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"COOK INLET" REPORT

733 W. FOURTH AVE.
ANCHORAGE, ALASKA

FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

A REPORT TO THE SENATE AND HOUSE OF REPRESENTATIVES

RESOURCES COMMITTEES OF THE ALASKA STATE LEGISLATURE

ON THE PROPOSED COOK INLET LAND TRADE

MARCH 6, 1976

BRIEF SYNOPSIS OF
THE PROPOSED COOK INLET LAND TRADE

The following is a short summary of the major aspects of the proposed Cook Inlet Land Trade. The "agreement document" which forms the basis of the agreement among the three parties is found in the U.S. House of Representatives' Report No. 94-729 dated December 15, 1975. The "agreement document" is found on page 35 of that report and is entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area." To assist parties interested in the specific details of the "agreement document", appropriate page and section references follow each specific point in the summary below. In addition, where appropriate, a map reference refers to the attached map.

	Agreement Document (Page) & Section Reference	Map Reference
I COOK INLET REGION RECEIVES:		
A. FROM FEDERAL GOVERNMENT:		
1. 10,000 acres excised from the Kenai National Moose Range abutting the western end of Lake Tustumena (with the following covenant: no sale for 25 years; if then sold, first right of refusal to the federal government; strict development restrictions along edge of Lake Tustumena).	(35)I-A	--
2. Up to 9.6 townships of sub-surface rights to oil, gas and coal (subject to normal Moose Range surface restrictions; coal may only be removed in a liquid or gaseous state).	(37)I-B (43)IV	--
3. All federal lands in the following:		
(a) T.10S., R.9W., F.M. (near Healy).	(37)I-B-(1)	--
(b) T.20N., R9E., S.M. (Glenn Highway near Matanuska Glacier).	(37)I-B-(1)	--
(c) T.1N., R.21W., S.M. (west side of Cook Inlet - 15 sections - title to metalliferous minerals only; Secretary must approve surface mining plans).	(37)I-B-(2)	
(d) T.1S., R.21W., S.M. (west side of Cook Inlet - 18 sections - ownership in fee; surface use only for mining needs).	(37)I-B-(3)	--

	Agreement Document (Page) & Section Reference	Map Reference
4. Outside Region - 29.66 townships outside Cook Inlet Region (from native deficiency or d(1) lands in the Ahtna, Bristol Bay, Calista, Chugach or Doyon Regions; certain protections for the Federal government, State and regional and village corporations).	(38)I-C-(1)	--
5. Within Region pool (up to 138,000 acres of federal surplus lands; any acres selected come from "out-of-region" selection entitlement; State has certain safeguards to protect public interests).	(38)I-C-(2)	--
B. FROM STATE:		
1. 1.2 townships of scattered tracts (lands in the vicinity of Point McKenzie, Knik, Kashwitna and Chickaloon).	(48)I-AtoD	Appendix C IA-D
2. 1.8 townships to the certified native villages and groups of Chickaloon, Knik, Alexander Creek, Salamatof, Ninilchik, Montana Creek and Caswell (to trade villages out of Lake Clark).	(50) 3	Appendix C 3
3. 5.0 townships on the Kenai Peninsula.	(49)I-E	Appendix C I-E
4. 13.5 townships in the Beluga area	(49) 2	Appendix C 2
21.5 TOWNSHIPS TOTAL		

STATE RECEIVES:

A. The following lands over and above its statehood entitlement:

1. 26 townships in the Lake Clark area.	(50)	Appendix D
2. 7 townships in the Tutna Lake area.	(51)	Appendix G
3. 8 townships in the Talkeetna Mountains.	(51)	Appendix G

	Agreement Document (Page) & Section Reference	Map Reference
4. 11 townships on Kamishak Bay (near Mt. Augustine).	(51)	Appendix G
52 TOWNSHIPS TOTAL		
B. The right to select an additional 12.4 townships in the Talkeetna Mountains and Koksetna River areas.	(52)	Appendix G
C. Immediate conveyance of approximately 4,000 acres in the Campbell Tract in the heart of the Anchorage Bowl.	(42)III-B	Appendix F
D. Early conveyance of Point Woronzof, Point Campbell and Goose Lake withdrawals.	(41)I-C-2(e)	--
E. Protection of approximately 12 townships of land previously selected by the State in 1972, but which would be selected by Cook Inlet Region if the proposed land trade is not effected.	--	--

III FEDERAL GOVERNMENT RECEIVES:

A. No lands directly, but will retain title to a number of specific townships within Cook Inlet Region which the Regional Corporation will otherwise select.

B. Several other benefits not directly related to the receipt of land:

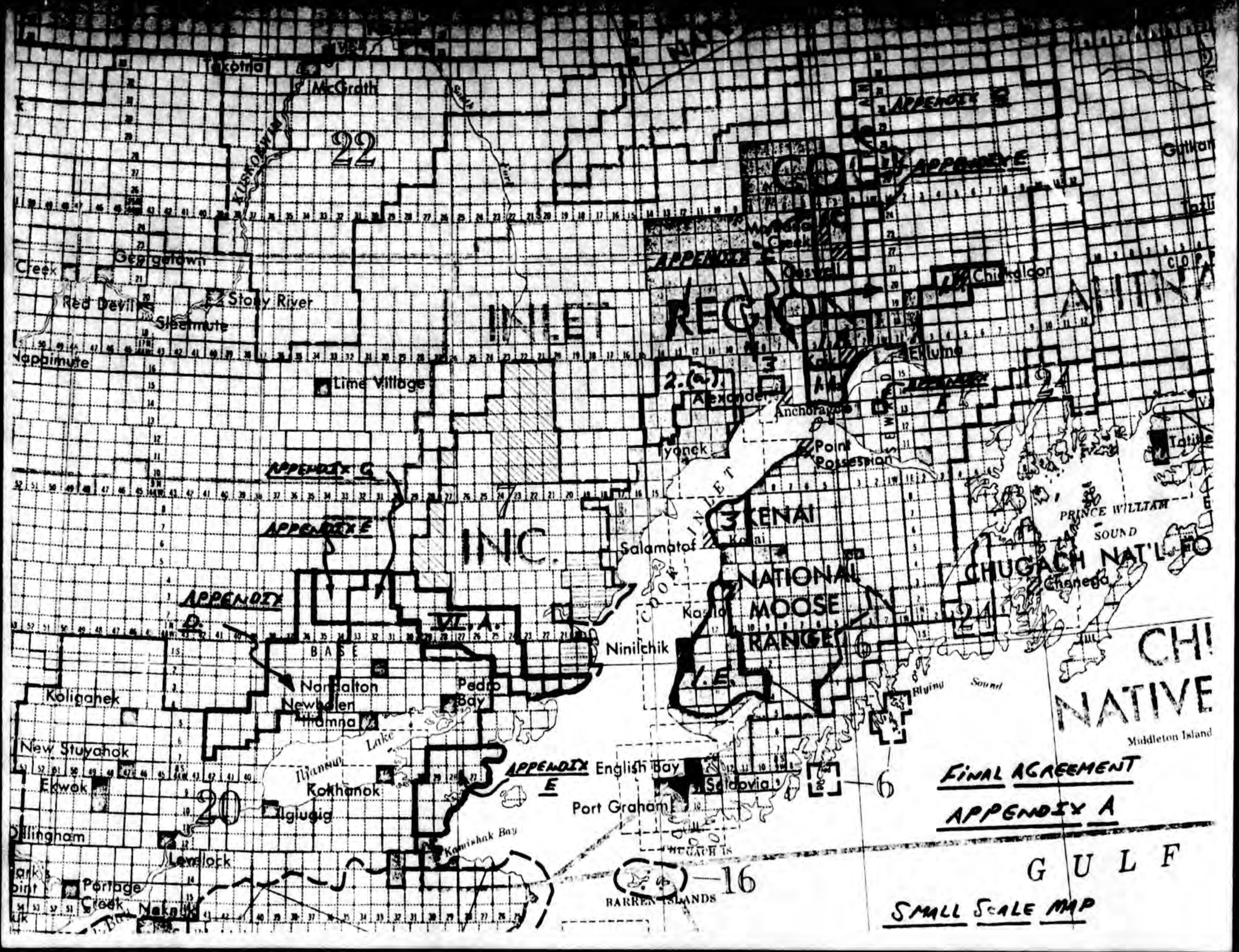
(a) Settlement of Cook Inlet Region's entitlement under ANCSA.
(b) Settlement of Cook Inlet Region's suit against the Secretary.
(c) Minimal impact upon lands in the Kenai National Moose Range.
(d) Improoved land ownership pattern in the Lake Clark area.

IV MISCELLANEOUS PROVISIONS:

A. No oil and gas fields will be transferred to native ownership (all revenues currently received by the State will continue).

B. All lands transferred to native corporations will contain ANCSA safeguards (e.g. easements).

C. All state lands conveyed will additionally contain dedicated or platted section line easements and highway or other rights-of-way.



Takotna
McGrath
KUSKOKWIM
22
Georgetown
Red Devil
Sleetmute
Stony River
Napaimute
Lime Village
INLET
REGION
INC.
APPENDIX C
APPENDIX E
APPENDIX D
VI. A.
BASE
Nondalton
Newhalen
Iliamna
Pedro Bay
Koliganek
New Stuyahok
Ekwok
Kokhanok
Igiugig
Dillingham
Levelock
Portage Creek
Naknek
20
Iliamna Lake
APPENDIX E
English Bay
Seldovia
Port Graham
Kamishak Bay
BARREN ISLANDS
16
Tyonek
Alexander
Anchorage
Eklutna
Point Possession
COOK INLET
KENAI
Salamatof
Kenai
NATIONAL MOOSE RANGE
Kasilof
Ninilchik
I.E.
6
Chickaloon
Gulkana
Tazlina
ATTNA
CHUGACH NAT'L FO
Chenega
PRINCE WILLIAM SOUND
Tatitlek
24
Blying Sound
CHU
NATIVE
Middleton Island
GULF
FINAL AGREEMENT
APPENDIX A
SMALL SCALE MAP

Moderow, Walsh, Johnson & James
510 "L" Street, Suite 207
Anchorage, Alaska 99501

MARK R. MODEROW
DAVID J. WALSH
DONALD M. JOHNSON
DENNIS P. JAMES

Area Code 907
276-6200
276-2408
277-5955

May 1, 1978

The Honorable Mike Colletta
State Senator
Pouch V
Juneau, AK 99818

Dear Mike:

It was a pleasure talking with you recently with regard to the Chugach Native land exchange. I know you are busy, and I appreciate your taking the time to listen to our proposal.

As we discussed, we are currently negotiating with the Department of Interior, the Department of Agriculture, and the State Department of Natural Resources to obtain equitable and fair settlement for all parties. As the negotiations progress, I'll be contacting you again to bring you up to date on the status of the proposal.

If you have any questions or if I can be of any service to you, please feel free to contact me.

Very truly yours,

MODEROW, WASLH, JOHNSON & JAMES

Dave

David J. Walsh

DJW:at

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

March 26, 1976

AIRMAIL

Senator Mike Colletta
Assembly Building
Room 100
Juneau, Alaska 99801

HB 784

Dear Senator Colletta:

This letter is in response to your inquiry concerning the effect of the State of Alaska Legislature's recent ratification of the Cook Inlet land trade on lands on Point Woronzof. It was certainly not the intent of the Department of the Interior that transfer of lands on Point Woronzof be restricted to park and recreation uses. It is our understanding that the State of Alaska and Cook Inlet Region, Inc., had similar intentions during the negotiation of the land trade agreement. Unfortunately, the language of the agreement does not reflect the intent of the parties, because of typographical errors in the final document.

We view the exclusive language relating to Point Woronzof in the land trade agreement as an oversight, and we intend to take corrective measures to attempt to resolve this matter. In this regard, we are now having discussions with representatives of the state and Cook Inlet Region, Inc., to identify methods by which the intent of the parties may be accomplished.

If the State of Alaska desires a portion of the tract for a runway extension, and the Federal Aviation Administration concludes that such a transfer would be appropriate, we will take whatever actions are necessary, within our authority, to accomplish such a transfer.

We hope that this letter clarifies our position on this matter.

Sincerely yours,

Kent Frizzell

Under Secretary of the Interior

copy to all Senators

Save Energy and You Serve America!

MEMORANDUM

State of Alaska

TO: All Members of the Senate

DATE: March 30, 1976

FROM: Senator Mike Colletta

SUBJECT:

For you information I have attached a copy of a letter I received from Kent Frizzell, Under Secretary of the Interior. It clarifies the position of the Department of the Interior on the Cook Inlet Land Trade as pertains to Point Woronzof land.

FROM THE OFFICE OF
SENATOR MIKE COLLETTA

March 29, 1976

Donald Harris, Commissioner
Department of Public Works
Pouch Z
Juneau, AK 99811

Dear Commissioner Harris:

Attached for your information is a copy of a letter I received from Mr. Kent Frizzell, Under Secretary of the Interior. It clarifies the Department of the Interiors position on the Cook Inlet Land Trade as pertains to Point Woronzof land.

Sincerely,

Mike Colletta
Senate Minority Leader

dsf

FROM THE OFFICE OF
SENATOR MIKE COLLETTA

March 31, 1976

Guy R. Martin, Commissioner
Department of Natural Resources
Pouch M
Juneau, AK 99811

Dear Commissioner Martin:

Attached for your information is a copy of a letter I received from Mr. Kent Frizzell, Under Secretary of the Interior. It clarifies the Department of the Interiors position on the Cook Inlet Land Trade as pertains to Point Woronzof land.

Sincerely,

Mike Colletta
Senate Minority Leader

dsf

Alaska State Legislature

SENATOR
MIKE COLLETTA
P. O. BOX 8188
ANCHORAGE, ALASKA 99501

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

Senate

Minority Leader

HEALTH & SOCIAL SERVICES
COMMERCE
STATE AFFAIRS

March 30, 1976

Senator Chancy Croft
President of the Senate
Pouch V
Juneau, AK 99811

Dear Mr. President:

Attached is a copy of a letter I received from Kent Frizzell, Under Secretary of the Interior. It clarifies the Department of the Interiors position on the Cook Inlet Land Trade as pertains to Point Woronzof land.

I hereby request that the Senate consider the content of Mr. Frizzell's letter part of the business as pertains to Point Woronzof.

Sincerely,

Mike Colletta

Mike Colletta
Senate Minority Leader

dsf

FROM THE OFFICE OF
SENATOR MIKE COLLETTA

March 31, 1976

Jay S. Hammond
Governor
Pouch A
Juneau, AK 99811

Dear Governor Hammond:

Attached for your information is a copy of a letter I received from Mr. Kent Frizzell, Under Secretary of the Interior. It clarifics the Department of the Interiors position on the Cook Inlet Land Trade as pertains to Point Woronzof land.

Sincerely,

Mike Colletta
Senate Minority Leader

dsf

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

J. R. LEWIS and HAROLD H. GALLIETT, JR., Citizens and Taxpayers of the State of Alaska,

Plaintiffs,

vs.

STATE OF ALASKA; GOVERNOR JAY HAMMOND; GUY R. MARTIN, Commissioner of Natural Resources; MICHAEL C. T. SMITH, Director, Division of Lands,

Defendants.

No. 76-1608

MEMORANDUM IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs, pursuant to Alaska Civil Rule 23, have commenced this action for permanent injunction not only on their own behalf but on behalf of all citizens and taxpayers of the State of Alaska. Plaintiffs are alleging and intend to prove that the Beluga land exchange contemplated by the Hammond Administration as alleged herein violates the provisions of the United States Constitution, the Alaska Statehood Act, and the Alaska Constitution.

Plaintiffs allege that if the actions of the governor and his administration in approving the land exchange are not restrained and enjoined, the citizens of the State of Alaska will be the victims of an even greater governmental give-away through the loss of valuable mineral resources than occurred during the Teapot Dome scandal of President Harding's administration years ago.

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ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-9477

Plaintiffs wish to emphasize that this is not a political lawsuit nor a lawsuit to harass or embarrass the Hammond Administration. The issues presented herein are very real and substantial issues involving questions concerning the State's mineral resources which will affect the citizens and taxpayers of the State of Alaska for generations to come.

Although the facts are summarized in detail in the complaint filed in this case, the chronological sequence of events is set forth again, and the basis of plaintiffs' legal claims are further set forth below.

