SCOMM

62:20

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 539
PUBLISH DATE: 3/30/90

FISCAL NOTE

REQUEST:
Revision Date:
Title: Ratifying Oil and Gas Lease Sale 50
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Natural Resources
BRU: Petroleum Management
Components: Petroleum Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND&STRUCTURES | | | | | | |
| GRANTS,CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Larry Ostrovsky
Division: Commissioner's Office
Phone: 465-2400
Date: March 29, 1990

Approved by Commissioner: Lennie Gorsuch
Agency: Department of Natural Resources
Date: March 29, 1990

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Original sponsor(s): Rules/Governor

IN THE SENATE BY THE SENATE SPECIAL COMMITTEE ON OIL & GAS

CS FOR SENATE BILL NO. 539 (Oil & Gas)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act ratifying Oil and Gas Lease Sale 50; and providing for an effective date."

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

* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the leasing of oil, gas, and associated substances in Camden Bay is in the best interest of the state, regardless of whether the Arctic National Wildlife Refuge may be used as a site for shore-based support and transportation facilities;

(2) a lessee of state oil and gas rights must apply for and receive permits from numerous local, state, and federal agencies before the lessee may drill for, produce, or transport oil, gas, or associated substances;

(3) each government agency charged with evaluating and issuing a permit for an oil and gas lessee's application to conduct exploration and production activities, including transportation, must undertake a review, under applicable laws, of relevant facts and technologies that are then available before granting or denying a permit;

(4) the lessees have undertaken the risks of finding oil and gas and of producing and transporting oil and gas that is found in a manner that will satisfy laws then in effect providing for environmental protection and safety; and

(5) state oil and gas leases expressly provide for their cancel-

damage to biological resources, property, mineral resources, or the environment.

(b) It is the purpose of this Act to counter the effect of the Alaska Supreme Court's decision in <u>Trustees for Alaska v. State</u>, ___ P.2d ___ (Op. No. 3573, March 16, 1990), and to ratify and declare valid Oil and Gas Lease Sale 50, held June 30, 1987.

* Sec. 2. LEASE SALE RATIFIED. Oil and Gas Lease Sale 50 resulting in the sale of 35 oil and gas leases covering 118,147 acres of offshore state land in Camden Bay is valid, notwithstanding the court's finding of lack of compliance with laws or regulations relating to that sale, including the requirements of AS 38.05.035(e) and AS 44.19.145(a)(11). The validity of the issuance of leases under that sale is ratified and confirmed.

* Sec. 3. This Act is retroactive to January 1, 1986.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

SB 539

STEVE COWPER, GOVERNOR

# OFFICE OF THE GOVERNOR

DIVISION OF GOVERNMENTAL COORDINATION


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April 6, 1990

The Honorable Drue Pearce
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Pearce:

Per you request, I have attached chronologies which list the steps in the state's previous reviews of the Endicott and Niakuk Offshore Development Projects. These reviews were to determine consistency with the state's coastal management program as defined by the state's resource agencies and applicable previsions of the North Slope Borough District Coastal Management Plan. The lists do not include prior state lease or exploration reviews or similiar information for the Federal Environmental Impact Statement Review or any details pertaining to the process followed by the applicant to secure individual federal agency permit(s).

Please call if you have questions.

Sincerely,

BOB

Robert L. Grogan
Director

cc: Commissioner Collinsworth, DFG
Commissioner Kelso, DEC
Commissioner Gorsuch
Denby Lloyd, Office of the Governor

The following is a summary of the review schedules for issuing the conclusive consistency determinations for the Endicott and Niakuk oil and gas development projects.

Endicott

| | |
|---|---|
| July 20, 1984 | Review startup |
| August 14, 1984 | Comment deadline extended to coincide with the Department of Natural Resources' Right-of-Way Lease review schedule. |
| September 14, 1984 | Coastal consistency comment deadline. |
| September 25, 1984 | Consistency review elevated to resource agency directors. Applicant notified that state agency consensus on project consistency can not be reached. |
| October 9, 1984 | Conclusive Consistency Determination issued. |

Niakuk

| | |
|---|---|
| July 26, 1988 | Coastal Consistency Review begins. |
| August 19, 1988 | Comment deadline extended for new information on water quality impacts requested from the Department of Environmental Conservation. |
| March 2, 1990 | Review comment deadline based on new information received from applicant. |
| March 12, 1990 | Consistency review elevated to the resource agency directors. Applicant notified that state agency consensus on the project consistency can not be reached at the regional level. |
| April 2, 1990 | Conclusive consistency determination issued. |

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arctic slope regional corp.

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CORPORATE HEADQUARTERS
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April 4, 1990

The Honorable Drue Pearce
Chairman, Senate Oil and Gas
Committee
Alaska State Legislature
P.O. Box V (MS3100)
Juneau, Alaska 99811

Dear Senator Pearce:

Arctic Slope Regional Corporation ("ASRC") generally supports the position recently taken by the Governor on the need for legislation to confirm state leasing practice and to ratify the Camden Bay lease sale. This is a matter the Governor, the Legislature and the State resource agencies should decide. It is not a public policy issue for the state courts and an environmental law firm to decide.

My people have many concerns about offshore development on the North Slope. Through our Borough and Village governments, we have been at the center of proceedings on proposed offshore leasing and development to protect our people's interests. We were active participants in the hearings and administrative process for the Camden Bay lease sale. Our voices were heard and changes were made to accommodate many of our people's concerns and interests.

I support pending legislative efforts to take this matter out of the courts and out of the hands of a few environmental organizations. Their clear and overriding objective is to use all means, including litigation and the courts, to halt all development and virtually all economic activity in Alaska. Their concern is wilderness. My concern is my people and their relationship to the land and the water.

Choices about our future are better made by our elected representatives in the legislature than environmental law firms and organizations. My people want a quality environment. They also want clean, carefully regulated development of some of our resources. We do not, however, want our children to face the prospects of no jobs, no economic activity and no hope. We do not want an economy funded by welfare checks in villages located in a pristine wilderness. Attaining these objectives requires an open mind, reasoned analysis and, in the end, some degree of compromise.

My shareholders would prefer to see all North Slope development take place "onshore" rather than offshore. We strongly support and we have led the fight to open the 1.5 million acre onshore Coastal Plain area of ANWR. This is where development should now be taking place. This area has the greatest potential for huge oil reserves. The technology is proven. It is close to the pipeline. The costs and the risks are less than offshore. This would be the rational thing to do.

But, we have been opposed at every level by the well funded and heavily organized efforts of both local and national environmental organizations. The environmental organizations, while opposing and blocking onshore development in the Coastal Plain, have until recently quietly gone along with Federal offshore lease sales and with State lease sales in State waters at Camden Bay and elsewhere on the North Slope. They have also acquiesced in Canadian offshore development in the Beaufort Sea.

Now, with the opening of the Coastal Plain stalled in the Congress, they have turned to stop development in State waters.

I urge the Legislature to act to regain control over public policy and the economic future our people face. Legislators as representatives of the people, should act to advance the people's interests. And the people's interest is not served by further litigation, by delay, by economic uncertainty, by cancelling projects, by laying off people, or by forcing investments scheduled for Alaska to some other part of the world.

Please feel free to make my position known to your colleagues in the Legislature.

With all best wishes.

Sincerely,

ARCTIC SLOPE REGIONAL CORPORATION

Jacob Adams

Jacob Adams
President

cc: The Honorable Steve Cowper, Governor
The Honorable Eileen Panigeo MacLean, Alaska State Representative
The Honorable Albert P. Adams

THE SUPREME COURT FOR THE STATE OF ALASKA

TRUSTEES FOR ALASKA, NORTHERN ALASKA ENVIRONMENTAL CENTER, THE SIERRA CLUB, THE NATIONAL PARKS AND CONSERVATION ASSOCIATION, AND THE WILDERNESS SOCIETY,

Appellants,

v.

STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES; STATE OF ALASKA, OFFICE OF MANAGEMENT AND BUDGET,

Appellees.

Supreme Court File No. S-2865

Superior Court File No. 3AN-87-7649 Civil

O P I N I O N

[No. 3573 - March 16, 1990]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, John Bosshard, III, Judge.

Appearances: Randall M. Weiner and Eric Smith, Trustees for Alaska, Anchorage for Appellants. M. Francis Neville, Assistant Attorney General, Anchorage, Steven R. Porter, Assistant Attorney General, Anchorage, Douglas B. Baily, Attorney General, Juneau for Appellees. Carl J.D. Bauman, Hughes, Thorsness, Gantz, Powell & Brundin for Amici Curiae.

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices.

MATTHEWS, Chief Justice.

injunction was denied, and Sale 50 proceeded as scheduled on June 30, 1987.

In July 1987, Trustees agreed to dismiss their prior action for declaratory relief, and instead brought this administrative appeal. The trial court upheld Sale 50 in every respect. Trustees now appeal. They raise a number of procedural and substantive challenges to DNR's decision to hold Sale 50.

II.

Did Trustees Have a Fair Opportunity to Comment?

Trustees claim that until DNR issued its Final Best-Interests Finding, the fundamental assumption underlying the sale was that development would occur only if it became possible to place support facilities onshore, in ANWR. Trustees discuss several documents which seem to show a DNR decision to delay Sale 50 until after Congress decided whether to open ANWR, on the theory that development of Camden Bay could only proceed given adequate onshore support facilities. Trustees maintain that when DNR "abrupt[ly]" changed its position in August 1986 and decided to hold the sale, its only reason for so doing was political - to influence Congress' ANWR decision.

The problem thereby created, according to Trustees, is that as DNR's preliminary findings gave no indication that production could occur in Camden Bay without onshore support facilities in ANWR, DNR's Final Finding represents an abrupt switch from a shore-based project to one reliant upon offshore

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# CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT FOR THE STATE OF ALASKA

TRUSTEES FOR ALASKA, NORTHERN ALASKA ENVIRONMENTAL CENTER, THE SIERRA CLUB, THE NATIONAL PARKS AND CONSERVATION ASSOCIATION, AND THE WILDERNESS SOCIETY,

Appellants,

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Appellees.

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OPINION

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Appearances: Randall M. Weiner and Eric Smith, Trustees for Alaska, Anchorage for Appellants. M. Francis Neville, Assistant Attorney General, Anchorage, Steven R. Porter, Assistant Attorney General, Anchorage, Douglas B. Baily, Attorney General, Juneau for Appellees. Carl J.D. Bauman, Hughes, Thorsness, Gantz, Powell & Brundin for Amici Curiae.

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices.

MATTHEWS, Chief Justice.

This is an administrative appeal by five environmental groups (hereinafter collectively "Trustees") which seek to overturn a competitive sale of oil and gas leases ("Sale 50"). The appellees are the State of Alaska, its Office of Management and Budget, and its Department of Natural Resources. At issue is the procedural propriety and substantive basis of the decision to lease.

I.

The state held Sale 50 on June 30, 1987. The oil and gas development rights to 118,147 acres of offshore state land in Camden Bay, 35 tracts in all, were offered and sold. Camden Bay is located on the northern coast, west of Kaktovik and north of the Arctic National Wildlife Refuge ("ANWR").

Trustees challenged the decision of the Department of Natural Resources ("DNR")[1] to proceed with Sale 50. This decision was reflected in DNR's Final Best-Interests Finding. On June 1, 1987, Trustees filed a motion with DNR to reconsider its Sale 50 decision. DNR did reconsider, but declined to change its decision. Trustees filed suit. Their motion for a preliminary

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1. AS 38.05.035(e) empowers the director of DNR, with the consent of the commissioner of DNR, to approve contracts for sale, lease, or other disposition of state land upon a written finding that such disposition is in the state's best interests. To simplify the discussion, this memorandum refers to the director, the commissioner, and the entire Department of Natural Resources collectively as "DNR."

