

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672
2941 SCOMM 128: HOUSE SPEC. COMM. ON OIL AND GAS, 2001-02 705

views and concerns of the Alaska Legislature and of Alaska's citizens, and we will be evaluating alternatives on the basis of seven criteria:

- Overall project economics,
- Alaskan access to gas,
- Jobs for Alaskans,
- Revenues to the State,
- Safety,
- Environmental Protection, and,
- Project timing.

We do not feel we have enough information yet to make a route decision. Indeed, that is the reason for our aggressive work program. The effect this legislation may have on FERC or other agency permit applications is unknown. Again, we think that the interests of commercializing North Slope gas are best served by creating choices, not foreclosing them. We expect that there will be many future opportunities for legislative guidance and action.

Thank you Mr. Chairman for this opportunity to express our opposition to this bill.

Subject: SB 164

Date: Tue. 27 Mar 2001 14:29:58 -0900

From: "Christine A. McGraw" <backbone@alaska.net>

To: "Senator John Torgerson" <Senator_John_Torgerson@legis.state.ak.us>

Dear John:

I would like to thank you, and indeed the whole body, for your work on Senate Bill 164.

It sets forth the principles and the context needed for your work on the natural gas pipeline.

As we move forward on securing a project that will be most beneficial to the people of Alaska, this is the kind of leadership that will be essential and vital for all Alaskans to follow and emulate.

It is my hope that the other body will join you in this effort.

Thanks, John.

Christy McGraw

SCOMM

128:43

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 308 (RES)
(S) Publish Date: 3/6/02

Revision Date/Time (Note if correction):

Title "An Act relating to the Alaska coastal
management program..."

Dept. Affected: Office of the Governor
BRU Governmental Coordination
Component Governmental Coordination

Sponsor Senator Theriault

Requester Senate Resources

Component No.

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Patrick Galvin, Director
Division Governmental Coordination
Approved by: David Ramseur
Agency Office of the Governor

Phone 465-3562
Date/Time 3/5/02 4:01 PM
Date 3/5/2002

ALASKA STATE LEGISLATURE

SENATOR
Gene Therriault
119 N. Cushman Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
FAX (907) 488-4271



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
FAX (907) 465-3884

Senate
Senate District Q

Senate Bill 308—Revised 3/20/2002

**"An Act relating to the Alaska Coastal management program
and the responsibilities of the Coastal Policy Council."**

SPONSOR: Senator Gene Therriault

SPONSOR STATEMENT:

Alaska's permitting system is broken. Industries from across the state have stepped forward to ask for clarity, consistency, and timeliness. Central to the confusion of this broken system is the Coastal Zone Management program (CZM) and its underlying consistency determination process. It is confusing and often misunderstood by the public and permit applicants alike. Senate Bill 308 takes steps to address some of the problems associated with CZM and keep Alaska and its resource-dependent economy moving forward.

Alaska chose to participate in the federal voluntary Coastal Zone Management program by creating the Alaska Coastal Management Program (ACMP) in 1977. The ACMP requires that all permits issued by state agencies for a project within the coastal zone be consistent with the respective plans developed by a coastal resource district. Since that time, there have been many state and federal laws such as the clean water act, clean air act, spill prevention laws, and wetlands legislation affecting coastal districts and further complicating the process by which permits are found to be consistent.

As local plans have been developed, the statutes and regulations of specific departments and agencies were incorporated by reference. The result has been that local officials sometimes interpret these requirements differently than the state officials who work with them on a regular basis. While these conflicts are resolved through the internal elevation process, it causes delays and frustrations among all involved.

Specifically, the bill does two things:

- Prohibits the adoption by reference of state statutes and regulations by coastal districts.
- Allows permitting agencies to make consistency determinations in separate phases for a North Slope natural gas pipeline project that parallels the Trans

Alaska Pipeline System and the Alaska Highway or a route that runs to Alaska tidewater.

While the original version and the previous committee substitute for SB 308 dealt with the petition process, a House bill (HB 439) has come over to the Senate that addresses the issue. However, the language adopted by the House may not accomplish what was intended and the title on that measure is too restrictive to allow changes. If, in order for the Senate to effectively deal with these concerns, changing the title of HB 439 proves problematic, the title of SB 308 needs to remain broad enough to deal with petitions at a later time. For that reason, the proposed CS retains a broad title.

For the foreseeable future, Alaska's economy will be dependent upon the development of our natural resources. As the policy-making body of state government, we must remove those aspects of our permitting system which cause unnecessary delay and expense without improving public input and accountability, particularly when it comes to those projects which are critical to our state's future prosperity and revenues.

SCOMM

128:44

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 319
(S) Publish Date: 3/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DNR
Title Shallow Natural Gas Leasing BRU Oil and Gas Development
Component Oil and Gas Development
Sponsor Sen. Torgerson
Requester Senate Resources Component No. 439

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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 EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	275.0*	250.0**	250.0**	250.0**	250.0**	250.0**
-------------------------------	---------------	----------------	----------------	----------------	----------------	----------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

*Positive revenue flow anticipated in FY 03 from the conversion of approximately 50 shallow gas leases. Lessees would have a one-time chance to convert the lease to the specifications allowed under the new amendments if they pay the difference in the application fee (estimated at \$4,500 if fees are set at \$5,000 in the regulation process), bonding requirement, and rental fees. Under this example the state could receive \$225,000 additional application fees, plus an additional \$0.50 per each acre converted under the proposed amendments. DNR also assumes that it will receive 10 new applications (\$50,000) during FY03.

** In the ensuing years, activity in shallow gas leasing is expected to increase leading to additional revenues to the state. These figures assume that DNR receives 50 new applications each year. This amount does not include additional rental income nor royalties from production.

Prepared by: Mark Myers Phone 269-8800
Division Oil and Gas Date/Time 2/25/2002
Approved by: Pat Pourchot Date 2/25/2002
Agency Natural Resources



ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

Session:

State Capitol, Room 427, Juneau, AK 99801
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy. Suite 101B,
Soldotna, AK 99669
Telephone 907/260-3042 Fax 907/260-3044

Sponsor Statement

SB 319 - "An act relating to shallow natural gas leasing; and providing for an effective date."

Shallow gas leasing was originally proposed as a program that would enable exploration and production of shallow natural gas deposits. One of the features of the program was to encourage a new energy supply to villages, mines, and other rural users. The program is fully operational with over 100 leases processed and nearly 200 more pending. The program has become a vehicle for commercial gas development in Fairbanks, Big Delta, Matsu Valley, and the lower Kenai Peninsula. SB 319 is intended to advance the program into a more robust and viable commercial program that should benefit all parties.

Because the program has become more commercial in nature, increasing revenues from application fees and annual rental fees is appropriate. The program will still neither involve competitive bidding nor require bonus bids. However, application fees for shallow gas leases have been increased from \$500 to \$5,000 and annual rental fees have been increased from \$0.50 to \$1 per acre. The increased fees are designed to increase revenue and pay for the program costs, while not discouraging parties of genuine interest and ability from developing shallow natural gas resources.

The requirement that DNR annually notify a lessee by certified mail of rental due has been deleted. Rent would automatically be due on the date determined in the lease. Deadlines have proven to be unworkable and do not recognize the work required by DNR to prepare leases in areas that are populated and may have complex land ownership patterns.

REPRESENTING THE KENAI PENINSULA

Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Fritz Creek Happy Valley Halibut Cove Homer Hope Kachemak City Kachemak Selo Kasilof Lowell Point Moose Pass Nanwalek Nikolaevs Ninilchik Port Graham Razdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka

The limitation on depth to 3,000 feet has been replaced with the requirement that some portion of the field must be within 3,000 feet of the surface. The total amount of acreage that may be held by shallow natural gas lessees has been increased from 46,080 acres to an aggregate of 100,000 acres. The acreage increase reflects the fact that large acreage may be necessary to a shallow gas program.

The requirement that the applicant conduct a title search will be removed. DNR routinely conducts a title search for land before leases are issued. Additionally, there are no title companies who will conduct a thorough title search of the subsurface estate and warranty title. These changes will improve reservoir management and increase the value to the lessee and the state.

New bonding provisions would demonstrate lessees are fiscally responsible and would help protect surface owners. The lessee must secure the bond as a precondition to obtaining the lease. In the event that the surface estate is owned by a private party, an additional bond may be required if the lessee and the private party cannot reach an agreement.

Lessees will have from July 1, 2002 through September 30, 2002 (roughly 90 days) to convert leases from the existing program to the new program, if they so choose.



ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

Session:

State Capitol, Room 427, Juneau, AK 99801
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy.; Suite 101B, Soldotna, AK 99669
Telephone 907/260-3042 Fax 907/260-3044

SECTIONAL ANALYSIS

SB 319

"An Act relating to shallow natural gas leasing"

Sec. 1 Page 1, lines 6-7.

- Amends the 3,000 foot depth to "a field, if a part of the field is within 3,000 feet of the surface."

Sec. 2 Page 2, Lines 14-22

- Amends the application fee to "up to \$5,000."
- Amends the total acreage from 46,080 acres to 100,000 acres.

Sec. 3 Page 2, Lines 23-7

- Removes the timing requirements for DO&G: Notice 20 days after receipt of application; Execute lease within 90 days after close of public comment period or 30 days after final consistency determination.

Sec. 4 Page 3, Lines 8-14

- Increases rental from .50 per acre to \$1 per acre.
- Removes requirement that DO&G send written notice by certified mail of rent due.

Sec. 5 Page 3, Lines 15-29

- Amends depth in AS 38.05.177(j) Lessee has the right to produce gas only if it is from a field if a part of the field is within 3000 feet of the surface.

Sec. 6 Page 3, Lines 30-16

- Adds new section requiring an additional bond (in addition to the bond required under AS 38.05.130). Establish by regulation form and amount for statewide, areawide, unit-wide, or per-lease bonds.

REPRESENTING THE KENAI PENINSULA

*Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Fritz Creek Happy Valley Halibut Cove
Homer Hope Kachemak City Kachemak Selo Kasiloof Lowell Point Moose Pass Nanwalek Nikolaevsk
Ninilchik Port Graham Razdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka*

- The bond must be posted as a condition of issuing the lease.
- An additional bond is not required if the person already has a bond covering the person's statewide oil and gas leasing activities in an amount of at least \$500,000.

Sec. 7 Page 4, Lines 17-5

- Amends the depth with respect to Waste Disposal Permits under Title 46(DEC). The permit requirements do not apply for "water well drilling, geophysical drilling, or coalbed methane drilling or other natural gas from a field subject to lease under AS38.05.177.

Sec. 8 Page 5, Lines 6-29

- Changes depth for proof of financial responsibility to respond to damages in the case of pipelines or exploration/production facilities Title 46 (DEC).

Sec. 9 Page 5, Line 30

- Repeals the requirement for the applicant to conduct the title search.

Sec. 10 Page 5, Lines 31-5

- DNR may proceed with adopting regulations necessary to implement these amendments.

Sec. 11, Page 6, Lines 6-12

- Adds a new section to the uncodified that allows lessees to convert leases to consistency with the amendments between July 1, 2002 and October 1, 2002.

Sec. 12 Page 6, Line 13

- Section 10, above, takes effect immediately

Sec. 13 Page 6, Line 14

- The remainder of the amendments take effect July 1, 2002

Alaska Reserves and Production

- **36% of total U.S. oil reserves.**
- 8.0 billion barrels of oil
- **17% of total U.S. gas reserves**
- 35 trillion cubic feet of gas
- **20% of total U.S. oil production**
- 1.04 million barrels of oil per day

Sources: Alaska data are from Department of Natural Resources, Division of Oil and Gas, 2001 Annual Report
U.S. data are from U.S. Crude Oil, Natural Gas, and NGL Reserves, 2000 Annual Report, U.S.D.O.E.-E.I.A.

The State Revenue Pie

Petroleum Revenue Sources, (FY 2001)

Total Royalties, Bonuses, Rents & Settlements:
\$1,145.9 Million

General Fund Royalties, Bonuses & Rents^{1,2}:
\$798.8 Million

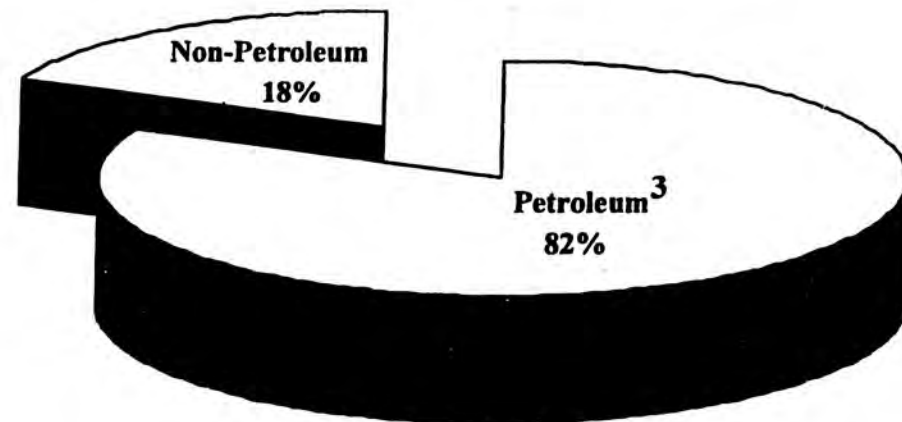
Royalties to Permanent Fund &
School Fund⁴:
\$337.1 Million

Settlements to CBRF⁴:
\$10.0 Million
(Includes Royalties & Taxes)

Taxes:
\$1,125.4 Million²

(Oil & Gas Property Tax + Tax Settlements +
Income Tax + Severance Tax)

FY 2001 Unrestricted Revenue



¹ Includes Federally shared rentals

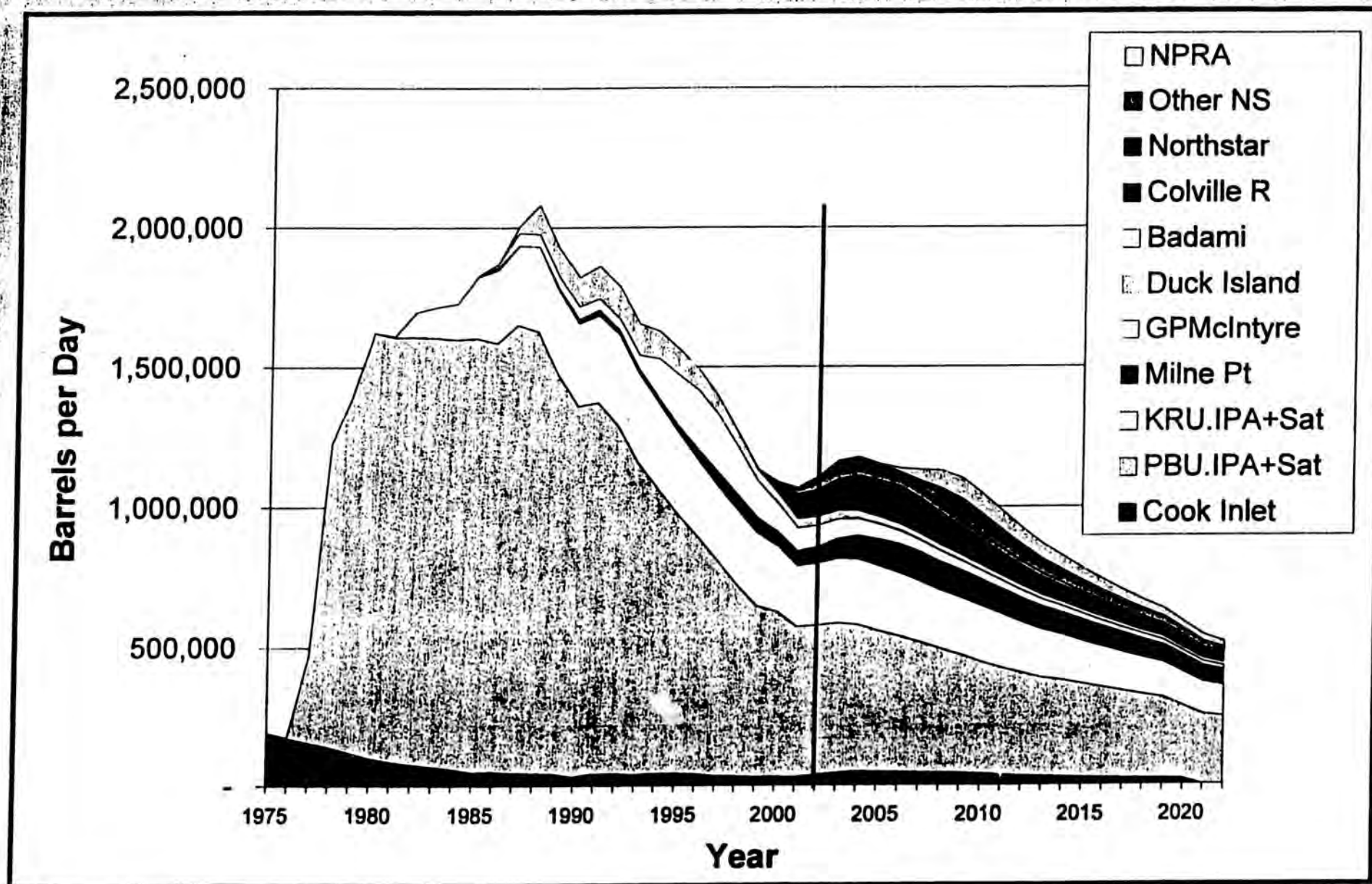
² Source: pg. 23, DOR Fall 2001 Revenue Sources Book