A. FACTS

1. The chronological sequence of events leading to the present dispute can be summarized as follows:

In 1955 the then Territory of Alaska, through its legislature, provided for a constitutional convention. Elected delegates adopted a constitution on February 5, 1956 which was ratified by the people of Alaska on April 24, 1956. This constitution adopted by the people of Alaska served as a basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with the terms of said constitution.

2. Article VIII, Section 9 of the Constitution of the State of Alaska provided in part as follows:

> Section 9. Sales and Grants. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources.

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3. Two years after the people of Alaska adopted the above constitutional provisions, Congress passed the Alaska

Statehood Act, approved on July 7, 1958. Sec. 6(i) of the Statehood Act is a direct response by Congress to the provisions contained in Article VIII, Sec. 9 of the Alaska Constitution set forth above. The Alaska Statehood Act stated in this section as follows:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, ...

Sec. 6(i) of the Act further provided that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

Sec. 8(b) of the Statehood Act provided, in addition, that:

> In the event each of the foregoing propositions (grants of land restrictions approval by majority vote in statehood election) is adopted at said election by a majority of the legal votes cast on submission, the proposed constitution of the proposed. State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. (Emphasis supplied)

4. By Public Law 92-203, 85 Stat. 688, approved December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act. This Act provided for the fair and just settlement of all claims by native groups in Alaska based upon their aboriginal land claims. All prior conveyances of public land pursuant to federal law and all tentative approvals pursuant to Sec. 6(g) of the Alaska Statehood Act were declared to be an extinguishment of the aboriginal title of Alaska natives.

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The Act further provided for 12 geographic regions within the State and for appropriate regional native corporations which were given the right to select land and share in the revenues from the sale of minerals. Sec. 12 of the Alaska Native Claims Settlement Act provided for the selection of land by each village corporation within the township in which the village is located, plus an area that would make the total selection equal to the acreage to which the village was entitled under Sec. 14 of the Act.

5. Because of existing federal withdrawals, state land selection and other non-native settlement patterns within the Cook Inlet region, Cook Inlet Region, Inc., a native corporation, was not able to select lands which it considered of like and similar character under the formula established by the Alaska Native Claims Settlement Act. For approximately three years following the enactment of this Act, Cook Inlet Region, Inc. negotiated with the Secretary of the Interior in an attempt to insure its land selection of a similar and like character.

6. Cook Inlet Region, Inc. was dissatisfied with these negotiations with the United States Department of the Interior, and it filed suit in a District Court. Negotiations continued, however, and the solicitor for the Department of Interior made an offer to convey to Cook Inlet Region, Inc. ten surface and fifteen subsurface townships within the Kenai National Moose Range, including the Swanson River oilfield, as well as additional federal lands in the then Greater Anchorage Area Borough. These lands included land at Point Woronzof, Point Campbell, and a sizable portion of the Campbell air strip tract. Cook Inlet Region, Inc. declined this offer andit was later withdrawn

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by the Department of the Interior.

7. The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

8. The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

9. The State, Cook Inlet Region, Inc., and the Department of the Interior entered into the negotiations concerning the exchange of lands pursuant to Sec. 22(f) of the Alaska Native Claims Settlement Act which provided as follows:

> The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

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10. Pursuant to the exchange provisions cited above, the State volunteered the trade of various patented lands to the Department of the Interior for exchange and grant to the Cook Inlet Region, Inc. The terms of the settlement were, in summary, that the State of Alaska obligated itself to convey lands to the United States for exchange with Cook Inlet Region, Inc. in accordance with "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area" made a part of the report from the Committee on Interior and Insular Affairs accompanying HR 6644, the amendment to the Alaska Native Claims Settlement Act. Further, Cook Inlet Region, Inc. was to dismiss its lawsuit in the case of Cook Inlet v. Kleppe, 75-2232, Ninth Circuit Court of Appeals; and other native village selections under Sec. 12 of the Settlement Act concerning lands within Lake Clark, and other areas outside the Cook Inlet Region, Inc., would be withdrawn to enable the exchange to take place by substituting land outside Cook Inlet region. These terms are summarized in Sec. 12(a) of Public Law 94-204, known as Alaska Native Claims Settlement Act Amendments, approved January 2, 1976. Sec. 12(f) of the Amendments states that all conveyances of lands made or to be made by the State of Alaska in satisfaction of the Terms and Conditions "shall pass all of the State's right, title, and interest in such lands, including the minerals therein, as if those conveyances were made pursuant to Sec. 22(f) of the Settlement Act."

11. Sec. 17 of the Amendment purports to amend Sec. 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Sec. 22(f), the State may convey its lands, "free of the restrictions of Sec. 6(i) of the Alaska Statehood Act."

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12. In the "Terms and Conditions" contained within the report accompanying HR 6644, Sec. II at P. 42, the State of Alaska was asked to give its consent to the exchange and settlement agreement within sixty days of the commencement of the 1976 session of the Alaska State Legislature. Upon such consent being given, the State of Alaska is bound to convey to the United States for reconveyance to Cook Inlet Region, Inc. the lands set forth within the "Terms and Conditions." Plaintiffs allege on information and belief that said consent must be given, if at all, prior to March 12, 1976.

13. In an attempt to implement Sec. 22(f) of the Alaska Native Claims Settlement Act, the Alaska legislature, in 1972, enacted what is now Sec. 38.95.060 Alaska Statutes which authorizes the exchange of state land with a native corporation "with the consent of the governor," when the purpose is to effect land consolidations or to facilitate the management or development of the land. Similar to ANCSA, Sec. 22(f), the Alaska Statute provided that exchanges shall be on the basis of equal value, with either party being allowed to accept or pay cash in order to equalize the value of the properties exchanged.

14. The governor and the State, through its Commissioner of Natural Resources and Director of the Division of Lands, is proposing to give away large parcels of land andis also proposing to convey the subsurface mineral rights in such a manner as would convey all the coal, oil and gas resources of the lands. The State is proposing to give away the following estimated resources (see pages 4-13, Affidavit of Harold Galliett):

Present value of coal	$4,732,000,000
Minimum probable present value of oil and gas	62,500,000
Present value of surface estate	451,605,000
TOTAL	$5,246,105,000

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The State proposes to receive the following estimated value as a result of the exchange:

Present value of surface estate 165,917,440

From the above summary of the exchange values, the net result to the State of Alaska is as follows:

Net loss $5,080,187,560

15. In an attempt to rush this matter through the legislature, in complete disregard of the constitutional and statutory impairments to the execution of the exchange, the Hammond Administration, on February 17, 1976, introduced Senate Bill No. 674 which purports to give the Commissioner of Natural Resources authority to execute the exchange of land "notwithstanding any other provision of law." This bill provides in part as follows:

> While the land exchange is authorized by existing law, the vagueness and ambiguity of the provisions of the applicable law create a situation which may well involve protracted and devisive litigation and continuing uncertainty and disruption with respect to public and private land management. The law on the subject will be amended to remove any vagueness or ambiguity, but the timing for the land exchange requires action now, before amendment for clarification of the general law on land exchanges. (Emphasis supplied)

Senate Bill No. 674 is now the subject of legislative hearings and possible future action before March 12, 1976.

B. THE PROPOSED EXCHANGE VIOLATES ARTICLE VIII, SECTION 9, CONSTITUTION OF THE STATE OF ALASKA AND SECTION 6(i) OF THE ALASKA STATEHOOD ACT

Any rational consideration of the merits of plaintiffs' claims must keep in mind the distinction between laws and acts of the legislature, or of Congress, and the fundamental or basic law as set forth in the Alaska Constitution and its com-

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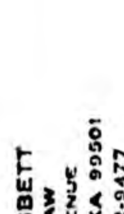
pact with Congress as accepted in the Alaska Statehood Act.

The general rule is that a "constitution" in the American sense of the term is the fundamental or basic law to which all others must conform; it serves to protect the people against arbitrary power; and a state constitution, like that of the nation, is the supreme law within the realm and sphere of its authority and is a limitation on the power of the legislature, binding on the several departments of state government, and the people themselves. 16 C.J.S. Constitutional Law, §3 at p. 23-26.

When a state constitution makes definite provisions covering a particular subject, that provision is exclusive and final, and must be accepted unequivocally. Hence, constitutional provisions may not be abrogated by the legislature or in any way other than by changing the constitution itself, and a right granted by the constitution, when unconditional, cannot be defeated, even in part, by statute. 16 C.J.S. Constitutional Law, §3 at p. 26.



In addition to the above general propositions, and as a corollary to these fundamental and basic rules, is the rule of law that the provisions of a state constitution, when accepted by Congress as a basis for admittance of the State into the Union, create a compact which cannot unilaterally be changed by an act of Congress or by an act of the state legislature without proper amendment to the State Constitution approved and ratified by a vote of the people. Metlakatla Indian Community v. Egan, 362 P.2d 901, 911 (Alaska 1961); State v. Commissioners, 301 P.2d 655 (Okla. 1956); Opinion of the Attorney General, No. 6 (Alaska 1969).

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As set forth in the Statement of Facts, supra, Article VIII, Sec. 9, Constitution of the State of Alaska, states

that "all sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State . . . ."

The above provision of the Alaska Constitution constituted an offer to the federal government that, upon admittance to the Union as a state on equal footing, the State would abide by all restriction upon the conveyance of state lands as required by the State or Congress. This offer was accepted in Sections 6(i) of the Alaska Statehood Act, which states that "the grants of mineral lands to the State of Alaska under subsections (a) and (b) of the section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral rights so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented . . . ."

Section 6(i) of the Alaska Statehood Act further stated that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

The offer of the State as contained in Article VIII, Section 9 of the Constitution, and acceptance of that offer through the restrictions contained in Section 6(i) of the Alaska Statehood Act, constituted a compact between two sovereign states, the purpose of which was obviously to protect the people of the State of Alaska against the arbitrary, capricious or fraudulent conveyance of the mineral rights of the State which were reserved exclusively for the citizens of the State of Alaska forever. Neither an act of Congress nor an act of Alaska legislature can unilaterally amend or change the provision of

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this compact without a proper vote of the people of Alaska.

Section 17 of the Amendments purports to amend Section 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Section 22(f), the State may convey its lands "free of the restrictions of Section 6(i) of the Alaska Statehood Act." As set forth above, Section 6(i) of the Alaska Statehood Act is a part of the compact with the people of the State of Alaska through Article VIII, Section 9 of the Alaska Constitution. Pursuant to Sec. 8(b) of the Statehood Act, the Alaska Constitution was "deemed amended accordingly, "and Sec. 6(i) is therefore a part of Article VIII, Section 9 of the Alaska Constitution.

For the sole purpose of obtaining state land and its mineral rights to satisfy a federal obligation to the natives of Alaska, the federal government has attempted illegally to change the provisions of the Statehood Act, and indirectly, the Constitution of the State of Alaska.

The Supremacy Clause of the United States Constitution does not allow an act of Congress to waive or change provisions of a state constitution without an appropriate vote of the people through constitutional amendment, initiative, or referendum. Boeing Aircraft Company v. R. F. C., 171 P.2d, 838 (Wash. 1946). In this case, the Supreme Court of Washington sitting en Banc was asked to hold that an act of Congress allowing property to be taxed within the State of Washington changed, through the Supremacy Clause, the provisions of the Washington Constitution prohibiting the tax. The court replied:

> We cannot so hold, for to do so would effectively do away with the provisions of our state constitution by subjecting those provisions to be continually changed by acts of Congress. The Constitution of

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> the United States has not given that power to Congress, and Congress has only the powers expressly given it by the constitution of the United States. The American system of government is dual in nature, containing Federal and state sovereignties, each supreme within its appropriate sphere. The states do not get their power from the Federal government, but from the constitution of the United States. They exercise those powers independently of the Congress of the United States. The Federal government has no power to control the power or authority of the State except as such power may have been expressly granted, or as may be necessary to maintain the acknowledged powers of the Federal government. 171 P.2d at 842.

The Supreme Court of Washington further discussed the provisions of the enabling act admitting Washington into the Union and the extent of subsequent permissible federal control over state matters:

> True, Congress may determine the circumstances under which a state may be admitted into the Union, but that does not give it any powers to change or modify either directly or indirectly, the provisions of the state constitution. 171 P.2d at 842.

The Supreme Court of Alaska has also spoken on the issues now before this court in the case of Metlakatla Indian Community v. Egan, 362 P.2d 901 (Alaska 1961). Plaintiffs submit that this case is dispositive as to whether or not Section 17 of the Amendments to the Alaska Native Claims Settlement Act, in waiving Section 6(i) of the Alaska Statehood Act, is invalid and in violation of the state and federal compact.

In the Metlakatla case there was a dispute about the legality of the state prohibition of the use of fish traps for the taking of salmon in all of the coastal waters of the State. The Metlakatla Indian community claimed that their fish traps were exceptions to the prohibitions contained in

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the Constitution and laws of the State of Alaska because they were authorized by the Secretary of the Interior pursuant to federal law.

In determining whether the State or federal government exercised authority over fish traps of the Metlakatla Indians, the Supreme Court of Alaska carefully compared the appropriate provisions of Section 4 of the Alaska Statehood Act with Section 12, Article XII, of the Alaska Constitution. Section 12, Article XII, of the Alaska Constitution specifically agreed on behalf of the State that "unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States." As quoted out by the Supreme Court of Alaska, the corresponding acceptance contained in Section 4, Alaska Statehood Act, stated that "all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States . . . ."

Section 4 of the Alaska Statehood Act did not specifically reserve to the exclusive jurisdiction and control of the United States the fishing rights earlier mentioned in Section 12, Article XII, Constitution of the State of Alaska. Therefore, three days after the fishing trap controversy arose, Congress enacted a law which stated as follows:

> Section 4 of the act of July 7, 1958, (72 Stat. 339), providing for the admission of the State of Alaska into the Union, is amended by striking out the words 'all such lands or other property, belonging to the United States or which may belong to said natives', and inserting in lieu thereof the words 'all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held

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by the United States in trust for said natives.'

In determining the effectiveness and validity of the federal attempt to amend the Alaska Statehood Act, the Supreme Court of Alaska pointed out that, as required by the Alaska Statehood Act, the following proposition was submitted to the qualified voters of Alaska on August 26, 1958:

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

The Supreme Court of Alaska further noted that this proposition was approved by a vote of 40,739 to 7,500 on August 26, 1958. The Supreme Court of Alaska stated:

> Section 4 of the Alaska Statehood Act is a direct response by Congress to the provisions contained in the five sentences of Section 12 of Article XII of the Alaska Constitution. The two sections constitute a compact between sovereigns . . . . The compact or contract between Alaska and the United States became effective upon approval of the terms of the Alaska Statehood Act by the voters of Alaska. 362 P.2d at 909, 910.

The Metlakatla Indian community argued that the congressional amendment to the Statehood Act was a part of the compact and merely "clarified" the original intent of Congress. The Supreme Court of Alaska held as follows:

> We cannot accept this reasoning. It is our view that the amendment forms no part of the compact between Alaska and the United States. It was not enacted until ten months after the voters of Alaska had ratified the compact, six months after Alaska had attained Statehood, and three days after these controversies had arisen. This portion of Section 4 reserves absolute jurisdiction and control in the United States. As originally enacted, it applied only to "lands or other property".

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> As amended, it purports to include fishing rights . . . . The conciseness of and correlation between the pertinent sentences of the Alaska Constitution and the responding portions of Section 4 leave no room for the construction appellants urge. 362 P.2d at 911.

The Metlakatla Indians further argued that the Congressional amendment to Section 4 of the Alaska Statehood Act transcended the police power of the State under the Supremacy Clause of the United States Constitution. This argument also was rejected by the Supreme Court of Alaska, which stated that the power of a state to control and regulate the taking of fish and game within its borders has always been recognized by the Supreme Court of the United States as a purely state concern. Also, to withhold sovereignty over the State's inland waters from the State would be a violation of the equal footing doctrine by which the State of Alaska was declared admitted to the Union upon an equaL footing with all other states. 362 P.2d at 913, 925, 927.

In the same manner that the federal government attempted to amend the Statehood Act concerning the fish trap controversy, Congress in Section 17 of the Amendments to the Alaska Native Claims Settlement Act attempts to waive Section 6(i) of the Alaska Statehood Act which expressly prohibit the conveyance of the mineral rights belonging to all the citizens of Alaska. Also, Section 17 attempts to induce (perhaps <u>seduce</u> is the better word) the State to convey away its mineral rights in violation of Article VIII, Section 9, of the Constitution of the State of Alaska.

