the "substantive terms and conditions" of the sale, the disagreement is referred to an expert (called a qualified independent

consultant). The expert determines whether the state's proposed "substantive terms and conditions" meet the standard of performance.

Three outcomes are possible: (1) the state and ASRC agree on terms and the lease sale goes forward; (2) they disagree, and the issue is referred to the expert who decides in favor of the state; or (3) they disagree, and the issue is referred to the expert who decides in favor of ASRC.

If either of the first two situations occurs (agreement or an expert decision favoring the state), ASRC forever waives the right to argue that the state violated its standard of performance. If the expert decides in favor of ASRC, the state can, of course, decide to adopt ASRC's recommendations. It can also go ahead under its own terms. If this occurs, however, ASRC may claim damages in court, arguing that the state violated the standard of performance that it promised in the agreement.

**After the Joint Lease: *Separate Administration.*** After the state signs the lease on behalf of itself and ASRC, the state and ASRC will each separately administer its own interest in the lease. The two parties have what is essentially identical but separate legal relationship with the lessee with respect to the same mineral estate. Although a new concept for Alaska, this is a frequent occurrence in other parts of the United States, like Texas, where landownership is more complicated.

Most state administration of oil and gas leases focuses on an operator's compliance with laws concerning natural resource management and protection (land use permits, etc.). This administration is based not upon the state's statutes for oil and gas leases, but on the state's sovereign powers. These regulatory decisions are made by the state alone. Decisions concerning whether the lessee has lived up to his lease obligation (e.g., paid rent, drilled for oil) are made under the requirements of the individual lease document. These decisions would be administered separately by the two parties with respect to their own interests.

There is an unlikely possibility that the state or ASRC will terminate its lease but that the other will not. In that case, the party with the unleased interest would be free to lease its interest on its own (though such a lease might be worth considerably less than a joint lease). In addition, the lessee may still explore and produce, but as long as part of the subsurface interest is unleased, production occurs under the laws of mineral cotenancy. These laws have not been tested in Alaska, but we expect that the lessee will owe the remaining lessor (the one with the lease) the royalty due under that lease, and will owe the other lessor (the one without a lease) the value of all oil after its share of production and development costs have been subtracted.

This system, while unusual for Alaska, is unlikely to create frequent conflict. The limited nature of decisions made under the lease and the self-interest of both the state and ASRC will likely result in consistent administration.

## **SUMMARY OF PROCESS BEFORE A JOINT LEASE SALE.**

The previous section explained the concept of the settlement agreement. This section explains the steps that precede a joint lease sale.

**The Grant of Executive Rights.** Once State and ASRC both have title to a section and the section is unleased, State has Executive Rights to lease both State and ASRC acreage for oil and gas. With those executive rights, the State is held to a "Standard of Performance" but does not give up its "Sovereign Powers."

1. **State proposes "substantive terms and conditions"** of the lease sale. At least 6 months before sale, State gives ASRC notice of proposed "substantive terms and conditions" for the sale.
  - 2a. **If State and ASRC reach "Approval Agreement"** -- that is, if State and ASRC agree on those terms, State goes forward and holds the sale. Go to Step 3.
  - 2b. **If State and ASRC disagree - the Qualified Independent Consultant (QIC).** If State and ASRC disagree, the disagreement is referred an expert, the Qualified Independent Consultant. State and ASRC show each other and the QIC their information; QIC decides whether State would breach its "Standard of Performance" in using those "substantive terms and conditions."
    - (i) **If QIC decides for State.** State holds lease sale. Go to Step 3.
    - (ii) **If QIC decides against State.** State has two choices:
      - (A) **Change terms** to those requested by ASRC and hold sale. Go to Step 3.
      - (B) **Hold sale using State's proposed terms.** Go to Step 4.
3. **State holds Lease Sale -- Liability Ends.** ASRC loses right to argue State breached Executive Rights "Standard of Performance" because ASRC agreed or lost in front of the QIC.
4. **State holds Lease Sale -- Liability Continues.** ASRC retains right to sue for damages that State breached "standard of performance." If they sue, court reviews decision of QIC based on the record before QIC. If, based on record before QIC, court decides that QIC's decision was "arbitrary and capricious" State is absolved of liability. If court upholds QIC, then court awards damages on State's failure to comply with "standard of performance."

**Grant of Executive Rights Ends -- State and ASRC Administer Own Interest Separately.** One partial exceptions to separate administration: ASRC agrees to use State's method for royalty evaluation.