³ Source: pg. 22, DOR Fall 2001 Revenue Sources Book

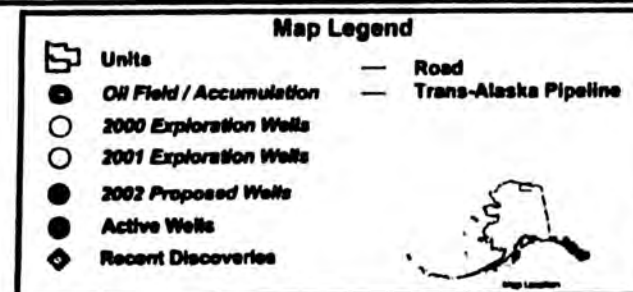
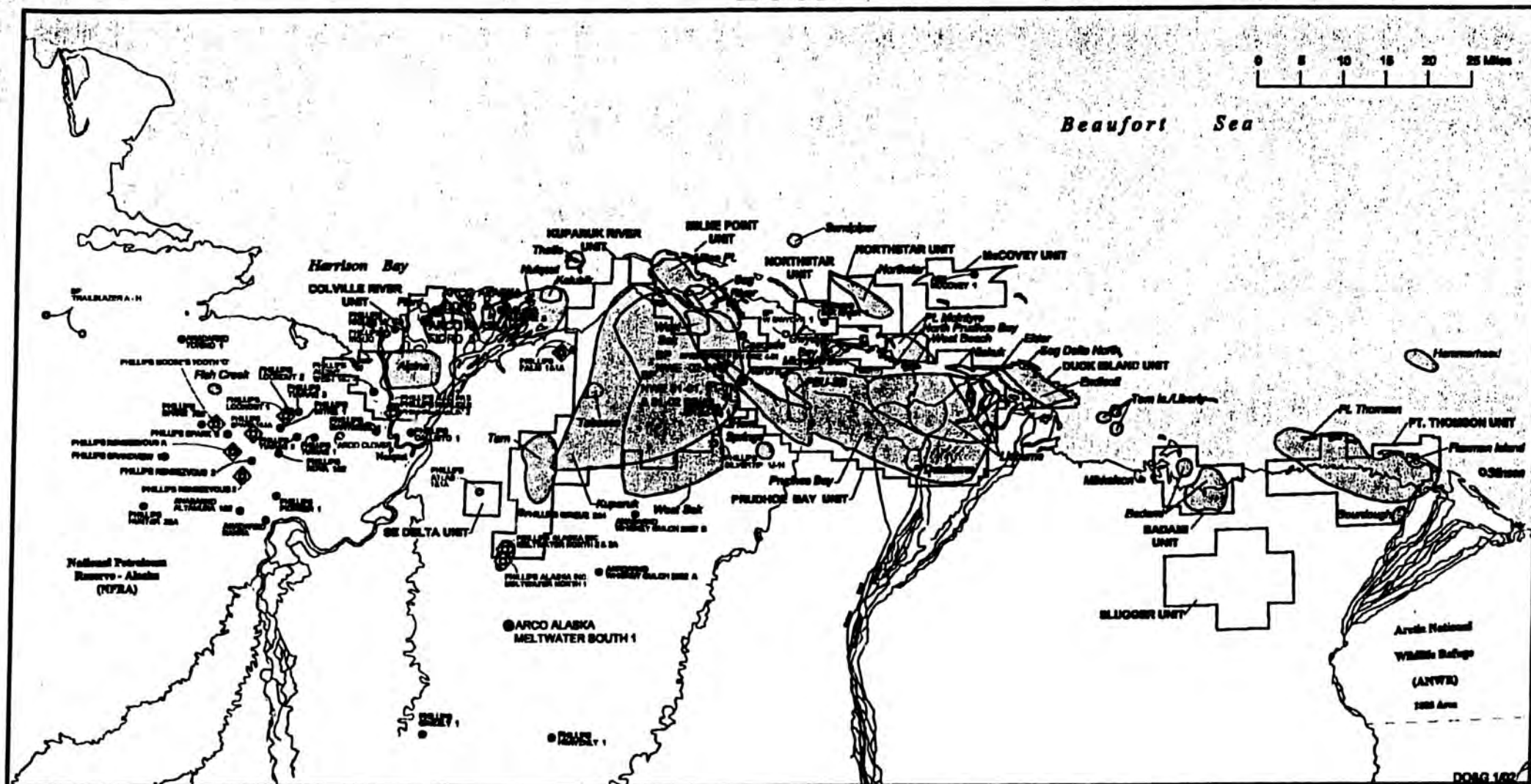
⁴ Source: pg. 19, DOR Fall 2001 Revenue Sources Book

Historic and Projected Alaska Oil Production

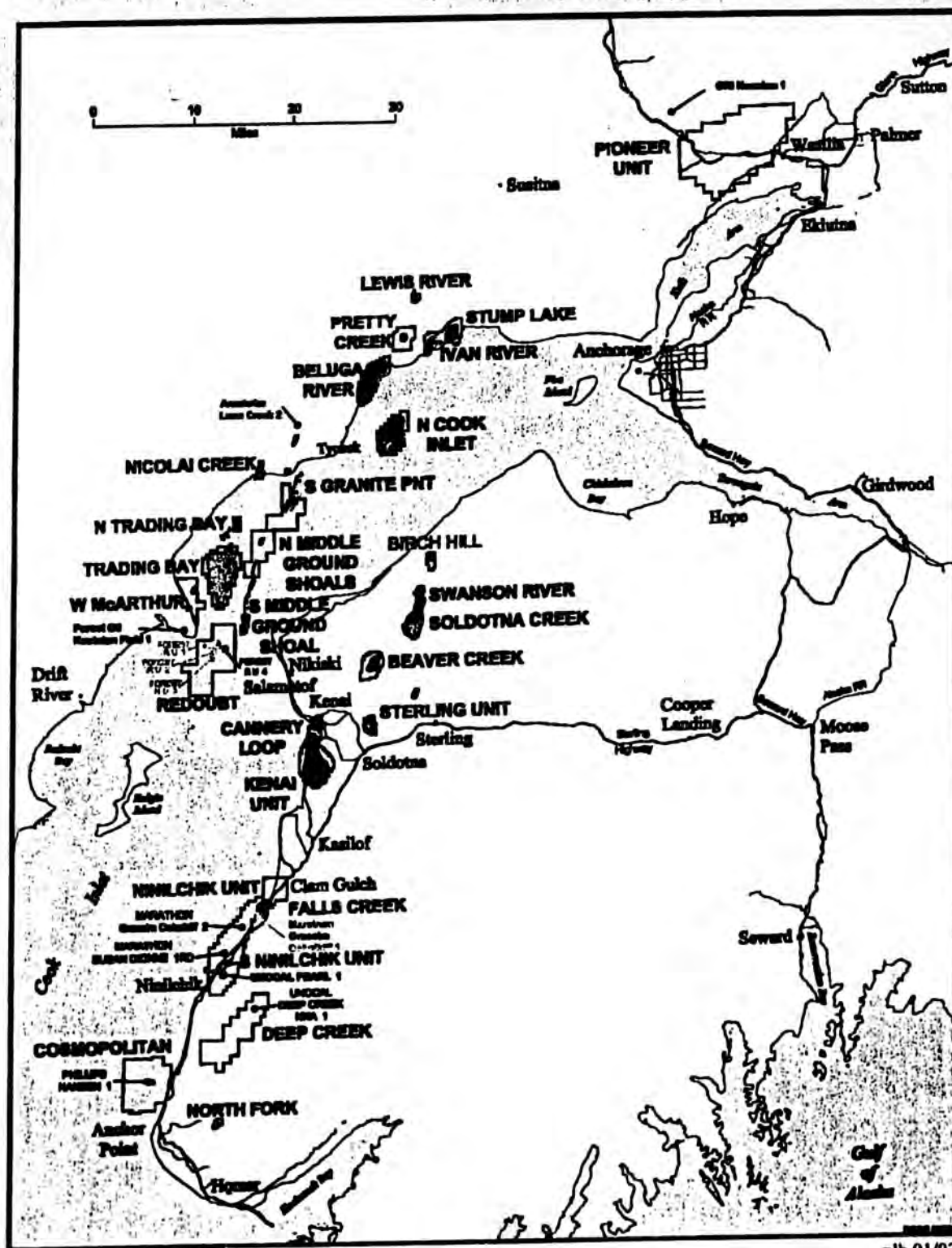
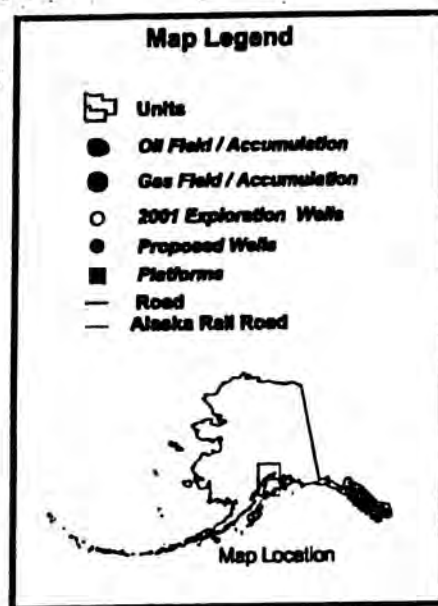
1975 - 2022



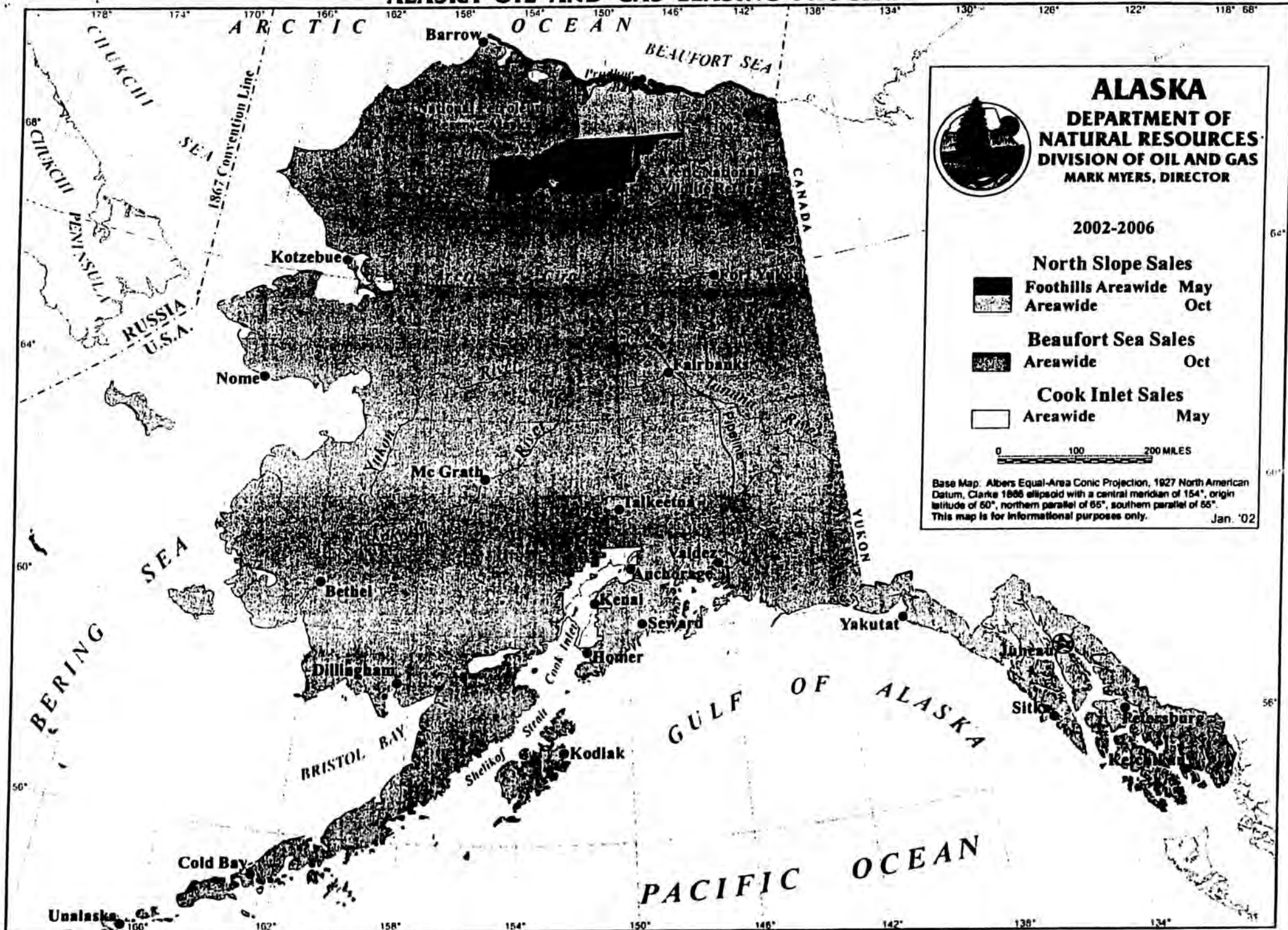
North Slope Oil & Gas Activity and Discoveries 2002



Cook Inlet Oil & Gas Activity January 2002



ALASKA OIL AND GAS LEASING PROGRAM



ALASKA
DEPARTMENT OF
NATURAL RESOURCES
DIVISION OF OIL AND GAS
 MARK MYERS, DIRECTOR

2002-2006

North Slope Sales



Foothills Areawide May
Areawide Oct

Beaufort Sea Sales



Areawide Oct

Cook Inlet Sales

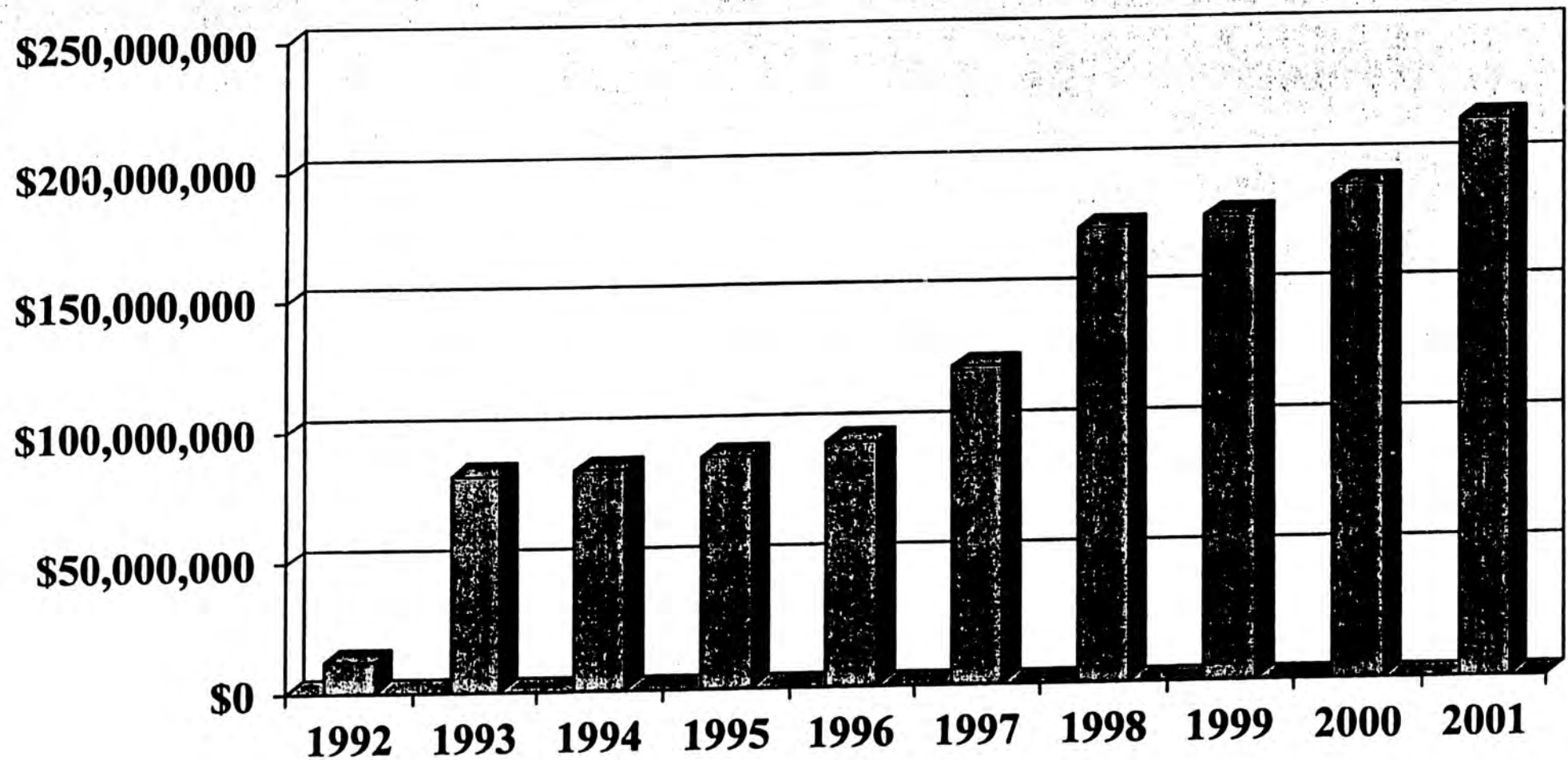


Areawide May

0 100 200 MILES

Base Map: Albers Equal-Area Conic Projection, 1927 North American Datum, Clarke 1866 ellipsoid with a central meridian of 154°, origin latitude of 60°, northern parallel of 65°, southern parallel of 55°. This map is for informational purposes only. Jan. '02

Cumulative Bonus Bids



2001 Areawide Lease Sales

Total Acres Leased = 1.6 Million

Total Bonus Bids = \$24.5 Million

North Slope Foothills

- Area's First Lease Sale
- Largest State Sale Ever
- 8 Bidding Groups
- 978,560 Acres Leased
- \$10.7 Million in Bonus Bids

North Slope

- 16 Bidding Groups (Shell returns after 13 yrs)
- 469,760 Acres Leased
- \$7.4 Million in Bonus Bids

Cook Inlet*

- 6 Bidding Groups
 - 102,523 Acres Leased
 - \$928,085 in Bonus Bids
- (* Final Results)