Neither the Alaska Constitution nor the Alaska Statehood Act stand alone in defining the nature of the compact between the two sovereigns; both must be read together in the nature of an offer and an acceptance concerning the grant of lands to

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the State with the reservation of all mineral rights being required as a condition of such grants. Section 8(b) of the Statehood Act expressly amends Article VIII, Section 9 to conform to Section 6(i) of said Act.

Article XIII, Constitution of Alaska, provides for amendment and revision. Amendments to the Constitution may be proposed by a two-thirds vote of each house of the legislature, and if approved by a majority of the votes cast at the next statewide election, the amendment is adopted. Section 3 of Article XIII provides for a constitutional convention by referendum. Again, a majority of the votes cast determines the issue. Article XI of the Constitution provides for initiative and referendum. Again, if a majority of the votes cast on the proposition favor its adoption or rejection, the issue is determined. In any case, there is more than adequate provision contained in the Alaska Constitution for the enactment of a law which would amend or change Article VIII, Section 9 should the people of Alaska desire to convey away their mineral rights.

In the absence of a proper demonstration of intent of the citizens of Alaska to waive or change the provisions of Article VIII, Section 9, of the Constitution, any attempt to convey away the mineral rights belonging to the people should be held to be in violation of this section and in violation of the compact provisions between the State of Alaska and the United States pursuant to the State Constitution and the Alaska Statehood Act. The opinion of the Supreme Court of Alaska in the Metlakatla case and the express terms of Article VIII, Section 9, Constitution of Alaska, compel such a conclusion.

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C. THE ALASKA ATTORNEY GENERAL OPINIONS DECLARE THE PROPOSED EXCHANGE IN VIOLATION OF STATE AND FEDERAL LAW

The State of Alaska through its Attorney General's office in 1969 was previously concerned with the same issues discussed above. In conjunction with negotiations and congressional hearings prior to the enactment of the Alaska Native Claims Settlement Act, the question arose as to whether or not it would be legal to grant to the natives of Alaska an overriding royalty of 2% on all proceeds from any state and federal land.

In the 1969 Opinion of Attorney General, No. 6, the Attorney General presented his opinion to the Honorable Wayne N. Aspinall, Chairman of the Committee on Interior and Insular Affairs for the U. S. House of Representatives. The State of Alaska in this lengthy opinion took the clear position that the State could not convey away a 2% overriding royalty from the income from State lands. The opinion of attorney General stated in part as follows:

> A diversion of revenues which may be due to the State by virtue of State law and State leases is a flagrant violation of the United States Constitution. It not only goes beyond the scope of the Supremacy Clause of the Constitution, but it also takes the property of the people of the State of Alaska in violation of the due process clause of the Fifth Amendment to the Constitution. A provision of that nature constitutes a serious threat to any state government because it apparently recognizes a right of the federal government to control the finances and treasury of state government. Opinion No. 6, 1969, at p. 8.

Concerning the conflict between the royalty provisions and the Alaska Statehood Act, the opinion of the Attorney General asks the following question: "May the United States unilaterally enact legislation in direct conflict with the Statehood Act?" The Attorney general answered this opinion

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as follows:

> The answer to this is that the United States may not constitutionally enact effective legislation in direct conflict with the compact provisions of the Statehood Act unless there's an amendment to the Constitution of the State of Alaska because a Statehood Act constitutes a compact in a nature of a contract between two sovereign governments. Opinion No. 6, 1969, at p. 10.

The opinion of the Attorney General further states that the only constitutional method by which there can be an act of legislation which is in direct conflict with the Alaska Statehood Act is with the approval of the people of the State of Alaska of such federal legislation. Opinion, p. 11.

The opinion of Attorney General at page 11 further pointed out that proposition 3 submitted to the voters at the time of their approval of the Alaska Statehood Act, which proposition is quoted at p. 14, *supra*, had the effect of amending the state constitution to comply with all of the restrictions and conditions concerning the grant of land made to the State by the federal government in accordance with the Alaska Statehood Act. This is so because Section 8(b) of the Alaska Statehood Act provided in part as follows:

> In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly.

In other words, Article VIII, Section 9, Constitution of the State of Alaska, in addition to constituting an offer to the federal government to abide by all restrictions as may be imposed by Congress in the Alaska Statehood Act concerning the grant of lands, also has been "deemed amended" by Section 8(b) of the Alaska Statehood Act to comply in all

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respects with the restrictions as set forth in Section 6(i).

It is somewhat incredulous that the opinion of the Attorney General would not now be that Article VIII, Section 9, Constitution of the State of Alaska, must be properly amended in accordance with the initiative, referendum, or amendment provisions of the State Constitution prior to the effective and valid disposition of state lands and their mineral rights.

C. THE PROPOSED EXCHANGE DOES NOT GIVE THE STATE OF ALASKA FAIR AND EQUAL VALUE FOR ITS LAND AND RESOURCES

As described in detail in the affidavit of Harold Galliett, submitted herewith, the State of Alaska in accordance with the proposed exchange terms would be conveying away over 5 billion dollars representing the minimum present values of State coal, oil, gas, and surface rights. In exchange, the State would be receiving approximately 165 million dollars representing the present value of the surface estate in land.

The content of Galliett's statements and evaluations contained within the affidavit are not outlandish and speculative; to the contrary, experts employed by the State of Alaska within the Department of Natural Resources have concurred in Mr. Galliett's opinion that the proposed exchange does not result in fair or equal value to the State.

For example, the Hammond Administration on or about November 28, 1975, solicited an "economic resource analysis" from one P. O. Dobey to justify the exchange. This report, however, was received by the staff members of the Department of Natural Resources, Division of Geological and Geophysical Surveys, with pointed criticism.

On January 2, 1976, Cleland N. Conwell, Mining Engineer, Department of Natural Resources, wrote a memorandum to Guy

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Martin, Commissioner of Natural Resources, and stated in part as follows concerning the "economic resource analysis" prepared for the Administration by Mr. Dobey:

> At the request of Gil Eakins, Acting State Geologist, I have reviewed the subject report. I find that the report is misleading, contradicts Alaska Geological Survey open file report No. 51, is inaccurate and biased. I respectfully request that the report not be published as an open file report under your name and that of Ross G. Schaff. It may be of some use to Mike Smith within the department, but I feel that the quality is too low to justify publications as a Division Report.

On or about January 2, 1976, Mr. Conwell also wrote a memorandum to Michael C. T. Smith, Director of the Division of Lands, and stated in this memorandum in part as follows:

> On or about the 8th of October, Ross Schaff, Don McGee, and I met with you in your office to advise you of the value of coal land the State was proposing to give away. It is my recollection that we advised you at that time of the value of coal on these lands and of work in progress by the private sector in exploring the Beluga coal field. As I recall, all three of us, especially Ross and I, expressed personal disapproval of a trade. It was and is our opinion that some of the most valuable land in the State is being traded for land that has little or no economic potential. (Emphasis supplied)

Further, in this memorandum to Michael C. T. Smith, Conwell states that the newspaper articles published by Mr. Galliett concerning the disadvantages of the proposed trade were accurate, and even conservative. The memo specifically refers to Mr. Galliett's estimated coal recoveries of 50%, and states: "My only comment on the first article is that recovery of 50% of the coal is low by today's standards."

Concerning the claim by the Hammond Administration that the exchange will give the State control over the salmon runs,

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the Conwell report states:

> In reference to the second article, it is my understanding that Fish and Game have control of fishing and the streams. I believe that this is covered in Section 16 of the State Statutes, so there is no need to control the Lake Clark or Iliamna areas for the fishing potential.

The Conwell report further summarizes the valuable land to be given to the natives and themineral and agricultural potential of each tract. Concerning the lands to be given to the State by the federal government in exchange, the report states:

> In general, these lands are underlain by Jurassic intrusives that have a low mineral potential for hard minerals, lack equivalent agricultural potential, lack the recreational value, because of inaccessibility, and, if not selected by the natives might still be open to selection by the State.

The Conwell memorandum concludes:

> There are many misleading statements in the report. I find errors in the calculations regarding the discounted cash flow. The Stanford Research Institute has a report issued in 1975 that gives figures that conflict with those of Robert Bottge.

On January 2, 1976, Mr. Gilbert R. Eakins, Acting State Geologist, issued a memorandum on behalf of the Department of Natural Resources, Division of Geological and Geophysical Surveys, to Mr. Michael C. T. Smith, Director of the Division of Lands. In this report, Mr. Eakins refers to three of Mr. Galliett's newspaper articles assessing the valuation of the tracts of land involved in the proposed land exchange. Mr. Eakins' opinion concerning Mr. Galliett's and Conwell's assessments is set forth in full as follows:

> I concur with Mr. Conwell's assessment that it is not in the best interests of the State to make the proposed land trade. A purely economic view indicates

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> a high potential dollar value of the tracts to be traded to the Cook Inlet Native Association. Large reserves of quality coal are known, agricultural lands are present, and a reasonably good potential exists for petroleum and uranium. In addition, the lands to be given to CINA have wisely been selected near populated areas and where industrial and population growth may be expected. We believe the potential revenues are very significant and that an attempt to put a discounted cash value on the resources today is not a fair evaluation.
>
> In contrast, the lands to be received by the State in the trade do not appear to have an important mineral potential, are relatively inaccessible, and are not suitable for development.

Copies of the three memoranda referred to above are attached hereto as exhibits.

Section 38.95.060 represents existing law concerning authority for the exchange. As set forth in detail in the complaint, Section (c) of this Statute requires that exchanges shall be on a basis of equal value. While the court cannot be expected to take Mr. Galliett's calculations as an ultimate conclusion of the exact valuation of the lands proposed to be exchanged, the great disparity in the equality of the figures should at least be accepted as placing grave doubt about whether or not the exchange complies with existing Alaska Statutes.

Combined with the memoranda of the Department of Natural Resource's own experts, Mr. Galliett's representations as set forth in the affidavit should satisfy the plaintiffs' burden of proof that the proposed exchange is, more probable than not, invalid.

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D. OTHER ISSUES

1. Count Two of plaintiffs' complaint sets forth in detail the statutory provisions relating to the sale of public lands.

Section 38.05.045, Alaska Statutes, provides that state land may be sold as provided in Sections 45-69 of this chapter. Section 38.05.055, Alaska Statutes, provides for public auction to the highest qualified bidder as determined by the director.

Section 38.05.125, Alaska Statutes, states that each contract for the sale, lease, or grant of state land, and each deed to state land, properties or interest in state land, made under Section 315-325 of this chapter or Section 45-120 of this chapter, . . . is subject to the reservation that the State of Alaska "expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind, or description, ..."

Section 38.05.310, Alaska Statutes states that no land may be sold or leased for less than the approved, appraised market value. The proposed exchange violates the intent and purposes of the foregoing Alaska Statutes which provide for the sale of all lands by public auction to the highest bidder. In any event, land cannot be sold for less than the appraised market value.

The proposed exchange lacks any proper appraised market value by the State concerning the lands to be exchanged, and the Alaska Statutes cited above, in addition, prohibit any conveyance without reserving to the State of Alaska all the mineral rights contained within the lands so conveyed.

2. Article VIII, Section 10, Constitution of the State of Alaska, also prohibits the sale or lease of state lands without prior public notice and other safeguards of the public interest as may be prescribed by law. This requirement is dis-

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cussed in Count Three of the complaint in detail.

It seems fairly obvious that "prior public notice" must include effective notice. As set forth in the complaint, the actual lands to be made the subject of the trade with the native corporation have not yet been determined. How much of the Beluga coal land and other lands now belonging and patented to the State will be selected from various "pools" and the exact location and value of such lands, still has yet to be determined, and probably will not be determined until long after the governor or the Commissioner of Natural Resources gives his consent to the proposed exchange.

Because the public will have been denied effective prior notice of the exact nature of the land exchange, even if the subsurface minerals could be conveyed the proposed exchange violates Article VIII, Section 10 of the Constitution of the State of Alaska.

3. Article VIII, Section 17, Constitution of the State of Alaska, provides as follows:

> Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

It seems fairly obvious that the proposed land exchange violates the above constitutional provision and that the trade or exchange will result in valuable state resources being conveyed to a private corporation for less than fair value and for the use and benefit of less than all citizens of the State of Alaska.

4. The proposed exchange attempts, through federal legislation, to unilaterally waive or amend the Alaska Statehood Act; disposes of state lands and minerals without esta-

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blished and appropriate sale procedures; and denies the citizens of the State of Alaska the protection of Article VIII, Section 9 of their Constitution and its compact with the federal government pursuant to Section 6(i) of the Statehood Act.

For the above reasons the proposed exchange and its implementing legislation deprive plaintiffs and the citizens of the State of Alaska of their property and resources without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 7 of the Constitution of the State of Alaska.

Further, the proposed exchange denies the citizens of Alaska of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 1, Alaska Constitution.

There can be no enactment of the Alaska legislature which effectively and with validity conveys away the State's mineral resources without an appropriate amendment of the Constitution of the State of Alaska and is compact with the federal government. This must be done in accordance with the procedures outlined above concerning constitutional amendments.

5. In A. J. Industries, Inc. v. Alaska Public Service Commission, 470 P.2d 537 (Alaska 1970), the standard is set forth governing the issuance of preliminary injunctive relief. In accordance with the rulings of this case, plaintiffs submit that a more than sufficient showing has been made for the granting of a temporary restraining order and preliminary injunction.

Plaintiffs have, in the opinion of the undersigned, demonstrated real and important constitutional issues surrounding the proposed land exchange, which issues will, more probable than

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not, be resolved in plaintiffs' favor. Also, in weighing the equities of both parties, the loss to the taxpayers in failing to obtain injunctive relief at this time would be astronomical. The value of the State mineral resources about to be conveyed away to the native corporation can never be replaced and the proposed exchange would result in an economic loss to the citizens of Alaska for generations to come.

On the other hand, as far as the State of Alaska is concerned, if the injunction is granted, little or no harm will be done because even though an extension of time will have to be granted by Congress in order to effect the exchange, if the merits of the exchange are just as valid tomorrow as the State claims today, there should be no problem for Congress and the Alaska legislature to effect the exchange during the coming months.

In accordance with all applicable criteria, plaintiffs have presented more than sufficient justification for immediate injunctive relief. A preliminary injunction should issue restraining Governor Jay Hammond, the Commissioner of Natural Resources and the Director of the Division of Lands, their agents and employees, from conveying or attempting to convey in any manner any state land with mineral resources in violation of State and Federal law.

DATED this 3rd day of March, 1976.

Raymond A. Nesbett
RAYMOND A. NESBETT
Attorney for Plaintiffs

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MEMORANDUM

State of Alaska
Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Michael C.T. Smith, Director
Division of Lands

DATE: January 2, 1976

FILE NO:

THRU: Guy R. Martin, Commissioner
Department of Natural Resources

TELEPHONE NO:

FROM: Cleland N. Conwell CNC
Mining Engineer

SUBJECT: Mineral Analysis of Proposed Cook Inlet Land Trade

On or about the 8th of October, Ross Schaff, Don McGee, and I met with you in your office to advise you of the value of coal land the State was proposing to give away. It is my recollection that we advised you at that time of the value of coal on these lands and of work in progress by the private sector in exploring the Beluga coal field. As I recall, all three of us, expecially Ross and I, expressed personal disproval of the trade. It was and is our opinion that some of the most valuable land in the State is being traded for land that has little or no economic potential.

In direct comment on the articles by Mr. Galliett:

Don McGee and K. O'Connor in AOF 51, page 7, estimate 7.8 billion tons of coal in the Beluga field. Therefore, Mr. Galliett has a reference from a report of the Alaska Geological Survey. My only comment on the first article is that recovery of 50% of the coal is low by todays standards.

In reference to the second article, it is my understanding that Fish and Game have control of fishing and the streams. I believe that this is covered in Section 16 of the State Statuates, so there is no need to control the Lake Clark or Iliamna areas for the fishing potential.

In the 3rd article, Galliett appears to be accurate. I am sure we could check on the number of natives and the allocation, but the figures are approximately those that I have read.