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injunction was denied, and Sale 50 proceeded as scheduled on June 30, 1987.

In July 1987, Trustees agreed to dismiss their prior action for declaratory relief, and instead brought this administrative appeal. The trial court upheld Sale 50 in every respect. Trustees now appeal. They raise a number of procedural and substantive challenges to DNR's decision to hold Sale 50.

II.

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Trustees claim that until DNR issued its Final Best-Interests Finding, the fundamental assumption underlying the sale was that development would occur only if it became possible to place support facilities onshore, in ANWR. Trustees discuss several documents which seem to show a DNR decision to delay Sale 50 until after Congress decided whether to open ANWR, on the theory that development of Camden Bay could only proceed given adequate onshore support facilities. Trustees maintain that when DNR "abrupt[ly]" changed its position in August 1986 and decided to hold the sale, its only reason for so doing was political - to influence Congress' ANWR decision.

The problem thereby created, according to Trustees, is that as DNR's preliminary findings gave no indication that production could occur in Camden Bay without onshore support facilities in ANWR, DNR's Final Finding represents an abrupt switch from a shore-based project to one reliant upon offshore

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transportation. Trustees argue that they did not have a fair opportunity to comment on such an approach and that, had they known of this change, they would have submitted "a number of important arguments and significant evidence" regarding the environmental hazards of offshore transportation to DNR during the comment period. Because of this alleged failure on DNR's part, Trustees seek a remand so that the public may have a full opportunity for comment.

DNR points out that its Preliminary Best-Interests Finding does provide notice that an offshore transport infrastructure was contemplated. In the "Summary and Conclusion" section of that document, DNR states:

> The possibility of oil and gas development and the associated impact on the coastal plain of ANWR will be dealt with by Congress when it decides whether or not to open ANWR to oil and gas leasing. Such a discussion is beyond the scope of this document. At this time it is assumed that any exploration or development in Camden Bay would be supported by <u>offshore facilities</u> or facilities located at approved onshore sites.

(Emphasis added.) Thus, DNR argues that Trustees had ample notice of the possibility of offshore transport facilities, and cannot now complain of a lack of opportunity to comment thereon. In addition, DNR responds that whether or not Trustees had adequate notice from the start that offshore development was

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contemplated, they had ample opportunity to present information to DNR in their reconsideration briefing.[2]

Alaska Statute 38.05.035(e) gives DNR the power to sell, lease, or otherwise dispose of state lands upon a written finding that "the interests of the state will be best served" by the disposition.[3] See Hammond v. North Slope Borough, 645 P.2d

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2. DNR also notes several items in the record which demonstrate that it has consistently viewed development in ANWR as preferable, but not necessarily essential to development of Camden Bay. Similarly, DNR's Preliminary Finding states that the possibility of leasing in ANWR would "greatly increase the economic potential of proposed Sale 50," but does not hinge development on this contingency.

3. AS 38.05.035(e) states in part:

> Upon a written finding that the interests of the state will best be served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. A contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the commissioner approves the contract but if the appraised value is not greater than $50,000 in the case of the sale of land or an interest in land, or $5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner. Before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or

(Footnote Continued)

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750, 758 (Alaska 1982). The written finding must set out the law and facts on which DNR has based its conclusion, and must be made available to the public at least twenty-one days before the disposition. AS 38.05.035(e). Similarly, AS 38.05.945 provides that when the director makes a decision to dispose of property under AS 38.05.035(e), the public must be given adequate notice and an opportunity to comment at least thirty days before the sale.[4]

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(Footnote Continued)

> interests in them, the director shall make available to the public a written finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based.

4. AS 38.05.945 states in part:

> (a) This section establishes the requirements for notice given by the department for the following actions:
>
> . . . .
>
> (3) a decision under AS 38.05.035(e) regarding the sale, lease, or disposal of an interest in state land or resources;
>
> . . . .
>
> (b) Notice of one or more actions described in (a) of this section shall be given at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:
> (1) publication through public service announcements on the electronic media serving

(Footnote Continued)

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In Alaska Survival v. State, 723 P.2d 1281, 1287 (Alaska 1986), we observed that there is no explicit statutory requirement for amended findings or additional public comment upon discovery of new information pertaining to a land disposition. We noted, however, that an agency's failure to closely consider an important factor would render its decision arbitrary.

We have addressed the sufficiency of notice and comment in the analogous context of promulgation of agency regulations.[5] In Chevron U.S.A. v. LeResche, 663 P.2d 923 (Alaska 1983), the issue before the court was whether the initial notice of proposed regulations contained adequate notice of the contents of the final rule. Id. at 929. Applying AS 44.62.200(b),[6] we held that

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(Footnote Continued)

> the area affected by the action;
> (2) posting in a conspicuous location in the vicinity of the action;
> (3) notification of parties known or likely to be affected by the action; or
> (4) another method calculated to reach affected persons. A notice shall contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity of the public to comment on the action.

5. Regulations properly filed by an administrative agency are presumed to be procedurally valid. AS 44.62.100(a)(3). A regulation must substantially fail to comply with the Administrative Procedure Act's procedural requirements to be declared invalid. AS 44.62.300. See also State v. First Nat'l Bank of Anchorage, 660 P.2d 406, 425 (Alaska 1982).

6. AS 44.62.200(b) provides:

(Footnote Continued)

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a final regulation may vary from its form in the initial notice if the subject matter remains the same and the public has been reasonably notified that the proposed action might affect its interests. Id.

Federal courts take a similar approach. One court has stated the general rule:

> Even substantial changes in the original plan may be made so long as they are "in character with the original scheme" and "a logical outgrowth" of the notice and comment already given.
>
> The essential inquiry is whether the commenters have had a fair opportunity to present their views on the contents of the final plan. We must be satisfied, in other words, that given a new opportunity to comment, commenters would not have their first occasion to offer new and different criticisms which the Agency might find convincing.

BASF Wyandotte Corp. v. Costle, 598 F.2d 637, 642 (1st Cir. 1979) (footnotes and citations omitted) cert. denied 444 U.S. 1096 (1980). See also Connecticut Light and Power Co. v. Nuclear Regulatory Comm'n, 673 F.2d 525, 533 (D.C. Cir. 1982) cert.

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(Footnote Continued)

> A regulation which is adopted, amended or repealed may vary in content from the summary specified in (a)(3) of this section if the subject matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject.

denied 459 U.S. 835 (1982); Weyerhaeuser Co. v. Costle, 590 F.2d 1011, 1031 (D.C. Cir. 1978).

While Trustees claim that they had no notice that offshore facilities were contemplated before DNR published its Final Finding, the Preliminary Finding stated that Sale 50 could occur notwithstanding Congress' inaction regarding ANWR. Further, the Preliminary Finding stated that activities in Camden Bay might be supported by offshore facilities. The offshore development approach reflected in the Final Finding is at least a logical outgrowth of that notice. We thus conclude that Trustees were given a fair opportunity to comment.

III.

Was DNR's Decision Arbitrary, Capricious or Unreasonable?

Trustees challenge the merits of DNR's finding that Sale 50 is in the state's best interest. Alaska Statute 38.05.035(e) gives DNR the power to sell, lease, or otherwise dispose of state lands upon a written finding that the interests of the state will be best served by such disposition. In Hammond v. North Slope Borough, 645 P.2d 750 (Alaska 1982), we determined the standard of review applicable to DNR's best-interest determination. Such determinations involve complex subject matter or fundamental policy formulations. Therefore, we review the decision "only to the extent necessary to ascertain whether the decision has a 'reasonable basis,'" and to ensure that it

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"'was not arbitrary, capricious, or prompted by corruption.'" Id. at 758, 759.

While DNR's ultimate decision is subject to deferential review, we nevertheless must ensure that DNR has "taken a 'hard look' at the salient problems" and has "genuinely engaged in reasoned decision making." Alaska Survival v. State, 723 P.2d 1281, 1287 (Alaska 1986).

> Where an agency fails to consider an important factor in making its decision, the decision will be regarded as arbitrary. State v. 0.644 Acres, More or Less, 613 P.2d 829, 833 (Alaska 1980). As one distinguished judge has put it, the role of the court is to
>
>> ensure that the agency "has given reasoned discretion to all the material facts and issues." The court exercises this aspect of its supervisory role with particular vigilance if it "becomes aware, especially from a combination of danger signals, that the agency has not really taken a 'hard look' at the salient problems and has not genuinely engaged in reasoned decision making."
>
> Leventhal, Environmental Decision Making and the Role of the Courts, 122 U.Pa.L.Rev. 509, 511 (1974) (emphasis in original, footnotes omitted).

Southeast Alaska Conservation Council v. State, 665 P.2d 544, 548-49 (Alaska 1983). The facts and premises on which the decision is based should appear in DNR's decisional document. Ship Creek Hydraulic Syndicate v. State, 685 P.2d 715, 717 (Alaska 1984).

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Trustees support their contention that the decision to conduct the lease sale was arbitrary, capricious and unreasonable with three arguments:

(1) The Final Finding does not sufficiently explain the basis for DNR's decision that the benefits of leasing Camden Bay outweigh the risks;

(2) The Final Finding does not discuss the economic feasibility or environmental problems associated with production and transportation of oil, assuming that the status of ANWR does not change and that ANWR is thus unavailable as a support site for offshore production; and

(3) The discussion in the Final Finding of the possible cumulative impacts of the sale combined with other oil and gas developments on the North Slope of the Brooks Range and in the Beaufort Sea is insufficient.

The Final Finding is a 62-page document exclusive of appendices. It discusses the general effects of oil exploration, production and transportation on fish and wildlife. It contains sections concerning species in the sale area which require special consideration, such as bowhead whales, ringed seals and polar bears. The Finding identifies critical bird habitats and an unusual kelp community in the sale area. It sets out stipulations which are designed to eliminate or mitigate adverse effects with respect to these species and habitats. The Finding also details the existing human use of the sale area and expresses the means by which existing uses can be protected.

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The Finding describes qualitatively the likely harm that would result from development of Camden Bay as an oil producing area. The conclusion of this assessment is, in general, that the adverse effects will not be very great because the various specified stipulations will minimize them.

The Finding also contains a section discussing the anticipated cumulative effects of oil production at Camden Bay taken together with oil production in adjacent areas. It concludes that the cumulative effects, like the individual effects from the Camden Bay sale itself, are not likely to be of great significance since all of the developments are subject to informed government scrutiny.

With respect to the benefits of leasing Camden Bay, the Finding notes that the sale area has "moderate to high petroleum potential." The document expresses our state government's dependence on petroleum-related income - 86 percent of state revenues for fiscal year 1986. It observes that this sale is a part of the state's oil and gas leasing program, the long-range goal of which is "to provide the basis for a stable, prosperous economy." The Finding states that even if there is no discovery or no production in the sale area, the state will still significantly benefit from the bonus payments received for the privilege of leasing.[7] The Finding also notes that another

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7. These, as it turned out, amounted to some $6.6 million.

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benefit of the sale will be to make existing oil discoveries near the sale area economically feasible to develop in the event of production from the sale area.

Turning to the Trustees' first argument, (insufficient explanation of risks and benefits of leasing Camden Bay) we conclude that the Finding discussion is, in general, sufficient.[8] Critical habitat and species are discussed, and the means to minimize harm to them are set forth and are incorporated in the leases. A qualitative assessment of the various risks is set forth. While Trustees doubtless find the assessment to be unduly optimistic, the detail and subject matter of the discussion is such that we are persuaded that DNR has given reasoned discretion to the material facts and issues.