**STANDARD OF PERFORMANCE.** The agreed standard of performance is reproduced from the agreement.

#### **4.2 Standard of Performance.**

(a) The State shall exercise the Executive Rights granted herein in compliance with the Limited Prudent Landowner Standard, as defined herein, as to the substantive terms and conditions of all Subsurface Agreements<sup>1</sup> and Subsurface Agreement Solicitations<sup>1</sup> to be executed or issued by the State as executive pursuant to this Settlement Agreement. In exercising such Executive Rights, the State shall treat ASRC's interest in the same manner as it treats its own interest and shall not act in a manner intended to benefit itself at the expense of ASRC.

(b) Neither the Limited Prudent Landowner Standard nor any other provision of this Settlement Agreement creates a fiduciary duty on the part of the State to ASRC.

#### **IMPORTANT DEFINITIONS**

**"Executive Rights"** means the exclusive right, power, and authority to formulate and issue Subsurface Agreement Solicitations<sup>1</sup> and to negotiate, formulate, agree upon, execute, and grant Subsurface Agreements<sup>1</sup> pursuant to the terms of this Settlement Agreement.

**"Limited Prudent Landowner Standard"** means the Prudent Landowner Standard except to the extent that the State is prevented from complying with such standard because of its duties and obligations as sovereign or because of applicable federal or state statutes, regulations, and constitutional provisions, including, but not limited to, those that govern protection of natural resources and procedural requirements for disposal of interests in state lands for leasing, exploration, and development of natural resources, subject, however, to the provisions of subsection 8.2.<sup>2</sup>

**"Prudent Landowner Standard"** means the degree of diligence and discretion that would be exercised by an average landowner, acting as a reasonable and prudent person who is familiar with prevailing practices and standards in the oil, gas, and mineral industry in the area at the time, in seeking to cause his subsurface to be explored and developed and to maximize subsurface revenues from such subsurface and protect such subsurface from drainage.

**"Substantive terms and conditions"** means, but is not limited to, timing of lease sales, lease tract identification and composition, bid terms, and lease terms but shall not include (i) the exercise by the State of its duties and obligations as sovereign, (ii) the State's compliance with applicable federal or state statutes, regulations, and constitutional provisions, including but not

---

<sup>1</sup> "Subsurface Agreements" are essentially oil and gas, or coal leases. "Subsurface Agreement Solicitations" is the lease sale.

<sup>2</sup> Section 8.2 ensures that ASRC has not waived "its right to challenge the constitutionality of any statute or the validity of any regulation...that singles out the Nuiqsut subsurface or the Point Lay subsurface for treatment different from that accorded to other lands with the State of Alaska, or that causes any injury-in-fact to any rights expressly granted to ASRC under this Settlement Agreement."

, those that govern protection of natural resources and procedural requirements for  
interests in State lands for leasing, exploration, and development of natural resources,  
granting of exploration incentive credits against tax obligations or the State's royalty  
but not ASRC's royalty interest), or (iv) other exercise of the State's taxing power."

# STATE OF ALASKA

## DEPT. OF NATURAL RESOURCES

### DIVISION OF OIL AND GAS

WALTER J. HICKEL, GOVERNOR

P.O. BOX 107034  
ANCHORAGE, ALASKA 99510-7034  
PHONE: (907) 762-2553

December 23, 1991

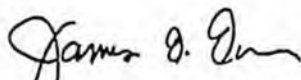
Re: Proposed Oil and Gas Lease Sale 75, Kuparuk Uplands

Dear Potential Bidders, Interested Individuals and Agencies;

The Division of Oil and Gas (DO&G) of the Department of Natural Resources has rescheduled the sale date for its proposed Oil and Gas Lease Sale 75. The sale, originally planned to be held on September 29, 1992, has been moved to December 8, 1992.

Sale 75 is located on the North Slope of Alaska between the Colville River and Sagavanirktok River. A portion of the acreage included within this sale is the subject of pending litigation and a settlement agreement between the State of Alaska and the Arctic Slope Regional Corporation. This settlement agreement, which is subject to legislative approval, would facilitate the offering of unleased lands within the Colville River Delta in Sale 75. The postponement of the sale is needed to provide the time necessary for the Alaska State Legislature to review and ratify the settlement agreement. The postponement of Sale 75 would also allow inclusion of acreage contracting out of the Kuparuk River and Hemi Springs Units over the next three months.

As a consequence of rescheduling the sale date, the dates for the draft and final Best Interest Finding and public notices have also been rescheduled. DO&G now anticipates issuance of the draft finding and associated notice on or about May 26, 1992 with the final finding and Notice of Sale to be issued on or about August 25, 1992. Anyone with concerns or questions regarding Sale 75 may contact James Hansen, Petroleum Geophysicist at 762-2588.

  
James E. Eason  
Director

75-7a

EXPLANATION OF HB416/SB369<sup>1</sup>

"An Act relating to the approval of an agreement settling litigation between the State of Alaska and Arctic Slope Regional Corporation; and providing for an effective date."