With regard to the specific "Lands to be given by the State to CIRI":

Pt. MacKenzie (Appendix C - 1.B) and This is within the Anchorage area and is a valuable section for port facilities.

Knik-Willow (Appendix C - 1.B and 3) — This is an excellent recreation area near Anchorage. It contains the Nancy Lake State Recreation area, Meadow Creek Campground, and many lakes. There is both a coal potential and oil and gas potential in the area. Coal at one time was mined at Houston.

Kashwitna (Appendix C - 1.B) — This is prime agricultural land - Ref: Alaskas Agricultural Potential, Alaska Rural Development Council, Publication No. 1, 1974. It also contains a site selected for the future capitol of Alaska. It is accessable by road and railroad, and has many home sites. The land has potential for fossil fuels and uranium.

Chickaloon (Appendix C - 1.D and 3) -- This is excellent coal land and part is under coal lease. Coals in this area have a higher calorific value than the Beluga area, i.e., 7,200 Btu Beluga vs. 12,000+ Btu Matanuska. Some of the Matanuska coals have coking qualities. Therefore, Matanuska coals have a higher market value than Beluga coals. The railroad right-of-way to the area is retained by the Alaska Railroads. There are excellent home sites in this area.

Alexander Creek (Appendix C - 1.D and 3) — Coal, oil, gas, and uranium potential.

Salamatof (Appendix C - 3) and Kenai Peninsula (Appendix C - 1.E and 3) — These are excellent coal lands. The coals are nearly horizontal, therefore, favorable for mining. Several beds at least 5 feet thick underlie the area. Undoubtedly there are at least 11.7 billion tons of coal in these areas. In addition to the loss of coal there would be a loss of recreation along the beaches of the peninsula. This includes both clam digging and fishing. I have been informed by native groups that they intend to protect these rights, and p ohibit non-natives from trespassing. A law suit on this matter is presently in court (Edwardsen vs. Morton). These lands also have a high agricult ral potential. In the case of strip mining the agricultural potential could be utilized the year following cessation of mining.

Beluga (Appendix C - 2(a)) — This area contains the outcrops of the Capps and Waterfall coal beds which can have respective thicknesses of 27 and 50 feet. Some sections could contain 70 million tons of coal with a stripping ratio of less than 3 to 1. One township could contain 2.5 billion tons of coal. This is also an area of high agricultural potential, and experimental work has proven that reclamation can be done after strip mining.

In regard to the lands to be given to the State by the Federal Government:

In general, these lands are underlain by Jurassic intrusives that have a low mineral potential for hard minerals, lack equivalent agricultural potential, lack the recreational value, because of inaccessability, and, if not selected by the natives might still be open to selection by the State.

In regard to the report by Dobey, Walch, and O'Conner:

There are many misleading statements in the report. I find errors in the calculations regarding the discounted cash flow. The Stanford Research Institute has a report issued in 1975 that gives figures that conflict with those of Robert Bottge. Nevertheless, assuming the inaccurate figures do have meaning, should the State give away such valuable revenue producing land?

By a separate memorandum I am requesting the report by Dobey et. all,be kept for in house use and not issued as an open-file report by the Division of Geological and Geophysical Surveys.

FORM (REV. 10-77)

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Guy Martin, Commissioner of Natural Resources

DATE: January 2, 1976

THRU: Gil Eakins, Acting State Geologist *GHE*

FILE NO:

TELEPHONE NO:

FROM: Cleland N. Conwell *CNC*
Mining Engineer

SUBJECT: Economic Resource Analysis of Measured and Indicated Coals
November 28, 1975
P.L. Dobey, J. Welch, K.M. O'Connor

At the request of Gil Eakins, Acting State Geologist, I have reviewed the subject report. I find that the report is misleading, contradicts Alaska Geological Survey open file report #51, is inaccurate and biased. I respectfully request that the report not be published as an open file report under your name and that of Ross G. Schaff. It may be of some use to Mike Smith within the department, but I feel that the quality is too low to justify publications as a Division Report. If published, the report certainly should be reviewed by Ross Schaff beforehand.

02-001 (REV. 6-73)

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Michael C.T. Smith, Director
Division of Lands

THRU: Guy R. Martin, Commissioner
Department of Natural Resources

FROM: Gilbert R. Eakins *GRE*
Acting State Geologist

DATE: January 2, 1976

FILE NO:

TELEPHONE NO:

SUBJECT: Mineral Analysis of Proposed Cook Inlet Land Trade

In response to your letter of December 29, 1975 to Ross Schaff, I requested Cleland Conwell, State Mining Engineer, to review the three newspaper articles by Harold Galliett and again to assess the tracts of lands involved in the proposed land trade.

I concur with Mr. Conwell's assessment that it is not in the best interests of the State to make the proposed land trade. A purely economic view indicates a high potential dollar value of the tracts to be traded to the Cook Inlet Native Association. Large reserves of quality coal are known, agricultural lands are present, and a resonably good potential exists for petroleum and uranium. In addition, the lands to be given to CINA have wisely been selected near populated areas and where industrial and population growth may be expected. We believe the potential revenues are very significant and that an attempt to put a discounted cash value on the resources today is not a fair evaluation.

In contrast, the lands to be received by the State in the trade do not appear to have an important mineral potential, are relatively inaccessable, and are not suitable for development.

cc: Ross Schaff, State Geologist

# of land swap

By [illegible]
Daily News Staff Writer

A consultant who warned legislators the state would be losing $1 billion or more in the proposed Cook Inlet Region Inc. land exchange filed suit in Superior Court Monday to stop the trade.

The consultant, Harold E. Galliett Jr., charged in an affidavit that Alaska citizens would lose more than $5 billion worth of land and natural resources in the trade. Galliett and J.R. Lewis of Anchorage asked for a permanent injunction to prevent it from taking place.

THE PROPOSED exchange is an agreement between the federal government, the state administration, and Cook Inlet Region Inc. Native corporation to settle the Native corporation's land claims. The legislature has until March 12 to approve the deal.

If the exchange were to take place, the state would be giving up $1.7 billion worth of coal, [illegible] million worth of oil and gas and [illegible] million worth of [illegible] in present values, the suit alleges.

The state would receive surface estate with a present value of about [illegible] million, the complaint says. That would result in a net loss to the state of [illegible] billion.

GALLIETT and Lewis contend the state constitution and the Alaska Statehood Act prohibit the state from trading away mineral rights, and state statutes require any trade to be on the basis of equal value.

"The state is proposing to give away coal resources which ultimately may be of more value and benefit to the State of Alaska than the resources underlying the Prudhoe Bay oil fields," the suit alleges.

The land to be given the state would be "useful for park and recreational purposes," but have "little inherent value," according to the complaint.

A CONGRESSIONAL action amending the Alaska Native Claims Settlement Act to allow the exchange to take place violates the U.S. Constitution by attempting to control the power of Alaska to dispose of its own lands, the suit charges.

The suit also challenges the method by which the agreement was approved by the state administration, and says public notice requirements were not complied with.

In an affidavit, Galliett says advice from the Joint Federal-State Land Use Planning Commission on the trade was compromised by the firing of the state cochairman, David Jackson. "The pressure on other state-appointed members of the commission tends to bias, not rational consideration and impartial advice," Galliett says.

HE ALSO charged a hunting lodge at Lake Clark in Bristol Bay owned by Gov. Jay S. Hammond will increase in value because of the trade, and that that creates a conflict of interest which "taints any determination of equal value by the present administration."

Galliett made a presentation to the Legislative Council last fall in opposition to the land trade.

System at fault in jail death?

Selberg

By NANCY DOHERTY
Daily News Staff Writer
(Last of three articles)

What is wrong with a system that lets an innocent young man die in jail?

That is one question among many stemming from the Jan. 6 death in state jail of David Paul Selberg. But no authority has yet tried to answer it or others surrounding the case, officially ruled as a natural death. Selberg died of collapsed lungs after nine days of irrational behavior.

SELBERG, a 23-year-old pipeline worker who apparently had taken LSD, became irrational and incoherent last Dec. 28. His friends decided to seek help, and called the police.

That was the first in a series of events and inaction that led to Selberg's death in jail — a young man who had committed no crime.

An extensive Daily News investigation has brought these critical points concerning the Selberg case to light:

Alaska State Legislature

Senate

JUNEAU, ALASKA

File Cook Inlet Land Trade

March 4, 1976

MEMORANDUM

TO: ALL MEMBERS

FROM: SENATOR KAY POLAND

We have received copies of the Complaint and Memorandums filed against the Cook Inlet Land Trade in Anchorage Superior Court, and they are hereby transmitted for your information.

These documents, together with the comments of Dave Jackman and Michael Smith, sent you earlier, should give you a reasonable resume of the basic issues.

The earlier packet contained a transcript of the Anchorage testimony plus written material received since that date. Tapes of the Juneau testimony are available but not transcribed because of repetition.

The entire matter will be calendared early next week. The Senate Resources Committee has endeavored to secure testimony from every source for your information.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

J. R. LEWIS and HAROLD H. GALLIETT, JR., Citizens and Taxpayers of the State of Alaska,

Plaintiffs,

vs.

STATE OF ALASKA; GOVERNOR JAY HAMMOND; GUY R. MARTIN, Commissioner of Natural Resources; MICHAEL C. T. SMITH, Director, Division of Lands,

Defendants.

No. 76-1608

COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

Plaintiffs, HAROLD H. GALLIETT, JR. and J. R. LEWIS, citizens and taxpayers of the State of Alaska, pursuant to Alaska Civil Rule 23, and on behalf of all citizens and taxpayers of the State, complain and allege as follows:

COUNT ONE

I

Plaintiffs have been and now are residents, citizens and taxpayers of the State of Alaska and reside in Anchorage, Alaska. Defendants are the State and its Governor, Commissioner of Natural Resources and Director of Division of Lands.

II

Plaintiffs are commencing this action in order to permanently enjoin the state from participating in an exchange of lands involving the alienation of subsurface mineral rights belonging to all the people of the State of Alaska. This

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attempted alienation is in violation of the Constitution of the United States, the Constitution of the State of Alaska, the Alaska Statehood Act, and Title 38, Alaska Statutes.

III

In 1955 the then Territory of Alaska, through its legislature, provided for a constitutional convention. Elected delegates adopted a constitution on February 5, 1956 which was ratified by the people of Alaska on April 24, 1956.

IV

This constitution adopted by the people of Alaska served as a basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with the terms of said constitution.

V

Article VIII, Section 9 of the Constitution of the State of Alaska provided in part as follows:

> Section 9. Sales and Grants. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources.

VI

Two years after the people of Alaska adopted the above constitutional provisions, Congress passed the Alaska Statehood Act, approved on July 7, 1958. Sec. 6(i) of the Statehood Act is a direct response by Congress to the provisions contained in Article VIII, Sec. 9 of the Alaska Constitution set forth above. The Alaska Statehood Act stated in this section as follows:

> All grants made or confirmed under this Act shall include mineral deposits. The

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> grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, ...

Sec. 6(i) of the Act further provided that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

VII

By Public Law 92-203, 85 Stat. 688, approved December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act. This Act provided for the fair and just settlement of all claims by native groups in Alaska based upon their aboriginal land claims. All prior conveyances of public land pursuant to federal law and all tentative approvals pursuant to Sec. 6(g) of the Alaska Statehood Act were declared to be an extinguishment of the aboriginal title of Alaska natives. The Act further provided for 12 geographic regions within the State and for appropriate regional native corporations which were given the right to select land and share in the revenues from the sale of minerals. Sec. 12 of the Alaska Native Claims Settlement Act provided for the selection of land by each village corporation within the township in which the village is located, plus an area that would make the total selection equal to the acreage to which the village was entitled under Sec. 14 of the Act.

VIII

Because of existing federal withdrawals, state land selection and other non-native settlement patterns within the Cook

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Inlet region, Cook Inlet Region, Inc., a native corporation, was not able to select lands which it considered of like and similar character under the formula established by the Alaska Native Claims Settlement Act. For approximately three years following the enactment of this Act, Cook Inlet Region, Inc. negotiated with the Secretary of the Interior in an attempt to insure its land selection of a similar and like character.

IX

Cook Inlet Region, Inc. was dissatisfied with these negotiations with the United States Department of the Interior, and it filed suit in a District Court. Negotiations continued, however, and the solicitor for the Department of Interior made an offer to convey to Cook Inlet Region, Inc. ten surface and fifteen subsurface townships within the Kenai National Moose Range, including the Swanson River oilfield, as well as additional federal lands in the then Greater Anchorage Area Borough. These lands included land at Point Woronzof, Point Campbell, and a sizable portion of the Campbell air strip tract. Cook Inlet Region, Inc. declined this offer and it was later withdrawn by the Department of the Interior.

X

The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

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X

The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

XI

The State, Cook Inlet Region, Inc., and the Department of the Interior entered into the negotiations concerning the exchange of lands pursuant to Sec. 22(f) of the Alaska Native Claims Settlement Act which provided as follows:

> The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

XII

Pursuant to the exchange provisions cited above, the State volunteered the trade of various patented lands to the Department of the Interior for exchange and grant to the Cook Inlet Region, Inc. The terms of the settlement were, in summary, that the State of Alaska obligated itself to convey lands to the United States for exchange with Cook Inlet Region, Inc. in accordance with "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area" made a part of the report from

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the Committee on Interior and Insular Affairs accompanying HR 6644, the amendment to the Alaska Native Claims Settlement Act. Further, Cook Inlet Region, Inc. was to dismiss its lawsuit in the case of Cook Inlet v. Kleppe, 75-2232, Ninth Circuit Court of Appeals; and other native village selections under Sec. 12 of the Settlement Act concerning lands within Lake Clark, and other areas outside the Cook Inlet Region, Inc., would be withdrawn to enable the exchange to take place by substituting land outside Cook Inlet region. These terms are summarized in Sec. 12(a) of Public Law 94-204, known as Alaska Native Claims Settlement Act Amendments, approved January 2, 1976. Sec. 12(f) of the Amendments states that all conveyances of lands made or to be made by the State of Alaska in satisfaction of the Terms and Conditions "shall pass all of the state's right, title, and interest in such lands, including the minerals therein, as if those conveyances were made pursuant to Sec. 22(f) of the Settlement Act."

XIII

Sec. 17 of the Amendment purports to amend Sec. 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Sec. 22(f), the State may convey its lands, "free of the restrictions of Sec. 6(i) of the Alaska Statehood Act."

XIV

In the "Terms and Conditions" contained within the report accompanying HR 6644, Sec. II at P. 42, the State of Alaska was asked to give its consent to the exchange and settlement agreement within sixty days of the commencement of the 1976 session of the Alaska State Legislature. Upon such consent being given, the State of Alaska is bound to convey to the United States for reconveyance to Cook Inlet Region, Inc. the lands set forth

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within the "Terms and Conditions." Plaintiffs allege on information and belief that said consent must be given, if at all, prior to March 12, 1976.

XV

In an attempt to implement Sec. 22(f) of the Alaska Native Claims Settlement Act, the Alaska legislature, in 1972, enacted what is w Sec. 38.95.060 Alaska Statutes which authorizes the exchange of state land with a native corporation "with the consent of the governor," when the purpose is to effect land consolidations or to facilitate the management or development of the land. Similar to ANCSA, Sec. 22(f), the Alaska Statute provided that exchanges shall be on the basis of equal value, with either party being allowed to accept or pay cash in order to equalize the value of the properties exchanged.

XVI

The governor and the State, through its Commissioner of Natural Resources and Director of the Division of Lands, is proposing to give away large parcels of land and is also proposing to convey the subsurface mineral rights in such a manner as would convey all the coal, oil and gas resources of the lands. The State is proposing to give away the following estimated resources:

Present value of coal	$4,732,000,000
Minimum probable present value of oil and gas	62,500,000
Present value of surface estate	451,695,000
TOTAL	$5,246,195,000

The State proposes to receive the following estimated value as a result of the exchange:

Present value of surface estate	165,917,440

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From the above summary of the exchange values, the net result to the State of Alaska is as follows:

Net loss $5,080,187,560

XVII

The proposed conveyance violates the Alaska Constitution and its compact with the federal government through the Alaska Statehood Act. The Alaska Constitution and the Alaska Statehood Act prohibit any conveyances, deeds, grants or sales of state lands without reservations to all the people of the State of the mineral rights contained therein.