Beaufort Sea

- 7 Bidding Groups
- 60,800 Acres Leased
- \$5.4 Million in Bonus Bids

Exploration Licensing

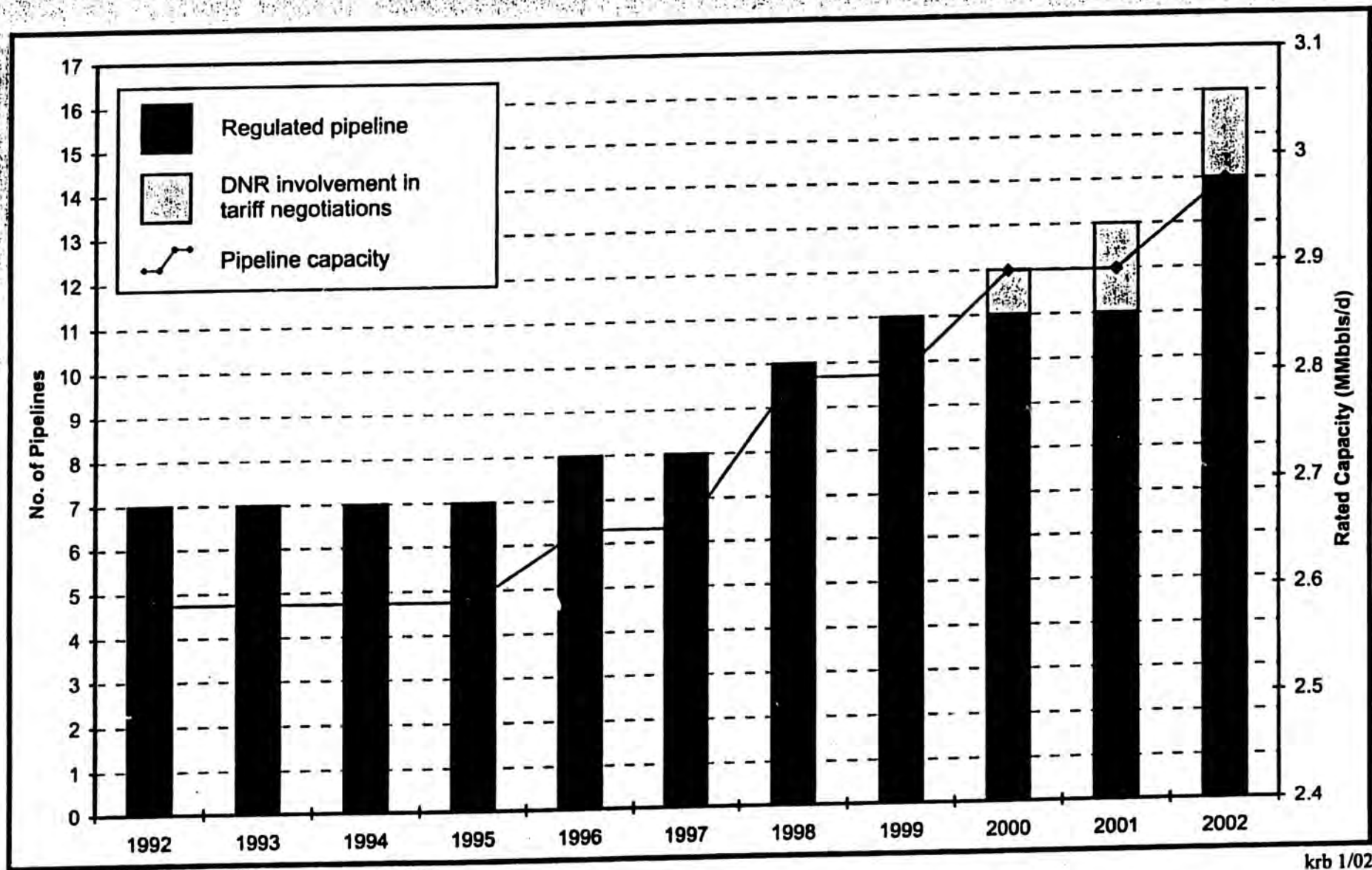
Proposed – Susitna Valley

- Forest Oil Corp. submitted two proposals
- 873,600 Total Acres, located west of Susitna R.
- Total Exploration Commitment over \$5 Million
- Final Finding and Decision – February 2002

Proposed – Nenana Basin

- Andex Resources submitted only proposal
- 499,800 Acres, located north and west of Nenana
- Exploration Commitment = \$2.5 Million
- Preliminary Finding – February 2002
- Final Finding and Decision – Late Summer 2002

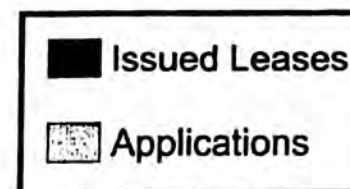
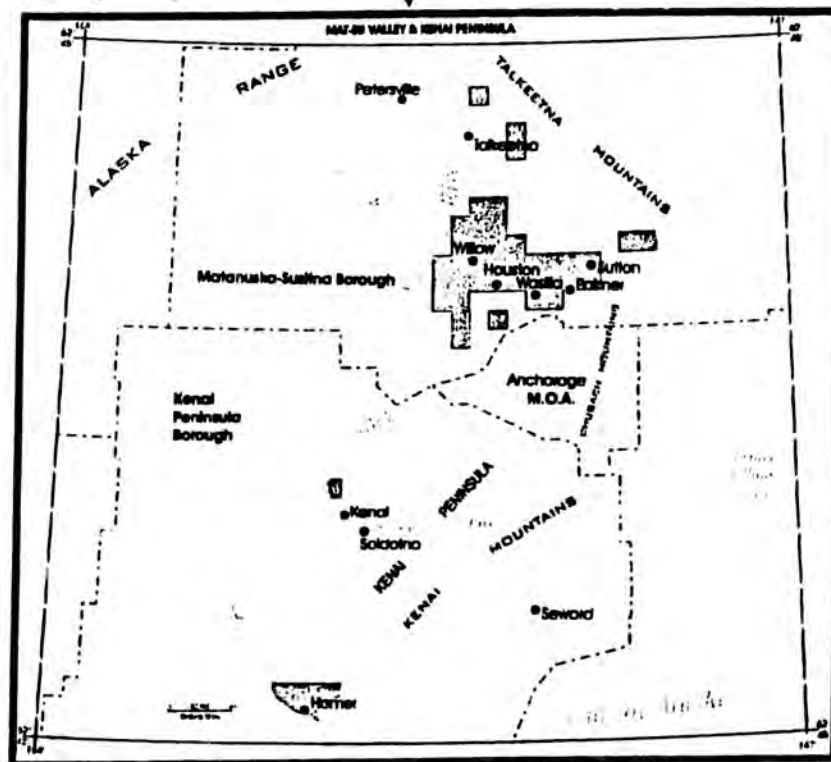
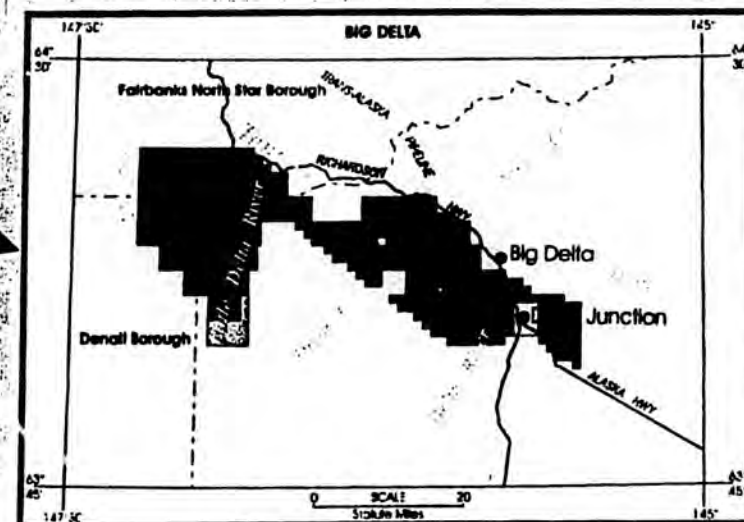
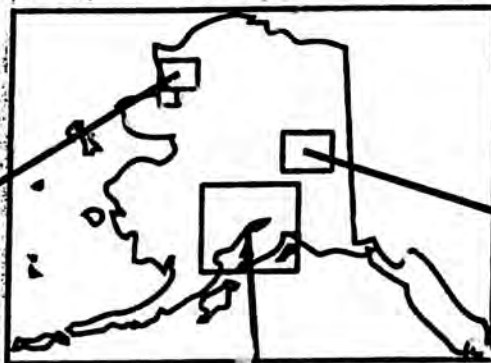
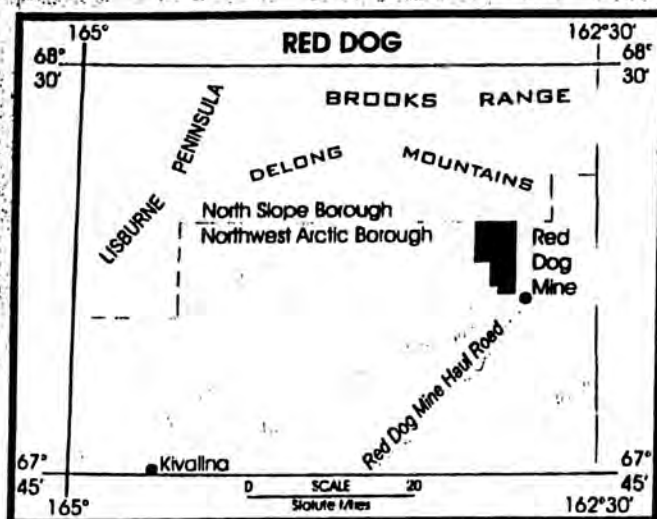
Alaska Regulated Pipelines



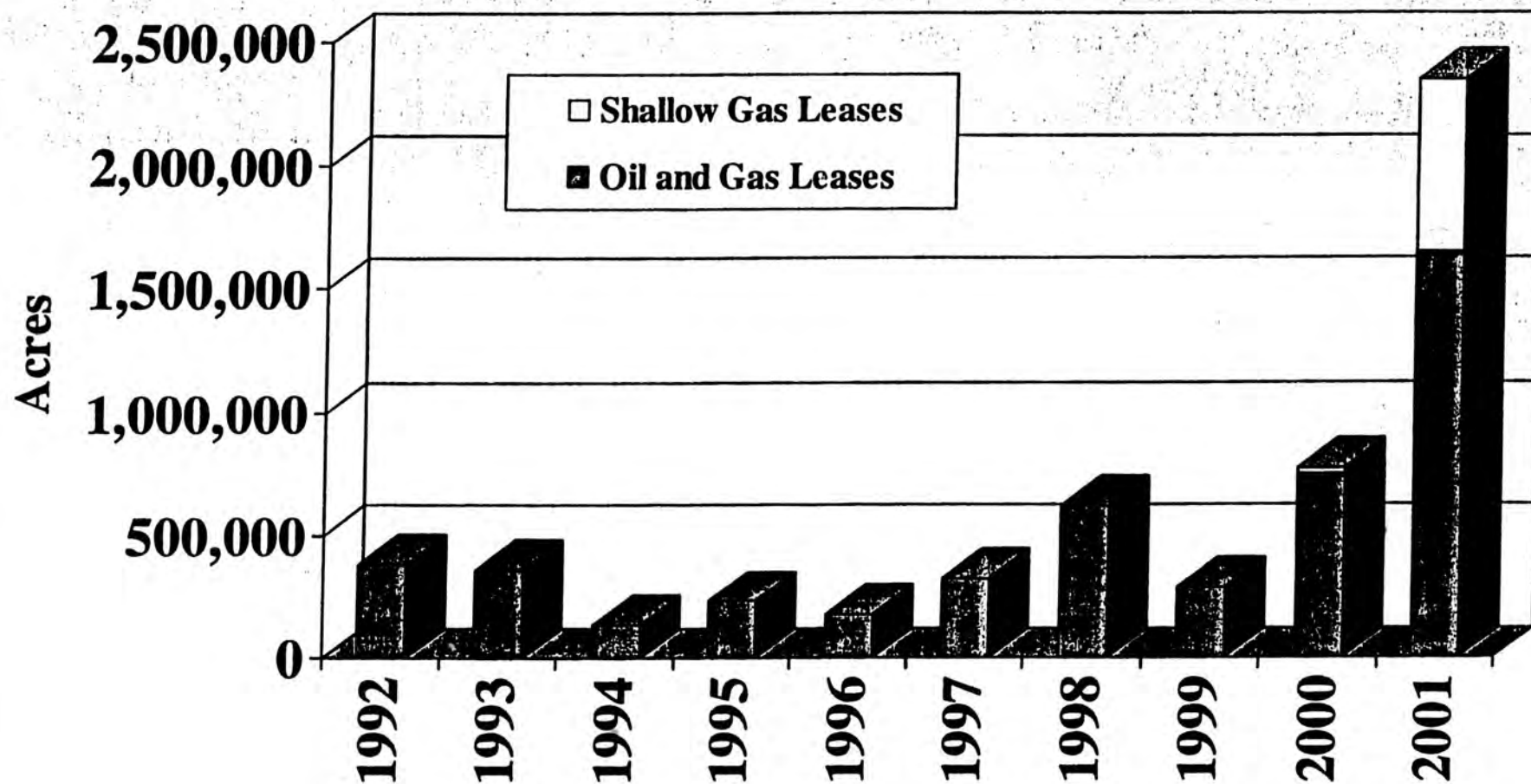
Source: Division of Oil and Gas, January 2002