The "1991 Settlement Agreement Between Arctic Slope Regional Corporation and State of Alaska" ("1991 Agreement") is an historically significant attempt to resolve disputes and forge new partnerships between the State of Alaska and Alaska Native Regional Corporations. The 1991 Agreement proposes to resolve a long-standing dispute between the State and the Arctic Slope Regional Corporation ("ASRC") over ownership of potentially valuable mineral lands on the North Slope. More importantly, it proposes to do so in a way that will remove impediments to title marketability and create a long term partnership between the State and ASRC aimed at maximizing revenues for both parties. Because the 1991 Agreement involves an exchange of the State's mineral estate and contemplates conferring new management powers on the Commissioner of Natural Resources unique to the 1991 Agreement, legislative approval is required.

The purpose of this memorandum is to acquaint the reader

---

<sup>1</sup> This document was prepared by counsel for Arctic Slope Regional Corporation. It is being supplied to House and Senate staff to assist in analysis of HB416/SB369. It replaces a draft supplied to House and Senate staff on January 30, 1992. Please refer any questions to counsel for ASRC, David C. Crosby (586-6262).

with the 1991 Agreement and HB416/SB369. This memorandum is organized in three parts: Section I explains the historical setting that gave rise to the 1991 Agreement. Section II is a more detailed section-by-section explanation of the 1991 Agreement. Section III explains the provisions of the Bill.

I. HISTORY OF THE DISPUTE LEADING TO NEGOTIATION  
OF THE 1991 AGREEMENT.

Shortly after statehood, the State of Alaska filed selections in the delta of the Colville River immediately east of the National Petroleum Reserve No. 4 (since renamed the National Petroleum Reserve - Alaska, or "NPRA"). These lands are located approximately 50 miles west of Prudhoe Bay, and at the time of their selection were believed to be prospective for oil and gas. The selections were Tentatively Approved by the Secretary of the Interior and some of the lands were subsequently leased. An exploration program resulted in several dry holes.

In the mid-1960's the Arctic Slope Native Association filed aboriginal land claims to much of the North Slope, including the Colville Delta. The pendency of these and other Native claims led to the Secretarial land freeze order of 1968, and the eventual settlement of the claims of Alaska Natives by Congress in the Alaska Native Claims Settlement Act of 1971 ("ANCSA"). The basic land settlement contemplated selection of surface estate surrounding historic village cites by Village Corporations, with conveyance of the subsurface estate under the village land to the appropriate Native Regional Corporation. ANCSA identified roughly 200 Native villages and withdrew 25 townships of land, including lands previously Tentatively

Approved to the State, in the vicinity of each village. Within this area, eligible Village Corporations organized under ANCSA were permitted to select and receive title to up to three townships (69,120 acres) of lands Tentatively Approved to the State of Alaska.

The Colville Delta was the site of the historic Native Village of Nuiqsut (or "Nooiksut"), which was listed in Section 11(b) of ANCSA as a "Native village subject to this Act." That section also required the Secretary of the Interior to review the eligibility of listed Villages to determine whether they met the eligibility requirement of 25 or more residents as of the 1970 census. The Secretary's regulations defined "residence" broadly in terms of traditional Native occupancy patterns.

In 1974 the Secretary certified eight Inupiat villages in the Arctic Slope region as eligible to receive land benefits under ANCSA. The State of Alaska appealed the certification of two of these villages -- Nuiqsut and Pt. Lay -- on the ground that they did not satisfy the residency requirements for certification. Nuiqsut, because of its proximity to Prudhoe Bay and the possibility that ASRC would receive up to three townships of State TA'd lands in the Colville Delta if its certification were upheld, was of the greatest concern. The appeals were contested by ASRC on behalf of its villages.

While the appeals were pending before the Alaska Native Claims Appeals Board, ASRC proposed to settle the certification disputes by relinquishing its ANCSA entitlement to the Colville Delta subsurface. In return, the State would withdraw its selections and permit ASRC to select and receive conveyance to the surface and subsurface of approximately 65,000 acres of lands that had previously been TA'd to the State in the Point Lay area. When the federal government refused to cooperate on the ground that the Secretary had no discretion not to convey the subsurface estate under village surface conveyances, the settlement was hastily recast as a two party exchange of ASRC's subsurface in the Colville Delta for the slightly smaller amount of land owned by the State in fee in the Pt. Lay area. The deal was finalized in a "1974 Settlement Agreement" and the State's appeal of the village certifications was dismissed.