The same conclusion for the same reasons is applicable to Trustees' third argument relating to cumulative effects.

We agree, in part, however, with Trustees' second argument relating to the transportation of oil if ANWR cannot be used. The Finding determines that the leasing of Camden Bay is in the best interest of the state, even if Congress does not change the status of ANWR and open it for use as a site for shore-based support and transportation facilities. Without the use of ANWR, DNR acknowledges that production and transportation

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8. The only exception to this is with respect to the special risks associated with offshore transportation. These are discussed below in connection with Trustees' second argument.

of oil from the sale area would become much more expensive and difficult. The Finding does not, however, discuss how the oil would be transported if ANWR cannot be used.

Trustees mention two transportation alternatives, a subsea pipeline and a pipeline built on a gravel causeway, the base of which would be on the floor of the sea. Both of these pipelines would have to extend to the west beyond the western boundary of ANWR before they could turn to the shore and discharge into more conventional land-based facilities. Because of the size of the sale area, the undersea or sea causeway pipelines could be 50 miles long. These facilities are unquestionably a vital part of the development of the sale area for oil production and thus are important factors in the decision to lease the sale area. They would seem to present unique environmental risks. Yet the Finding is remarkable in that - as detailed as it is on other subjects - it fails to mention facilities of this magnitude at all, much less examine the critical question of whether they are safe.

As previously noted, our role in this case is to ensure that DNR "has given reasoned discretion to all the material facts and issues." If an agency does not consider an important factor, its decision is regarded as arbitrary, and those important factors which it did consider, must be discussed in the decisional document. Southeast Alaska Conservation Council v. State, 665 P.2d 544, 548-49 (Alaska 1983); Ship Creek Hydraulic Syndicate v. State, 685 P.2d 715, 717 (Alaska 1984). Because the

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Finding omits any discussion of transportation facilities should ANWR's present status be unchanged, it clearly does not meet this standard of review.

Accordingly, we find that a remand to DNR will be necessary. On remand, the agency should consider the unique risks presented by the oil transportation methods that would be necessary if the legal status of ANWR remains unchanged. Those risks should be weighed with the other risks and benefits flowing from the decision to lease. The best-interest determination required by AS 38.05.035(e) should thus be reconsidered and a supplemental written finding should be made.[9]

The other aspect of Trustee's second argument relates to economic feasibility. Trustees contend that DNR's decision to proceed with the sale without onshore support facilities in ANWR is unreasonable because without such support facilities, production and transportation of oil would be economically infeasible. We do not accept this argument. No law requires DNR to demonstrate the economic feasibility of developing Camden Bay. Assuming, if nothing else, that the state benefits from the bonus and lease income from Sale 50, this court need not inquire into the feasibility of future development.

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9. We of course express no view as to what that finding should be.

IV.

Has the State Complied with the ACMP Consistency Requirement?

The Alaska Coastal Management Program ("ACMP"), AS 46.40.010-210, protects numerous environmental and cultural values in Alaska's coastal zone. AS 46.40.020. See Hammond v. North Slope Borough, 645 P.2d 750, 761 (Alaska 1982). When a project requires two or more state or federal permits, leases, or authorizations, the Office of Management and Budget (OMB) must render a finding as to whether the project is consistent with the ACMP. AS 44.19.145(a)(11);[10] 6 AAC 50.010(1)(B). In this case, however, DNR performed the consistency review. Trustees contend that this was error, and request a remand so that OMB may make the required finding.

The state makes two arguments. First, that Sale 50 is not a project that requires multiple permits, leases, or

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10. AS 44.19.145(a)(11) provides:

> (a) The office shall
>
> . . . .
>
> (11) render, on behalf of the state, all federal consistency determinations and certifications authorized by 16 U.S.C. 1456 (§ 307, Coastal Zone Management Act of 1972), and a conclusive state consistency determination when a project requires two or more state or federal permits, leases, or authorizations.

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authorizations. Rather, it argues that the sale only requires DNR's best-interests finding, and thus is not subject to the OMB consistency review process.

The state's argument conflicts with the plain meaning of the regulations and statute at issue. OMB's regulation requires that it render the conclusive ACMP consistency determination when a "project" requires two or more state or federal permits. 6 AAC 50.010(1)(B). The term "project" applies to an activity which requires the issuance of one or more state permits. 6 AAC 50.190(14). The term "permit" includes leases. 6 AAC 50.190(13). Sale 50 contemplated issuing 35 leases and thus falls within 6 AAC 50.010(1)(B).

Second, the state argues that, pursuant to OMB's regulations, OMB could delegate the consistency determination to DNR. 6 AAC 50.030(b) provides that a resource agency (such as DNR) shall coordinate the consistency review and make the consistency determination when the project requires the permits of only a single state agency. Trustees challenge this regulation as invalid on the grounds that it conflicts with AS 44.19.145(a)(11).

To be valid a regulation must be consistent with the authorizing statute and reasonably necessary to carry out the statute's purpose. AS 44.62.030.[11] An administrative agency's

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11. A two-step analysis is used in assessing the (Footnote Continued)

interpretation of its own regulation is normally given effect unless plainly erroneous or inconsistent with the regulation. Tunley v. Municipality of Anchorage School Dist., 631 P.2d 67, 78, n.30 (Alaska 1981); State, Dep't of Highways v. Green, 586 P.2d 595, 602 n.21 (Alaska 1978). As Sale 50 is a project which requires two or more state leases, the plain language of AS 44.19.145(a)(11) clearly requires that OMB perform a consistency review of the sale.[12] The statute leaves no room for an exception for projects involving only one agency. We conclude, therefore, that OMB must render a consistency determination in this case.[13]

V.

Trustees had a fair opportunity to comment on DNR's finding that Sale 50 was in the state's best interests. However, DNR's Final Finding is deficient in that it did not review the environmental problems associated with oil transportation from

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(Footnote Continued)

validity of an administrative regulation. First, the court looks to whether the regulation is consistent with and reasonably necessary to carry out the purposes of the authorizing statute. Second, it must be determined whether the regulation is reasonable and not arbitrary. Chevron U.S.A. v. LeResche, 663 P.2d 923, 926 (Alaska 1983); Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1971). Here, we are concerned with only the first step.

12. See footnote 10, supra.

13. Because we remand for OMB's consistency determination, we need not address Trustees other ACMP challenges.

the sale area, assuming no change in the status of ANWR. With regard to all other issues, we affirm the Best-Interests Finding. DNR and OMB failed to comply with the procedural requirements of the ACMP. OMB cannot delegate its statutory duty to DNR. It must make the ACMP consistency determination. For these reasons, we remand this case to the superior court with instructions to remand to DNR and to OMB for further action in accordance with this opinion.

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings.

STEVE COWPER
GOVERNOR

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 30, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting two bills related to oil and gas lease sales and consistency determinations. As part of this package, I am also transmitting to the Senate Finance Committee (where the bill currently resides) a set of amendments to SCS CSHB 128(Res). Collectively, this package confirms existing oil and gas lease sale practices, confirms existing coastal consistency determination practices, and ratifies Oil and Gas Lease Sale 50. This package is necessary to avoid the serious adverse consequences of the Alaska Supreme Court's decision in Trustees for Alaska v. State of Alaska, ___ P.2d ___ (Op. No. 3537; March 16, 1990). The three items will be discussed separately below.

Amendments to SCS CSHB 128(Res):

The proposed amendments to SCS CSHB 128(Res) respond to the court's holding that the "best interest finding" for Oil and Gas Lease Sale 50 (Camden Bay), required by AS 38.05.035(e), failed to consider the environmental safety of transportation facilities should the Arctic National Wildlife Refuge (ANWR) remain unavailable for shore-based support facility siting under federal law. The decision overlooks the fact that the best-interest finding did address transportation to the extent feasible at the time of the lease sale, incorporating suggestions from, among others, the Department of Environmental Conservation (DEC) and the Department of Fish and Game (ADF&G). To the extent that the court engrafted a new requirement onto the best-interest statute -- to require the Department of Natural Resources (DNR) to undertake a detailed study of hypothetical development and transportation scenarios and their feasibility -- it is at odds with federal precedent and the court's own reasoning. With regard to federal environmental impact statements for oil and gas lease sales, a federal court of appeals recently observed, quoting an earlier federal case:

> To require a cumulative EIS at the leasing stage . . . would be tantamount to "demanding that the Department specify the probable route of a highway that may never be built from points as yet unknown to other points as yet unknown over terrain as yet uncharted in conformity with state plans as yet undrafted. A more speculative exercise can hardly be imagined."

The federal court concluded that such an exercise would "result in a gross misallocation of resources." Park County Resource Council, Inc. v. United States Department of Agriculture, 817 F.2d 609, 624, and 623 (10th Cir. 1987). Moreover, the Alaska Supreme Court's opinion regarding Sale 50 realized that economic feasibility of eventual production need not be assured in advance for the lease sale to be in the best interest of the state. The same is true of the feasibility of any transportation system: the lessee bears the risk of designing and obtaining approval for any future transportation facilities under laws applicable at the time of any production.

This set of amendments expressly identifies the subjects that DNR must discuss in an oil and gas best-interest finding by setting out the complete list of factors that must be addressed. The legislation is intended to preclude a court from determining the "important factors" that must be addressed before the executive decision is made concerning whether an oil and gas lease sale is in the best interest of the state. It is further intended to make clear that speculation concerning future activities that would be subject to independent permitting requirements is not necessary at the time of the lease sale decision. By specifying that only "reasonably foreseeable cumulative effects" be discussed, it is intended that DNR need not speculate concerning the location and size of discoveries, the economic feasibility of ultimate development, the technological feasibility of production or transportation, future environmental or other laws that may apply at the time of any future development, or other such factors that cannot reasonably be foreseen at the time of leasing.

These changes will have two salutory effects on the state's leasing program. First, they will reduce the uncertainties that now interfere with the efficacy of the state's five-year leasing program. The legislature, DNR, and potential lessees would have more assurance that lease sales would be less subject to judicial interference. Second, because the amendments conform to existing practices, the bill will obviate the need for an increased appropriation to make even more extensive and specialized best-interest findings. (The finding in Lease Sale 50 was

89 pages long, and was based on a record more than 11,000 pages long.) If hypothetical development and transportation systems and their risk must be analyzed, DNR would need a greatly expanded budget for conducting the best-interest findings, and the Department of Law would need a larger budget to advise and defend against the inevitable challenges based upon contrary speculations.

## Bill on Coastal Consistency Determination Statutes

The proposed amendments to AS 44.19.145(a)(11) and AS 44.19.152 are necessary to confirm existing procedures for issuance of coastal consistency determinations. In its opinion, the court held that, because Lease Sale 50 involved more than one lease, AS 44.19.145(a)(11) required the Division of Governmental Coordination (DGC) to conduct an independent review and render the coastal zone management consistency determination for the lease sale, notwithstanding the fact that statutory responsibility for holding the lease sales is vested in a single agency (DNR). Given the fact that DEC, ADF&G, and the North Slope Borough all agreed with DNR that the lease sale is consistent with the applicable plan, requiring DGC to render the determination in such a case would add no extra protections, while creating unnecessary bureaucracy.