krb 1/02

Shallow Natural Gas Leasing Program

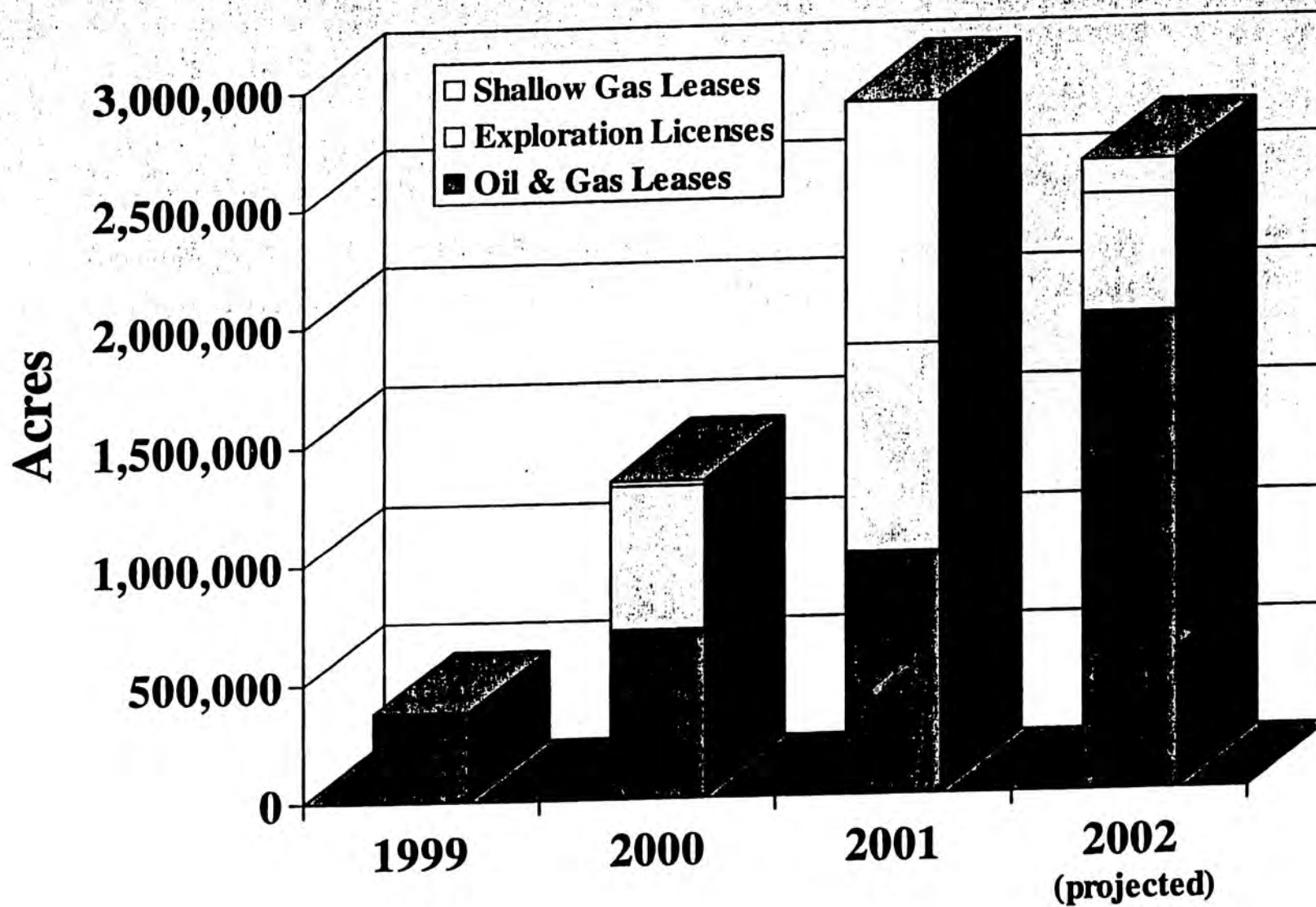


Acres Leased

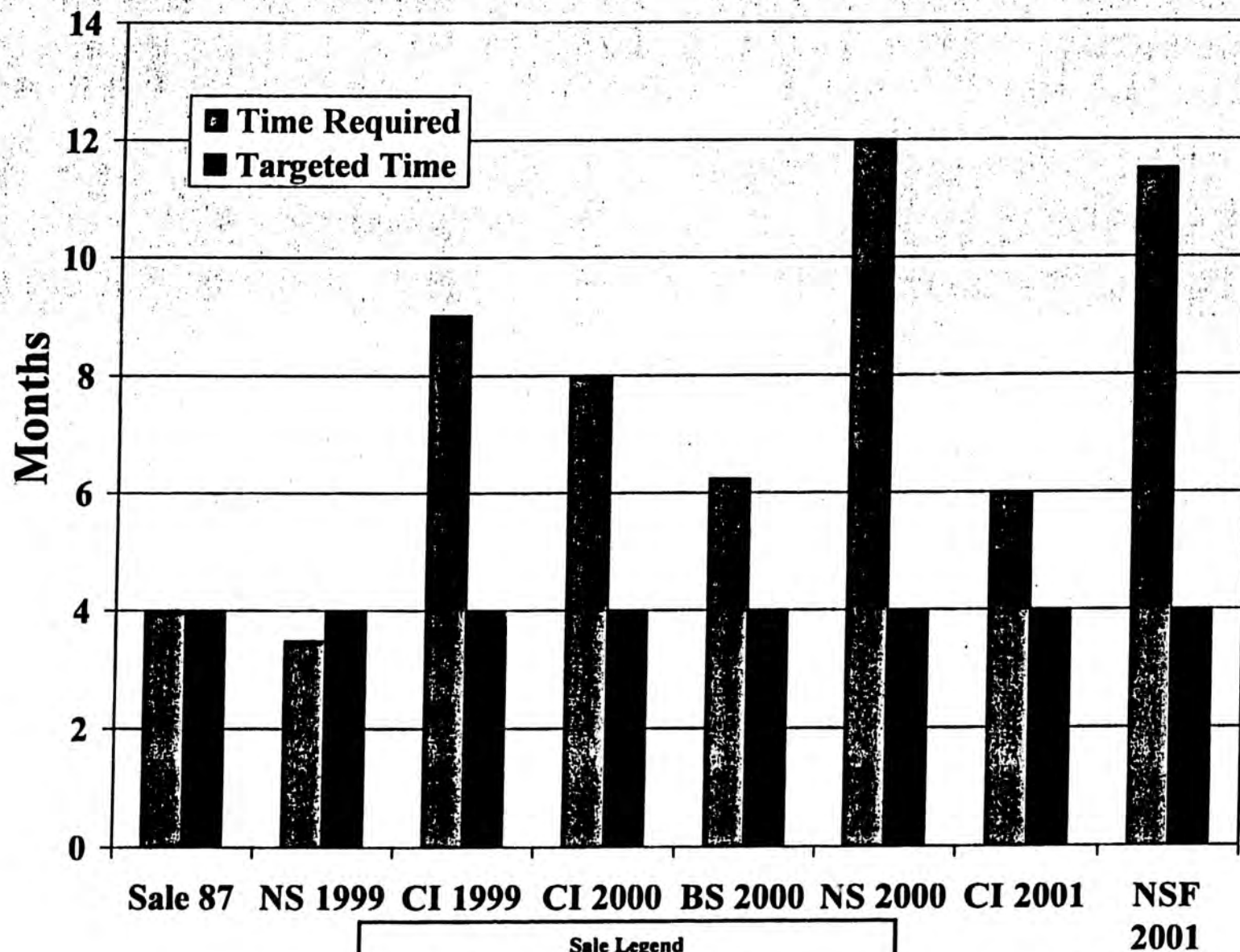


jjh 11/01

Title Work



Time Required to Issue a Lease



Sale Legend

BS – Beaufort Sea	CI – Cook Inlet
NS – North Slope	NSF – North Slope Foothills

(Projected)

Delays in Title = Delays in \$\$

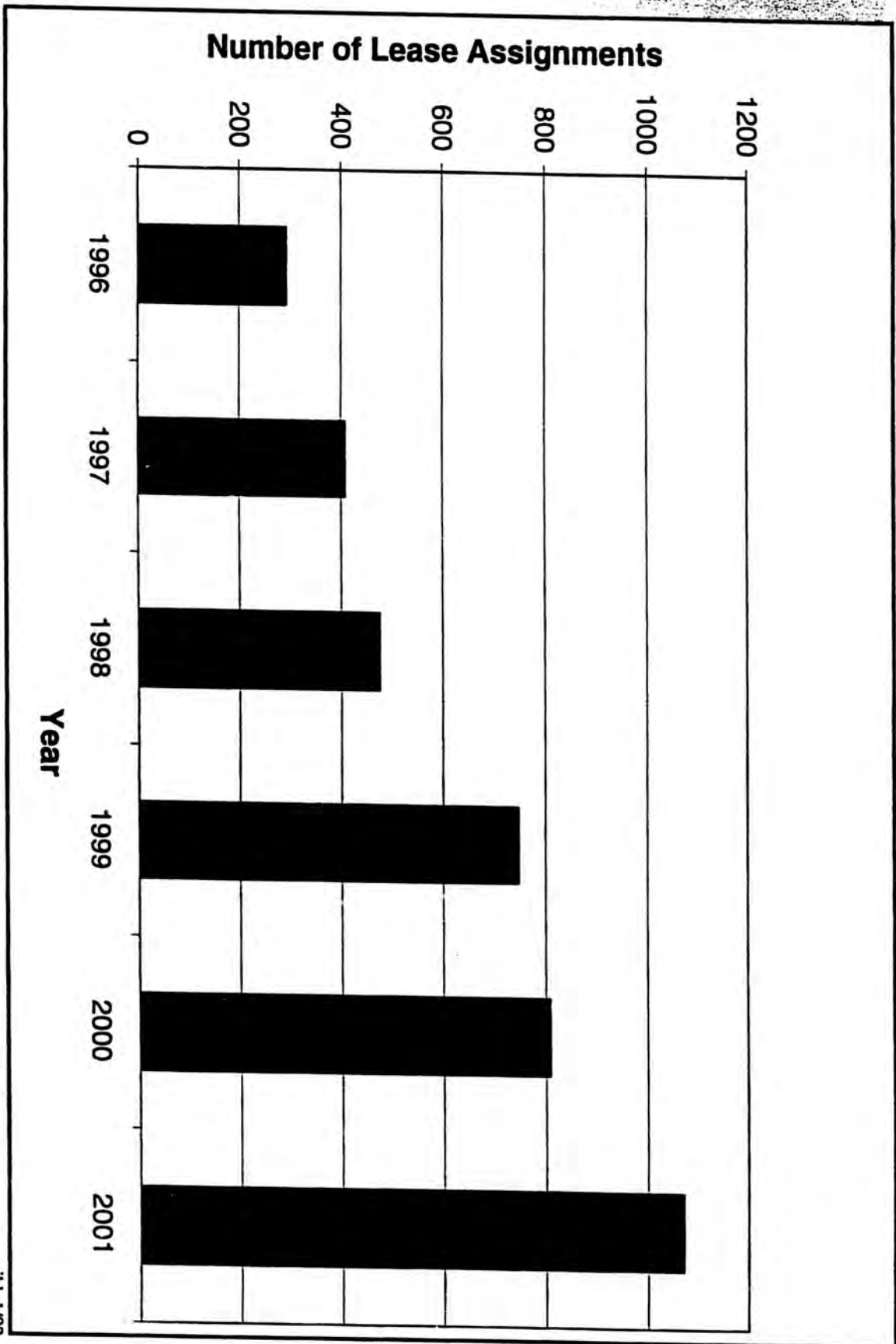
- It Takes up to 1 Year to Issue Leases

- FY 01 Revenue Delayed to FY 02

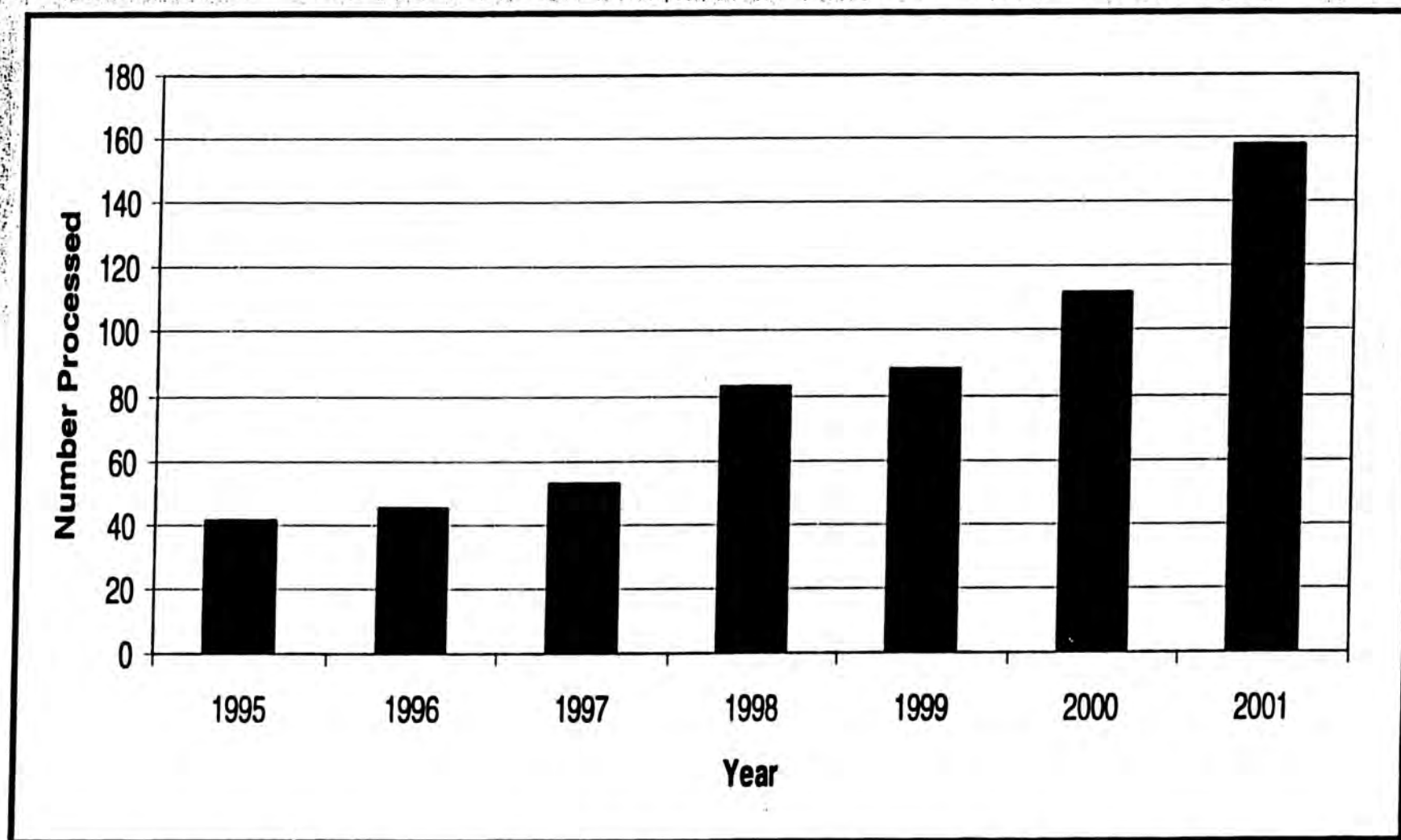
Balance on Bonus Bids = \$8.9 Million

1st Yr Lease Rentals = \$1.3 Million

Lease Assignments in Alaska



Unit Actions



Actions include Units and Participating Areas formed, expanded, contracted, and terminated; Unit decisions appealed; Unit Plans of Exploration and Development reviewed and approved.

cdl 01/02

PBU Mechanisms

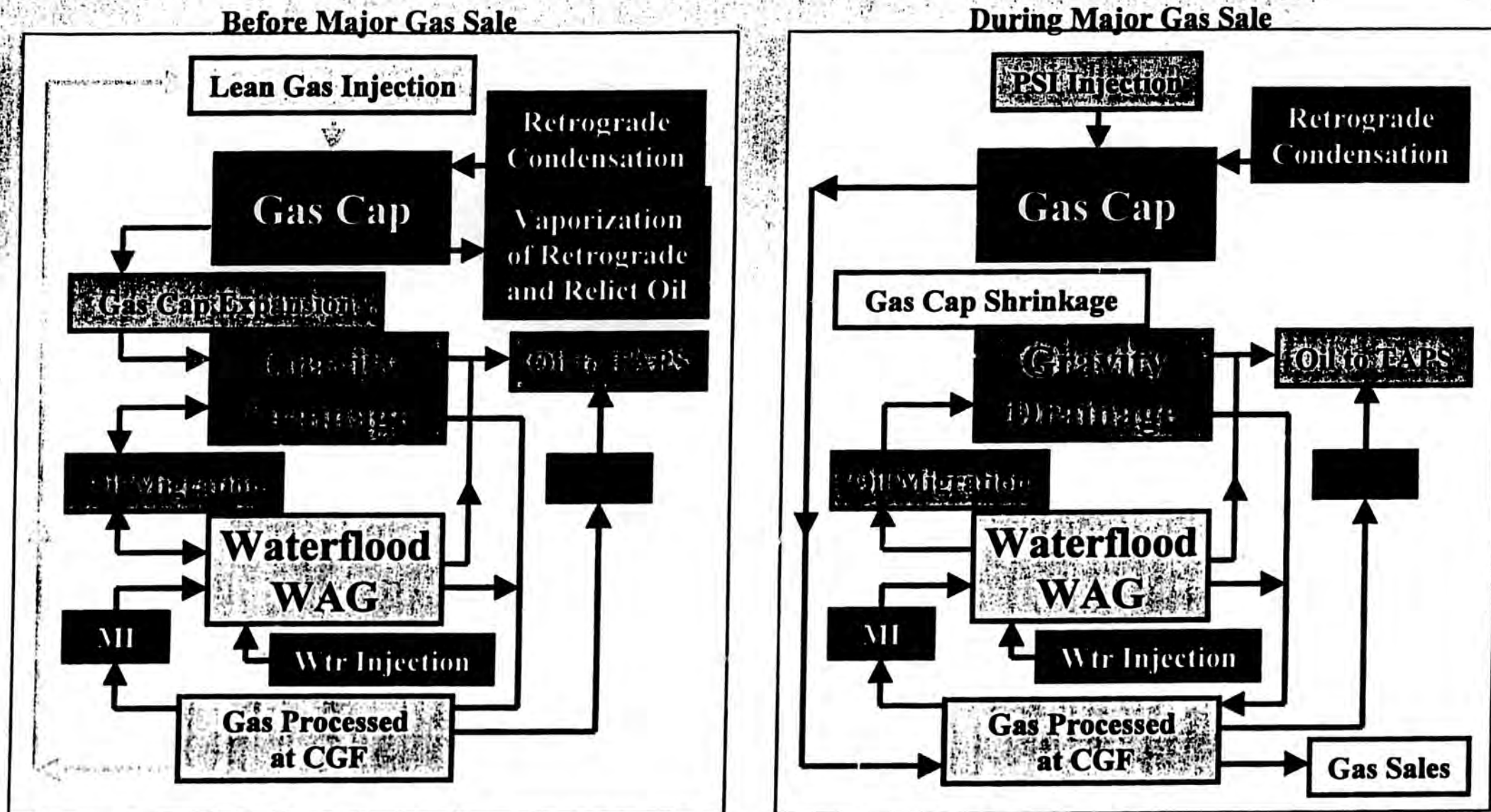
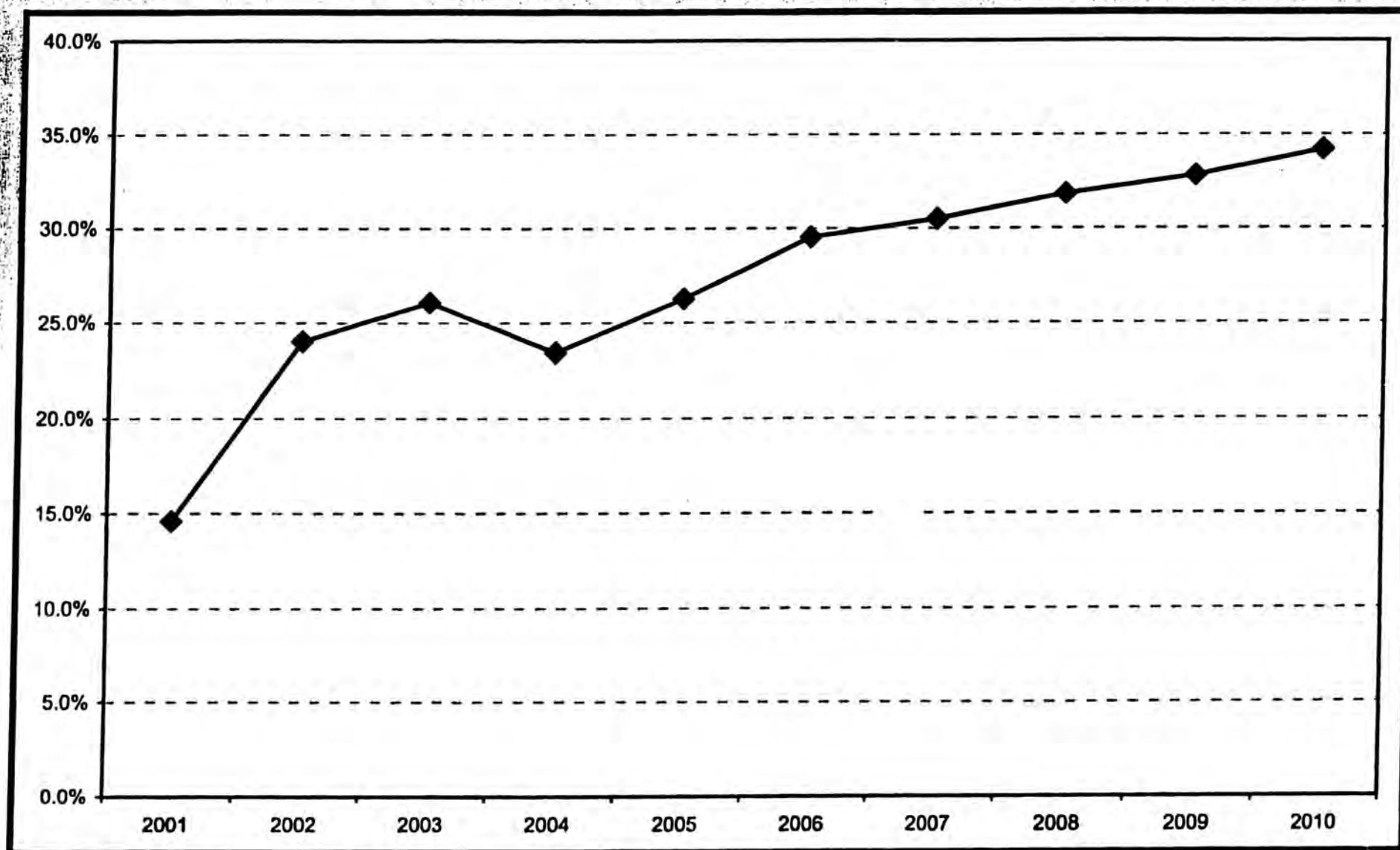