Although the 1974 Settlement Agreement contemplated an immediate exchange of quitclaim deeds to the parties' respective interests, the Department of Natural Resources declined ASRC's proffered conveyance, stating that it would prefer to await ASRC's receipt of conveyances to the Nuiqsut subsurface before finalizing the exchange. In 1977, the Alaska Supreme Court decided in State v. Lewis, 559 P.2d 630 (1977), strongly suggesting that any attempt to alienate the State's mineral estate without the prior consent of Congress and the Alaska Legislature would violate Section 6 of the Alaska Statehood Act.

The ruling cast a cloud on the State's ability to convey any mineral estate to ASRC at Pt. Lay.

Following inquiries by ASRC in 1977, neither side showed any further interest in implementing the 1974 Settlement Agreement until Texaco announced a discovery in the Colville Delta in 1985. When the Commissioner of Natural Resources served a demand that ASRC consummate the 1974 Settlement Agreement, ASRC filed suit in federal District Court asserting that the exchange provisions of the 1974 Settlement Agreement violated Section 6 of the Statehood Act and were unenforceable. The State countered by filing suit for specific performance of the 1974 Settlement Agreement in Superior Court.

The litigation posed significant problems for both parties. On the one hand, ASRC appeared to be reneging on a deal. On the other hand, the State was forced to concede in its briefing to the Court that it had no authority to deliver a significant portion of the agreed upon consideration -- the Pt. Lay mineral estate. To further complicate matters, subsequent events seemed to suggest that the Texaco discovery might not be as significant as it was initially believed to be and the Pt. Lay lands were known to contain substantial coal deposits that could prove valuable in the future.

Faced with the uncertainties of litigation and the highly

speculative values of both the Nuiqsut and Pt. Lay parcels, then Commissioner of Natural Resources Esther Wannicke and ASRC reached an agreement in principle in 1986 to settle the litigation by splitting the disputed lands in such a way that each side would receive half of the disputed lands at Pt. Lay and half of the disputed lands at Nuiqsut. In this manner, neither side "lost," and both sides spread the risk that one or the other of the two speculative tracts might prove to be substantially more valuable than the other. This "50/50" split remains at the heart of the 1991 Settlement Agreement.

After shaking hands on a conceptual settlement that was believed to be fair to both sides, the negotiations bogged down over the description of the lands that were subject to the settlement. The difficulties focused on the State's claims of ownership to submerged lands underlying bodies of water alleged to be navigable. ASRC took the position that a 1942 public land order (PLO 82) withdrew the entire North Slope of Alaska for national defense purposes and precluded the State from acquiring title to any submerged lands as a matter of law. The matter had been clarified to some extent in the Colville Delta by Section 1431(n) of ANILCA, which retained ownership of the principal channels (often referred to as the "named channels") of the Colville River "in public ownership" (without specifying whether "public" meant federal or State ownership). Since the United States concede the right of the State of Alaska to select

submerged lands in the area covered by the former PLO 82 withdrawal (which was rescinded shortly after statehood), and the State had in fact selected all available lands in the Colville Delta, there was no question that the State was the undisputed owner of submerged lands under the named channels. There, however, the agreement ended.

The State contended that the extent of submerged lands under the named channels was substantially greater than ASRC was prepared to concede. In addition, the State claimed exclusive ownership of a number of other smaller channels and sloughs in the Colville Delta, as well as the Kukpowruk River running through the Pt. Lay lands, and a number of lakes in both places. ASRC contended that submerged lands, other than the named channels of the Colville mentioned in Section 1431(n) of ANILCA, should be treated as subject to the settlement and divided 50/50. The State insisted that since ANCSA did not entitle ASRC to receive conveyance to any submerged lands under navigable waters, these submerged lands were not subject to the settlement. To further complicate matters, the law provides that title to submerged lands changes as the banks and shores of water bodies shift due to accretion, reliction and erosion. Thus, the boundary line between State and ASRC lands would be constantly shifting, especially in the Colville Delta. This fact alone would tend to make titles uncertain and decrease the marketability of title for both owners. Future litigation over

the existence and extent of State ownership of submerged lands was almost a certainty.

Ultimately, the parties concluded that the settlement should anticipate and resolve as many future disputes as possible, even if those disputes did not, strictly speaking, have to be resolved in order to settle the controversy over the 1974 Settlement Agreement. The parties concluded that the optimal settlement would (1) dispose of the dispute regarding the enforceability of the exchange provisions of the 1974 Settlement Agreement; (2) lay to rest disputes regarding the existence and extent of State owned submerged lands; (3) resolve the ambiguity created by the problem of accretion, reliction and erosion; and (4) provide for common management of uplands and submerged lands.