The opinion also suggests that in those cases where DGC must render a consistency determination, it must conduct an independent review of the substantive issues. This is contrary to the common meaning of the term "render," and inconsistent with existing, long-established administrative practices. Consistent with its basic charge to coordinate the resource agencies to "avoid duplication" (AS 44.19.145(d)(1)), DGC has always viewed itself as a <u>coordinating</u> agency, without the staff or authority to transform itself into a separate permitting agency. Here, DNR, DEC, ADF&G, and the North Slope Borough agreed that the lease sale was consistent with the applicable coastal zone management plan. For DGC to make an independent judgment would require a vastly enlarged appropriation to hire more personnel (especially high-cost employees with specialized technical qualifications) where the resource agencies and their technical staffs have already agreed that a project is consistent. Failure to pass the bill would result in a needless waste of state resources, while creating bureaucratic delay -- results contrary to the fundamental purposes of OMB.

Finally, the bill would avoid delays in making coastal consistency determinations for projects regulated by all of the resource agencies -- DNR, DEC, and ADF&G. Such delays would impair projects under each resource agency's laws pending the creation of sufficient DGC staff to handle DGC's new responsibilities under the court's opinion.

Bill to Ratify Sale 50:

The other bill would ratify Oil and Gas Lease Sale 50. The court did not invalidate the sale, the state has filed a petition for rehearing, and remand proceedings could very well result in the eventual affirmation of the sale. Nevertheless, considerable uncertainty and delay are inevitable without expeditious ratification. Plaintiffs have already asked the Supreme Court to "clarify" its decision by declaring the leases invalid, have sought an injunction against current, ongoing exploration under a lease in the sale area, and are certain to fight any affirmation of the lease sale in both administrative and judicial fora.

This lease sale was planned in accordance with the legislature's prescribed five-year public planning process, starting in 1981. The sale was held almost three years ago. Extended uncertainty would result in diversion of administrative and legal resources from other projects, and exploration within the sale area would be chilled or stopped. If the sale is ultimately canceled or invalidated, the state might have to refund bonus bids ($6.6 million) and rents, half of which have been deposited in the Permanent Fund, and could possibly be liable for exploration expenditures and the value of any discovery that might be made before cancellation or invalidation. One lessee has already spent about $50 million exploring a Sale 50 lease.

Therefore, in light of the very serious practical and financial ramifications of the current situation, these bills and the amendments to SCS CSHB 128(Res) are vital to the state's best interests, and I urge your prompt and favorable action on them.

Sincerely,

Steve Cowper
Governor

LEASE SALE LEGISLATION FACT SHEET

The Camden Bay Lease Sale Supreme Court Decision

On March 16, 1990, the Alaska Supreme Court found two errors in the procedures by which Oil and Gas Lease Sale 50 was held:

1. The court held that the "best interest finding" required by AS 38.05.035(e) failed to consider the environmental safety of transportation facilities should ANWR remain closed, a factor determined to be important notwithstanding the fact that before a lessee could obtain permits to produce and transport oil in the future, it would have to comply with all safety laws then in effect.

2. The court held that, because Lease Sale 50 involved more than one lease, AS 44.19.145(11) required the Division of Governmental Coordination (DGC) to conduct an independent review and render the coastal zone management consistency determination for the lease sale, notwithstanding the facts that (1) the statutory responsibility for holding the lease sales is vested in a single agency (DNR), and (2) DEC, ADF&G, and the North Slope Borough all agreed with DNR that the lease sale is consistent with the applicable plan.

Response to the Court Decision

1. The decision overlooks the fact that the best interest finding did address transportation to the extent feasible at the time of the lease sale, incorporating suggestions from, among others, DEC and ADF&G. To the extent that the court engrafted a new requirement on to the best interest statute - to require DNR to undertake a detailed study of hypothetical development and transportation scenarios and their feasibility - it is at odds with federal precedent and the court's own reasoning. With regard to federal environmental impact statements for oil and gas lease sales, a federal court of appeals recently observed:

> To require a cumulative EIS at the leasing stage ... would be tantamount to "demanding that the Department specify the probable route of a highway that may never be built from points as yet unknown to other points as yet unknown over terrain as yet uncharted in comformity with state plans as yet undrafted.

The court concluded that such an exercise would "result in a gross misallocation of resources." Park County Resource Council, Inc. v. United States Department of Agriculture, 817 F.2d 609, 623, 624 (10th Cir. 1987). Moreover, the Alaska Supreme Court's opinion realized that economic feasibility of eventual production need not be assured in advance for the lease sale to be in the best interest of the state. The same is true of the feasibility of any transportation system: the lessee bears the risk of designing and obtaining approval for any future transporation facilities under laws applicable at the time of any production.

2. DGC has always viewed itself as a coordinating agency, without the staff or authority to transform itself into a separate permitting agency. Here, DNR, DEC, ADF&G, and the North Slope Borough agreed that the lease sale was consistent with the applicable coastal zone management plan.

The Proposed Legislation

The proposed legislation would confirm existing lease sale and DGC coordinating practices. It would also ratify Lease Sale 50, which has been on the five year plan submitted to the legislature since 1982.

Consequences if the Legislation Is Not Passed

1. The legality of Lease Sale 50, held almost two years ago, could remain uncertain for two more years, or more. During the period of uncertainty, administrative and legal resources would be diverted from other projects, and exploration within the sale area would be chilled or stopped. Indeed, plaintiff environmental groups have already indicated an intent to seek an injunction against the Stinson Well, currently being drilled in the sale area.

2. If the sale is ultimately cancelled or invalidated, the state could have to refund bonus bids ($6.6 million) and rents, half of which have been deposited in the Permanent Fund, and could potentially be liable for exploration expenditures and the value of any discovery that may be made prior to cancellation or invalidation. One lessee has already expended about $50 million dollars exploring a Sale 50 lease.

3. All future oil and gas lease sales would be subject to the risk that a court, at the urging of a person or group opposed to leasing, will come up with an "important factor" that was allegedly overlooked or insufficiently discussed in the best interest finding.

4. DNR would need an increased appropriation to make even more extensive and specialized best interest findings. (The finding in this case was 89 pages long, and was based on a record over 11,000 pages long).

5. DGC would need an increased appropriation to greatly expand its staff and develop specialized expertise.

6. Coastal consistency determinations for projects regulated by all of the resource agencies - DNR, DEC, and ADF&G - would suffer delays pending the creation of sufficient DGC staff to handle DGC's new responsibilities under the court's opinion.

## Chronology for Lease Sale 50, Camden Bay

| | |
|---|---|
| October 1981 | DNR proposes to add Sale 50 to leasing schedule; call for comments issued. |
| January 1982 | Sale 50 added to Five Year Oil and Gas Leasing Program. |
| July 26, 1985 | Call for general information. |
| January 27, 1986 | Request for socioeconomic and environmental information. |
| August 21, 1986 | Call for comments, 1987 Five Year Oil and Gas Leasing Program |
| November 20, 1986 | Preliminary Analysis of the Director and Preliminary ACMP Consistency Determination; request for comments; public notice as required under AS 38.05.945(a)(3). |
| March 1987 | Public meetings held in Kaktovik and Anchorage. |
| April 30, 1987 | Final Finding and Decision of the Director and ACMP Consistency Determination; public notice required under AS 38.05.945(a)(4). |
| June 1, 1987 | Groups represented by Trustees for Alaska (TfA) file motion with DNR to reconsider its Sale 50 decision and postpone Sale 50 pending DNR's reconsideration decision. |
| June 4, 1987 | DNR notifies the groups it will not postpone Sale 50 pending reconsideration. |
| June 22, 1987 | TfA file their reconsideration brief. |
| June 24, 1987 | TfA file action for declaratory and injunctive relief challenging Sale 50. |
| June 25, 1987 | DNR responds to reconsideration brief and reaffirms conclusion that holding Sale 50 is in the best interests of the state. |
| June 29, 1987 | Judge Hunt holds a hearing and then denies the groups injunction request. |
| June 29-30, 1987 | Bids accepted for Sale 50; sale held; 35 tracts sold for a total bonus bid of $6.6 million. |
| June 2, 1988 | Judge Bosshard issues a lengthy decision upholding Sale 50 in every respect. |
| July 5, 1988 | TfA files appeal to Alaska Supreme Court. |
| September 28, 1989 | Supreme Court hears oral arguments on Sale 50. |
| March 16, 1990 | Alaska Supreme Court issues decision on Sale 50 remanding the Best Interest Finding to DNR for supplemental analysis of "important" transportation routes and to DGC for independent ACMP consistency determination. Supreme Court decision also returns review of agencies follow-up to Superior Court. |

# Trustees for ALASKA

A Non-Profit, Public Interest, Environmental Law Firm

For Immediate Release:
Friday, March 30, 1990

Contact: Randall Weiner
(907) 276-4244
Bob Childers
(907) 276-7986

## Governor Introduces Legislation to "Fast Track" State Lease Sales

Governor Steve Cowper introduced legislation today giving the Department of Natural Resources (DNR) the power to authorize oil and gas lease sales without evaluating transportation safety or feasibility issues.

The legislation would circumvent a recent Alaska Supreme Court decision requiring DNR to analyze the environmental problems associated with oil transportation from offshore leasing areas.

"The Governor has not learned the lessons of the Exxon Valdez spill," said Randall Weiner, director of Trustees for Alaska, which has challenged offshore lease sales on behalf of eight environmental groups and the Native Village of Kaktovik. "These bills would undercut environmental controls over the most risky aspect of offshore oil drilling -- transportation of crude oil."

The Supreme Court's decision criticized DNR for failing to mention the facilities that would have to be built to transport oil from offshore wells to market, "much less examine the critical question of whether they are safe." The Court noted that such facilities represent "unique environmental risks."

The Governor's bills would do the following:

* Limit the analysis required before oil and gas lease sales

are approved by DNR. Discussions of transportation feasibility and safety would be excluded from the analysis. (House Bill 591 and Senate Bill 539.)

* Give DNR, rather than the Division of Governmental Coordination, the power to determine if lease sales are consistent with the Alaska Coastal Management Program. (House Bill 592 and Senate Bill 540.)

* Ratify the lease sale in Camden Bay by nullifying the effect of the Supreme Court's March 16 ruling in Trustees for Alaska v. State. The bills would also ratify the adjacent state lease sale 55 (Demarcation Point) which was challenged by Kaktovik and environmental groups because of its impact on subsistence resources located in the Beaurfort Sea and the Arctic National Wildlife Refuge. (Amendment to House Bill 128 [currently before Senate]).

In addition to Kaktovik, the groups challenging the oil and gas lease sales are the Wilderness Society, Alaska Center for the Environment, Northern Alaska Environmental Center, National Parks and Conservation Association, Sierra Club, American Wilderness Alliance, Alaska Wildlife Alliance, and Trustees for Alaska.

Why we oppose these bills:

* After the *Exxon Valdez* spill, the State and oil companies need to be more, not less, prepared for oil development and transportation problems.

* The Supreme Court has recently determined the level of analysis that is reasonable before the State makes the decision to hold an oil and gas lease sale. The Governor has made an emotional response based on fiscal concerns, rather than a measured response based on safety concerns.

* Offshore oil and gas lease sales pose dangers that are not present with onshore oil and gas development. These dangers must be thoroughly evaluated before there is a decision to hold a state oil and gas lease. Once a lease sale is held and the state and companies have invested substantial sums to explore for oil, it is unlikely to ever be stopped, even if environmental and safety problems are encountered.

* Offshore oil exploration poses the danger of blowouts, a driller's sudden loss of control over gas pressure that could turn the rig into a an uncontrolled gusher causing spills, fires or explosions. A blowout in the Arctic Ocean and around the state could have a devastating impact on marine life and subsistence communities. The *Anchorage Daily News* reported today that blowout equipment inspectors felt the inspection process was inadequate.

* The Governor should recognize that there is a system of checks and balances. He should let the courts grapple with the complex concerns raised by Natives, and environmentalists about oil development in specific regions.