Figure 10

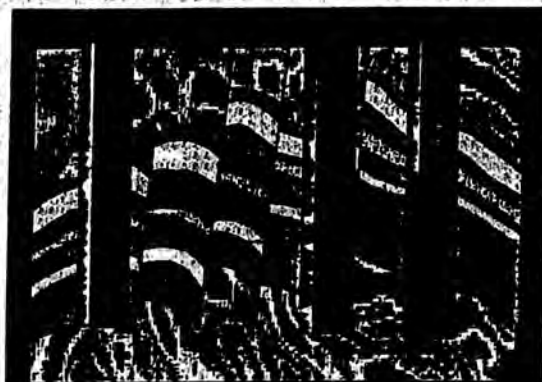
Projected Pipeline Tariffs as a Percent of ANS Wellhead Price



Source: DOR, Revenue Sources Book, Fall 2001

krb 1/02

Different databases and data managed and merged to create 3-D pictures of oil fields and royalty share

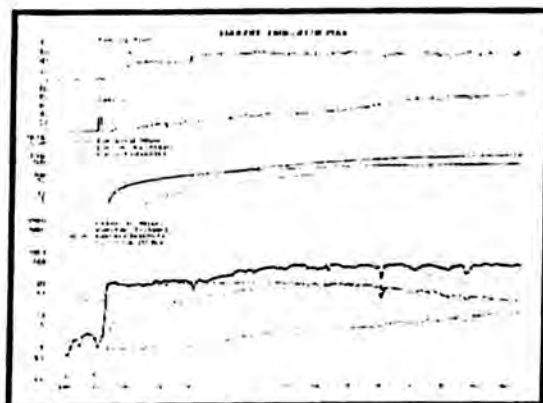


Geologic Data

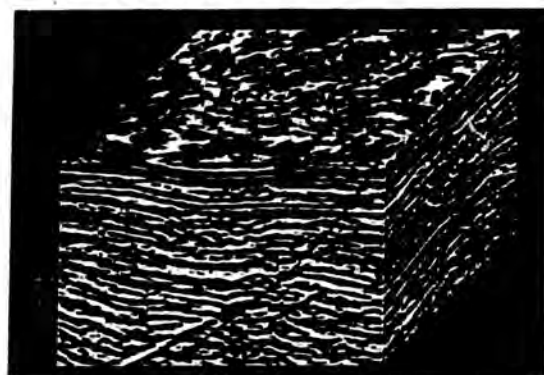
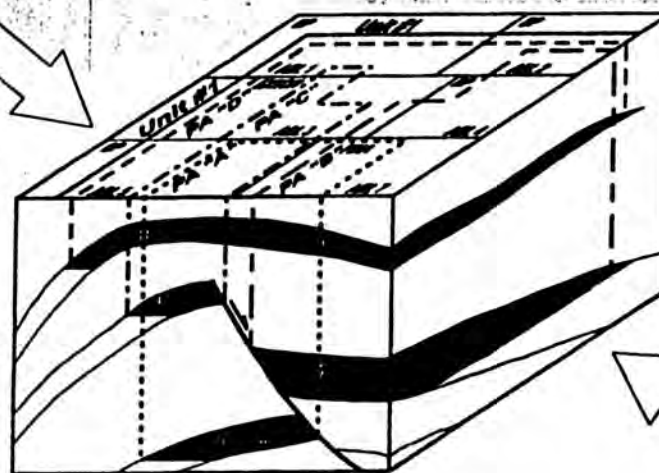
(Well logs, Directional Surveys, Geochemistry, Paleontology, & Formation data)

Niskuk Western PA		Niskuk Eastern PA	
34626 ARCO, EXXON 12.0% \$2,4140 1987		34625 BP 12.0% \$7,8740 1987	312827 BP, AMERADA 20%, 74.8% BP \$1,7000 1988
34628 ARCO, EXXON 12.0% \$4,0000 1987	34630 BP 12.0% \$21,1500 1987	34635 BP 12.8% (45/100) \$22,7700 1987	34634 BP 12.0% \$6,8000 1987

Royalty, Lease, Unit/Participating Areas, Ownership & Economic Data

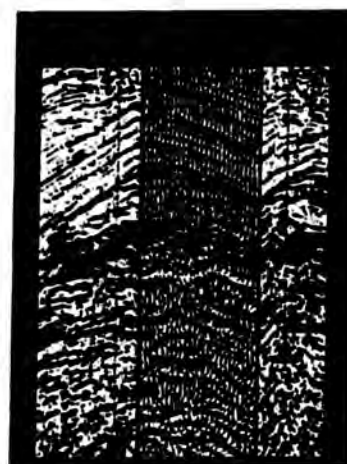


Engineering & Production Data

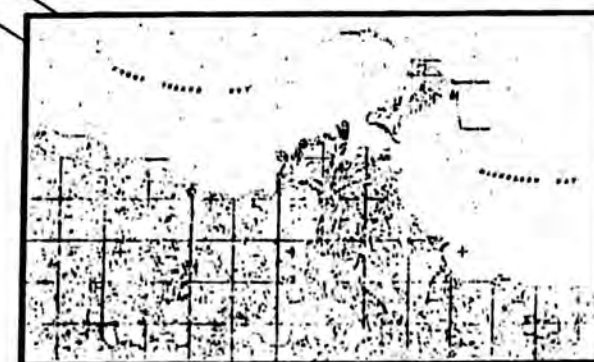


3-D Seismic

Geophysical Data
(Seismic, Gravity, Magnetic, Velocity, & Shothole data)



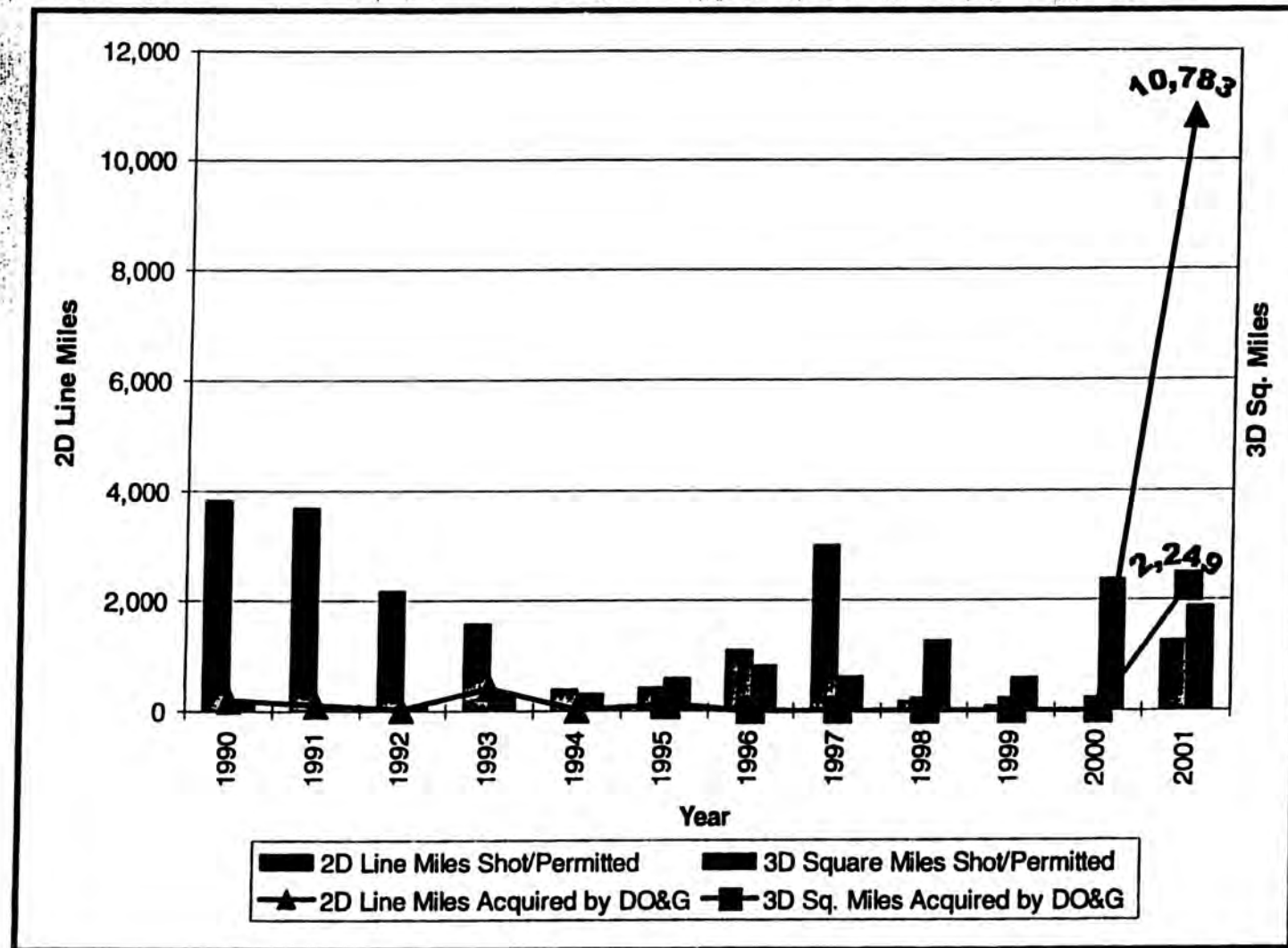
2-D Seismic



**Geographic Information;
Cultural & Physical Data
Aerial & Satellite Imagery**

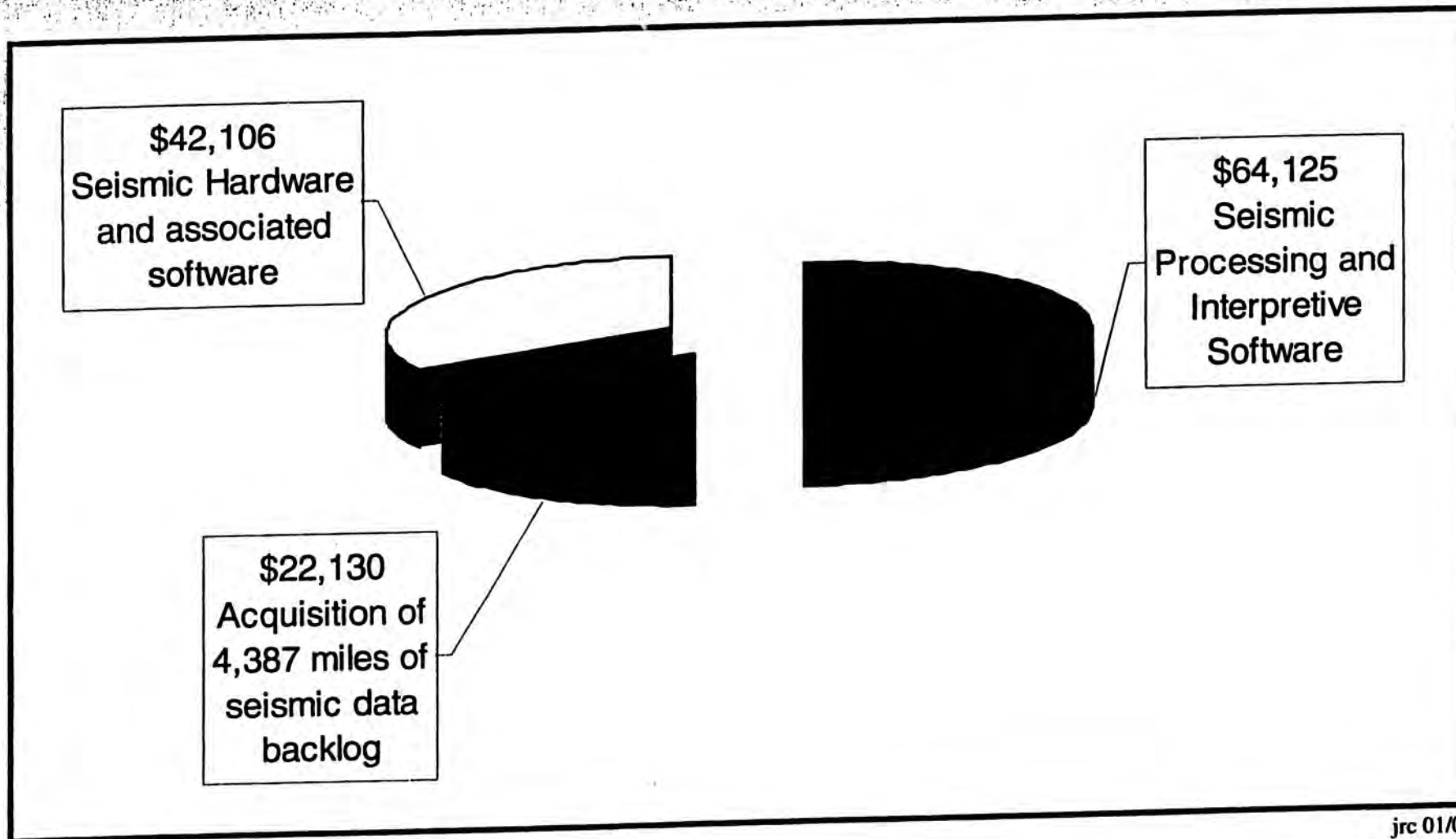
Seismic Data Status

1990 - 2001



jrc 01/02

FY02 Seismic Increment Expenditures



Unocal
909 W. 9th Avenue
Anchorage, AK 99501
907-263-7600
Fax 907-263-7698

faxtransmittal

to:

Rep. Fate

fax number:

(907) 465-3265

from:

Kevin A. Tabler

date:

4-8-02

re:

Oil and Gas Committee Testimony

pages including cover:

2

NOTES: Per your request at today's Hearing.

UNION OIL COMPANY OF CALIFORNIA

Testimony of Kevin A. Tabler

SB 319

Before The House Special Committee on Oil and Gas

April 8, 2002

Mr. Chairman and members of the House Special Committee on Oil and Gas:

My name is Kevin A. Tabler, Manager of Land and Government Affairs for Union Oil Company of California (Unocal) in Alaska. I appreciate this opportunity to be heard today and comment on SB 319. Unocal is currently conducting an aggressive gas exploration program in the Cook Inlet area and is very interested in any legislation dealing with gas and gas exploration. The Shallow Gas Leasing Program augments the existing areawide leasing program and enhances the access to, and development of, the State's natural gas resources. We are very supportive of this program and other leasing programs providing access to the State's mineral wealth. I have participated in hearings on the Senate side and have listened today to the remarks of Senator Torgeson and Director Myers of the Division of Oil and Gas and others testifying in support of this Bill and wish to lend Unocal's support in passage of this legislation for the varied reasons already articulated. The amendments identified in SB 319 provide for better administration and clarification of the Shallow Gas Leasing Program and are in the best interest of the State of Alaska.

**Testimony of John Tanigawa (from Mat-Su LIO)
Evergreen Resources (Alaska) Corporation
House Oil & Gas Committee
Monday, April 8, 2002, 9:00 AM**

EVERGREEN

RE: SUPPORT OF SENATE BILL 319

Thank you Mr. Chairman. My name is John Tanigawa. I am the Special Projects Manager for Evergreen Resources Alaska Corporation, a wholly owned subsidiary of Evergreen Resources, Inc. Last December, I moved to Wasilla to oversee our operations. I am the person accountable and responsible for our activities in Alaska. Currently, we have 46,080 acres of Shallow Gas Lease Applications located near Willow. These applications are pending with the Division of Oil and Gas. Today, I testify in support of Senate Bill 319.

SB 319 removes obstacles to our ability to explore for and to develop shallow natural gas. Evergreen Resources Alaska's specialties extend to Alaska the main focus of Evergreen Resources which is coal bed methane, unconventional gas and shallow natural gas development. These activities require at least 100,000 acres or roughly 4 townships to establish the necessary economies of scale for initial development. Due to the challenges of operating in an arctic environment however, increasing that acreage limitation to 138,240 acres or 6 townships, increases economic viability of shallow natural gas. We strongly support increasing the depth limitation to one that relies on science and geology for the specific play. We are certain that we can drill, complete and produce natural gas wells below 3,000 feet in a safe and environmentally responsible manner using already existing technologies that we employ.

Finally Mr. Chairman, the Shallow Natural Gas Program is the primary reason Evergreen is in Alaska. We are grateful that the legislature is making this program possible and for improving it. Changes proposed in this bill provide us the necessary latitude to operate in an economically sound and environmentally safe manner. We acknowledge the Division of Oil and Gas for collaborating with us and other stakeholders and is an excellent example of how state agencies and industry can work together to the benefit not just government and industry, but particularly the public.

Thank you for allowing me to testify.

I would be pleased to answer any questions that you may have.

####

April 8

To

State of Alaska

Oil & Gas Committee Records

465-3265

1-800-862-3878

From Charlotte McCoy

ph 272-2117

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS CHARLOTTE MACCAY AND I'M SENIOR ADMINISTRATOR OF ENVIRONMENTAL AND REGULATORY AFFAIRS FOR TECK COMINCO ALASKA. TECK COMINCO IS THE OPERATOR OF THE RED DOG MINE NORTH OF KOTZEBUE. WE THANK YOU AND THE COMMITTEE FOR THE OPPORTUNITY TO ADDRESS YOU TODAY.