The parties had already agreed in principle to a 50/50 split of lands subject to the exchange provisions of the 1974 Settlement Agreement. They next agreed to quantify the extent of State owned by submerged lands by splitting the difference between the State's calculations and those of ASRC. Title problems were resolved by pooling the interests of the State and ASRC on a section-by-section basis with each party receiving an undivided percentage ownership reflecting a 50/50 division of the stipulated uplands within the section, with the State receiving full (i.e., 100 percent) credit for any stipulated submerged lands within the section. (The State retains full sovereign

powers over submerged lands, notwithstanding ASRC's undivided interest.) In order to eliminate any possible future disputes over the boundary of the settlement area on the coastline and the NPRA boundary (where the original 1974 settlement area followed the sinuosity of the constantly shifting ocean boundary and the west bank of the Nechelik Channel of the Colville River), the parties agreed to extend section lines into the ocean and across the NPRA boundary so that the area subject to the 1991 Agreement will include only full sections whose location can be protracted at any time without reference to changes brought about by accretion, reliction and erosion. In this manner, approximately 4,000 acres of ocean submerged lands owned by the State outside the 1974 Settlement Agreement area and approximately 9,000 acres of NPRA subsurface owned by ASRC and outside the 1974 Settlement Agreement area were included in the 1991 Agreement. In each instance the parties' undivided percentage interest in each section so extended was adjusted to provide a 100 percent credit for lands outside the original 1974 Settlement Agreement area.

Finally, the parties agreed that the State of Alaska would be the executive rights holder for both parties' interests. As defined by the 1991 Agreement, the State is authorized to enter into leases on behalf of both ASRC and the State. Lease sales will be conducted in the usual manner as provided by Title 38 of Alaska Statutes, subject to all legal requirements otherwise applicable to leasing of State lands. The 1991 Agreement

includes provisions to insure that ASRC is treated fairly in the leasing process.

Thus, the 1991 Agreement not only settles long-standing litigation between ASRC and the State, it anticipates and resolves disputes regarding the existence, extent and location of submerged lands owned by the State of Alaska. Finally, ASRC and the Department believe that by merging title to uplands and submerged lands and vesting executive rights in the State, the 1991 Agreement will result in maximum certainty and predictability for potential lessees, which in turn will make the interests of both the State and ASRC more marketable.

On November 28, 1989, the United States District Court for the District of Alaska approved the agreement in principle, including the section-by-section percentages set out in Exhibits E and F to the Agreement. (These percentages have since been adjusted slightly by mutual agreement to correct errors in calculation and make allowance for contingencies relating to future disposition of Native allotment claims.)

## II. SECTION-BY SECTION ANALYSIS OF THE 1991 AGREEMENT

The following section provides a more detailed section-by-section explanation of the terms of the 1991 Agreement. Much of the complexity of the document derives from the confused state of title in the Colville Delta and the technical nature of the executive rights arrangement. The underlying consideration given by the parties -- the cross conveyance of 50% undivided interests in the lands subject to the 1974 parcel-for-parcel Exchange -- is straightforward.

No effort has been made to treat each subsection individually. Emphasis is placed on drawing attention to significant issues and summarizing complex technical provisions.

### Introduction.

This section explains that the purpose of the agreement is to settle pending litigation between ASRC and the State regarding the enforceability of the 1974 Settlement Agreement and to eliminate the potential for future ownership disputes over submerged lands by exchanging undivided interests in the subsurface of submerged lands and uplands and establishing fixed revenue sharing percentages for the settlement lands that will not change in the event of accretion, reliction or avulsion.

Section 1: LEGISLATIVE APPROVAL.

This section provides for submission of the 1991 Agreement to the legislature (1.1) and commits the parties to the form of the legislation approving the same (1.2). The parties may withdraw at any time prior to enactment of an acceptable bill approving the 1991 Agreement (1.3(a)). If an acceptable bill is enacted, the litigation will be dismissed (1.4) and the 1991 Agreement will supersede the obligations of the parties under the 1974 Settlement Agreement, unless the statute, the 1991 Agreement or any conveyance authorized by the 1991 Agreement is set aside by the courts (1.3(b)). The parties commit not to create any third party interests in the lands subject to the 1991 Agreement pending deliberations on the bill (1.5).

Section 2: LANDS SUBJECT TO THE 1991 SETTLEMENT AGREEMENT

2.1 describes the intent of the parties with respect to inclusion of submerged lands in the 1991 Agreement, including offshore lands under the Beaufort Sea, the Chukchi Sea and the Kasegaluk Lagoon necessary to describe settlement lands by full sections.

2.2 describes the current ownership of the Nuiqsut subsurface, including ASRC's right to receive future conveyances, the status of outstanding third party interests created by either

the State or ASRC, and State claims of ownership to submerged lands.