* The Governor's broad brush solution will allow safety issues to be brushed under the rug.

APR 4 1990

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 3, 1990

The Honorable Drue Pearce
Chair, Senate Special Committee on Oil and Gas
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Pearce:

**Subject**: Senate Bill 539, which ratifies State Oil and Gas Lease Sale 50.

**Position**: The Department of Natural Resources supports this bill. The bill is necessary to avoid the serious adverse consequences, both practical and financial, of the Alaska Supreme Court's recent decision in Trustees for Alaska v. State of Alaska.

While the state has filed a petition for rehearing, and the court did not invalidate the sale, uncertainty will continue until the court acts on the petition or the Legislature validates the sale.

If the court ultimately cancels the sale, the state may need to refund the $6.6 million in Sale 50 bonus bids as well as exploration costs and the value of any discovery made in the area (drilling has already started on one lease).

This bill will protect the public's interest in responsible oil and gas exploration and development at Camden Bay.

Please let me or Oil and Gas Director Jim Eason know if you would like additional information about this matter.

Sincerely,

Lennie Gorsuch

Lennie Gorsuch
Commissioner

10-J9LH

cc: Committee Members
Bob Evans, Legislative Liaison
Office of the Governor
Denby Lloyd, Special Staff Assistant
Office of the Governor

DNR'S POINT-BY-POINT RESPONSE TO
TRUSTEES FOR ALASKA'S PRESS RELEASE

On Friday, March 30, 1990, Trustees for Alaska ("TfA") issued a press release concerning the Governor's proposed legislation responding to the Supreme Court's recent Lease Sale 50 (Camden Bay) decision. This responds to each point raised in order.

TfA's Claim: The legislation would "fast track" state lease sales.

> DNR's Response: This statement is false. Lease Sale 50, like all lease sales, was subject to the statutory procedures for an advance five year leasing schedule. AS 38.05.180(b) and (c). DNR first proposed adding Sale 50 to the leasing schedule in 1981. An administrative record in excess of 11,000 pages demonstrates that the lease sale was subject to lengthy and intensive review. DNR is not attempting to change the five year leasing schedule program, or to limit public review and involvement in the state's oil and gas leasing program.

TfA's Claim: The legislation would "authorize oil and gas lease sales without evaluating transportation safety or feasibility issues."

> DNR's Response: First, DNR did evaluate transportation safety issues. The state has filed a petition for rehearing with the Supreme Court setting forth the many places in the record where this issue was addressed. Copies of the petition for rehearing are available upon request.
>
> Second, the court expressly held that economic feasibility is an issue that need not be addressed by DNR at the leasing stage. Economic feasibility of development is a risk borne by the lessee. Likewise and the laws and technology that would apply at the time of production is presently unknown, the risk of complying with future environmental laws is borne by the lessee. DNR recognizes the importance of safe and environmentally sound transportation of oil. It simply points out that the issues can be more meaningfully addressed in the context of concrete information and plans once oil is discovered, and all of the options for transporting it are fully understood. The state's power to enforce transportation safety laws is in no way diminished.

Third, the present AS 38.05.035(e) merely requires that the Department of Natural Resources (DNR) prepare a written "best interest" finding prior to holding a lease sale. Thus, the legislation proposed and endorsed by the Governor would actually provide more specific substantive content by listing those things that must be covered in an oil and gas lease sale best interest finding.

TfA's Claim: "The legislation would circumvent a recent Alaska Supreme Court decision requiring DNR to analyze the environmental problems associated with oil transportation from offshore leasing areas."

DNR's Response: As noted above, the Alaska Supreme Court decision is subject to a petition for rehearing. DNR did analyze environmental problems associated with oil transportation from offshore leasing areas. Specific terms of sale were adopted to address those problems. Three of the ten years of the primary term of the oil and gas leases have already expired, and the legality of the sale is still in question. Lessees may be unwilling to bid for and explore oil and gas leases if legal certainty concerning the oil and gas lease sales cannot be achieved in a timely manner.

TfA's Claim: "The Governor has not learned the lessons of the Exxon Valdez spill. These bills would undercut environmental controls over the most risky aspect of offshore oil drilling -- transportation of crude oil."

DNR's Response: These bills would not in any way undercut the environmental controls over transportation of crude oil in offshore areas. The issuance of leases does not itself authorize the transportation of oil. In Alaska, it has typically taken 10 to 20 years after an oil and gas lease sale until actual production begins. At that time, separate authorizations from many federal and state agencies and a coastal consistency determination would be required for any offshore transportation system. Substantive environmental and safety considerations are not diminished by issuance of the leases.

TfA's Claim: The bill would "limit the analysis required before oil and gas lease sales are approved by DNR. Discussion of transportation feasibility and safety would be excluded from the analysis."

DNR's Response: As noted above, DNR did consider transportation issues. For instance, at the urging of the Department of Fish and Game (ADF&G) and the Department of Environmental Conservation (DEC) (and against the wishes of industry), DNR imposed lease stipulations restricting the use of causeways. Under the Governor's bill package, DNR would continue to consider reasonably foreseeable cumulative impacts and the comments of the public and other agencies in the preparation of written findings for each sale.

TfA's Claim: The bills would "give DNR rather than the Division of Governmental Coordination, the power to determine if lease sales are consistent with the Alaska Coastal Management Program."

DNR's Response: Lease Sale 50 was determined to be consistent with the Alaska Coastal Management Program (ACMP) by the North Slope Borough, DEC, ADF&G and DNR. The issue is not who makes the determination, but who coordinates it. DGC has never had an independent staff of experts to make consistency determinations. DGC's purpose has been to coordinate reviews, to expedite the issuance of permits and to reduce and eliminate duplication in State government processes. DNR currently does not have the unilateral power to "determine" whether lease sales are consistent with the applicable plan. Rather, it must coordinate the consistency review and, with regards to the merits, it must gain concurrence in its consistency determination from the North Slope Borough, DEC, and ADF&G. The bill would merely confirm the long-standing practice and the uniform understanding of local governments and the various state agencies concerning how the ACMP program was intended to operate.

TfA's Claim: "After the Exxon Valdez spill, the state and oil companies need to be more, not less prepared for oil development and transportation problems."

DNR's Response: DNR agrees that environmental safety issues are important and that laws concerning those issues must continue to be reexamined and enforced. The answer is not, however, to foreclose the opportunity to have continued oil exploration and development in the state by stopping lease sales. Rather, the answer is to pay appropriate attention to the specific transportation and development issues as they arise. The particular oil development and transportation problems that may apply in the offshore areas cannot be determined in a meaningful way until oil and gas deposits have been found, and particular transportation alternatives and their advantages and disadvantages are known.

TfA's Claim: "The Supreme Court has recently determined the level of analysis that is reasonable before the State makes a decision to hold an oil and gas lease sale. The Governor has made an emotional response based on fiscal concerns, rather than a measured response based on safety concerns."

DNR's Response: The Supreme Court was not clear on either what level of analysis is required or reasonable before the state makes a leasing decision. The state believes that it met the court's standard, and therefore has filed a petition for rehearing on that ground. Moreover, if the court intended to engraft a new requirement on the statutory best interest finding to require DNR to undertake a more detailed study of hypothetical development and transportation scenarios and their feasibility, it is at odds with common sense and federal precedent. With regard to federal environmental impact statements, which are subject to more stringent and specific standards than are applicable to the state's best interest finding requirements, a federal court of appeals recently observed, quoting an earlier federal case:

> To require a cumulative EIS at the leasing stage... would be tantamount to "demanding the Department specify the probable route of a highway that may never be built from points as yet unknown to other points as yet unknown over terrain as yet uncharted and in conformity with state plans as yet undrafted. A more speculative exercise can hardly be imagined."

The federal court concluded that such an exercise would "result in a gross misallocation of resources." Park County Resource Council, Inc. vs United States Department of Agriculture 817 F.2d 609, 624, and 623 (10th Cir. 1987). The intent of the bill package is to avoid uncertainty and needless speculative exercises, not to avoid appropriate attention at a meaningful time to real problems. Rather than enlarge the state bureaucracy to engage in speculation ten years or more before any possible oil and gas development, the state's resources are much better spent in waiting to evaluate the risks and alternatives in the context of specific development and transportation proposals. The answer is not to say "No" to all oil and gas leasing and potential development before the existence of oil and gas is known, but to pay maximum attention to ensuring safe and environmentally sound development in the context of known deposits and concrete proposals for development.

TfA's Claim: "Offshore oil and gas lease sales pose dangers that are not present with onshore oil and gas development. These dangers must be thoroughly evaluated before there is a decision to hold a state oil and gas lease [sic]. Once a lease sale is held and the state and companies have invested substantial sums to explore for oil, it is unlikely to ever be stopped, even if environmental and safety problems are encountered."

DNR's Response: The state should not say "no" to oil and gas leasing based upon a fear that the state, local, and federal agencies will not apply future environmental laws properly or conscientiously. At the lease sale stage the size and location of oil deposits are not known, the possible routes are not determined, the technology that might be available is unknown, and the laws that might apply are subject to change. When specific exploration and development activities are proposed, agencies have and use their authorities to protect the environment. For instance, in the Sale 50 area, the Stinson Well was dependent upon the receipt of more than 23 local, state and federal permits.

TfA's Claim: "Offshore oil exploration poses the danger of blowouts. A driller's sudden loss of control over gas pressure could turn the rig into an uncontrolled gusher causing spills, fires, or explosions. A blowout in the Arctic Ocean and around the state could have a devastating impact on marine life and subsistence communities. The Anchorage Daily News reported today that blowout equipment inspectors felt that the inspection process was inadequate."

DNR's Response: DNR recognizes that there is a small danger of blowouts in oil exploration activities. Significantly, the Alaska Supreme Court found no inadequacy in the lease sale process based upon this issue. Accordingly, contrary to the implication in TfA's there is no connection between the remote risk of oil rig blowouts and the supreme court decision or this bill package. Moreover, the drilling of a well is subject to a host of independent permitting requirements, including coastal consistency determinations. The Stinson Well, currently being drilled within the Lease Sale 50 area, proceeded only after a host of permits were issued for the project. The North Slope Borough, DEC, and ADF&G all found the drilling of the Stinson Well consistent with the coastal program. No appeal was taken of the local, state, and federal agencies' decisions to issue the drilling permits. If an investigation shows that there is an inadequacy in the inspection process for exploratory wells, this certainly should be addressed. This issue is, however, entirely independent of the sale decision. DNR supports effective enforcement of all safety and environmental laws.

TfA's Claim: "The Governor should recognize that there is a system of checks and balances. He should let the courts grapple with the complex concerns raised by Natives and environmentalists about oil development in specific regions."

DNR's Response: The legislature (not the court) is the branch of government with the power to set the standards for oil and gas leasing. Under the legislature's statutes, the decision to dispose of interests in state land is committed to executive discretion. The courts do not have authority to "grapple" with complex substantive concerns. Indeed in the Sale 50 decision, the Alaska Supreme Court did not purport to decide specific environmental issues but simply interpreted two statutes passed by the legislature and remanded the matter to the state executive branch to reconsider in light of the Supreme Court ruling. The Governor's bill package was proposed because the court decision is inconsistent with longstanding state practice and with the legislative appropriations to DNR and DGC. Natives, environmentalists, and other members of the public have many opportunities to have their voice heard. They can make their points to the legislature concerning the items on the five year leasing program, and can make comments concerning the lease sale in the best interests finding process. Moreover, they can have substantial input into the ACMP process.

TfA: "The Governor's broad brush solution would allow safety issues be brushed under the rug."