XVIII

The exchange of land as proposed by the Hammond Administration fails to effect land consolidations or to facilitate the management or development of the land as required by A.S. 35.95.060.

XIX

There is no adequate remedy at law for plaintiffs and the taxpayers and citizens of the State of Alaska to effect redress should this illegal conveyance take place. Damages would be astronomical for the replacement of the values of the coal, oil and gas reserves and resources. In any event, damages would have to come from the treasury of the State of Alaska, which consists of assets already owned by the people of the State. If this proposed exchange is not permanently enjoined, the plaintiffs and other citizens and taxpayers of the State of Alaska will suffer irreparable harm on the magnitude of billions of dollars in lost resources.

COUNT TWO

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

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II

Article VIII, Sec. 9, Constitution of the State of Alaska, subject to the reservation to the State of all resources, allows the Legislature to provide for the sale or grant of state lands, or interests therein, and specifically allows for the establishment of sales procedures.

III

Pursuant to this constitutional authority, the Alaska legislature in Sec. 38.05.045, Alaska Statutes, provided in part as follows:

> All lands owned in fee by the state or to which the state may become entitled, excepting tide, submerged or shorelands, and timber or grazing lands, may be sold as provided in §45-69 of this chapter.

IV

Sec. 38.05.055, Alaska Statutes, states in part as follows:

> Except as provided in §315(d) of this chapter, the sale shall be made at public auction to the highest qualified bidder as determined by the director.

Sec. 38.05.125 A.S. states that each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under Sec. 315-325 of this chapter or Sec. 45-120 of this chapter, . . . is subject to the reservation that the State of Alaska "expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, ..."

VI

Sec. 38.05.310, Alaska Statutes, states that no land may be sold or leased for less than the approved, appraised market value.

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VII

If Sec. 38.05.125, Alaska Statutes, providing for the reservation to the State of all mineral rights, is not in violation of Article VIII, Sec. 9, Constitution of Alaska, the reservation must apply to all authorized and legal state sales or grants in accordance with the contractual and compact provisions of Article VIII, Sec. 9, Constitution of Alaska and Sec. 6(i) of the Alaska Statehood Act. In this event, Sec. 38.95.060, Alaska Statutes, providing for the exchange of land with a native corporation would not be in accordance with the public auction and competitive bid requirements set forth in Sec. 38.05.045-120, Alaska Statutes.

VII

If the State is assuming for the purposes of the proposed exchange transaction that Sec. 38.95.060 (exchange provision) is outside the scope of the auction and competitive bidding provisions, and outside the reservation of mineral rights provisions, then Sec. 38.95.060 and Sec. 38.05.125 are in violation of Article VIII, Sec. 9 of the Alaska Constitution and the compact provisions between the Constitution and the Alaska Statehood Act. The proposed exchange is, therefore, illegal.

COUNT THREE

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Article VIII, Sec. 10 of the Constitution of the State of Alaska states as follows:

> No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

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Although the State has conducted numerous hearings on the proposed land trade, the actual lands to be made the subject of the trade with the native corporation have not yet been determined. In accordance with Sec. 12(b) of the Amendments of ANCSA, and the "Terms and Conditions," the Cook Inlet region is allowed to select lands from various "pools." How much of the Beluga coal land and other lands now belonging and patented to the State will be selected from these "pools", and the exact location and value of such lands, still has yet to be determined and probably will not be determined until long after the Governor gives his consent.

III

The public notice requirements of Article VIII, Sec. 10 of the Alaska Constitution have not been complied with insofar as said provisions must require that notice not only be given of the exchange, but of the value and appraisals of the resources and surface rights contained therein, and the exact nature of the trade so as to give the public real notice of what is contemplated in terms of economic impact to the State Treasury now and in the future. Without these additional facts, notice is meaningless and ineffective.

IV

Article VIII, Section 10 also requires "other safeguards of the public interest as may be prescribed by law" as a part of a notice requirement prior to disposal of state lands. Plaintiffs allege that the terms of the proposed sale to this date remain indeterminate, indefinite, and of such an ambiguous nature that the public has received inadequate notice of the economic consequences of the proposed exchange. Even the legislature is unable to prescribe safeguards because it, like the plain-

tiffs, has no exact knowledge of specific lands and resources involved. The proposed exchange, therefore, violates Article VIII, Section 10, Constitution of the State of Alaska.

COUNT FOUR

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Article VIII, Section 17, Constitution of the State of Alaska, provides as follows:

> Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

III

Plaintiffs allege that the proposed land trade involving the Cook Inlet region violates Article VIII, Section 17 of the Alaska Constitution in that the trade or exchange will result in valuable state resources being conveyed to a private corporation for less than fair value and for the use and benefit of less than all citizens of the State of Alaska.

IV

The purported and invalid attempt on the part of Congress to waive provisions of the Alaska Statehood Act, requiring reservations of all minerals for the benefit of all citizens of the State, and the purported and invalid attempt of the State to convey the mineral rights underlying state lands in violation of the State Constitution, results in the application of federal and state law which is not uniform and which does not apply to all citizens of the State equally. The State through the proposed exchange is violating the intent and purpose of Article VIII, Section 17, Constitution of the State of Alaska.

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COUNT FIVE

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, providing for the exchange of state lands with lands owned by the regional corporation, cannot and does not purport to amend, change or waive the provisions of Article VIII, Sec. 9 of the Alaska Constitution and Sec. 6(i) of the Alaska Statehood Act, both of which require that all deeds or grants of state lands reserve to the State all mineral rights contained therein.

III

The purported land exchange between the State and the Cook Inlet Region, in addition to conveying subsurface mineral rights in violation of Article VIII, Sec. 9 of the Alaska Constitution and Sec. 6(i) of the Statehood Act, is also in excess of the authority set forth in Sec. 38.95.060, Alaska Statutes, which does not in any manner refer to subsurface mineral rights as a part of the exchange.

COUNT SIX

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 6(i) of the Alaska Statehood Act in conjunction with Article VIII, Section 9 of the Alaska Constitution created a compact which thereafter and until amended according to law, guaranteed to all the people of the State of Alaska that the mineral resources of the State would be retained by the State and its citizens. The grant of lands from the federal government

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to the State was expressly conditioned upon the State preserving the mineral rights for all its citizens, and the State cannot now legally, without a proper vote of the people as required to amend the Alaska Constitution, convey said mineral rights and thereby bestow a special benefit on any person or corporation, public or private, at the expense of the citizens of Alaska.

III

The Alaska Statehood Act and the Alaska Constitution place the State in the position of trustee over the mineral resources of the citizens of the State, and the State cannot now legally abdicate its duty as trustee without the consent of its citizens any more than it could abdicate its police powers and duty to protect persons and their property.

COUNT ~~SIX~~ SEVEN

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, providing for the exchange of land, states that a corporation organized under Alaska law pursuant to the federal Alaska Native Claims Settlement Act may obtain "up to 23,040 acres of state land."

III

The purported land exchange between the State and the Cook Inlet Region purports to grant far in excess of 23,040 acres of state land; to the contrary, the proposed exchange would involve over 400,000 acres. Therefore, even if Sec. 38.95.060, Alaska Statutes, is a valid delegation of legislative authority to the Governor, the proposed exchange is not within the limitations imposed by this section.

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Actually 495,360 acres of state patented land

COUNT ~~SEVEN~~ EIGHT

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, states as follows:

> (c) Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

III

The proposed exchange of lands between the State and Cook Inlet region are not based upon equal value. The State has not conducted adequate appraisals of the coal and other natural resources underlying the lands attempted to be exchanged in this transaction, and the State is proposing to give away coal resources which ultimately may be of more value and benefit to the State of Alaska than the resources underlying the Prudhoe Bay oil fields.

IV

The State is attempting to exchange state lands involving enormous coal resources in exchange for lands which, although useful for park and recreational purposes, contain little inherent value. Sec. 38.95.060(c) incorporates the concept of "cash" in equalizing values, and the actual monetary benefits and disadvantages should be the primary factor in determining equality in this proposed exchange. Although park and recreational lands do have value to the State, the enormity and magnitude of the economic value and benefit to the State of its mineral rights far outweigh any assertion on the part of the State that the proposed exchange is on the basis of equal value.

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COUNT ~~EIGHT~~ NINE

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 17 of the Amendments to the Alaska Native Claims Settlement Act, which purports to allow the State to convey its lands in conjunction with the Cook Inlet Region settlement free of the restrictions of Sec. 6(i) of the Alaska Statehood Act, is a unilateral attempt on the part of the Congress to waive and amend the compact provisions of the Statehood Act in order to obtain state lands and their underlying mineral rights for the sole purpose of effecting a federal settlement with the natives of Alaska.

III

The purported attempt of Congress in Sec. 17, to authorize the disposal of state lands contrary to the Alaska Statehood Act and the Alaska Constitution, is in violation of the Supremacy Clause of the Constitution of the United States. This clause declares that the laws of the United States shall be the supreme law of the land, but also directly limits the supremacy to that area solely within the sphere of lawful federal power and that area not reserved to the states by the Tenth Amendment.

IV

Amendment X of the Constitution of the United States specifically states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The federal government, through its Congress, does not possess the constitutional authority to enact Sec. 17 of the Amendments,

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which is nothing more than an attempt to control the power or authority of the State of Alaska concerning the dispositions of its own lands. Congress determined in the Statehood Act the circumstances under which the State of Alaska would be admitted into the Union, but this did not and does not give Congress any power to change or modify, either directly or indirectly, the provisions of the Constitution of the State of Alaska.

VI

By the enactment of Sec. 17 of the Amendments, the Congress of the United States is violating the compact provisions of the Statehood Act which provide that upon the issuance of the proclamation of the President, the State of Alaska "is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other states in all respects whatever, ..."

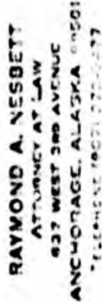
VII

Should the attempt of Congress pursuant to Sec. 17 of the Amendments be construed to be a valid exercise of federal authority concerning state lands, the State of Alaska would, in effect, be denied admission into the Union on equal footing. Any such attempt is, therefore, in violation of federal law.

COUNT ~~NINE~~ TEN

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.



II

Sec. 38.95.060 providing for the exchange of land with a native corporation, states that "with the consent of the governor, a corporation . . . may obtain up to 23,040 acres

of this land, if it has not been disposed of or developed, by exchanging land or interest in land with the State." This section further states that exchanges shall be on a basis of equal value.

III

The legislative delegation of authority to approve of exchanges of land granted to the governor pursuant to the above-cited statute is an unconstitutional and invalid delegation of legislative authority by virtue of insufficient standards, rules and regulations to govern the sale and exchange transaction contemplated therein.

IV

Sec. 38.05.035, Alaska Statutes, states that the Director of the Division of Lands shall " . . . (2) manage, inspect and control state lands and improvements on them belonging to the State and under the jurisdiction of the division;" . . . . The same section states that the Director shall" . . . (7) have jurisdiction over state lands . . . and shall perform the duties necessary to protect the state's rights and interest in state lands, including the taking of all necessary action to protect and enforce the state's contractual or other property rights; . . . . "

V

Sec. 38.05.035, Alaska Statutes, further states that the power of the Director of the Division of Lands authorizes him . . . "(14) when he finds that the interest of the state will be best served, he may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available lands, resources, property or interest in them, . . . and no contract for the sale, lease, or other disposal of available lands or interest in them, is legally binding on the

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ANCHORAGE, ALASKA 99501

State until the commissioner formally records his consent to the contract; . . . ."

VI

Article VIII, Section 9, Constitution of the State of Alaska, authorizes the legislature to provide for the sale or grant of state lands, and establish sales procedures. Pursuant thereto the Alaska legislature delegated to the Department of Natural Resources, its Commissioner, and the Director of the Division of Lands the duty of making findings and determinations relating to the best interests and welfare of the State of Alaska. The legislature established sale procedures for the sale of state lands in Section 38.05.045 et seq.

VII

By virtue of Section 38.95.060, Alaska Statutes, the legislature is attempting to delegate the decision of making a land exchange concerning valuable state resources not to an administrative agency, but to the Governor, a single employee of the executive branch, contrary to the established sale procedures, regulations and statutes which give exclusive jurisdiction over the sale and disposal of state lands to the Director of the Division of Lands and the Commissioner of Natural Resources. There are no standards set forth in the exchange provisions governing the appraisal and determination of equal values, and there is not even a requirement that the consent of the governor be withheld until the exact lands involved have been identified and the exact appraisal and valuation of the exchange is made definite.

VIII

The legislature in Section 38.95.060, Alaska Statutes, is, pursuant to invalid federal legislation, attempting illegally

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TELEPHONE (907) 272-9477

to give away irreplaceable natural resources at the sole discretion of the Governor, thereby divesting the Division of Lands and its Director of its constitutional and statutory power to control and manage state lands through established procedures.

COUNT ~~TEN~~ ELEVEN

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

The proposed exchange attempts, through federal legislation to unilaterally waive or amend the Alaska Statehood Act; subverts the jurisdiction of the Division of Lands; disposes of lands without established and appropriate sale procedures; and denies the citizens of the State of Alaska the protection of Article VIII, Section 9 of their Constitution and its compact with the federal government pursuant to Section 6(i) of the Statehood Act. For these reasons the proposed exchange and its implementing legislation deprive plaintiffs and the citizens of the State of Alaska of their property and resources without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 7 of the Constitution of the State of Alaska. Further, the proposed exchange denies the citizens of Alaska of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 1, Alaska Constitution.

WHEREFORE, plaintiffs on their own behalf and on behalf of all of the citizens of the State of Alaska, pray for an order of this court granting them judgment declaring that the

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proposed exchange of land between the State of Alaska and the Cook Inlet Region, Inc. be declared illegal as in contravention and in violation of the Federal and State Constitutions, and the applicable Alaska Statutes; further,

Plaintiffs pray for judgment permanently enjoining defendants, their agents and employees, from consenting to, implementing, negotiating, or in any manner conveying or attempting to convey any of the lands and mineral rights as contemplated in Section 12 of the Amendments to the Alaska Native Claims Settlement Act; and further,

For judgment awarding plaintiffs their costs and attorney fees for protecting their interests and the interests of all citizens of the State of Alaska.

DATED at Anchorage, Alaska this 1st day of March, 1976.

RAYMOND A. NESBETT
Attorney for Plaintiffs

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

J. R. LEWIS and HAROLD H. GALLIETT, JR., being first duly sworn on oath, depose and say:

That they are the plaintiffs in the above-entitled action; that they have read the foregoing Complaint, know the contents thereof and believe the same to be true.

J. R. LEWIS

HAROLD H. GALLIETT, JR.

SUBSCRIBED AND SWORN to before me this 1st day of March, 1976.

Notary Public in and for Alaska
My Commission Expires: 9-18-77

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(e) The extremely valuable patented state lands which these top officials are attempting to exchange for unconscionably less valuable lands, are as follows:

(1) POINT MACKENZIE POOL - An unspecified 3,200 acres of land, together with mineral estate. This land could include uniquely-valuable, Point Mackenzie port lands or enormously-valuable lands containing an estimated 550 million tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs.

(2) KNIK-WILLOW POOL - An unspecified 4,480 acres of land, including mineral estate. This land could include enormously-valuable coal lands containing an estimated 770 million tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs.

(3) KASHWITNA POOL - An unspecified 38,400 acres of land, together with mineral estate. This land could include valuable home and agricultural land, for which Alaskans and outside speculators alike have competed to purchase at rapidly escalating prices.

(4) CHICKALOON POOL - An unspecified 4,800 acres of land, including mineral estate. This land could include extremely-valuable coal lands containing large reserves of bituminous coal. Some of this coal is of high-priced, coking-quality, as determined from U. S. Geological Survey and U. S.

Bureau of Mines investigations.

(5) KENAI POOL - An unspecified area of at least 115,200 acres - and possibly much more acreage, depending on as yet uncertain Native village corporation entitlement - together with mineral estate. This land could include enormously-valuable coal lands containing about 20 billion tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs and surface outcrop data.