2.3 explains possible changes regarding ownership of the Nuiqsut subsurface (and corresponding corrections to ownership percentages) contingent upon disposition of pending Native allotment applications and possible exclusion of sections from the settlement area in the event Kuukpik Corporation does not receive title to the surface estate. This latter provision is now moot. The BLM recently determined that Kuukpik was under-selected by approximately 500 acres, none of which may be selected from State TA'd lands. As a consequence, all of the lands identified in the Agreement will in fact remain in the Agreement. Any references to "over-selection" by Kuukpik should be disregarded.

2.4 provides a comparable analysis the State's title to the Point Lay subsurface.

### Section 3: CONVEYANCE OF INTEREST IN LANDS

3.1 commits ASRC to convey to the State the applicable percentage undivided interest, according to Exhibit E, in each section of ASRC's Nuiqsut subsurface as soon as that section has been fully conveyed to ASRC, retaining to the State its own percentage interest, also according to Exhibit E. (Conveyances

are not called for until all title contingencies have been resolved.)

3.2(a) commits the State to convey the applicable percentage undivided interest in the Point Lay subsurface, including any submerged lands therein, as set forth in Exhibit F, to ASRC within 30 days of the final effective date of the 1991 Agreement, retaining its own percentage interest, also as described in Exhibit F.

3.2(b) obligates the State to make a cross conveyance to ASRC of the applicable undivided percentage interest in the Nuiqsut subsurface, including any submerged lands therein, as set forth in Exhibit E, retaining the applicable percentage interest to itself, also as described in Exhibit E.

3.3 states that no change in the boundary, location or extent of submerged lands or uplands will affect the percentage undivided interest conveyed pursuant to the 1991 Agreement.

The net effect of the cross-conveyances called for in Section 3 is an exchange of undivided interests in the subsurface estate such that the title to submerged lands and uplands has been merged and the parties, for all time, will own their respective undivided percentage interest in each section according to the schedules set forth in Exhibits E and F. This

percentage is fixed and will not change regardless of the amount or location of submerged lands that may be contained in the section from time to time.

Section 4: SUBSURFACE AGREEMENTS AFFECTING NUIOSUT  
SUBSURFACE AND POINT LAY SUBSURFACE; GRANT OF RIGHTS TO  
EXECUTIVE; RIGHTS AND DUTIES OF EXECUTIVE.

4.1 ASRC grants to the State of Alaska executive rights in the Point Lay and Nuiqsut subsurface. Executive rights are defined in section 11.8 as the right to formulate and issue Subsurface Agreement Solicitations and to negotiate and execute Subsurface Agreements -- primarily oil and gas leases -- on behalf of ASRC with respect to ASRC's interest in the Nuiqsut and Point Lay subsurface.

4.2 requires that the State will be held to a prudent landowner standard, except to the extent that obligations imposed on the State by law require it to act otherwise. The State must treat ASRC's interest in the same manner as it treats its own and may not act so as to benefit itself at the expense of ASRC. The limited prudent landowner standard does not create a fiduciary duty to ASRC by the State. The State may not assign its executive rights without the consent of ASRC (7.2).

4.3 provides for notice to and consultation with ASRC prior

to exercise of executive rights by the State. It also provides a mechanism for resolving disputes if the two parties are unable to agree on the substantive terms of subsurface agreements or solicitations. ASRC may refer disputes to a member of a panel of qualified independent consultants who is charged with determining whether the action proposed by the State is consistent with the limited prudent landowner standard. A decision in favor of the State is binding on ASRC without right of appeal. The State is not bound by a decision in favor of ASRC, but is exposed to future damages if it proceeds and a court subsequently upholds the qualified independent consultant.

4.6 provides that the executive rights of the State with respect to a subsurface agreement cease upon execution of the agreement. Thereafter, each side may execute amendments or changes with respect to its own undivided interest only.

4.8 relieves the State, as executive rights holder, of any obligation to conduct operations on the lands. Rather, the 1991 Agreement contemplates that the State will fulfill its obligations by entering into agreements with third parties.

4.9 provides that the State has no right, obligation, or duty to enforce the terms of subsurface agreements once they are executed. ASRC is responsible for enforcing the terms of any such agreement as they relate to its interests, and the State is

not exposed to any liability for failure to enforce such agreements.

In order to acquire title to subsurface within NPRA, ASRC entered into an agreement with the surface owner, Kuukpik Corporation, not to develop the subsurface of any NPRA subsurface without first obtaining Kuukpik's consent. Approximately 9,000 acres (all deemed to be 100 owned by ASRC) are affected by this consent. Kuukpik may also have consent rights for lands in the vicinity of the village under Section 14(f) of ANCSA. Although the State will hold executive rights to all of this acreage, it is not liable for failure to lease any such land if Kuukpik's consent is required and cannot be obtained. The 1991 Agreement resolves title disputes between ASRC and the State of Alaska. It does not purport to affect the rights of Kuukpik as against ASRC or the State (or vice versa). Kuukpik and its counsel have been fully informed of the negotiations and have been supplied with copies of the Agreement, which it supports.