Response: As indicated above, this charge is entirely without merit. Specific safety issues will simply be taken up at the appropriate time, when specific projects are proposed.

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3/31/90

# Position Paper
# Camden Bay Lease Sale

The Resource Development Council for Alaska, Inc., supports efforts by Governor Steve Cowper and the Alaska Legislature to expedite ratification of the Camden Bay lease sale.

RDC urges both the House and Senate to take prompt action on the lease sale, which was thrown into limbo by a March 16 Supreme Court decision.

It is incumbent upon the Alaska Legislature to ratify the Camden Bay lease sale and to confirm existing coastal management reviews through the amendments proposed by the governor.

The sales at Camden Bay indicate a strong interest on the part of the oil industry - Alaska's primary source of income - in future development in the Arctic National Wildlife Refuge. With declining production at Prudhoe Bay and increasing national dependence on oil produced abroad, it is imperative that Alaskans take the necessary steps to ensure future exploration and drilling, particularly in Camden Bay and the coastal plain area, proceeds.

Governor Cowper and the Alaska Senate have made a commitment to proceed with the necessary legislation and RDC urges the Alaska House of Representatives to do the same.

RDC applauds the efforts of the governor and legislators who are supportive of the Camden Bay lease sale ratification.

Anch Daily News 3/28/90

# Groups call for Camden Bay review

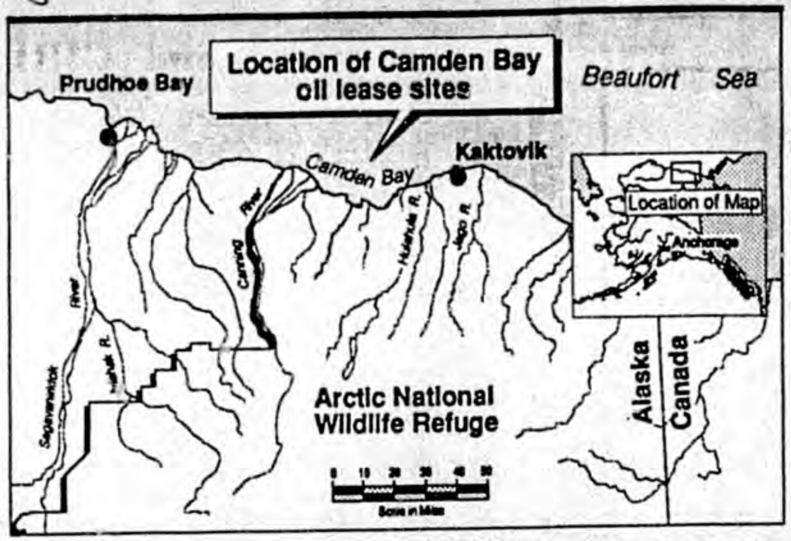
By ROSANNE PAGANO
The Associated Press

State attorneys want the Alaska Supreme Court to review a decision requiring authorities to consider oil transportation safety before holding lease sales off the coast of the Arctic National Wildlife Refuge.

Outcome of the case affects ongoing oil exploration in the waters of Camden Bay, ranked highly by the state for oil prospects.

The state's request was filed the same day as environmentalists asked for a halt to Camden Bay exploration until the court has time to clarify its March 16 order.

In rejecting the state's basis for going ahead with the 1987 lease sale, the supreme court ruled that the Department of Natural Resources should first have considered the safety of getting Camden Bay oil to market, assuming that ANWR remains off-limits to offshore oil development.



RON ENGSTROM / Anchorage Daily News

The court discussed options proposed by the environmental law firm, Trustees for Alaska. It concluded that causeways, pipelines or tankers all pose environmental concerns and ordered the state to re-do its Camden Bay assessment by taking into account oil transportation concerns.

Environmentalists said that amounted to invalidating the Camden Bay lease sale.

But Assistant Attorney General Mark Worcester said the state had no order to stop ARCO Alaska from keeping up its search for oil in the icy waters off the ANWR coast. The company itself said the decision would not interrupt its drilling schedule, which is authorized until April 30.

In papers filed Tuesday, Worcester said the court had overlooked DNR's "extensive" review of oil transportation safety before scheduling the 1987 lease sale.

"A hard look was given," Worcester said. The state

Please see Page B-5, ANWR

# ANWR: Safety concerns

Continued from Page B-4

said seven of 29 lease-sale conditions dealt with minimizing oil transportation's potential effect on arctic fish and wildlife.

According to the state, those terms include:

• Requiring an oil-spill contingency plan for all offshore activities.

• Requiring pipelines to be placed so as to minimize effects of oil spill accidents.

• Prohibiting oil tankers once a pipeline is constructed, and making a pipeline the first choice for getting oil to market.

But the state is also arguing that even if the supreme court sticks to its earlier ruling, and finds that transportation independent of ANWR was not sufficiently considered, it is an error to require "detailed, hypothetical studies" at the lease-sale stage.

"It's not the state's worry," Worcester said. "Those controls are in the future, in the permit stage, once it's known what fields will be developed and how much oil will be taken."

But Randall Weiner, an attorney with Trustees for Alaska, said the risk of environmental harm already exists at Camden Bay, as long as exploration goes ahead.

"Events in Prince William Sound a year ago demonstrate that accidents do happen, with horrifying results, especially if the parties are unprepared," Weiner said, adding that until the state complies with reviews ordered by the court, "such lack of preparation is present" at Camden Bay.

"There has yet to be an appropriate analysis of whether the clean up and containment procedures are consistent with state and North Slope Borough coastal managements standards," Weiner said.

Weiner asked the court to specifically declare the lease sale invalid.

He also asked for an injunction, as soon as the court can grant one, to halt exploration and any work linked to it.

Worcester said he expected the court to ask for additional information from both sides before deciding whether to reconsider its decision.

SB 539/540

Jim Eason's testimony
ref. material

Randall Weiner's (RW) Testimony

RW: My name is Randall Weiner. I am the Executive Director of Trustees for Alaska who represents a variety of groups (inaudible)concerned about the way the Department of Natural Resources's handling offshore oil and gas lease sales. The Alaska Supreme Court unanimously determined that the Department of Natural Resources had mishandled the Camden Bay leasing process. The court ----- I understand that copies of the decision are belatedly being passed out. The court noted on page 14 of that decision that DNR overlooked the critical issue of oil transportation safety. Before determining that the lease sale was in state's best interest. The court also determined that an independent agency, the Division of Governmental Coordination not DNR should determine whether the sale - the lease sale are consistent with the Alaska Coastal Management Program. I have been listening to the testimony of the state officials this afternoon. I believe the state is raising some adverse action unnecessarily in support of a need to vote out these bills and to move these bills so quickly. I often become suspicious when someone claims that an urgent decision is needed yet perhaps the committee should take a closer look at the actual need for urgency. As the letter stated that additional years of uncertainty may follow this decision. I don't believe that that's the case and in court papers submitted by the state the state argues that they have taken the hard look at transportation issues for a lease sale next door-the Camden Day--excuse me-the Demarcation Point lease sale, Lease Sale 55. Uh . . . DNR has the capacity to take the required look at critical safety issue which it is. However, when oil is discovered offshore when it is transported to market and it is a critical issue, an issue which raises a host of concerns surrounding the particular type of method that is chosen. Are tankers going to be used to bring the oil around Point Barrow. Is a subsea pipeline going to be built? Is the causeway going to be built? That is issue the court determined need to be looked at not in the specific detail, not in such big detail that it would be impossible to determine without the speculation was necessary but the minimum detail. The type of detail that is currently required under an environmental impact statement under federal law if I could briefly describe the difference between state law and federal law in the federal law when a decision is made to lease oil or gas right that decision requires that an environmental impact statement be prepared but before actual production goes into effect another environmental impact statement has to be prepared so that there is an ability to discuss and analyze critical environmental issues not just at the lease sale stage but at second stage. It is not the case under state law. Under state law there is only one opportunity for the state to determine whether the lease sale and the development that may result therefrom should go forward and that is at the best interest finding stage. That is when the state has to determine whether it is in the best interest of the state and the people to go forward with the lease sale and further development. The Supreme Court determined that specifically that it was a critical decision - a critical issue as to what type of, what mode of, transportation would be required and had DNR looked at that issue and discussed it in the interest finding in brief detail I can assure that would have satisfied the Supreme Court -- -- uh ----This is a long way of saying that DNR has the capacity to take that critical look up front at the best interest finding stage and it is wrong therefore for state officials to say that DNR does not have that capacity and that it will slow the existing lease sale program into uncertainty for many years if DNR is required to take close look at that specific issue. In fact, what the Supreme Court did was determine that there was a mere pothole in the oil development program. And instead of filling the pothole what DNR proposes to do is to build an entirely different road. It will not take that long for DNR to do what the court requires. Consistency determination process. Currently, the Division of Governmental Coordination makes the consistency determination for any activity that requires more than one permit or more than one authorization. They did it on the regular basis. It doesn't any specific expertise. It requires the coordinating law and what the Supreme Court determined is that the same independent coordinating role would have to be played by DGC with respect to future lease sale. In SB 540 it states that the Division of Natural Resources will that role that they played in the past but the plaintiffs argued the obvious that it would appear like the fox is guarding the henhouse. DNR was making the consistency determination on its own lease sales and that lack of independent review made the consistency determination biased. Supreme Court agreed with us and we believe that the reasoned analysis by the Supreme Court should not be tampered with by the legislature.

DP: Mr. Weiner, is that the end of your testimony, you went -- you We have lost you. Is that the end of your testimony, or were you just taking a breath.

RW I was taking a breath.

DP: Okay, please go on.

RW: The legislature is not a court of law. The court has determined many of the complex issues which led to the decision. Attorney Mark Worcester was, in effect, making and arguing his case that was made by his division at the Department of Law before the Supreme Court to you. We don't believe that it is the role of the legislature to attempt to ferret out whether Mr. Worcester's claims are correct or whether Trustees for Alaska's claims are correct. The Supreme Court has unanimously ruled and that ruling has been challenged as pointed out by the state and the legislature should insert itself into that decision making process. But the legislature, we believe, has every right to do it to determine whether the policy decisions are thrown askew by a court's decision and we all believe if that is the case. We believe to the contrary that what the court had suggested that critical issue ignored by DNR in the past needs to be looked at for future lease sale. And perhaps the court has followed the reasoning that supports many of people who will testify before you today. And that is that in post Exxon-Valdez environment, oil transportation issues are critical and those issues should be determined at the earliest possible stage because otherwise there may be a lack of preparation in the long run.

DP: Mr. Weiner, are you still there?

RW: Yes, I am sorry there was a noise from another representative that I (inaudible). Director Bob Grogan stated that the refund, I believe he stated there may be requirement to refund the money expended so far by the oil company. We don't believe that is the case. The lease entered into between the Department of Natural Resources and the various oil companies specifically provide for DNR's ability to suspend lease sales. DNR could suspend drilling activity or rather leasing activity if it so chose. We believe that DNR has the ability as I stated before and should go forward with making the supplemental analysis that the Supreme Court has required and that pending that analysis, there is absolutely no need to pay to refund the oil companies the monies that have expended so far. I guess that there are number of people who are tired of the testimony. I will limit my time at that and leave as a closing note that the plaintiffs in our particular case began their attempts to have DNR to listen to their concerns back in 1970. DNR refused to listen to the concerns. Attempts made to stay the of lease sale before oil companies had vested interest in leases there. We made our claims to superior court and finally 21 days ago or so the state's highest court determined unanimously that all of our claims were correct. That indeed our concerns were valid; that indeed an oil transportation scenario and oil transportation safety issues should be considered by the Department of Natural Resources before a determination to hold a lease sale is made. With the recent decision and we hope that the legislature will not overturn it. Thank you for the opportunity to testify.