(6) BELUGA POOL - An unspecified area of 13½ townships (311,040 acres), including mineral estate. This land is to be selected by the Cook Inlet Region, Inc., from a larger area consisting of 16 townships (368,640 acres), after possible selection of one township of surface estate by the Tyonek village corporation. The attempted land exchange permits the Cook Inlet Region, Inc., to select the most valuable lands in the pool. Under the terms of the attempted exchange, enormously-valuable patented state coal lands will be granted by the state. The most valuable coal lands in this pool contain about 26 billion tons of coal between the surface and a depth of 2,000 feet, as estimated from nearby oil well logs, surface outcrop data and geophysical surveys.

3. VALUE OF COAL WHICH MAY BE LOST TO THE STATE

(a) I estimate eventual recovery of 50 percent of the coal estimated above.

(b) I estimate the present mean effective state coal royalty in said pools to be 20 cents per ton.

(c) In making my estimate of future state coal royalty income from lands which may be lost, I first estimate that no significant reduction of the estimated resource will occur in the next 20 years as a result of mining. Second, I estimate inflation henceforth at 6 percent per annum, compounded annually. Third, I estimate a real increase in the value of coal due to improvements in technology and increased demand, at 3 percent per annum, compounded annually. Fourth, I estimate that the royalty paid to the state for coal will be changed by law to a percentage of pit head price, and that this percentage of pit head price will become fully effective within 20 years from the date hereof. Fifth, I estimate that the overall escalation factor to be applied to state coal royalties will be 9 percent per annum, compounded annually.

(d) In making my estimate of the present value of future state coal royalty income from lands which may be lost, I first estimate that interest charged the state for bond funds will be 6 percent per annum. Second, I estimate that the required marginal utility of state bond funds above interest cost, will be 50 percent of interest cost. Therefore, I estimate that the overall discount factor to be applied to determine the discounted present value of future state coal royalty income from lands which may be lost, will be 9 percent per annum.

(e) Therefore, I calculate that the escalation factor offsets the discount factor, and that my estimate of the present mean effective state coal royalty may be applied to recoverable coal to compute the present value of future state coal royalty income from lands which may be lost.

(f) Thus, the estimated present value of only a part of the coal which may be lost by the state in this attempted land exchange, is as follows:

(1) POINT MACKENZIE POOL

550,000,000 Tons
X 50% Recovery
X 20¢/Ton Royalty = $55,000,000

(2) KNIK-WILLOW POOL

770,000,000 Tons
X 50% Recovery
X 20¢/Ton = 77,000,000

(3) KENAI POOL

20,000,000,000 Tons
X 50% Recovery
X 20¢/Ton = 2,000,000,000

(4) BELUGA POOL

26,000,000,000 Tons
X 50% Recovery
X 20¢/Ton = 2,600,000,000

(5) PRESENT VALUE OF COAL WHICH MAY BE LOST BY THE STATE $4,732,000,000

(g) The complex Chickaloon coalfields contain large resources of bituminous coal which could be estimated, if need be.

(h) The quantities of coal in the attempted exchange lands below a depth of 2,000 feet are larger than the quantities of coal above a depth of 2,000 feet. These resources could be estimated, if need be, and many mines could be cited which recovered coal as early as 1910 from depths greater than 2,000 feet.

(i) The estimated quantities of coal in the lands to be lost by the state from the Beluga Pool are conservative. These estimated quantities amount to about 2.5 percent of the volume of tertiary sedimentary rocks to a depth of 2,000 feet in the possible Beluga Pool exchange area. The average percentage of coal in nearby tertiary sedimentary rocks, as determined by interpretation of suites of oil well logs, is about 7.8 percent.

4. VALUE OF OIL AND GAS WHICH MAY BE LOST TO THE STATE

(a) The Beluga tertiary basin, much of which is in the attempted exchange lands, has recently, as a result of gravity geophysical work, been recognized as having sufficient depth of sedimentary rocks to offer good possibilities for oil and gas discoveries.

(b) At the Beluga River gas field, drilling by Standard Oil Company of California of three stepout wells has resulted in increasing the probable reserves of this field from 500 billion cubic feet to one trillion cubic feet. Parts of the

(1) POINT MACKENZIE POOL

3,200 Acres
X $10,000
Per Acre = $32,000,000

(2) KNIK-WILLOW POOL

8,320 Acres
X $2,000
Per Acre = 16,640,000

(3) KASHWITNA POOL

38,400 Acres
X $1,000
Per Acre = 38,400,000

(4) CHICKALOON POOL

5,730 Acres
X $500
Per Acre = 2,865,000

(5) ALEXANDER CREEK

4,560 Acres
X $500
Per Acre = 2,280,000

Beluga River gas field are excluded from the attempted land exchange. But, continuation of planned stepout drilling is likely to extend this gas field out into the lands attempted to be exchanged.

(c) Ten miles northeast of the Beluga gas field, Cities Service Oil Company and Pacific Lighting Corporation have very recently discovered a gas field estimated to hold one trillion cubic feet of gas. Similar discoveries are likely in the attempted exchange lands.

(d) Gas discoveries in the amount of one trillion cubic feet in the attempted exchange lands would yield about 125,000,000 MCF of in-kind royalty gas to the State of Alaska. I follow the same rationale for estimating present value of future gas income as has been given above for coal royalties. Using a present gas sale price of 50 cents per MCF, gas discoveries in the amount of one trillion cubic feet in the attempted exchange lands would have a present value to the state of $62,500,000.

(e) Yet, the state has thus far assigned no value to the great oil and gas potential in the attempted exchange lands.

5. VALUE OF SURFACE ESTATE WHICH MAY BE LOST BY THE STATE

(a) The present value of surface estate which may be lost by the state in the attempted land exchange is estimated as follows, using the same present value rationale as for coal:

(6) SALAMATOF

5,945 Acres
X $1,000
Per Acre = 5,945,000

(7) KENAI PENINSULA

117,315 Acres
X $1,000
Per Acre = 117,315,000

(8) BELUGA POOL

11,520 Acres
Port &
Industrial
Site X
$10,000
Per Acre = 115,200,000

5,760 Acres
Townsite
X $10,000
Per Acre = 57,600,000

316,800 Acres
Coal Surface
X $200 Per
Acre = 63,360,000

(9) PRESENT VALUE OF SURFACE ESTATE WHICH MAY BE LOST BY THE STATE $451,605,000

(b) The theory used by state officials in valuation of surface estate has been that all surface estate must be valued as though put on the market at once. Such a one-time sale would yield prices much less than would be realized by spreading sales over a period of years.

(c) My estimates above are based on sales at continuously escalating land prices, over a long period of years. I estimate that the escalation factor for land prices offsets the discount factor derived from the interest cost and required marginal utility of state bond funds.

6. VALUE OF SURFACE ESTATE WHICH MAY BE RECEIVED BY THE STATE

(a) The present value of surface estate which may be received by the state in the attempted land exchange is estimated as follows:

(1) NUSHAGAK, MULCHATNA & KOKSETNA DRAINAGES

587,520 Acres
X $40 Per
Acre = $23,500,800

(2) <u>TALKEETNA MOUNTAINS, KAMISHAK BAY & TUTNA LAKE AREAS</u>

596,480 Acres
X $60 Per
Acre = 35,788,800

2,560 Acres,
Chenik Port
Site, X
$5,000
Per Acre = 12,800,000

(3) <u>CAMPBELL AIRSTRIP TRACT</u>

4,120 Acres
X $20,000
Per Acre = 82,400,000

(4) TALKEETNA MOUNTAINS

& KOKSETNA DRAINAGE

285,696 Acres

Selection Rights

Only,

Discretionary

With Secretary

of the Interior,

X $40 Per Acre = 11,427,840

(5) PRESENT VALUE OF SURFACE ESTATE WHICH MAY BE RECEIVED BY STATE $165,917,440

7. SUMMARY OF ATTEMPTED EXCHANGE VALUES

(a) The following is my summary of estimated values which the state may lose in the attempted land exchange:

(1) PRESENT VALUE OF COAL	$4,732,000,000	
(2) MINIMUM PROBABLE PRESENT VALUE OF OIL & GAS	62,500,000	
(3) PRESENT VALUE OF SURFACE ESTATE	451,605,000	
		$5,246,105,000

(b) The following is my summary of estimated value which the state may receive in the attempted land exchange:

(1) PRESENT VALUE OF SURFACE ESTATE	$165,917,440

(c) From this summary, the net loss to Alaska citizens is as follows:

$5,080,187,560

8. LAND CONSOLIDATION AND FACILITATION OF MANAGEMENT OR DEVELOPMENT OF THE LAND

(a) The attempted land exchange will destroy the compact integrity of patented state lands in the heartland of our state. State lands will be broken up, not consolidated.

(b) The attempted land exchange will create conflict of land management where none existed or could exist before.

(c) The attempted land exchange discourages settlement on the land by all citizens equally, except as leasehold tenants on terms dictated by Native corporations.

(d) The attempted land exchange denies Alaska citizens responsible state environmental and economic control in the public interest of an empire of coal on the threshold of development.

(e) The attempted land exchange makes inadequate provision for rights-of-way to and from state lands, across lands which may be lost by the state.

(f) The attempted land exchange could result in the loss to the state of the critical deep-water port and industrial site at Beluga. This site is essential to the future processing and shipment of not only Beluga coal, but also Susitna coal, Matanuska coal, Nenana coal, and other future exports from the Interior and North Slope. The hinterland of this port will be as large as Texas. The result of selection of the Beluga surface estate by the Tyonek village corporation, as provided for in the attempted land exchange, will be to create a virtual monopoly of natural resources port sites on the northwest shore of Cook Inlet in this one, narrowly-based, profit-making corporation.

9. EQUAL VALUE

(a) There is no way to assure equal value in the attempted land exchange. No cash payment to equalize values attempted to be exchanged is authorized under the pertinent federal act. The major values are mineral values. Not enough testing with the drill has been done, and there is not enough time to drill and report and evaluate under the fixed terms and conditions of the importunate federal act.

(b) It is impossible to determine most of the values which will be exchanged in the short time which has been allowed by the federal act. Alaska citizens are denied a map showing the exact patented state lands which will be lost. Alaska citizens are denied a legal description of the specific lands

to be conveyed away. Alaska citizens are denied any development plan for the lands to be given up, with which to properly assess values.

(c) It is impossible to obtain a complete and unbiased geological report by state geologists. This results not only from inadequate time, but also from intimidation of professional staff by gubernatorial firing of a chief advisor for giving testimony before the Alaska legislature against the attempted land exchange. Present reports from the Alaska Division of Geological and Geophysical Survey are so incomplete as to be false. These present reports show evidence of having been instigated and hastily-prepared to support a predetermined conclusion by officials named earlier in this affidavit.

(d) Advice from the Joint Federal-State Land Use Planning Commission has been compromised by the firing of the state co-chairman, David Jackman, as noted above. The pressure on other state-appointed members of the Commission tends to bias, not rational consideration and impartial advice. A new appointee, mindful of the fate of his predecessor, may vote accordingly.

(e) Increase in the value of Governor and Master Guide Jay S. Hammond's Lake Clark lodge, resulting from creation of nearby federal and state hunting lands protected from Native hunting restrictions, creates another conflict of interest which further taints any determination of equal value by the present administration.

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

MAR 19 1976

Honorable Thomas S. Kleppe
Secretary of the Interior
C St. between 18th & 19th Sts.
Washington, D.C. 20240

Dear Mr. Secretary:

Public Law 94-204, amending the Alaska Native Claims Settlement Act (PL 92-203) was passed by Congress on January 2, 1976. Among the several provisions of this Act are those land consolidation provisions found in Section 12 calling for the conveyance by the United States to the Cook Inlet Region, Inc., and the State of Alaska of title to certain federal lands within Alaska. Pursuant to Section 12(b) of the Act, the conveyance of these lands is made subject to the specific terms, conditions, and reservations set forth in the document entitled, "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area," which was submitted to the House Committee on Interior and Insular Affairs on December 10, 1975.

Among those lands to eventually be conveyed by the United States are lands from a pool which shall be established pursuant to Section 12(b)(6) by the Secretary of the Interior and the Administrator of the General Services Administration. Under subparagraph I-C(2)(e) of the "Terms and Conditions" document referred to in Section 12(b) of the Act, certain specifically identified federally-owned tracts of land are said to be excluded from inclusion in those pool lands which are to be conveyed to Cook Inlet Region, Inc.; and instead these lands

> ". . .shall be reserved by the United States for early conveyance to the State for park and recreation purposes as an integral part of the consideration for this document." (Emphasis added.)

Included in the tracts so identified is the Point Woronzof tract, containing approximately 592 acres, which is situated at Anchorage, Alaska, and is utilized by the Federal Aviation Administration in connection with the administration of an air navigation facility pursuant to Public Land Order 2703 dated June 26, 1962. On

May 10, 1972, in response to a request made by the Under Secretary on February 16, 1972, the Department of the Interior was advised by the Federal Aviation Administration that those Point Woronzof lands constituted the smallest practicable tract enclosing lands actually used in connection with the administration of a federal installation under Section 3(e) of the Alaska Native Claims Settlement Act.

It appears possible to me that upon reading PL 94-204 together with subparagraph I-C(2)(e) of the "Terms and Conditions" document, a conclusion might be arrived at that the Department of the Interior has been given the authority to convey to the State of Alaska the referenced Point Woronzof lands. I do not, however, interpret the effect of Congress' ratification of that "Terms and Conditions" document as revoking Public Land Order 2703 or otherwise granting to the Department of the Interior any authority to transfer, without the prior consent of the Department of Transportation, the lands within the Point Woronzof tract which are under my administration.

I am confident that you will agree that PL 94-204 does not give to the Department of the Interior the authority to convey these lands without my prior approval or concurrence, or that of the Administrator of the Federal Aviation Administration, as provided in Executive Order 10355 of May 26, 1952. However, should the Department of the Interior interpret their authority under PL 94-204 differently than I have expressed here, I request that you advise me of that fact immediately so that our respective Departments may enter into consultations to resolve this matter at an early date.

In addition, I am asking for your further review and consideration of any decision regarding the conveyance of the Point Campbell lands, which are similarly situated near Anchorage, to the State of Alaska for park and recreation purposes. This land, also identified in paragraph I-C(2)(e) of the "Terms and Conditions" document, is presently under the administration of the Department of Defense. The Department of Transportation foresees a critical aviation safety need for this land in connection with its future relocation of a federal air navigation facility for the Anchorage International Airport. The matter of the future disposition of this land should likewise be discussed between the Departments most concerned with its future use.

Sincerely,

Bill

William T. Coleman, Jr.

COOK INLET REGION, INC.

1211 WEST 27th AVE. ANCHORAGE, ALASKA 99503
TELEPHONE 274-8638

March 16, 1976

The Honorable Mike Colletta
United States Senate
Box 3188
Anchorage AK 99501

Dear Senator Colletta:

On behalf of the mangement and stockholders of the Cook Inlet Regional Corporation, I wish to extend my appreciation for your support of the Cook Inlet Region Land Trade.

Without your efforts and concern, a solution to this complicated and potentially divisive problem could not have been achieved.

Sincerely,

COOK INLET REGION, INC.

Roy M. Huhndorf
President

RMH:jg

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 27 1975

RECEIVED
MAR 5 1976
Department of
Natural Resources

Honorable Avrum M. Gross
Attorney General
State of Alaska
Department of Law
Pouch K
Juneau, Alaska 99811

Dear Mr. Gross:

This is in response to your inquiry of February 23, 1976. Specifically, you inquire whether lands described in subsection IC(2)(e) of Terms and Conditions for Land Consolidation and Management in Cook Inlet Area (H.R. 94-729, 94th Congress, 1st Session, December 15, 1975; hereinafter Terms and Conditions), may be transferred to the State of Alaska by the Federal Aviation Administration for airport purposes. It is our understanding that FAA has the authority to make such a transfer by virtue of the Airport and Airway Development Act of 1970, 49 U.S.C. §§1701-1741 (1970).

Subsection IC(2)(e) of Terms and Conditions provides that Cook Inlet Region, Inc., may not include certain lands, including Point Woronzof, in the selection pool created by this document. The subsection further provides that:

> [S]uch lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes as an integral part of the consideration for this document.

The issue is whether this provision precludes transfer of part of the Point Woronzof tract to the State of Alaska by the FAA for other than park and recreation purposes, if the transfer were otherwise authorized by law.