I'M HERE TODAY TO TALK ABOUT A POTENTIAL ENERGY SOURCE WE'RE LOOKING AT TO REPLACE OUR EXTENSIVE USE OF DIESEL FUEL. BRIEFLY, THE RED DOG MINE EMPLOYS SOME 400 ALASKANS OF WHICH 60% ARE FROM THE IMMEDIATE REGION. THE MINE PRODUCES OVER 1 MILLION TONS OF ZINC AND LEAD CONCENTRATE EACH YEAR AND SHIPS THAT PRODUCT THROUGH THE DMT'S PORT FACILITY FOR 3 MONTHS EACH YEAR. TO CRUSH THE ORE AND MAKE THE CONCENTRATES, REQUIRES SOME 28 MEGAWATTS OF POWER USING APPROXIMATELY 18 MILLION GALLONS OF DIESEL EACH YEAR.

IN THE AREA WHERE WE HAVE FOUND INDICATIONS OF GAS, THE TERRAIN IS ROLLING HILLS TO RUGGED MOUNTAINS, MUCH DIFFERENT THAN EITHER THE MATANUSKA VALLEY OR PRUDHOE BAY.

THE RUGGED NATURE OF THE REGION PRESENTS THE NEED TO HAVE A MORE FLEXIBLE DEFINITION FOR THE DEPTH LIMITATION FOR A SHALLOW GAS LEASE. THE DEPTH LANGUAGE SUGGESTED IN THIS LEGISLATION WILL ASSIST THE STATE AND THE LEASEHOLDER IN KNOWING WHAT AREA WILL BE A PART OF A LEASE. IT ALSO ALLOWS THE OPERATION TO FULLY UTILIZE A RESERVOIR ONCE IT'S BEEN TAPPED.

CURRENTLY, TECK COMINCO HOLDS 4 STATE SHALLOW GAS LEASES FOR A TOTAL OF 23,000 ACRES. NANA HAS THE ADJOINING LAND TO THE EAST WHICH IS NEARLY 100,000 ACRES. TO ADEQUATELY COVER A TARGET OR CONCEPT TAKES CONSIDERABLE ACREAGE. THE CURRENT LEASE HAS AN ACREAGE LIMITATION OF 46,000 ACRES TO ANY

ONE COMPANY, NOT SUFFICIENT ACREAGE FOR A PROJECT. THE SUGGESTED 100,000 ACRE LIMIT OFFERED IN THIS LEGISLATION IS SUPPORTED.

SURFACE OWNERSHIP IN THIS PORTION OF ALASKA IS FAIRLY STRAIGHTFORWARD WITH THREE MAJOR OWNERS: THE NATIONAL PARK SERVICE WHOSE LAND WE KNOW IS OFF LIMITS, THE STATE OF ALASKA LAND AND PRIVATE LANDS OF NANA SO THE ISSUE OF ADDRESSING THE SURFACER OWNER SEPARATELY IS NOT AN ISSUE FOR US.

THE FEE CHANGE REQUESTED BY THE ADMINISTRATION IS CONSIDERABLY MORE THAN THE INITIAL LEGISLATION, IN FACT DOUBLE FOR RENTALS AND 10 X FOR APPLICATION FEES. WE UNDERSTAND THE ADMINISTRATIONS DESIRE TO GENERATE MORE REVENUE TO ADMINISTER THE PROGRAM AND TECK COMINCO CAN SUPPORT THE FEE INCREASES IF THE MONIES ARE DIRECTED TO THE SHALLOW GAS PROGRAM. OTHERWISE THE INCREASE IS A SIGNIFICANT ADDED COST TO AN ALREADY COST SENSITIVE BUSINESS, PARTICULARLY FOR RURAL ALASKAN DEVELOPMENT.

DEVELOPMENTS OF A SHALLOW GAS FIELD IN NORTHWEST ALASKA HAS MANY IMPEDIMENTS, THAT SOME AREAS SHARE AND SOME THEY DON'T. LOCATION IS A MAJOR IMPEDIMENT DUE TO ACCESS AND THE ABILITY TO BRING LARGE EQUIPMENT IN AND OUT ONLY IN THE SUMMER MONTHS. THE LACK OF ROADS IN THE AREA AND THE DESIRE TO MAINTAIN THE PRISTINE NATURE OF THE REGION IS A HIGH COST AND TIME IMPEDIMENT.

ITS VERY DIFFICULT IF NOT IMPOSSIBLE TO TEST A SHALLOW GAS LEASE WITHIN THE 3 YEARS PROVIDED IN THE CURRENT LEASE WHEN WORK IS SO SEASONAL. LOGIC WOULD SAY A LEASE SHOULD BE AT LEAST 5 YEARS FOR A PRIMARY TERM WITH RENEWAL OPTIONS AS PROVIDED IN THE CURRENT LEASE. ALTHOUGH NOT PROVIDED IN THIS LEGISLATION, WE SUPPORT A 5 YEAR TERM WITH RENEWAL OPTIONS.

DEVELOPOMENT OF A SHALLOW GAS FIELD IS MUCH DIFFERENT THAN A CONVENTIONAL FIELD IN COOK INLET OR ON THE SLOPE. INSTEAD OF 2 TO 5 HOLES TO DEVELOP A GAS

FIELD, IT WILL TAKE 50 TO 100 HOLES TO DEVELOP A SHALE GAS FIELD. A LONGER LEASE IS NEEDED TO ACCOMMODATE THIS WORK AND THE COST PER HOLE NEEDS TO BE KEPT AT A MINIMUM OR A FIELD BECOMES UNECONOMIC VERY QUICKLY.

TO DATE TECK COMINCO HAS FOLLOWED THE MINERAL EXPLORATION EFFORT IN THE RED DOG AREA AS A TOOL TO HELP DEFRAY COSTS AND DELINEATE AREAS OF POTENTIAL GAS RESOURCE. THE METHANE GAS WE HAVE FOUND IS LOW PRESSURE, AND IS LOCATED LATERAL TO AND UNDERLYING THE ORE ZONES. EXTENSIVE WORK HAS BEEN COMPLETED TO DATE USING THE MINERAL EXPLORATION TOOLS, BUT THE NEXT PHASE IS TO CONDUCT A FLOW TEST. THIS FLOW TEST CAN NOT BE SUPPORTED UNTIL THE DEPTH BELOW SURFACE OF A FIELD IS BETTER DEFINED AS THIS BILL PROPOSES TO DO.

ARCTIC OPERATIONS WILL ALWAYS PRESENT NUMEROUS CHALLENGES NOT PRESENT ELSEWHERE. TECK COMINCO ALASKA ADDRESSES MANY OF THESE CHALLENGES EACH AND EVERY DAY AT RED DOG. BY PASSING THIS LEGISLATION, YOU WILL HAVE ADDRESSED A MAJOR CHALLENGE AND IMPEDIMENT WE CANNOT ADDRESS.

TECK COMINCO SUPORTS SB 319

THANK YOU

**Testimony of John Tanigawa (from Mat-Su LIO)
Evergreen Resources (Alaska) Corporation
House Oil & Gas Committee
Monday, April 8, 2002, 9:00 AM**

EVERGREEN

RE: SUPPORT OF SENATE BILL 319

Thank you Mr. Chairman. My name is John Tanigawa. I am the Special Projects Manager for Evergreen Resources Alaska Corporation, a wholly owned subsidiary of Evergreen Resources, Inc. Last December, I moved to Wasilla to oversee our operations. I am the person accountable and responsible for our activities in Alaska. Currently, we have 46,080 acres of Shallow Gas Lease Applications located near Willow. These applications are pending with the Division of Oil and Gas. Today, I testify in support of Senate Bill 319.

SB 319 removes obstacles to our ability to explore for and to develop shallow natural gas. Evergreen Resources Alaska's specialties extend to Alaska the main focus of Evergreen Resources which is coal bed methane, unconventional gas and shallow natural gas development. These activities require at least 100,000 acres or roughly 4 townships to establish the necessary economies of scale for initial development. Due to the challenges of operating in an arctic environment however, increasing that acreage limitation to 138,240 acres or 6 townships, increases economic viability of shallow natural gas. We strongly support increasing the depth limitation to one that relies on science and geology for the specific play. We are certain that we can drill, complete and produce natural gas wells below 3,000 feet in a safe and environmentally responsible manner using already existing technologies that we employ.

Finally Mr. Chairman, the Shallow Natural Gas Program is the primary reason Evergreen is in Alaska. We are grateful that the legislature is making this program possible and for improving it. Changes proposed in this bill provide us the necessary latitude to operate in an economically sound and environmentally safe manner. We acknowledge the Division of Oil and Gas for collaborating with us and other stakeholders and is an excellent example of how state agencies and industry can work together to the benefit not just government and industry, but particularly the public.

Thank you for allowing me to testify.

I would be pleased to answer any questions that you may have.

####

SCOMM

128:45

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 343
(S) Publish Date: 3/6/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title An Act clarifying the term "best technology" required BRU Spill Prevention and Response
for use in oil discharge prevention and contingency plans ... Component Industry Preparedness and
Sponsor Senate Resources Pipeline Program
Requester Senate Resources Component No. 1922

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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 EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1052 OHSRPR Prevention Account						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal: ☐

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Current statute states that an oil discharge prevention and contingency plan (c-plan) must provide for the use of the best technology that was available at the time the contingency plan was submitted or renewed. DEC developed regulations for determining whether a c-plan meets this "best available technology" (BAT) requirement. The regulations were developed through a negotiated rulemaking process that included stakeholders from around the state representing a broad range of interests. On Feb. 1, 2002, the Alaska Supreme Court determined that, while the regulations had "considerable theoretical merit," the statute as currently written does not allow DEC to rely on response planning standards or performance standards in determining whether these technologies meet the BAT requirement. This bill changes the statute to validate DEC's current approach in considering certain technologies that are proven, appropriate and reliable in meeting State standards for best available technology and therefore there will be no fiscal impact.

Prepared by: Larry Dietrick Phone 465-5250
Division Spill Prevention and Response Date/Time 2/28/02 2:36 PM
Approved by: Kurt Fredriksson Deputy Commissioner Date 2/28/2002
Agency Department of Environmental Conservation

ALASKA STATE LEGISLATURE

Chairman: Senator John Torgerson
Vice Chair: Senator Gary Wilken
Senator Rick Halford
Senator Ben Stevens
Senator Robin Taylor
Senator Kim Elton
Senator Georgianna Lincoln



Official Business

State Capitol, Room 427
Juneau, AK 99801
Phone: (907) 465-4907
Fax: (907) 465-4779

SENATE RESOURCES COMMITTEE

Sponsor Statement

SB 343

"Best Available Technology: Discharge Plan"

The State of Alaska is widely recognized as having one of the most comprehensive oil spill prevention and response requirements in the world. This recognition is due to actions taken by the Legislature and the ADEC to ensure that companies operating in Alaska have taken the appropriate steps to prevent discharges and have access to the resources necessary to rapidly respond and clean up discharges should they occur.

Alaska law and regulation require vessels and facilities to have oil discharge prevention and contingency plans approved by ADEC. Plan holders are required to utilize best available technology as part of these plans. The regulations governing determinations of "best available technology" were developed through a comprehensive stakeholder process, and were adopted by ADEC in 1997. Since that time, over 100 C Plans have been approved, implementing the BAT requirement.

As a result of these requirements and industry efforts, significant advances have been made in technologies utilized and in place in Alaska. The regulations have served Alaska well in the five-year period they have been in effect.

On February 1, 2002, the Alaska Supreme Court struck down two provisions in the regulations (18 AAC 75.445(k)(1) and (2)), ruling that these provisions were inconsistent with that Court's interpretation of the Legislature's intent. At the same time, the Court emphasized the limited scope of its ruling and acknowledged that the Legislature had vested ADEC with broad discretion to define BAT.

This ruling jeopardizes timely issuance of new plans and timely renewals of existing plans. Immediate action by the Legislature is needed to address this ruling to ensure continued plan administration and preclude negative consequences on development of the state's resources. SB 343 affirms that the 1997 regulations and the three-tiered process encompassed in them do, in fact, meet Legislative intent with regard to BAT and are consistent with the statute. The bill also affirms the validity of the regulations and the C Plans.

ALASKA STATE LEGISLATURE

Chairman: Senator John Torgerson
Vice Chair: Senator Gary Wilken
Senator Rick Halford
Senator Ben Stevens
Senator Robin Taylor
Senator Kim Elton
Senator Georgianna Lincoln



Official Business

State Capitol, Room 427
Juneau, AK 99801
Phone: (907) 465-4907
Fax: (907) 465-4779

SENATE RESOURCES COMMITTEE

Sectional Analysis

SB 343

Best Available Technology: Discharge Plan

Summary. The purpose of this bill is to clarify the requirement for the use of best available technology in oil spill contingency plans in light of the Alaska Supreme Court's decision in *Lakosh v. Alaska Department of Environmental Conservation, et al.* (February 1, 2002). Specifically, the bill would legislatively affirm the best available technology approach taken by the 1997 negotiated rulemaking process and affirm the continued effect of the contingency plan approvals issued under those regulations.

Section 1. Legislative Findings, Intent and Purpose.

Subsection (a) contains legislative findings.

(a)(1)-(4) explain the required components of an oil discharge prevention and contingency plan set out in existing AS 46.04.030.

(a)(5)-(6) describes DEC's 1997 negotiated rulemaking which developed regulatory criteria for determining whether a contingency plan uses best available technology and finds that the three tier criteria developed was a reasonable process for defining what was meant by best available technology (BAT).

(a)(7) explains that over 100 contingency plans have been issued under the 1997 BAT regulations. These contingency plans utilizing the 1997 regulations have brought about major improvements in oil spill prevention and response capabilities.

(a)(8) describes the Alaska Supreme Court's February 1, 2002 ruling holding the 1997 BAT regulations at 18 AAC 75.445(k)(1)&(2) inconsistent with the Court's interpretation of the Legislature's intent in adopting AS 46.04.030(e) and AS 46.04.030(k).

(a)(9) explains that the Alaska Supreme Court's ruling potentially jeopardizes the status of existing contingency plans, the timely issuance of new plans, and the timely renewal of existing contingency plans.

(a)(10) explains the negative consequences of the Alaska Supreme Court's ruling including potential uncertainties, delays and cost.

Subsection (b) sets forth the Legislature's intent to 1) clarify that the 1997 BAT regulations meet the Legislature's intent with respect to application of best available technology and 2) create a solution to the uncertainty caused by the Alaska Supreme Court's recent ruling.

Subsection (c) states that the purpose of the Act is to overrule *Lakosh v. Alaska Department of Environmental Conservation*, which invalidated parts of the 1997 BAT regulations.

Section 2 amends AS 46.04.030(e) to affirm that the three-tier BAT approach taken in the 1997 BAT regulations is consistent with statute. Section 2 makes three clarifications. First, DEC must specify in regulation what technologies are subject to a BAT determination. Second, DEC may provide that technologies that meet the response planning standards in AS 46.04.030(k) or a oil pollution prevention performance standard adopted under AS 46.04.070 are BAT. Third, DEC may establish BAT independently of the contingency plan renewal process as provided in 18 AAC 75.447. Technologies which the department finds are BAT would be maintained in a departmental list. C-plan holders could choose to use any of the listed technologies in lieu of performing an individual BAT analysis or perform an individual BAT analysis if another alternative is preferred.

Section 3 is a transition provision which provides that the 1997 BAT regulations remain effect and that DEC may rely upon them in approving new contingency plans and renewing existing contingency plan approvals.

Section 4 is a transition provision which affirms a contingency plan that, on the effective date of this Act, has been approved by DEC under AS 46.04.030 remains in effect and that the plan holder may continue to operate under that plan until the approval expires, or is modified or revoked under existing law, whichever first occurs.

Section 5 provides that the clarifications made to AS 46.04.030(e) in section 2 are retroactive to the date of DEC's adoption of the 1997 regulations.

Section 6 provides that the Act takes effect immediately under AS 01.10.070(c).



ALASKA STATE LEGISLATURE

SENATOR JOHN TORGERSON

CHAIR, SENATE RESOURCES COMMITTEE

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CHAIR, JOINT COMMITTEE ON NATURAL GAS PIPELINES

Session:

State Capitol, Room 427, Juneau, AK 99801
Telephone 907/465-2828 Fax 907/465-4779

District:

45457 Kenai Spur Hwy.; Suite 101B, Soldotna, AK 99669
Telephone 907/260-3042 Fax 907/260-3044

MEMORANDUM

To: Representative Scott Ogan, Chair
House Oil & Gas Committee

From: Senator John Torgerson 

Date: March 14, 2002

Re: Scheduling request for SB 343
"Best Available Technology: Discharge Plan"

Please accept this memorandum as a request to schedule SB 343 for a hearing in the House Oil & Gas Committee at your earliest convenience. This bill clarifies the definition of "Best Available Technology" with regard to oil discharge prevention and contingency plans approved by DEC.

I have enclosed the following back-up information for your review and inclusion in the floor packets:

- CS SB 343 (RES)
- SB 343
- DEC zero fiscal note
- Sponsor Statement
- Sectional Analysis
- Testimony from DEC, the Attorney General's office, and AOGA
- Superior Court motion filed by Tom Lakosh, plaintiff
- Supreme Court decision on appeal

Thank you for your consideration of this request.

REPRESENTING THE KENAI PENINSULA

Anchor Point Bear Creek Clam Gulch Cooper Landing Crown Point Fritz Creek Happy Valley Halibut Cove
Homer Hope Kachemak City Kachemak Selo Kasilof Lowell Point Moose Pass Nanwalek Nikolaevsk
Ninilchik Port Graham Razdolna Seward Seldovia Soldotna Stariski Sterling Voznesenka

**POSITION OF THE
ALASKA OIL AND GAS ASSOCIATION
ON CSSB 343 (RES)
March, 2002**

The Alaska Oil and Gas Association (AOGA) is a private, nonprofit trade association whose 19 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska. In fact, all companies operating in Cook Inlet and on the North Slope, crude oil pipeline companies and all three in-state refiners are members of AOGA, and all are required to have in place approved Oil Discharge Prevention and Contingency Plans, or C Plans.

Clearly, we are heavily vested in ensuring that the State of Alaska has in place appropriate and reliable laws and regulations governing this program.

As described in CSSB343, on February 1, 2002, the Alaska Supreme Court ruled that two provisions (18 AAC 75.455(k)(1) and (2)) governing Best Available Technology (BAT) determinations were contrary to the Court's interpretation of the intent of the Legislature in enacting AS46.04.030. The Court did not, however, take issue with any other component of the BAT-related regulations or statutes.