4.14 precludes communitizing settlement acreage in a lease with non-settlement acreage. Nor will the inclusion of two or more sections of acreage in a common lease result in pooling or communitizing of the interests in those sections. Revenues are shared strictly on a section-by-section basis according to the respective percentages set out in Exhibits E and F. This section prevents prejudice that might result to either party if

unproductive sections could be averaged in with productive sections.

4.15 provides that until sections become fully conveyed such that the parties are obligated to execute cross conveyances with respect to that section, neither party will grant third party interests in any such sections without the consent of the other party.

Section 5: MINIMUM COVENANTS REQUIRED IN ALL SUBSURFACE AGREEMENTS

This section describes certain minimum requirements for all subsurface agreements executed by the State in the exercise of its executive rights. Subsection 5.2 provides a limited exception to the general rule that the executive powers of the State cease following execution of a subsurface agreement. In the event the State exercises its discretion under a lease containing a term permitting the Commissioner to set or adjust royalty valuation, the Commissioner's determination shall bind ASRC's interest as well. This section does not require the Commissioner to exercise his discretion under any such lease and does not expose the State to any liability for the Commissioner's exercise (or refusal to exercise) of his discretion.

Section 6: SUSPENSION OF EXECUTIVE RIGHTS

The 1991 Agreement contemplates that the State, in the exercise of its executive rights, will be bound by all provisions of State law governing its conduct as a public land owner and sovereign. The 1991 Agreement further contemplates that occasions may arise in which the State concludes that entering into a subsurface agreement would not be in the public interest or would conflict with sovereign obligations. The State is not liable to ASRC in such instances. Section 6.1 (a) provides that after giving appropriate notice to the State, however, executive rights are suspended ASRC is then free to lease its own interest.<sup>2</sup> Executive rights return to the State if ASRC rescinds its election to suspend executive rights under Section 6.1(a) prior to executing a subsurface agreement with respect to its interest (6.3(a)). The State's executive rights are also suspended if either the State or ASRC exercise their power to terminate a subsurface agreement and the other party elects not to do so (6.1(b)). Executive rights return to the State automatically at such time as neither the State's nor ASRC's interest is subject to a subsurface agreement (6.3).

During any period of time that executive rights is suspended, the rights and duties of the parties to one another

---

<sup>2</sup> The respective rights of the parties would be governed by the common law of cotenancy. Because the lessee would be required to account to the State for its unleased 50 percent of any oil produced, such a lease would be economically unattractive and therefore improbable. In effect, the lessee would be required to pay a royalty to ASRC on 50% of the oil produced and give a 50% net profits working interest to the State.

are governed by the law of cotenancy in common. Either party may develop the subsurface and the other will still receive its percentage share of the proceeds, after deduction of the cotenant's costs of development.

Section 7: MISCELLANEOUS RESTRICTIONS ON BOTH PARTIES

7.1 provides that while the State holds executive rights, neither the State nor ASRC may become a lessee of the lands or engage in self-development without the consent of the other.

7.3 provides that neither side may convey its interest in the Point Lay subsurface or the Nuiqsut subsurface without the consent of the other, and any such consent may be conditioned on termination of executive rights. In such case, the respective holders of the percentage interests would be cotenants in common.

Section 8: STATE'S RIGHTS AS SOVEREIGN

8.1 explicitly provides that nothing in the agreement diminishes or affects the sovereign rights of the State with respect to regulation or management of submerged lands, fish and game, or natural resources. ASRC's only recourse is under subsection 8.2 to challenge the constitutionality of a statute, or the validity of a regulation, if it feels that the statute or regulation singles out settlement lands for different treatment

from that accorded to other land in the State, or causes injury-in-fact to any rights expressly granted to ASRC under the 1991 Agreement.

#### Section 9: PREEXISTING LEASES OF THE NUIOSUT SUBSURFACE

This section describes the current status of leases affecting the Nuiqsut subsurface, provides for separate administration and enforcement of the parties respective percentage interests in existing leases, and provides for an equitable division of revenues received by either party with respect to leased lands prior to the effective date of the 1991 Agreement. The Section is complicated by the fact that ASRC has not received conveyances from the United States for all the Nuiqsut subsurface to which it is entitled. 1991 Agreement does not contemplate an exchange of interests with respect to any section until that section has become fully conveyed to ASRC (as defined in Section 11.12). Also, the State has waived its administration rights with respect to leases on some of the lands conveyed to ASRC by the United States, but has not waived with respect to other lands so conveyed. Consequently, it took a lot of verbiage to align all the preexisting legal relationships so that they conform to the basic pattern contemplated by the 1991 Agreement. The principles, however, are straightforward.