The Terms and Conditions must be read in conjunction with section 12 of P. L. 94-204, January 2, 1976. This section directs the Secretary, after certain conditions are met, to make a number of conveyances to Cook Inlet Region, Inc., and to the State of Alaska. The mandatory conveyances to the State of Alaska are described in paragraph (d) of section 12, and this paragraph refers to the Terms and Conditions to clarify the identities and amounts of lands to be conveyed to the state. Section 12 does not specifically direct the Secretary to convey Point Woronzof to the state for park and recreation purposes. Paragraph (b) of section 12 states that the duties and obligations of the United States and Cook Inlet Region, Inc., under the Terms and Conditions, are ratified as a matter of federal law.

We should note that it certainly was not the intention of the Departmental or State negotiators that the subject provision be construed as exclusive. And we are not aware of any reason why legislation authorizing a transfer of land to the state for park and recreation purposes should be construed as prohibiting a transfer of those lands to the state for airport purposes, if that transfer were also authorized by law. Apparently, the State of Alaska desires to receive part of Point Woronzof for airport purposes, rather than for park and recreation purposes. We see no impediment to such an action, if the proposed FAA action is authorized by law.

Sincerely,

Curtis B [illegible]

E. U. Curtis Bohlen
Deputy Assistant Secretary for
Fish and Wildlife and Parks

bcc: Guy Martin
Mike Smith
Roy Huhndorf
William Mullaly - FAA Anchorage

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 26, 1975

The Honorable
Mike Colletta
Box 3188
Anchorage, Alaska 99501

Dear Mike:

Over the past months, many of you have heard varying reports regarding the Cook Inlet Land Exchange. During the extensive public process which followed initial announcement of the proposal, a special briefing was held for legislators which some of you attended, and a subsequent detailed briefing was held for the Legislative Council which was also well attended. Because some of you have not been able to attend these meetings, I do want to bring the matter to your attention, give you a current status report, and indicate my intention to bring the issue before you.

The attached press release, issued at the time I indicated I would give my support to the final agreement, is a good summary of the agreement and the process which I intended to follow. As a matter of policy, which I would have demanded when I was a legislator, I intend to lay this entire matter before you, and to provide full documentation and support. Should the Legislature disapprove of the exchange, you have my pledge that I will not pursue to its implementation.

I obviously believe it is right, and perhaps the only wise course the State could take. The final agreement has passed Congress with the support of our entire delegation, and now resides on the President's desk. The State is the final link, and you are part of it. I look forward to discussing this with you, for it is a unique and cooperative solution to a difficult problem. I thought you would appreciate this report, and look forward to seeing you in January.

Sincerely,

Jay

Jay S. Hammond
Governor

Enclosures

JAY S. HAMMOND
GOVERNOR

DEC 11 1975
Department of
Natural Resources

GOVERNOR HAMMOND SUPPORTS COOK INLET LAND EXCHANGE PROPOSAL IN CONGRESS
December 9, 1975
#301

Governor Jay Hammond has given Administration support to a Congressional amendment authorizing Federal authority for the Cook Inlet land exchange. Hammond said, "I am today authorizing Administration support for the Cook Inlet land exchange. We join with the Cook Inlet Region and the Department of the Interior in this proposal to Congress which resolves a series of legal and land management problems in the Cook Inlet Regional area to the benefit of Alaska as a whole."

The State has little choice in the timing of Congressional consideration of the amendment. It is expected the House Interior Committee will act on December 10, on amendments to the Alaska Native Claims Settlement Act, of which this land trade will be a part. Before a final land exchange agreement is consummated, however, it will also require approval from the Cook Inlet Regional Corporation and the State.

Hammond said, "It is the clear policy of this Administration to support open government, particularly on matters which affect the future of State resources so substantially. For this reason, I have directed that prior to the time the State gives its final approval to this agreement, the matter be submitted to the

Alaska Legislature for review. The State will agree to the land trade unless the Legislature disapproves it within 60 days of the opening of the Session."

Hammond also said he would make available to the Legislature detailed documents to explain the Administration's support of the land trade. At the same time, he said, the Administration would investigate the entire area of future land exchanges of this magnitude with the Legislature. He also said he would seek constructive legislation to ensure the public interest is protected in these future instances.

Hammond pointed out this proposal was presented publicly on October 2. Since that time, it has been exposed to a series of public hearings, briefings, and comments. As a result there have been substantial changes made in the agreement which will be presented to Congress.

Hammond said these changes, most of which will improve the value of the exchange to the State, include:

1) a reduction by 75 percent of the amount of known and recoverable coal deposits which would have been conveyed in the Beluga area to the Cook Inlet region and substitution of speculative coal areas;

2) the additional conveyance of the Campbell tract from the Department of the Interior to the State and the ultimate transfer of the Point Campbell and Point Woronzof properties to the State or the Anchorage Municipality as soon as possible;

3) a provision giving other Native regions control over Cook Inlet selections in other regions;

4) the addition of substantial State control over other Cook Inlet Region selections from a pool of Federal surplus property in the Cook Inlet area;

5) a reduction of the 30 townships the State was to receive from the Department of the Interior in the Bristol Bay area to 25 and the substitution of five additional townships for the State in the Lake Chakachamna area;

Hammond said, "These changes were all undertaken as the result of the public participation to make the exchange sensitive to the legitimate interests expressed during the period since the original proposal was presented."

In announcing the Administration's position, Hammond said, "It is the opinion of the Attorney General that authority exists to undertake the proposed land exchange. At the same time other detailed research leads to our finding that the exchange will result in an excess value for the State over that

received by either of the other parties. This conclusion does not include an assessment of the unquantifiable values connected with gaining control over important resource lands in the Talkeetnas or other valuable land management patterns which would accrue to the State."

Hammond said the decision was reached only after careful consideration of many factors including: a description of the implications of the exchange, an outline of the objectives, a broad public participation, a response to the public comments, an analysis of legal authority and value considerations, and issue analysis.

The Governor said, "Our analysis shows that the implications of failing to proceed are substantial and represent a number of possible results that are extremely detrimental to the best interests of the State of Alaska."

-30-

The Honorable Chancy Croft
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

In my State of the State message, I laid before the Legislature the issue of the Cook Inlet Land Exchange. In doing so, I made the following statement:

> Alaska's land, perhaps more than the offshore oil and gas programs, hits Alaskans where they live. This administration believes that sound land ownership patterns and practices are important and we will not hesitate to use State power to influence them when in the public interest.

I continued by expressing the further commitment of the administration to take a major role in land decisions seeking to "balance the proper rights of Alaska's Natives with the long-term interests of the entire Alaska public."

Setting forth the Cook Inlet exchange specifically, I indicated the importance of the matter and my desire that it be the subject of thorough Legislative scrutiny:

> Perhaps the boldest of these (land) actions has been the Cook Inlet Land Exchange. Controversial from the first, this transaction is as large and complex as the issue it was intended to resolve. Pursuant to a Congressional request, we worked for months with the other parties for a settlement. More important, support for it has grown as its logic becomes apparent.
>
> Now, though not obligated, I am bringing it to the legislature with confidence, having seen it move through Congress supported by our entire delegation. Should you disapprove it, I will not act, but I earnestly solicit your approval.

By now, this issue is well-known to many Alaskans, as it has had extensive press coverage, has been the subject of an extensive public process, has been reviewed by a special Legislative Council subcommittee, and has been the subject of full Congressional review and action.

In spite of this, and in spite of my conclusion that State participation in the agreement is authorized by existing law, I believe full Legislative review is in the broadest public interest on a matter of this importance and scale.

By the terms of the document entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area", incorporated in Section 12 of the recently passed amendments to the Alaska Native Claims Settlement Act (P.L. 94-204), the consent of the State to the agreement must be given within 60 days of the commencement of the 1976 Session of the Alaska Legislature. I have stated my intent that such consent shall be given unless the Legislature disapproves State participation within this period. Should disapproval occur, I will withhold my consent for State participation.

The matter is thus submitted to you for oversight and policy review, and the attached material should be considered in addition to other public information on this matter and material earlier submitted to the special Legislative Council Subcommittee. Additionally, you have my pledge of full administration cooperation to further explain and illuminate the exchange agreement as your procedures indicate.

The materials attached are intended to permit an orderly analysis of the agreement, touching on the issues critical for Legislative review. In particular, there is a discussion of the considerations that entered into the deliberations, the alternatives as perceived by the State, and the economic evaluations that have been made. Most important, the documents trace the history of public participation and input into the agreement and the extent to which the final agreement reflects concerns stated by legislators, local governments, other Native Corporations and the public at large.

The exchange agreement, the legal and historical conditions which necessitated and permitted it, and the process by which it was formed are unique and critical to an understanding of the entire issue. So is an understanding of the paths not taken, or the consequences of a failure to take such an action. The entire Alaska delegation supported the agreement, and Congress acted to carry it into Federal law. When the bill was signed by the President on January 2, 1976, it placed the matter before the State and I am seeking your review.

In the House report that accompanied the federal legislation on the exchange, the Committee on the Interior and Insular Affairs noted that the document "harmonizes conflicting interest, seeking to adjust an equitable settlement for Cook Inlet Region consistent with the needs of Alaska and the public at large... It seeks to resolve harmful jurisdictional conflicts and arbitrary ownership and conserves for public use lands that should have that status." I agree.

I submit this set of documents to you cognizant of the care, delicateness and thoroughness that has been the hallmark of the evolution of the agreement, and seek your consideration of the land exchange agreement as the final step in this important endeavor.

Sincerely,

Jay S. Hammond
Governor

Alaska State Legislature

Senate

JUNEAU, ALASKA

SENATE RESOURCES COMMITTEE

NOTE:

RE: Berrier legal opinion on the Cook Inlet Land Trade

Page 3, Paragraph 2 AS 35.05.335 (a) (14)

should read AS 38.05.035 (a) (14)

Send copy & this to T. Fink

OK 3/5

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M   March 2, 1976

SUBJECT: Cook Inlet Land Trade (Work Order 2316)

TO: Senator Kay Poland
Chairman, Senate Resources Committee

FROM: Billy G. Berrier
Director, Legal Services

As a result of substantial negotiations between the State of Alaska, the United States and the Cook Inlet Region, Inc., an agreement was reached concerning the exchange of land among the parties. Since the agreement is quite complex and has been presented in great detail to your committee I will not attempt to setout the terms except to point out that one essential element of the agreement is the transfer of subsurface lands by the State of Alaska. This transfer is to be made to the United States which will in turn transfer the lands to CRIR.

It is my opinion that under existing state law adequate authority to implement this agreement does not exist and that, therefore, for the State of Alaska to make the conveyances required under the agreement enabling legislation is mandatory.

While it would appear that problems exist under section 6(i) of the Alaska Statehood Act, in my opinion these problems are apparent rather than real. This section provides:

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

This section is not a prohibition to the State of transfer of mineral rights. It is legally a conditional conveyance to the state, conditioned upon the requirement that mineral lands granted by the state be granted subject to reservation of all the minerals, with the enforcement of the condition being forfeiture of the lands to the United States by appropriate proceedings.

Under this pattern a transfer to the United States is not included. To look at it another way in the direct context of this bill if the section did not apply to the transfer to the United States, then the contemplated transaction is valid and title to the land and minerals passes to the United States; but if it were held that the section does apply to the United States a grant to the United States of the minerals, would be a breach of condition making both lands and minerals subject to forfeiture to the United States. In either event title would go to the United States contingently under the second hyposthesis upon a forfeiture action. It would be an unreasonable interpretation of the section to consider it applicable to transfers to the United States.

In any event, at this stage the question is hypothetical since it would have been removed by passage of HR 6644.

However, passage of the federal act has no effect on the state law. It is clear that the United States does not have authority to override state law in this area, and it is equally clear that in this bill Congress did not attempt to assert such an authority.

In my opinion the transfer of the surface estate contemplated in the agreement is authorized under AS 38.05.315 which provides in relevant part:

> "(a) the lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision..."

This leaves the question as to whether there is adequate authority to convey the mineral estate. In my opinion there is not.

Alaska law requires reservations of mineral rights to the State of Alaska in any conveyance AS 38.05.125 provides in relevant part:

> "RESERVATION. Each contract for the sale, lease, or grant of state land, and each deed to state land, properties or interest in state land, made under §§315-325 of this chapter or §§45-120 of this chapter, except for those lands originally acquired by purchase, exchange, condemnation, gift, escheat or foreclosure are subject to the following reservations:..."

This section then goes on to setout the wording of the reservation.

Transfers to the United States are specifically included in the section. It should be noted here that the rationale under which transfers to the United States are excluded from the operation of section 6(i) of the Statehood Act is not applicable. Unlike section 6(i), which is a condition on a grant between sovereigns, section 125 is positive law. As the section is worded the mineral reservations apply whether set out in the conveying document or not and would apply even though the conveying document expressly attempted to convey the subservice estate.

The administration has set out three sources of authority for the proposed land exchange. Two of the three are clearly not relevant to a proposed subsurface conveyance. The authority of the commissioner of natural resources under AS 38.05.020(b)(2) and the authority of the director of the division of lands under AS 35.05.335(a)(14) were cited as authorization. While these do give authority to enter into land trades and agreements this authority is clearly limited to transactions made in accordance with other law. Any contention that these sections authorize either the commissioner or the director to waive positive provisions of law must rest on the fundamentally unsound assumption that, except for these sections, the rest of the title has legal effect only to the extent that the commissioner and director determine that it should have legal effect.

The provisions of AS 38.95.060 especially when considered in the light of the 1972 House Judiciary statement in connection with the bill is relevant, but in my opinion not adequate authority for the proposed land exchange. Paragraph (b) of that section provides:

> "(b) An individual Native (as defined in the federal Act) or a corporation referred to in (a) of this section may exchange land or an interest in land with any other individual Native or corporation referred to in (a) of this section or the state for the purpose of effecting land consolidations or to facilitate the management or development of the land."

The report from House Judiciary Committee accompanying CSHB 731 which was the source of this section, comments on this section as follows:

"AS 38.15.060. Exchange of Land. Under the 1968 state Act, Native corporations were granted the right to obtain state-patented lands near the villages through exchange of lands with the state, with the consent of the Alaska Native Commission. This section revises and relocates those provisions to reflect the form of the federal Act, substituting the consent of the governor for consent of the commission, and adds a provision comparable to section 22(f) of the federal Act which provides for exchanges between the federal government and Native corporations or the state. The principle is

extended in this section to exchanges between Native corporations and the state. A "boot" clause comparable to the federal language is also included. The statehood Act will have to be amended to permit the state to exchange mineral interests, or the Secretary of the Interior will have to consent to being an intermediary under section 22(f) transfers in order to gain full utility from the exchange concept."

In light of these comments, section 22(f) of the Alaska Native Claims Settlement Act must also be looked at. That section provides:

> "(f) The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interest therein in Alaska under their jurisdiction for lands or interest therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged."

It can and has been, argued that the clearly stated purpose of the Alaska law was to facilitate settlement under the Alaska Native Claims Settlement Act and, since section 22(f) was specifically referred to AS 38.95.060 gives to the state administration equivalent authority to the authority given to the secretaries under section 22(f).

Although there is logic to this argument, it has extremely serious shortcomings. The most obvious shortcoming is that the language of paragraph .060(b) simply is not as broad as the language of 22(f). Unlike 22(f) which gives direct authority to the secretaries, paragraph (b) on its face gives authority only to the individual natives and native coorporations. The argument by inference is if these are given authority to exchange land or interest in land with the state, the state inferentially must have been given authority under this section to exchange land is somewhat weak but plausable. But the inference that follows, if this section is to be treated as authorization for the proposed transfer, is quite far fetched. That inference is that since the purpose of the act was to facilitate settlement under the Alaska Native Claims Settlement Act and since the section inferentially authorizes the state to exchange land or an interest in land, it also authorizes the state to transfer any interest they may have in land regardless of other laws. One of the sections necessarily waived would be AS 38.05.125. To accept this hypothesis one would have to accept that by a double pyramid inference the legislature repealed for this specific type case a major state policy embodied both in the statehood act and in state statute. In my opinion this interpretation places far more weight on inferential reasoning and the statement of intent than the reasoning or statement can bear.

A more reasonable interpretation of the legislature's decision not to grant authority commensurate with that granted in section 22(f), (and as noted in the committee report, section 22(f) was before the legislature), is found in the last sentence in the Statement of Intent quoted. That is the transfers of subsurface estates to other than the United States are prohibited by the Statehood Act, no amendment to the Statehood Act had been made at that time leaving a serious problem of possible forfeitures if the problem were dealt with then rather than awaiting possible amendment of the Statehood Act. Under this interpretation, as under the clear language of the statute, the provisions of AS 38.05.125 are unaffected by AS 38.95.060.