The regulations adopted by the Department of Environmental Conservation (DEC) in 1997 followed an extensive, year-long, facilitated stakeholder process involving industry, utilities, local governments, and citizens and public interest groups. This deliberative process identified a three-tier process for determining BAT, which the Department adopted into regulation in April, 1997. Since that time, over 100 C Plans have been approved utilizing this three-tiered approach, ensuring continuous improvement of spill prevention and response technologies in Alaska.

AOGA's members participated in that stakeholder process, supporting the regulations ultimately adopted. We stand by our commitment in support of those regulations, including the requirement for the holding of a conference on best available technology at five-year intervals.

The Supreme Court decision has placed everyone—from AOGA's members and others in the regulated community—to DEC who administers the program, in a tenuous position. Companies seeking new plan approvals, and those going through the renewal process on existing plans—all of which incorporate BAT—are faced with the prospect of unnecessary delays and uncertainties. The Department will be forced instead to refocus its resources away from the immediate process of working with Plan holders to ensure appropriate provisions are in place, to going through another rulemaking process which, at the end of the day, lacking specific Legislative language, could once again be called into question.

While the Supreme Court decision emphasized the limited scope of its ruling and acknowledged that the Legislature had vested ADEC with broad discretion to define BAT, the Court was unable to point to specific Legislative intent which justified the approach DEC had taken in its regulations. This lack of specificity is the heart of this legislation.

In our view, CSSB 343 provides the specificity the Court searched for in considering this matter. With the very limited amendment to AS46.04.030(e), the Legislature makes it clear that the regulatory approach taken by DEC—after extensive stakeholder deliberation—meets the Legislature's expectations when it vested this authority to the DEC.

We would like to emphasize one additional point. On any single legislative proposal there is always the potential that there will be differing views among those affected on what is appropriate and what is desired. We wish to make it absolutely clear that the *only* objective sought by AOGA and its members at this time is Legislative affirmation of the rules prior to the Court decision.

CSSB343 does not, in any way, diminish the Department's authorities in the determination of Best Available Technology, nor does it reduce requirements which Plan holders must meet. CSSB343 provides ADEC with the flexibility and ownership of administration of BAT, and provides the ability to recognize BAT with respect to the diverse set of environmental and operational conditions that exist throughout the State. Further, it affirms the validity of C Plans which have been approved under the regulations and effectively removes the obstacles facing pending Plan approvals.

To summarize, immediate action by the Legislature through CSSB343 is critical to continued C plan administration within the State of Alaska. CSSB343 clearly responds to the uncertainty voiced by the Supreme Court by specifying the Legislature's intent with regard to best available technology requirements in C Plans. We respectfully encourage adoption of CSSB343.

Subject: SB 343**Date:** Mon, 18 Mar 2002 11:44:53 -0900**From:** "Tom Lakosh" <lakosh@gci.net>**To:** "Representative_Scott_Ogan" <Representative_Scott_Ogan@legis.state.ak.us>

Dear Chairman Ogan;

Would you please provide an invitation to address the Oil and Gas Committee regarding SB 343. I would like to propose amendment of SB 343 to clarify the application of BAT standards and to develop a more competent and cost effective permitting and spill response system. I understand that DEC has previously proposed a "Firehouse" approach to spill response where DEC would operate response depots for permittees. This type of centrally controlled and strategically placed system of response depots is now, more than ever, necessary to provide for rapid permitting and efficient spill coverage for thousands of permits. I have testified to the Senate Resources Committee regarding these changes to provide for a more rational permitting/response system. The SB 343 legislation may provide an opportunity for promoting a more competent permitting and response system if something similar to the following language can be added to page 3 line 30 of the CS:

"The department shall identify the spill prevention and response technologies that are subject to a best available technology determination. These technologies shall be selected for review based upon the need to further protect natural resources susceptible to spill damage and the ability of new technologies to cost effectively improve the permittees' ability to prevent spills or recover oil under problematic circumstances such as in high current rivers, wet lands, high seas, in ice bearing waters, etc. DEC shall evaluate all available spill prevention and response technologies on a semi-annual basis in accordance with the procedures set forth in 18 AAC 75.447. DEC is authorized to extract up to \$500,000 from the "470 Fund" during each semi-annual review cycle to pay for the "Technology Symposium" and professional technology analysis required to carry out the .447 technology review. DEC is authorized to extract up to \$12,500,000 from the "470 Fund" and issue additional bonds totaling no more than \$12,500,000 through the AKRR Authority to stock response depots with BAT technologies that would otherwise be unavailable to protect susceptible resources and fulfill minimum regulatory requirements for permits. DEC may subcontract other entities to supply BAT response services and insurance to permittees. DEC shall apply reasonable fees and surcharges to permits where such permits require the services of DEC response depots, aerial surveillance, laboratory facilities or other DEC services to meet any or all of the regulatory requirements for permit issuance. DEC shall reimburse the "470 Fund" with income received from response services to permittees after a sufficient operating budget for maintaining and expanding DEC's response services is fully funded."

Please let me know if you have suggested text changes that would better promote a competent permitting and response system.

Sincerely, Tom Lakosh 563-7380 ph/fax

Dear Senator Leman;

Would you please provide an invitation to address the Resources Committee for 15-20 minutes this afternoon in consideration of SB 343. I hope to provide alternative solutions to the bill's attempted resolution of DEC's permitting predicament, industries' uncertainty regarding "Best Available Technology", and the private and public's concerns for mitigation of damage from hazardous substance spills. I will propose the creation of a DEC Response Authority, that would provide spill response services in a permit package to permit applicants that would not otherwise be able to even arrange much less afford a comprehensive spill response capability. This

"Authority" would conduct the research to improve response capability under problematic conditions and would develop a statewide system of public and private hazardous substance spill resources to cope with spills, particularly when and where the private response industry cannot meet strict regulatory requirements.

The proposed Response Authority would command resources and regulatory authority in a manner similar to the Federal Republic of Germany, <http://www.wsv.de/cis/>, but provide fee generating services like the AKRR. It would develop its own response depots and subcontract with established spill response providers to streamline permitting of facilities that utilize extensive transportation corridors or face particularly daunting response challenges with little working knowledge of the demands of the Alaskan environment or intricacies of our spill response laws. The ability of the RA to engage and organize subcontractors that utilize the best tactics and equipment will help insure that fly by night permittees and response contractors will not threaten Alaska's resources for long. A centralized system would also lower average response coverage costs because it would insure a more economical distribution of response resources along entire corridors and at individual locations. The good equipment and personnel will be more effectively utilized, gaps in protection would be minimized and redundant, ineffective or misplaced equipment would be reallocated for use in Alaska or wherever it was designed to operate.

Producers and transporters of hazardous substances would have a more accessible, reliable, and transparent permitting process while the natural resource users will garner the protections mandated by an intertwined legal system of regulations, statutes and Constitutional covenants.

Sincerely, Tom Lakosh

> Dear Senator:

>

> Please reject passage of SB 343 re: DEC's BAT regulations until the

> bill includes proper guidance to DEC for advancement of spill technologies
> and the proper funding to carry out this mandate. DEC's failure to prepare a

> fiscal note that reflects the true costs of implementing BAT regulations is

> all too telling of its intent to have the legislature change the law every
> time it gets caught issuing illegal permits.

> The Alaska Supreme Court decision in Lakosh Vs. DEC, Slip Opinion 5531,
> includes a history of this legislation and shows an understanding of the
> intent of the legislatures that repeatedly passed this law in 1980 and 1990.

> The history of this law and the Courts broad and detailed ruling in this
> matter should give each legislator great pause in any cursory review of SB
> 343. There are underlying Constitutional mandates for protection of
> resources that are woven throughout the applicable statutes and regulations

> that SB 343 does not address and cannot be swept under the rug.

> Without a reasoned legislative approach, only the parties to the case are
> left to develop a proper place for hazardous spill technology advancements
> in DEC's regulations. This will require extended and expensive legal battles

> that will only delay the spill protection the public deserves and will
> create the uncertainty the bill espouses to eliminate. The bill must remain

> in the Resources Committee to allow full consideration of DEC's obligations

> and to assess a proper funding level for this purpose.

> The legislature must recognize that Alaska's resources are far from being
> appropriately protected from hazardous spills. Most spill response equipment

> presently used in Alaska is totally ineffective in waves over six feet, in
 > fast currents or when there's ice in the water. In effect, there is no
 > "appropriate and reliable" equipment in Alaska if prevention of
 catastrophic

> spill damage is the mandated minimum standard of resource protection. The
 > "best technology available" standard is already a compromise of this
 > mandated protection floor.

> The legislature must fully fund those technology assessment programs that
 it

> says it espouses in this bill. The Supreme Court has already recognized
 that

> DEC's best attempt at technology assessment was insufficient:

>

> Footnote 26: Slip Opinion 5531

> DEC further points to 18 AAC 75.447, which requires DEC to
 > identify and evaluate "breakthrough" technologies by

> sponsoring a > technology conference at least once every

five years and to

> "engag[e] in studies, inquiries, surveys, or analyses

[that > DEC]

> believes appropriate to the consideration of new >

technologies,"...

>

> DEC has continually argued that these "technology

> conference[s]...studies... or analyses were a mandatory component for

> incorporation of "breakthrough technologies" into spill plan renewals. It

> has now been five years since this regulation was first codified and still

> no "conference" has been funded, planned or executed by DEC. SB 343 must

> return to committee to consider defining areas of spill prevention and

> response that desperately need improvement, and to attach a realistic

fiscal

> note to the bill as a reflection the Senate's commitment to provide swift

> and professional approval of plans that minimize the public's exposure to

> spill damage and permittee's exposure to liability for that damage.

>

Sincerely; Tom >

Lakosh



Regional Citizens' Advisory Council

Anchorage Office
3709 Spenard Road
Anchorage, AK 99503
907-277-7222 907-277-4523
1-800-478-7221

Valdez Office
PO Box 3089
Valdez, AK 99686
907-835-5957 907-835-5926
1-877-478-7221

TO: REP HUGH FATE	DATE: 3-20-02
Telephone/Fax: 465-3883	Time:
From: JOHN DEVENS	# Pages (including cover): 3
Regarding: SB343	

.....
Remarks

PLEASE SEE ATTACHED LETTER
TO REP. HUGH FATE

* PLEASE SEE THAT THIS GETS
DISTRIBUTED TO THE
HOUSE OIL & GAS COMMITTEE
MEMBERS

THANK YOU!!

CALL DONNA SCHANTZ 907-277-7222
WITH QUESTIONS OR PROBLEMS



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

In Anchorage:

3709 Spenard Road / Anchorage, Alaska 99503 / (907) 277-7222 / FAX (907) 277-4523

In Valdez:

P.O. Box 3089 / 339 Hazelet Avenue / Valdez, Alaska 99686 / (907) 835-5957 / FAX (907) 835-5926

MEMBERS

Alaska State
Chamber of
Commerce

Alaska Wilderness
Recreation & Tourism
Association

Chugach Alaska
Corporation

City of Cordova

City of Homer

City of Kodiak

City of Seldovia

City of Seward

City of Valdez

City of Whittier

Community of
Chenega Bay

Community of
Totitlak

Cordova District
Fishermen United

Kenai Peninsula
Borough

Kodiak Island
Borough

Kodiak Village Mayors
Association

Oil Spill Region
Environmental
Coalition

Prince William Sound
Aquaculture
Corporation

March 20, 2002

Rep. Hugh Fato
House Oil and Gas Committee
Alaska House
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

SUBJECT: Senate Bill 343

Dear Representative Fato:

I am writing to present the Prince William Sound Regional Citizens' Advisory Council's position on Senate Bill 343 (SB343), which comes before your committee this week. PWSRCAC is very concerned that every effort be made to ensure that SB343 does not weaken contingency planning requirements.

In particular, we wish to draw your attention to the crucial role of the Best Available Technology conference mandated by the regulations referenced in Section 1(a)(5)-(6) of the bill. As noted in this section, these regulations were developed through a negotiated rulemaking process involving numerous stakeholders, including this organization.

The Best Available Technology Conference, with industry support, was included in this regulatory package because it sets up a multi-stakeholder process (a process that includes industry) for identifying Best Available Technology in an orderly way. Absent such a formal mechanism, the Best Available Technology process could become chaotic and disorganized, possibly leading to more litigation comparable to *Lakosh v. Alaska Department of Environmental Conservation*.

In light of the important role the Best Available Technology Conference plays in this regulatory package, we want to recommend that your committee amend SB343 by explicitly noting that the regulations require this conference.

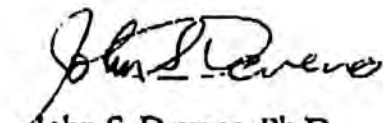
We suggest that such language could be inserted at 1(a)(5) by changing it to read as follows (new language in boldface):

(5) under AS 46.04.030(j) and 46.04.070, the Department of Environmental Conservation adopted regulations at 18 AAC 75.445(k), effective April 4, 1997, that established a reasonable three-tiered process, including periodic **Best Available Technology Conferences**, for defining what was meant by **best available technology**;

The first of these conferences is now due under the regulations, and DEC has requested a \$250,000 appropriation for that purpose in its CIP budget. We are aware that cost is a sensitive issue in the present budget climate, and so want to assure your committee that this appropriation will not draw from the general fund, or worsen the fiscal gap. The **Best Available Technology Conference** will be financed out of the Prevention Mitigation Account of the Oil and Hazardous Substances Release Prevention Response Fund (also known as the "470 Fund"). This is a dedicated fund financed by a per-barrel tax on crude oil that is separate and segregated from the General Fund.

Thank you for considering our views. Please do not hesitate to contact me if you have any questions or if I can provide additional information on our position regarding SB343.

Sincerely,



John S. Devens, Ph.D.
Executive Director

cc: Alaska House Oil and Gas Committee
PWSRCAC Board of Directors

House Oil and Gas Committee

SB 343

March 22, 2002

Testimony of Kurt Fredriksson
Alaska Department of Environmental Conservation
Deputy Commissioner

Thank you Mr. Chairman and members of the Committee for the opportunity to comment on SB 343. For the record my name is Kurt Fredriksson and I am the Deputy Commissioner for the Alaska Department of Environmental Conservation.

The Department is responsible for reviewing and approving Oil Discharge Prevention and Contingency Plans for over 120 facilities in Alaska. These facilities include oil terminals, pipelines, exploration and production facilities, tank vessels, oil barges, nontank vessels and the railroad.

The Department of Environmental Conservation has been working with the Department of Law since the recent Supreme Court ruling to devise a remedy that meets the recent Supreme Court ruling on "best available technology" described in contingency plans.

At issue is the legislative intent for meeting the "best available technology" statutory requirement. The court noted that "when an agency has adopted regulations under a delegation of authority from the legislature and using the process prescribed by the Administrative Procedure Act, we presume that the

regulations are valid..... and the review is limited to whether the regulations are consistent with and reasonably necessary to carry out the purposes of the statutory provisions and whether the regulations are reasonable and not arbitrary".

Following the Exxon Valdez oil spill, the legislature established what are arguably the toughest response planning standards in the world. When reviewing a contingency plan DEC has interpreted the statute to mean that meeting Alaska's tough response planning standards also satisfies the best available technology requirement if the equipment is proven, reliable and appropriate for its intended use and the magnitude of the spill it is addressing. This interpretation was developed through an extensive workgroup process when the regulations were developed in 1997.

The court recognized that this approach has considerable merit and that agency judgement in this regard deserves considerable deference but only to the extent that the legislature actually granted DEC authority to define best available technology in terms of reliance on the response planning standards.

The court has raised a rather narrow question regarding whether or not our regulatory interpretation meets the intent and lies within the limits of authority delegated by the legislature. Because "best available technology" was not defined by the legislature the court has interpreted the statutory language to

mean that the legislature intended to impose two separate requirements which precludes DEC from relying on the response planning standards or a performance standard established in regulations to establish BAT.

Clearly the court, in their ruling, has invited the legislature to clarify their intent if they so choose. We believe it is the legislature's prerogative to clarify the intent and appreciate your efforts to expedite a solution.

The department believes that any legislation should meet the following goals:

First and foremost, because of the timing of the release of the court decision and the time remaining during this session, it is imperative that any legislation be limited to only what is necessary to address the court ruling. There is simply not enough time to entertain other changes to the statute and do credible research and coordination with the regulated community and other stakeholders.

Second, to ensure continued operation of Alaska's facilities and eliminate the cloud of uncertainty from the court ruling regarding the validity of existing plan approvals made since 1997, the legislation must be passed this session.

Third, the legislation must validate the existing regulations and preserve the approach used for making BAT determinations as envisioned by the 1997 Task Force.

Fourth, the legislation must sustain the same level of rigor for plan reviews as now practiced and not diminish the existing response capability.

Fifth, the legislation must continue to support the ability of the department to evaluate new technologies and make BAT findings.

SB 343 meets these five goals and provides straightforward language clarifying the legislative intent. The bill validates the BAT approach taken by the department in the 1997 negotiated rulemaking process and affirms the continued effect of contingency plans approved by the department since 1997.

We believe this language is responsive to the Supreme Court ruling and does not reduce the rigor of existing contingency plan review, or diminish the response readiness and capability of industry. The bill also provides for the department's periodic examination of new technologies to keep Alaska in the forefront of environmental protection worldwide.

In conclusion, the department supports SB 343.

Thank you for your attention and I would be glad to answer any questions.

**Testimony of Assistant Attorney General
Breck C. Tostevin before House Oil & Gas Committee
concerning CS SB 343(RES)
Best Available Technology: Discharge Plans**

Thank you Mr. Chairman, Members of the Committee, for the opportunity to testify concerning SB 343. For the record, my name is Breck Tostevin, I am an Assistant Attorney General in the Alaska Department of Law's Environmental Section.

Overview: I would like to cover two general topics in my testimony: First, the reasoning and effect of the Supreme Court's recent decision concerning the statutory best available technology requirement for oil discharge prevention and contingency plans; and, second, how this legislation responds to the Supreme Court's decision in a focused and measured way.