DP: Mr. Weiner I am looking at the Supreme Court decision and the last sentence says affirmed in part, reversed in part, and remanded for further for further proceedings. That hardly sounds like they agreed with all of your points, Sir.

RW: They did not agree with all of our points. The challenge to the lease sale wa on a number of factors, the factors that the supreme court agreed with us on are on page 14. The Supreme Court said that "because of the size of the sale area the undersea or sea causeway pipeline could be 50 miles long.

The facilities are unquestionably a vital part of the development of the sale area for oil production and thus are important factors in the decision to lease the sale area. They would seem to present a unique environmental risk. Yet the Finding is remarkable in that as detailed as it is on other subjects - it fails to mention facilities of this magnitude at all, much less examine the critical question of whether they are safe. " It is that determination by the Supreme Court that we whole-heartedly agree with.

DW: So Mr. Weiner, the Supreme Court did not unanimously agree with all of your points as you just stated instead they agreed with two specific points or whatever number of points they agreed within the decision, correct?

RW: Correct

SH: I think drilling is schedule to go on until the end of April. Is it your intention to pursue some suspension of that activity between now and the end of April?

RW: We have a petition before the Supreme Court requesting that they clarify their ruling. There some question as to whether the Supreme Court determination that the best interest finding analysis was inadequate determination -----consistency determination was made by the wrong agency. Whether those decisions actually nullify the lease sale and activities pursuant thereto. We requested that the Supreme Court clarify that ruling. We also made a motion to suspend activities.

The Supreme Court denied that motion.

SH: So there is no pending legal action to stop activities through the month of April.

RW: Uh, depending on when the Supreme Court clarifies assuming that they agree to clarify their decision----- we have no idea as to when the Supreme Court...

RW: That issue is significant in considering whether this legislation, I think is urgent or just something possibly necessary.

RW: I agree Senator, and my feeling if I were sitting in one of your chairs would be let the court's process go through. The state has petitioned for reconsideration on a decision and the Supreme Court is currently probably entertaining to clarify their petition and until they act, I believe that legislative action is premature.

SH: Thank you.

DP: Mr. Weiner, I have a question for you. In your testimony you said that you thought that the administration is showing unnecessary apprehension so there is no need for urgency and that all they needed to do to satisfy the Supreme Court was look at the transportation issue in the minimal detail or briefly and you thought that would satisfy the court. Couple of sentences later , however, you stated that they should have taken a close look at the particular issue of transportation and in the press release for the Trustees for Alaska that you issued last week on the second page you say that the dangers of oil and gas lease sales , uh offshore oil and gas lease sales must be thoroughly evaluated before there is a decision to hold a state oil and gas lease sale. I know you are saying two things, sir, I hear you saying that while the minimal detail or brief look at the transportation issues might, you are saying, first of all that's going the satisfy the Supreme Court. I assume, however, that would not satisfy the Trustees for Alaska since you have also called for close look and a thorough evaluation. So if the agency came back in with a brief look or a minimal detail on transportation issues then what would the next move of the trustees would be?

RW: State law requires that a thorough look be taken at all important factors before a lease sale decision is made. We believe that DNR should take a close look at that particular issue ... a thorough look...uh...my personal feeling is that DNR may find it very difficult to justify or document that it is even possible to build a causeway 50 files long or to build a subsea pipeline in arctic waters where the icepack might scour away that pipeline. I think DNR may have very tough time proving that it is possible to in an offshore area without offshore support system. Nonetheless, all the Supreme Court ultimately required is a recent analysis that may be stated very briefly in the best interest finding requirement. Uh.... what I stated before is very true. Had DNR included a couple of sentences stating that they had taken a hard look at their decision this case would have gone nowhere very quickly. Did I answer your question?

DP: But there still would if there was not a thorough review or a close look at a particular issues would you expect that there still would be a case in that you would ask the Supreme Court to review the adequacy of the minimal detail or the brief look in future cases.?

RW: I guess that depends on how crummy of job DNR did. I think that with all due respect, but the Department of Natural Resources tripped all over themselves on this one. And I don't think that it is the legislature's duty to bail them out when all they have to do to do a supplemental finding on a very important issue.

DP: Thank you Mr. Weiner. And no further questions from the committee members.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

| | |
|---|---|
| TRUSTEES FOR ALASKA,<br><br>Plaintiff,<br><br>vs.<br><br>STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES,<br><br>Defendant. | ) |

Case No. 3AN-87-________ Civ.

AFFIDAVIT OF WILLIAM VAN DYKE

STATE OF ALASKA )
) ss.
THIRD JUDICIAL DISTRICT )

William Van Dyke, being duly sworn, states:

1. I am the petroleum manager for the Division of Oil and Gas (division), Department of Natural Resources (DNR), of the State of Alaska (state). In that position I oversee oil and gas activities on oil and gas leases issued by the state. By training, I am a petroleum engineer. I have been employed by the division since March 20, 1978.

2. I received my Bachelor of Science Degree in Petroleum Engineering from the Pennsylvania State University in 1974.

3. One of my duties and responsibilities is to supervise the review and issuance of plans of operation.

4. Under 11 AAC 83.158 and paragraph 9 of the oil and gas lease contract (the lease), a plan of operations must be approved by the Division of Oil and Gas (the division) prior to the lessee commencing either exploratory drilling or development activities on the lease area. The plan

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of operations in and of itself is not intended to regulate all aspects of all activities on the lease. The lessee must comply with all applicable state, federal and local laws prior to commencing drilling or construction activities--for example, the U. S. Corps of Engineers Section 404 Permit for Discharge of Dredge or Fill to Waters of the United States is required prior to construction of gravel islands. The lessee must also comply with all stipulations attached to the oil and gas lease--for example, the seasonal drilling and surface entry restrictions. In addition, the lessee must also satisfy the performance standards and comply with the restrictions contained in the sale notice--for example, the mitigating measures pertaining to the discharge of drilling muds and produced waters.

5. Prior to a decision by the division either to approve, modify or deny the application, plans of operation are reviewed by the Division of Land and Water Management (DNR), the Department of Environmental Conservation (DEC), the Department of Fish and Game (ADF&G), and the North Slope Borough (NSB). Comments and recommendations from the agencies are submitted to the division for consideration. The application (project) also undergoes a concurrent review by agencies listed above to assure that the proposed action is consistent with the Alaska Coastal Management Act (AS 44.19 and 46.40), a District Coastal Management Plan if such a plan is in place, and the Coastal Management Program regulations (6 AAC 50 and 80).

6. A plan of operations, at a minimum, must include (1) a sequence and schedule of events proposed to occur on the lease including the date the operations are to commence and the proposed duration of the operations; (2) projected use requirements directly associated with the proposed operation including the location, design, and intended use of well

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and facility sites, material sites, water supply sources, solid waste disposal sites, staging areas, roads and airstrips; (3) plans for rehabilitation of the affected lease area after completion of the operations, and (4) a description of facility design and operating procedures developed to prevent or minimize adverse effects on other natural resources and other uses of the lease area. A copy of the oil and gas lease contract, applicable regulations and application forms are attached as Exhibit 1.

7. Each Plan of Operations is site specific and must be tailored to the activity requiring the permit. Typical activities in the Sale 50 area would include (1) offshore exploratory drilling from a mobile bottom-founded drilling rig, an artificial gravel island, or a thickened ice drill site; (2) expansion of an existing gravel exploratory or development well site; (3) development drilling from an existing or new multiwell gravel well site; (4) installation of production facilities; (5) installation of enhanced recovery facilities; (6) installation of support facilities such as electric power generation facilities, water or sewage treatment plants, living quarters, and operations centers; (7) ice airstrips; (8) gravel source sites; and (9) marine docks. The Plan must be as detailed as necessary and may contain several volumes of drawings, charts, tables, graphs and text for a complex operation such as construction of development and production facilities. When all affected agencies have responded to the division's request for comments, the division renders its decision, including inserting any necessary stipulations.

8. It is at the plan of operations review stage when specific activities are proposed for specific times and locations, that the final

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fine tuning in the mitigation process is performed. The plan of operations (and other accompanying state permits) translates the sale-wide performance standards and mitigation objectives into terms and conditions applicable to the activity under consideration. It is not practical in the lease sale notice document to address in the detail necessary for permitting actions all the terms and conditions that would apply to every possible activity at every possible location especially considering all the state, federal and local authorities that govern oil and gas operations. By allowing for the fine tuning of the mitigating measures at the plan of operations stage, vis-a-vis the lease sale stage, the division also acknowledges that circumstances, technologies, and the understanding of the environment can change. Some flexibility is built in to the system to allow for these potential changes and advances.

9. Attached as Exhibit 2 is a partial listing of permitting and oversight authorities and regulations that would apply to a major oil and gas activity in the Sale 50 area. It is included to illustrate the extent to which the state, federal and local government agencies retain broad authority and control over proposed lease activities after a lease has been issued. It should also be noted that the lease is subject, insofar as constitutionally permissible, to all statutes and regulations placed in effect after the effective date of the lease--see paragraph 26 of the lease.

10. In addition to the plan of operations review and approval process, the lessee must also post a performance bond with the division prior to entering on to the lease--see paragraph 23 of the lease and 11 AAC 83.160. The bond amount varies between $10,000 and $100,000, depending upon the type of activity. A statewide bond of $500,000 is also acceptable.

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Under the lease, the division can also require a supplemental bond if it believes that the nature of the surface and its uses or the degree of risk involved justifies the increase. The Alaska Oil and Gas Conservation Commission (AOGCC) also requires that the lessee post a separate bond ($100,000) prior to any drilling activity; and DEC, in conjunction with its Oil Discharge Contingency Plan permitting process, requires proof of financial assurance ($35 million for any offshore wellsite or production facility). The $100,000/$500,000 bond required by the division is not intended to provide full coverage for cleanup and rehabilitation expenses resulting from a catastrophic accident or very large volume oil spill since that cost cannot be determined apriori. Regardless of the required bond amount (and the bond amounts required by other state agencies), the lessee is liable for the cleanup and rehabilitation of the lease area.

11. The bond required by the division is used as an indicator that the lessee is solvent and in good corporate standing. The bond monies could be used to provide a general cleanup or rehabilitation of the lease area, but it would not be adequate, in itself, to cover cleanup costs from a catastrophic accident. The probability of a catastrophic accident is very low, and the lessee retains all liability for its and its contractor's actions. Therefore, the risk to the state of irreparable environmental damage is extremely low.

12. Upon expiration or termination of the lease, paragraph 21 of the lease requires the lessee to rehabilitate the lease area to the satisfaction of the state. The lessee is granted one year from the date of expiration/termination to remove all equipment and improvements from the lease area and deliver up the lease area in good condition. Should the

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lessee fail to act, the state may step in and act; and then require compensation from the lessee.

13. Should a set of severe and unexpected environmental circumstances develop, the state has the option of canceling the lease. Paragraph 20(b) of the lease reads in part, "The state may cancel the lease at any time if the state determines, after the lessee has been given notice and a reasonable opportunity to be heard, that (1) continued operations pursuant to this lease probably will cause serious harm or damage to biological resources, to property, to mineral resources, or to the environment including the human environment, (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and (3) the advantages of cancellation outweigh the advantages of continuing the lease in effect." While it is understood that this cancellation clause would only be invoked in the most serious of situations, it remains an option available to the state should unforeseen events or circumstances develop.