Based upon this analysis, it is my opinion that the transfer of the subsurface estate contemplated in the Cook Inlet Land Exchange is specifically prohibited by state law, that this law is uneffected by the federal act, and that if it is desired that the exchange be made enabling legislation will be necessary. At any event, regardless of the legal theory adopted, it is clear that basing title to land of very substantital value upon a legal foundation open to serious question is most unsatisfactory.

Corrective legislation would fall in three classes:

1. General legislation covering all of the land transfers and exchanges that will be necessary in order to fully implement the Alaska Native Claims Settlement Act, or;

2. Specific enabling legislation for the Cook Inlet Exchange, or;

3. Specific enabling legislation for this exchange with subsequent general legislation.

Although specific enabling legislation for the Cook Inlet Exchange must surmount the constitutional hurdle posed by Article II, Section 19 of the Constitution which prohibits a local or special act if a general act can be made applicable, it would appear that specific enabling legislation to be followed by general enabling legislation is the only practicable course. Both factually and legally, the Cook Inlet Land Exchange is unique. The scope of the problem, the size of the exchange contemplated, the peculiar impact of concentrated selections on the Cook Inlet region, the time parimeters set on this exchange, and the actual and potential litigation make this a special situation. The subject is clearly a matter of statewide interest since highly important economic and planning values are involved and since implementation of the Native Claims Settlement Act is clearly of importance to the state. Further the unusual aspects here are significant and present an insurmountable barrier to action pursuant to a general statute. It would seem clear that under the tests in Boucher v. Engstrom, 528 P2 534 91 (Alaska 1974) and Abrams v. State, 534 P2 91 (Alaska 1975) carefully drawn enabling legislation for this specific transfer would be

upheld. General legislation involves very substantial policy decisions concerning the procedural mechanics by which such transactions will be allowed and consideration of the mechanics, if any, of legislative approval. It may very well be because of the unique nature of large transactions involved in implementing the Settlement Act the legislature may require specific approval by it of certain transfers.

Any specific legislation should (1) contain recitalsrelating to the Cook Inlet Land Trade and what the legislature intends to accomplish by approval of the land trade; (2) a specific waiver of the provision of AS 38.05.125 since this is clearly the major impediment existing currently; (3) a specific waiver of the equal value exchange requirement contained in AS 38.95.060. While arguably this equal value requirement would not apply in any event, the values on both sides of the transaction are of such nature that appraisals would be complex and subject to substantial dispute. For that reason waiver of the equal value requirement removes a cloud which is potentially significant and which could lead to litigation; (4) a general waiver clause of other provisions of law to make it clear that the legislature intends to waive any barriers to the consummation of the transaction.

This memorandum, of course, expresses no opinion as to whether it is desirable that the Cook Inlet Land Transfer be approved, but is intended to sketch the problems in existing law and steps that should be taken if the legislature elects to approve the transfer.

BGB:smh

OFFICE OF THE GOVERNOR
JUNEAU

JAY S. HAMMOND
GOVERNOR

FOR INFORMATION CONTACT:
Scott Foster, Press Secretary
Office of the Governor
Pouch A Juneau, Alaska 99811

OR PHONE: 907-465-3500

GOVERNOR HAMMOND'S STATEMENT ON COOK INLET LAND EXCHANGE
February 5, 1976
#18

"The Cook Inlet Land Exchange, along with voluminous supporting material, has been sent to the Legislature. Administration officials and agency professionals briefed House and Senate Resources Committees yesterday and will make two or three additional appearances in future meetings.

"I am today informing the legislative leadership of one change I am requesting in their treatment of the land exchange. I have before indicated that I would take action on the exchange <u>if the Legislature took no action</u> of disapproval within the 60-day period set by the Federal law. I am today informing the Legislature I will take no action <u>unless</u> they take an affirmative action of approval within the time allowed. There are two major reasons for my request.

"First, continuing legal research has indicated that, although legal authority for the exchange exists, the unique facts of the Cook Inlet agreement indicate that to make it clearly unassailable legally, an affirmative legislative action is available.

"Second, it has been my conviction all along that full legislative review is essential for an issue having such large and new policy considerations. Since no specific set of statutory guidelines existed for the exchange authority, it is my feeling that affirmative legislative action now is the appropriate substitute for such guidelines. For the future, we should have a complete statutory framework for such exchanges, and we are working with the Legislature on such a bill now. While my request for affirmative legislative action may slightly lower the chances for approval of the present exchange, it will substantially increase the chances for a full review of the exchange in the public interest."

-30-

Office of ... Clerk
Pouch 6-650
Anc 99502

For Reading:

file Cook Settl

ANCHORAGE, ALASKA

AR NO. 8-76

A RESOLUTION OF THE ANCHORAGE ASSEMBLY EXPRESSING ITS CONCERN REGARDING THE DISPOSITION OF CERTAIN LARGE TRACTS OF PUBLIC LAND WHICH ARE THE SUBJECT OF PUBLIC LAW 94-204, AN AMENDMENT BY THE U.S. CONGRESS TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971.

THE ANCHORAGE ASSEMBLY RESOLVES:

Section 1. The Congress of the United States has recently eacted Public Law 94-204, containing certain amendments to the Alaska Native Claims Settlement Act of 1971, one of which, at Section 12 of the Act and entitled "Cook Inlet Settlement", would have the effect of trading certain lands and future rights in lands between and among the federal government, the State of Alaska, and Cook Inlet Region, Inc., a native regional corporation, for the stated purposes of consolidating rational land ownership patters and settling certain pending litigation in the public interest.

Section 2. The Cook Inlet Settlement section of P.L. 94-204 provides that, if the Alaska Legislature disapproves of the Cook Inlet Settlement prior to April 15, 1976, that settlement shall be null and void and the options of the Congress to fashion an appropriate remedy shall not have been foreclosed.

Section 3. The great bulk of lands and land rights so exchanged between the parties lie outside the boundaries of the Anchorage Municipality, and do not directly affect the property interests or planning authority of the Municipality; however, certain specific tracts of land identified in P.L. 94-204 directly affect present and future property interests of this Municipality

and may consequently determine the direction of future growth and development which the Municipality will undergo and the amenities and necessities of life which will exist here for future generations. These tracts are the Campbell Airstrip Tract, the Point Campbell Military Reservation, the Point Woronzof FAA Reservation, and the Goose Lake Tract.

Section 4. The Municipality of Anchorage and its predecessors have long attempted to insure that the Campbell Airstrip Tract remains intact in public ownership as the Far North Bicentennial Park, both for its recreational and its watershed attributes. More recent efforts by local governments have stressed the importance of retaining the Goose Lake Tract, Point Campbell Reservation, and Point Woronzof Reservation in public ownership to guarantee that non-intensive land uses compatible with existing adjacent uses will occur in these areas in the future. While public ownership of each of these unique tracts of land at the local, State or Federal level is imperative, the Municipality of Anchorage believes that it is best qualified and equipped to plan and to manage these tracts in the public interest to meet the open space, watershed, recreational, institutional and cultural needs of a growing Anchorage, and this belief is hereby restated in this Resolution.

Section 5. Insofar as P.L. 94-204 may affect the future disposition and use of the Campbell Airstrip Tract, the Point Campbell Military Reservation, the Point Woronzof FAA Reservation and Goose Lake Tract, the Anchorage Assembly strongly urges that the Alaska State Legislature approve the Cook Inlet Settlement portion of P.L. 94-204 to insure that the public interest in

retaining these large, undeveloped tracts of land in continued public ownership is fully protected.

Section 6. The Municipal Legal Office has, at the request of the Assembly, monitored the progress of negotiations regarding the proposed agreement entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area", and the legal office is hereby directed to continue to monitor the progress of said agreement and to report to the Municipality any changes which may affect those tracts of land which the Assembly has determined by this Resolution to be significant to the public interest.

Section 7. The Municipal Clerk is hereby directed to inform the Governor, the President of the Senate, the Speaker of the House, the Chairpersons of the House and Senate Resource Committees, and each member of the Anchorage Legislative delegation of this action by the Municipal Assembly, and to provide a full text of this Resolution to each of such persons.

PASSED AND APPROVED by the Anchorage Assembly this 10th day of February, 1976.

David G. Rose
Chairperson

ATTEST:

Mary Coffey
Municipal Clerk

APPROVED this 10th day of February, 1976.

WASHINGTON, D.C.
MARCH 5, 1976

Honorable Kay Poland
State Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

SORRY THAT I DID NOT RESPOND SOONER TO YOUR LETTER OF FEBRUARY 25. AS YOUR STAFF HAS BEEN INFORMED, I ONLY YESTERDAY OBTAINED COPY, ORIGINAL ARRIVED TODAY. THE RESOLUTION OF THE DIFFICULTIES FACING COOK INLET REGION'S SELECTION UNDER ANCSA HAS CONCERNED ME FOR SOME TIME. UNDER THE TERMS OF ANCSA THE LAND THEY COULD SELECT FROM WAS MAINLY UNSUITABLE FOR ECONOMIC DEVELOPMENT OR USE. I FELT THAT IF THEY HAD CONTINUED LITIGATION THE ENTIRE PROCESS OF REGIONAL AND STATE SELECTIONS WOULD HAVE BEEN SERIOUSLY DELAYED. THERE IS INCREASING SENTIMENT HERE TO THE EFFECT THAT BOTH OUR STATE AND ALASKA NATIVES WILL RECEIVE TOO MUCH LAND UNDER STATEHOOD ACT AND ANCSA. THEREFORE, I FELT, AND STILL FEEL, THAT A TIMELY AND EQUITABLE SETTLEMENT WAS IN BEST INTERESTS OF COOK INLET, THE STATE AND FEDERAL GOVERNMENT. MY POSITION THROUGHOUT THE LENGTHY NEGOTIATIONS WAS THAT IT WAS UP TO THE PARTIES INVOLVED - THE NATIVES, THE DEPARTMENT OF THE INTERIOR AND STATE - TO REACH AN AGREEMENT. IF THEY AGREED, I PROMISED TO INTRODUCE LEGISLATION TO CONFIRM THE AGREEMENT AND WORK FOR ITS PASSAGE. I DID ENCOURAGE THE PARTIES TO MEET, TO AVOID THE DELAYS OF LITIGATION BUT I HAD NO PRECONCEIVED NOTION OF WHAT WOULD BE A FAIR SETTLEMENT. THE PARTIES DID NOT REACH AN AGREEMENT UNTIL AFTER THE SENATE HAD ACTED ON S. 1469. WHEN THE AGREEMENT WAS REACHED, I URGED THE HOUSE INTERIOR COMMITTEE, INCLUDING CONGRESSMAN YOUNG, TO INCLUDE AN AMENDMENT CONFIRMING IT IN S. 1469 AND URGED ITS PASSAGE THERE. SECTION 12 IS A VERY COMPLICATED PROVISION AND THE AGREEMENT IT CONFIRMS WAS OBVIOUSLY A COMPROMISE. FROM MY POINT OF VIEW, ONE MUST ASSESS WHAT THE STATE AND NATIVE ORGANIZATIONS COULD HAVE LOST HAD ALL BECOME EMBROILED IN LONG LITIGATION.

CONTINUED...

NO. WDS.—CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	THIS MESSAGE WILL BE SENT AS A TELEGRAM UNLESS IT IS OTHERWISE INDICATED.	PRESS CPR	NPR	OVERNIGHT TELEGRAM

Send the following message, subject to the Telegraph Company's conditions, rules and regulations, which are on file with regulatory authorities.

KAY POLAND
PAGE 2

I DO NOT HAVE THE CAPABILITY IN MY OFFICE TO ANALYZE THE VALUES INVOLVED IN THIS COMPROMISE. I RELIED AND I FEEL WE CAN, SHOULD, AND MUST RELY UPON THE STATE OFFICIALS INVOLVED TO DETERMINE WHETHER THE AGREEMENT IS FAIR TO THE STATE. SECTION 12 MAKES THAT FINDING FOR THE FEDERAL GOVERNMENT BASED UPON THE ADVICE OF THE DEPARTMENT OF THE INTERIOR. I DID SUPPORT THIS SECTION AND DO SUPPORT STATE ACTION TO IMPLEMENT IT. YOU HAVE ASKED ABOUT SECTION 17. EARLY IN THE NEGOTIATIONS I EXPRESSED SOME CONCERN OVER SECTION 6(I) OF THE ALASKA STATEHOOD ACT AND ARTICLE 8, SEC. 9 OF OUR CONSTITUTION IN REGARD TO AGREEMENTS OF THIS TYPE. WHILE I DO NOT BELIEVE IT WAS THE INTENT OF THOSE SECTIONS TO PROHIBIT TRADES NECESSARY TO OBTAIN FULL SATISFACTION OF OUR STATE AND NATIVE SELECTION RIGHTS, OBVIOUSLY THEY CONSTITUTE A CLOUD ON THE PROPOSED SETTLEMENT. I DID NOT PROPOSE THE LANGUAGE OF SECTION 17 BUT I AM INFORMED THAT THE DEPARTMENT OF INTERIOR CONSIDERED SECTION 17 ESSENTIAL NOT ONLY WITH REGARD TO COOK INLET, BUT ALSO IN SOUTHEASTERN ALASKA WITH REGARD TO LAND SELECTIONS WITHIN THE TONGASS FOREST. IT IS NOT MY FUNCTION TO RECOMMEND WHAT THE LEGISLATURE SHOULD DO REGARDING THIS AGREEMENT. I SUPPORT IT. OBVIOUSLY, THIS IS MORE THAN AN EXCHANGE - IT IS A MULTIPLE PARTY AGREEMENT, ALREADY APPROVED BY CONGRESS. IF OUR STATE DOES NOT APPROVE IT, THE SUBJECTS OF STATE AND NATIVE SELCTIONS WILL BE BROUGHT BEFORE THE NEXT CONGRESS. THAT, IN VIEW OF THE GROWING SENTIMENT I MENTIONED, COULD BE DISASTROUS FOR ALL ALASKANS. I UNDERSTAND THE RELUCTANCE OF SOME NATIVE CORPORATIONS, NOT INVOLVED IN THIS AGREEMENT, TO SUPPORT IT. HOWEVER, THE INCREASING DEMAND THAT THE FEDERAL GOVERNMENT RETAIN ALL LANDS NOW IN FEDERAL OWNERSHIP AND ALSO THE QUESTIONS BEING RAISED ABOUT OUR STATE'S 103.5 MILLION AND THE ALASKA NATIVES 42 PLUS MILLION ACRES SHOULD LEAD, I FEEL, TO A RESOLUTION OF THAT OPPOSITION ALSO. AS YOU STATED, I STRONGLY ENDORSED A SETTLEMENT.

Telegram

AB WDS.–CL. OF SVC.	PD. OR COLL	CASH NO.	CHARGE TO THE ACCOUNT OF	THIS MESSAGE WILL BE SENT AS A TELEGRAM UNLESS IT IS OTHERWISE INDICATED.	PRESS OFR / XFR	OVER NIGHT TELEGRAM

Send the following message, subject to the Telegraph Company's conditions, rules and regulations, which are on file with regulatory authorities.

I, ALSO, SUPPORTED S. 1469 - INCLUDING SECTIONS 12 AND 17. I CANNOT TESTIFY AS TO "EQUAL VALUE" - BUT I HOPE YOU AND THE OTHER MEMEBERS OF THE LEGISLATURE WILL LISTEN TO MY ADVICE AS TO THE CONSEQUENCES OF A FAILURE TO APPROVE THIS AGREEMENT. FORCES WITHIN THE ADMINISTRATION FOUGHT S. 1469 - PRIMARILY BECAUSE OF THE LAND EXCHANGES INVOLVED. IF THIS MATTER COMES BEFORE CONGRESS AGAIN, I BELIEVE SINCERELY THAT A GREAT MANY MORE ISSUES OTHER THAN THE COOK INLET EXCHANGE WILL BE RAISED. IT IS MY HOPE THAT THE LEGISLATURE WILL ACT ON THIS SUBJECT WITHIN THE TIME CONSTRAINTS INVOLVED.

TED STEVENS
United States Senator