#### Section 10: MISCELLANEOUS

This section contains a number of routine provisions relating to interpretation and administration of the 1991 Agreement. Notable provisions include a requirement that subsurface data be shared to the maximum extent permitted by preexisting legal constraints (10.3), subject to strict confidentiality requirements (10.1); subsection 10.11 commits the parties to joint defense of the 1991 Agreement, unless the challenge relates to ASRC's revenue sharing obligations to other ANCSA Corporations, in which case ASRC must defend, indemnify and hold the State harmless from such claims.

#### Section 11: DEFINITIONS

This Section defines key terms used throughout the 1991 Agreement.

#### EXHIBITS

Exhibits include the form of proposed legislation (Exhibit A, discussed in Section III, below), maps of the lands subject to the 1991 Agreement (Exhibits C and D), schedules of the respective percentage undivided interest in each section of land subject to the 1991 Agreement (Exhibits E and F), and specimen copies of various instruments called for in the 1991 Agreement (Exhibits G - J).

III. SECTION-BY-SECTION EXPLANATION OF HB416 AND SB369.

Section 1. PURPOSE. Provides that the purpose of the Bill is to provide for the settlement of outstanding litigation between the State and ASRC.

Section 2. RATIFICATION. This Section ratifies the 1991 Agreement "notwithstanding any other provision of law." Because the 1991 Agreement involves an exchange of the State's mineral interests in the Nuiqsut and Point Lay subsurface, legislative approval is required. Alienation of the State's mineral interest is prohibited by Section 6(i) of the Alaska Statehood Act. In 1976, however, Congress amended Section 22(f) of the Alaska Native Claims Settlement Act to permit the State of Alaska to enter into exchanges of land "for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes." Exchanges must be of equal value unless found to be in the public interest "by the appropriate Secretary." The United States has confirmed that its consent to the exchange is not required and that the requirements of Section 6(i) of the Statehood Act and 22(f) of ANCSA will be satisfied as long as the appropriate State approving authority finds the exchange to be in the public interest.

Chapter 50 of Title 38 of Alaska Statutes provides authority

for exchanges of the State's mineral estate, including the mineral estate in submerged lands. For a variety of reasons, however, that Chapter does not provide an appropriate vehicle for the settlement of litigation. Among other things, Chapter 50 contemplates a voluntary exchange for equal values and requires appraisals and a series of public hearings on proposed exchanges. Although the State and ASRC believe that the consideration given and received in the exchange is roughly equal, no effort has been made to appraise the lands. The terms of the exchange are influenced by factors other than land values (which are highly speculative, in any event), including each side's assessment of the risks of litigation. Finally, settlement negotiations have necessarily and appropriately been conducted in closed sessions. Public involvement is provided through the process of legislative ratification, but could not realistically have been provided earlier in the process, as contemplated for a voluntary exchange under Chapter 50. The "notwithstanding any other provision of Alaska law" will clarify that the exchange contemplated by the 1991 Agreement is not subject to the requirements of Chapter 50.

In addition to AS 38.50, the "notwithstanding any other provision of Alaska law" is intended satisfy any other provision of State law that might subsequently be raised to defeat the settlement itself. The Bill deliberately uses broad language to accomplish this result. Among other things, this language is intended to make it clear that in carrying out the provisions of

the settlement the Commissioner is acting pursuant to the mandate of the legislature and not exercising his discretion under other statutory provisions that authorize administrative disposition of ~~state lands.~~ Specifically, this language, ~~together with section~~ 3 of the Bill discussed below, relieve the Commissioner of any further notice, hearing or public interest finding requirements prior to making the conveyances required by the 1991 Agreement.

This exemption extends only to those actions mandated by the 1991 Agreement necessary to carry out the settlement and ratified by the Bill. Since the 1991 Agreement contemplates that the Commissioner will exercise his executive rights consistent with statutory constraints and does not waive any sovereign powers of the State of Alaska, any development activities that occur subsequent to the exchange will be fully subject to the statutory and regulatory procedures normally applicable to administration of State lands. Specifically, lease sales will be conducted in the normal manner and all regulatory requirements will be observed, including coastal zone consistency and public interest findings. To the extent that ASRC exercises powers as a landowner, this legislation does not exempt ASRC from federal, state or local requirements otherwise applicable to private landowners.

Section 2 also provides that "no statutory or common law rules against perpetuities or restraints of alienation of