Purpose of Legislation: The legislation before you today, Senate Bill 343, seeks to clarify the statutory requirement that oil spill contingency plans use best available technology in light of the Alaska Supreme Court's February 1 ruling in the *Lakosh v. DEC* case.

Legislative History of BAT Requirement: The best available technology (BAT) requirement has been in place since 1980 for response equipment used in C-plans. Because of the addition of oil spill prevention to the C-plan statute in 1990, the BAT requirement became applicable to prevention equipment. In addition, the 1990 amendments added the rigorous oil spill "response planning standards" in AS 46.04.030(k) to the C-plan statute but the Legislature did not address the relationship between the planning standards and BAT.

Alaska Supreme Court's Decision: In its recent ruling, the Court found two parts of DEC's regulatory criteria for determining whether an oil discharge prevention and contingency plan uses best available technology to be inconsistent with statute. These regulatory

criteria were developed as part of a negotiated rulemaking in 1997 that included numerous stakeholders from throughout the state with a broad range of interests.

In the *Lakosh* case, the Alaska Supreme Court was confronted with a general challenge to the regulations. The Court's ruling was a narrow legal decision focusing on the language of the regulations as opposed to a technical determination of whether any particular equipment or technology is indeed best available. In finding parts of the regulations inconsistent with statute, the Court relied upon the dictionary definition of the term "best" and concluded that in the absence of legislative history to the contrary, the BAT regulations could not rely on the stringent response planning standards for oil spill response technologies in determining BAT or rely on performance standards set forth in regulation for determining BAT for oil spill prevention technologies. The Alaska Supreme Court concluded that, while reliance on performance standards for determining BAT had considerable theoretical merit and are used in other federal environmental statutes in lieu of one-size fits all technological rules, the absence of specific legislative history on interplay between these standards and the BAT requirement, led the Court to the conclusion that the 1997 BAT regulatory criteria should be invalidated as inconsistent with statute.

Given that the Alaska Supreme Court's ruling overturned the 1997 workgroup's use of the statutory response planning standards and regulatory oil spill prevention performance standards in determining best available technology, the BAT statutory requirement is ripe for Legislative clarification.

Proposed Legislation: The Legislation you have before you today would restore the regulatory criteria adopted by the 1997 negotiated rulemaking group and that has been utilized in approving over one-hundred C-plans since April 1997. This Legislation does not

weaken the best available technology requirement but, rather, is an effort to restore the consensus criteria that has been used for making BAT determinations for the last five years: criteria that has resulted in major improvements in oil spill prevention and response.

SB 343 accomplishes three things. It clarifies that the 1997 negotiated rulemaking regulations which established a three-tier approach for making BAT determinations is a permissible interpretation of the statute. Second, it affirms the continued validity and effect of the 1997 regulations; if SB 343 is enacted, DEC would not be required to revise its BAT regulations. Third and finally, the legislation would affirm the continued effect of contingency plan approvals issued under the 1997 regulations and ensure that plan holders could continue to operate under those approvals.

I would be happy to respond to any questions the Chair or Members of the Committee may have. Thank you.



750 West Second Ave., Suite 109, Anchorage Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177
P.O. Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / www.acvoters.org

SB 343 ~ Best Available Technology

TO: House Oil and Gas Committee

DATE: March 22, 2002

Alaska Conservation Voters (ACV) is a nonprofit organization dedicated to protecting Alaska's environment through public education and advocacy. Our 32 member organizations represent over 35,000 registered Alaskan voters, many of whom have participated in efforts, since the *Exxon Valdez* oil spill, to ensure that our state laws governing oil spill prevention and response are as strong as possible. Senate Bill 343 weakens the state law and, for that reason, we oppose it.

Soon after the *Exxon Valdez* spill, the forward-thinking legislature responded to Alaskans' demand for stricter laws by requiring the use of "Best Available Technology" (BAT) to prevent and respond to oil spills. Last month, the Alaska Supreme Court ruled in the *Lakosh* decision that the Department of Environmental Conservation (DEC) had adopted regulations that were inconsistent with the BAT statute. The department's legal violation was so clear-cut the Court had no choice but to overturn the regulations.

By introducing SB 343 to overturn the *Lakosh* decision, this legislature is taking a step backwards in respect to the quality of our oil spill laws. By equating BAT with the ability to merely meet a planning standard, this bill creates a disincentive for oil companies to research and develop new, more-effective technologies for responding to spills. Further, by reversing the *Lakosh* decision, SB 343 is letting DEC off the hook for looking closely at alternative technologies that could provide a better approach to spill response. SB 343 allows DEC to rubber-stamp the first technology the plan applicant says will meet the planning standard.

The Department of Environmental Conservation's regulatory framework currently provides a forum to address the *Lakosh* decision. ACV believes that an agency process is the best way to establish oil spill rules. We support an approach to BAT that ensures DEC conducts an analysis of a full range of alternative technologies; DEC's choice of BAT should be made following public review and comment, not simply after a DEC-industry conference.

Alaskans have had to pay an extraordinarily high price – the *Exxon-Valdez* spill – for the right to say we have some of the most comprehensive oil spill laws in the world. We do not want an industry-promoted roll back of those laws. SB 343 should not be supported.


Susan Schrader

Conserve Alaska. It's Only Natural.

Alaska Department of Environmental Conservation
Division of Spill Prevention and Response

Senate Resources
SB 343

March 5, 2002

Testimony of Larry Dietrick
Director, Division of Spill Prevention and Response

Draft

Thank you Mr. Chairman and members of the Committee for the opportunity to comment on SB 343. For the record my name is Larry Dietrick and I am the Director for the Division of Spill Prevention and Response with the Alaska Department of Environmental Conservation.

The Department is responsible for reviewing and approving Oil Discharge Prevention and Contingency Plans for over 120 facilities in Alaska. These facilities include oil terminals, pipelines, exploration and production facilities, tank vessels, oil barges, nontank vessels and the railroad.

The Department of Environmental Conservation has been working with the Department of Law since the recent Supreme Court ruling to devise a remedy that meets the requirements of the court.

At issue is the legislative intent for meeting the "best available technology" statutory requirement. The court noted that "when an agency has adopted

regulations under a delegation of authority from the legislature and using the process prescribed by the Administrative Procedure Act, we presume that the regulations are valid..... and the review is limited to whether the regulations are consistent with and reasonably necessary to carry out the purposes of the statutory provisions and whether the regulations are reasonable and not arbitrary".

The legislature established what are arguably the toughest response planning standards in the world. When reviewing a contingency plan DEC has interpreted the statute to mean that meeting Alaska's tough response planning standards also satisfies the best available technology requirement if the equipment is proven, reliable and appropriate for its intended use and the magnitude of the spill it is addressing. This interpretation was developed through an extensive workgroup process when the regulations were developed in 1997.

The court recognized that this approach has considerable merit and that agency judgement in this regard deserves considerable deference but only to the extent that the legislature actually granted DEC authority to define best available technology in terms of reliance on the response planning standards.

The court has raised a rather narrow question regarding whether or not our regulatory interpretation meets the intent and lies within the limits of authority delegated by the legislature. It is not an expansive inquiry and recognizes that

the task of defining best available technology is well outside the scope of the judiciary's responsibility and falls squarely within DEC's area of authority and expertise.

Because "best available technology" was not defined by the legislature the court has interpreted the statutory language to mean that the legislature intended to impose two separate requirements, which precludes DEC from relying on the response planning standards, or a performance standard established in regulations to establish BAT.

The court has ruled in the absence of any further supporting legislative history clarifying the intent.

Clearly the court, in their ruling, has invited the legislature to clarify their intent if they so choose. We believe it is the legislature's prerogative to clarify the intent and appreciate your efforts to expedite a solution.

The department believes that any legislation should meet the following goals:

First and foremost, because of the timing of the release of the court decision and the time remaining during this session, it is imperative that any legislation be limited to only what is necessary to address the court ruling. There is simply not

enough time to entertain other changes to the statute and do credible research and coordination with the regulated community and other stakeholders.

Second, to ensure continued operation of Alaska's facilities and eliminate the cloud of uncertainty from the court ruling regarding the validity of existing plan approvals made since 1997, the legislation must be passed this session.

Third, the legislation must validate the existing regulations and preserve the approach used for making BAT determinations as envisioned by the 1997 Task Force.

Fourth, the legislation must sustain the same level of rigor for plan reviews as now practiced and not diminish the existing response capability.

Fifth, the legislation must continue to support the ability of the department to evaluate new technologies and make BAT findings.

SB 343 meets these goals and provides straightforward language clarifying the legislature intent. This language validates the interpretation made by the department in the 1997 regulations. We believe this language is responsive to the Supreme Court ruling and eliminates the existing ambiguity and, therefore is an acceptable remedy.

This bill does not reduce the rigor of existing contingency plan review, or diminish the response readiness and capability of industry.

Legislative clarification of the law will validate the BAT approach taken by the 1997 negotiated rulemaking process, and affirm the continued effect of the contingency plan approvals issued under those regulations. No revisions to the existing, stringent regulations will be necessary.

The legislation is also narrowly focused on language that is responsive to the court ruling.

This bill will also reaffirm the importance of continuing research into best available technologies via studies, findings and conferences every five years to ensure that oil discharge prevention and contingency plans employ technologies that continue to keep Alaska in the forefront of environmental protection worldwide.

It also eliminates the cloud of uncertainty, which now exists.

Subject to some edits, which the Department of Law will discuss, the department supports SB 343.

Thank you for your attention and I would be glad to answer any questions.

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Fact Sheet On Proposed Statutory Changes To Oil Discharge Prevention And Contingency Plan "Best Available Technology" Requirements

Background

AS 46.04.030(e) states, in part, that an oil discharge prevention and contingency plan (c-plan) "must provide for the use by the applicant of the best technology that was available at the time the contingency plan was submitted or renewed."

In 1997, DEC developed regulatory criteria for determining whether a c-plan meets this "best available technology" (BAT) requirement through a negotiated rulemaking process that included stakeholders from around the state representing a broad range of interests. The workgroup looked at all of the major components of a c-plan, determined which of those components were already subject to a stringent planning or performance standard, and devised an eight-point analysis that could be applied to the remaining critical components to determine whether they represented BAT.

Supreme Court Decision

The Alaska Supreme Court invalidated two of the BAT regulatory criteria on February 1, 2002 as inconsistent with statute (Decision No. 5531, *Lakosh v. ADEC, et. al.*). The invalidated sections are 18 AAC 75.445(k)(1) and (k)(2)), which read as follows:

"(1) technology used for oil discharge containment, storage, transfer and cleanup to satisfy a response planning standard in 18 AAC 75.430-18 AAC 75.442 will be considered best available technology if the technology of the applicant's oil discharge response system as a whole is appropriate and reliable for the intended use as well as the magnitude of the applicable response planning standard;

"(2) technology that complies with the performance standards of 18 AAC 75.005-18 AAC 75.080 and that is not subject to a best available technology review under 18 AAC 725(e)(4)(A) will be considered best available technology;..."

The Alaska Supreme Court concluded that, while the workgroup's approach had "considerable theoretical merit," AS 46.04.030(e) as written does not allow DEC to rely on response planning standards for oil spill response technologies, or performance standards for oil spill prevention technologies, in determining whether these technologies meet the BAT requirement. "Best", in the Court's opinion, implied that DEC must employ some comparative or "winnowing" process in its determination of BAT for all major systems or components of a c-plan, and could not merely rely on a substitute standard, however stringent, when applicable.

Existing Technologies

The 1990 legislation that led to the present c-plan statutes, undertaken partly in response to the 1989 Exxon Valdez spill, has resulted in the development of a spill prevention and response system that is unsurpassed anywhere in the world. The stringent response planning standards contained in statute, and the subsequent oil spill prevention performance standards that were adopted in regulation, have required the oil industry to upgrade and strengthen its technologies in order to demonstrate compliance.

The existing BAT analyses performed by DEC have been an important part of this improvement in Alaska's oil spill prevention and response system. The existing regulations require an eight-point analysis to be conducted on what DEC has considered to be the critical components of a c-plan that are not otherwise subject to planning or performance standards (18 AAC 75.445(k)(3)).

Effect of Bill

This bill will in no way reduce the rigor of existing contingency plan review, or diminish the response readiness and capability of industry. Legislative clarification of the law will validate the BAT approach taken by the 1997 negotiated rulemaking process, and affirm the continued effect of the contingency plan approvals issued under those regulations. No revisions to the existing, stringent regulations will be necessary.

This bill will also reaffirm the importance of continuing research into best available technologies via studies, findings and conferences every five years to ensure that oil discharge prevention and contingency plans employ technologies that continue to keep Alaska in the forefront of environmental protection worldwide.

**Testimony of Assistant Attorney General
Breck C. Tostevin concerning SB 343
Best Available Technology: Discharge Plans**

Thank you Mr. Chairman, Members of the Committee for the opportunity to testify concerning SB 343. For the record, my name is Breck Tostevin, I am an Assistant Attorney General in the Alaska Department of Law's Environmental Section.

Overview: I would like to cover two general topics in my testimony: First, the reasoning and effect of the Supreme Court's recent decision concerning the statutory best available technology requirement for oil discharge prevention and contingency plans; and, second, how this legislation responds to the Supreme Court's decision in a focused and measured way.

Purpose of Legislation: The legislation before you today, Senate Bill 343, seeks to clarify the statutory requirement that oil spill contingency plans use best available technology in light of the Alaska Supreme Court's February 1 ruling in the *Lakosh v. DEC* case.

Legislative History of BAT Requirement: The best available technology (BAT) requirement has been in place since 1980 for response equipment used in C-plans. Because of the addition of oil spill prevention to the C-plan statute in 1990, the BAT requirement became applicable to prevention equipment. In addition, the 1990 amendments added the rigorous oil spill "response planning standards" in AS 46.04.030(k) to the C-plan statute but the Legislature did not address the relationship between the planning standards and BAT.

Alaska Supreme Court's Decision: In its recent ruling, the Court found two parts of DEC's regulatory criteria for determining whether an oil discharge prevention and contingency plan uses best available technology to be inconsistent with statute. These regulatory

criteria were developed as part of a negotiated rulemaking in 1997 that included numerous stakeholders from throughout the state with a broad range of interests.

In the *Lakosh* case, the Alaska Supreme Court was confronted with a general challenge to the regulations. The Court's ruling was a narrow legal decision focusing on the language of the regulations as opposed to a technical determination of whether any particular equipment or technology is indeed best available. In finding parts of the regulations inconsistent with statute, the Court relied upon the dictionary definition of the term "best" and concluded that in the absence of legislative history to the contrary, the BAT regulations could not rely on the stringent response planning standards for oil spill response technologies in determining BAT or rely on performance standards set forth in regulation for determining BAT for oil spill prevention technologies. The Alaska Supreme Court concluded that, while reliance on performance standards for determining BAT had considerable theoretical merit and are used in other federal environmental statutes in lieu of one-size fits all technological rules, the absence of specific legislative history on interplay between these standards and the BAT requirement, led the Court to the conclusion that the 1997 BAT regulatory criteria should be invalidated as inconsistent with statute.

Given that the Alaska Supreme Court's ruling overturned the 1997 workgroup's use of the statutory response planning standards and regulatory oil spill prevention performance standards in determining best available technology, the BAT statutory requirement is ripe for Legislative clarification.

Proposed Legislation: The Legislation you have before you today would restore the regulatory criteria adopted by the 1997 negotiated rulemaking group and that has been utilized in approving over one-hundred C-plans since April 1997. This Legislation does not

weaken the best available technology requirement but, rather, is an effort to restore the consensus criteria that has been used for making BAT determinations for the last five years: criteria that has resulted in major improvements in oil spill prevention and response.

SB 343 accomplishes three things. It clarifies that the 1997 negotiated rulemaking regulations which established a three-tier approach for making BAT determinations is a permissible interpretation of the statute. Second, it affirms the continued validity and effect of the 1997 regulations; if SB 343 is enacted, DEC would not be required to revise its BAT regulations. Third and finally, the legislation would affirm the continued effect of contingency plan approvals issued under the 1997 regulations and ensure that plan holders could continue to operate under those approvals.

Technical Amendments. There are two technical drafting amendments that we recommend in sections 2 and 4. The first is to the second sentence of the amended language in section 2 (bottom of page 3, top of page 4). The change would be to insert the word "any" after "that" and change "technologies" to "technology" and the word "are" to "is" so that the sentence reads: "The department may find that any technology meeting the response planning standards in (k) of this section or a prevention performance standard established under AS 46.04.070 is best available technology." Again, the purpose of the amended language is the same as the original language which is to allow DEC to use the criteria adopted in the 1997 regulations at 18 AAC 75.445(k)(1)-(3) to determine BAT.

The second correction would be to the Transition provision in section 4 of the bill at page 4 lines 21-27 that ensures the continued validity of existing contingency plan approvals. The amendment would be to delete the words "modified or" and insert "until it" before the word "expires" so that the sentence reads: "the plan holder may continue to operate under that plan

until the plan is revoked under AS 46.04.030(f) or until it expires, whichever first occurs." As currently written, this section could be read to imply that a modified plan does not remain in effect and would not be covered by section 4. Such an unintended interpretation would clearly be incorrect. The amendment would clarify that a modified plan which utilized the 1997 regulations would remain in effect under this legislation and the plan holder could continue to operate under the original approved plan, as modified.

I would be happy to respond to any questions the Chair or Members of the Committee may have. Thank you.

CORRECTION

**THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION**



Central Microfilm Services
Department of Education & Early Development
State of Alaska

until the plan is revoked under AS 46.04.030(f) or until it expires, whichever first occurs." As currently written, this section could be read to imply that a modified plan does not remain in effect and would not be covered by section 4. Such an unintended interpretation would clearly be incorrect. The amendment would clarify that a modified plan which utilized the 1997 regulations would remain in effect under this legislation and the plan holder could continue to operate under the original approved plan, as modified.

I would be happy to respond to any questions the Chair or Members of the Committee may have. Thank you.