14. The lease stipulations and the terms and conditions contained in the plan of operations approval are binding on the lessee. Lease activities are monitored by DNR, DEC, ADF&G and AOGCC agency personnel to ensure compliance with the respective permits. The Department of Environmental Conservation maintains an office at Prudhoe Bay that also is used by ADF&G and DNR inspectors as a base of operations. Paragraph 16 of the lease requires that the lessee keep the lease area open for inspection by authorized state officials.

15. Off-lease activities such as geophysical (seismic) exploration, gravel mining, construction within pipeline rights of way,

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EXHIBIT H
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construction of access roads and water appropriation are controlled by separate permits. These permits undergo the same agency review and consistency determination process as a plan of operations. Bonding is also required for these activities, and the permitted activity is monitored by agency personnel.

16. Prior to commencing an exploratory well, well site (geohazard) surveys are required under 20 AAC 25.061 to identify potential shallow gas sources. In addition, potential sea bed hazards must be evaluated prior to the siting and use of a mobile bottom-founded type drilling unit.

Dated this 23rd day of June, 1987.

William Van Dyke

William Van Dyke

STATE OF ALASKA )
) ss.
THIRD JUDICIAL DISTRICT )

SUBSCRIBED AND SWORN TO before me this 23rd day of June, 1987.

Notary Public in and for the State of Alaska
My Commission expires: 10/4/88

0868E

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EXHIBIT H
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# FEDERAL LAWS AND REGULATIONS
# WHICH GOVERN OIL AND GAS DEVELOPMENT IN ALASKA

## CLEAN WATER ACT (CWA)

### OIL SPILL AND HAZARDOUS SUBSTANCES CONTROL

EPA REGULATIONS - 40 CFR

Part 109 - Criteria for Oil Removal Contingency Plans

Part 110 - Discharge of Oil

Part 112 - Oil Pollution Prevention

Part 113 - Small Onshore Oil Storage Facilities

Part 114 - Civil Penalties for Violation of Oil Pollution Regulations

Part 116 - Designation of Hazardous Substances

Part 117 - Reportable Quantities for Hazardous Substances

Part 151 - Hazardous Substances Pollution Prevention

COAST GUARD REGULATIONS - 33 CFR

Part 153-157 - Oil Spill Regulations

Part 153 - Reporting Oil Spills to Coast Guard

Part 155 and 156 - Vessels in Oil Transfer Operations

FEDERAL MARITIME COMMISSION REGULATIONS - 46 CFR

Part 542 - Financial Responsibility for Water Pollution

### WATER QUALITY

EPA REGULATIONS - 40 CFR

Part 120 - Federal Water Quality Standards

Part 121 - State Certification of Federal Permit

Part 136 - Test Procedures for Analysis of Pollutants

Part 140 - Performance Standards for Marine Sanitation Devices

COAST GUARD REGULATIONS - 33 CFR

Part 159 - Regulations on Marine Sanitation Devices



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NPDES PERMIT SYSTEM

EPA REGULATIONS - 40 CFR

Part 122 - National Pollutant Discharge Elimination System Permit Regulations

Part 123 - State NPDES Program Requirements

Part 125 - Criteria and Standards for NPDES Permits

Part 129 - Toxic Pollutant Effluent standards

Part 401 - General Provisions for Effluent Guidelines and Standards

Part 435 - Effluent guidelines and Standards for Offshore Oil and Gas Extraction

Part 436 - Effluent Guidelines and Standards for Mineral Mining and Processing

OCEAN DUMPING

EPA REGULATIONS - 40 CFR

Parts 220-225, 227-229 - Ocean Dumping regulations and Criteria

SECTION 404 - DISCHARGE OF DREDGE AND FILL

EPA REGULATIONS - 40 CFR

Part 230 - Discharge of Dredged or Fill Material into Navigable Waters

Part 231 - Disposal Site Determination

Part 233 - State Dredge or Fill Permit Program Requirements

ARMY CORPS OF ENGINEERS (COE) REGULATIONS - 33 CFR

Part 209 - Navigable Waters

Part 320-330 - Permit Program Regulations

THE FISH AND WILDLIFE COORDINATION ACT

Allows comment on 404 by Fish and Wildlife, National Marine Fisheries and EPA.

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA)

EPA PLANS - 40 CFR
Part 300 - National Oil and Hazardous Substances Pollution Contingency Plan

SAFE DRINKING WATER ACT

EPA REGULATIONS - 40 CFR
Part 141 - Interim Primary Drinking Water Regulations
Part 142 - Interim Primary Drinking Water Regulations Implementation
Part 143 - National Secondary Drinking Water Regulations
Part 144 - Permit Regulations for the Underground Injection Control Program
Part 145 - State Underground Injection Control Program Requirements
Part 146 - Criteria and Standards for Underground Injection Control Program
Part 149 - Review of Projects Affecting Sole Source Aquifers

COASTAL ZONE MANAGEMENT ACT (CZMA)

NOAA REGULATIONS - 15 CFR
Part 921 - Guidelines on Estuarine Sanctuaries
Part 923 - CZM Program Approval
Part 926 - Allocation of Funds to States for CZM Development
Part 930 - Federal Consistency with Approved Coastal Management Programs

Part 931 - Coastal Energy Impact Program

Part 933 - CZM Research and Technical Assistance

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

SOLID WASTE MANAGEMENT

EPA REGULATIONS - 40 CFR

Part 240 and 241 - Guidelines for Thermal Processing of Solid Wastes and Land Disposal of Solid Wastes

Part 243 - Guidelines for Solid Waste Storage and Collection

Part 245 - Guidelines for Resource Recovery Facilities

Part 255 - Guidelines for Identification of Regions and Agencies for Solid Waste Management

Part 256 - Guidelines for Classification of Solid Waste Disposal

Part 257 - Criteria for Classification of Solid Waste Disposal Facilities and Practices

HAZARDOUS WASTE MANAGEMENT

EPA REGULATIONS - 40 CFR

Part 260 - General Regulations for Hazardous Waste Management

Part 261 - Identifying Hazardous Waste

Part 262 - Hazardous Waste Generators

Part 263 - Hazardous Waste Transporters

Part 264 - Owners and Operators of Permitted Hazardous Waste Facilities

Part 265 - Interim Status Standards for Owners and Operators of Hazardous Waste Facilities

Part 267 - Interim Standards for Owners and Operators of New Hazardous Waste Land Disposal Facilities

Part 270 - Federally Administered Hazardous Waste Permit Programs

Part 271 - Authorizations of State Hazardous Waste Programs

CLEAN AIR ACT (CAA) - 42 USC 7401

EPA REGULATIONS - 40 CFR

Part 50 - National Primary and Secondary Ambient Air Quality Standards

Part 51 - Preparation of Implementation Plans

Part 52 - Approval and Promulgation of Implementation Plans (Subpart C - Alaska)

Part 53 - Ambient Air Monitoring Methods

Part 55 - Energy-Related Authority

Part 56 - Regional Consistency Under the CAA

Part 58 - Ambient Air Quality Surveillance

Part 60 - New Source Performance Standards

Part 61 - National Emission Standards for Hazardous Air Pollutants

Part 62 - State Plans for Designated Facilities and Pollutants

Part 65 - Delayed Compliance Orders Under the CAA

Part 66 - Assessment and Collection of Noncompliance Penalties

Part 67 - Federal Approval of State Noncompliance Penalty Programs

Part 81 - Designating Areas for Air Quality Planning

TOXIC SUBSTANCES CONTROL ACT

NATIONAL OCEAN POLLUTION PLANNING ACT

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

COUNCIL ON ENVIRONMENTAL QUALITY (CEQ) REGULATIONS - 40 CFR

Parts 1500-1508 - Implementing NEPA Procedures

ENDANGERED SPECIES ACT (ESA) (16 USC 1531)

FWS REGULATIONS - 50 CFR

Part 17 - Endangered and Threatened Species

Part 402 - Interagency Cooperation

FWS GUIDELINES

Endangered an Threatened Species Listing and Recovery Priority Guidelines

FISH AND WILDLIFE COORDINATION ACT

MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT

WILDERNESS ACT

MARINE MAMMAL PROTECTION ACT

MIGRATORY BIRD TREATY ACT

NATIONAL HISTORIC PRESERVATION ACT

OUTER CONTINENTAL SHELF LANDS ACT (OCSLA)

PORTS AND WATERWAYS SAFETY ACT

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# AFFIDAVIT OF JERRY L. DEES

STATE OF ALASKA )
) ss.
THIRD JUDICIAL DISTRICT )

JERRY L. DEES, being duly sworn, does state the following:

1. I am the Vice President of Exploration and Lands for ARCO Alaska, Inc. ("ARCO"), a position I have held for 2 years. Prior to this position with ARCO, I was employed in various positions associated with the exploration for and production of oil and gas for 25 years.

2. ARCO is Operator of an exploration well currently being drilled on State of Alaska Competitive Oil and Gas Lease ADL No. 371024 which was issued to Phillips Petroleum Company ("Phillips") on September 1, 1987. ARCO operates this well, known as the ARCO Stinson #1 Well, under a Joint Operating Agreement between ARCO and Phillips.

3. ARCO obtained all necessary federal, state, and local government authorizations for drilling the Stinson Well. In particular, these authorizations include a Conclusive Consistency Certification issued by the Division of Governmental Coordination on August 17, 1989, and an Oil Spill Contingency Plan approved by the Department of Environmental Conservation.

4. The Stinson Well is being drilled using the Glomar Concrete Island Drilling Structure ("CIDS"), which is a concrete structure frozen into place approximately 2½ miles offshore on the



EXHIBIT ______

west side of Camden Bay. The CIDS was moved into location and provisioned in September, 1989, prior to the sul istence whale hunt. Drilling commenced on October 11, 1989. Drilling and testing were originally estimated for 185 days. The North Slope Borough Development Permit for the Stinson Well provides in Stipulation No. 6 that all "below threshold" activities must be completed by April 30, 1990. (Below threshold activities in this context means activities at depths where significant hydrocarbon accumulations are projected to be encountered.)

5. The Stinson Well has stayed on its projected schedule and is literally "in the home stretch." The time between now and the current deadline of April 30, 1990, for cessation of down hole operations is critical to the realization of the value of the well, which is the evaluation of the strata in which the well is now drilling. Prior drilling operations are certainly important, but their value largely lies in getting to the target geologic horizons, which is where the well is now reaching.

6. ARCO, on behalf of itself and Phillips, has expended approximately $49,100,000 on the Stinson Well to date. Current expenditures are in the range of $100,000 per day. Total cost for the well is estimated at $56,000,000.

7. Cessation of operations at this time would essentially deprive ARCO and Phillips of the primary benefit of drilling the Stinson Well, which is the evaluations which will occur between now and April 30, 1990.

8. If these operations are not conducted between now and April 30, 1990, their likelihood of ever bei ; conducted is low. If ARCO is compelled to cease activity now before April 30, 1990, based on the concerns and restrictions permitting agencies expressed in granting authorizations for the Stinson Well, ARCO believes it likely that it would not be allowed to resume downhole activities below threshold depth until after November 1, 1990. In order to conduct operations from the CIDS after November 1, 1990, it would be necessary to freeze the structure in place in the fall and leave it there until the following open water season, a period of at least 10 months. ARCO and Phillips would be forced to pay for the CIDS for an additional 10 months to obtain a few weeks worth of data, at an estimated cost of $30,000,000 to $50,000,000. (This would be in addition to the $49,100,000 already spent.) It is my opinion that ARCO management would not expend this amount of money to complete the operation. The ultimate benefit of the Stinson Well to ARCO and Phillips would have been lost.

9. ARCO's current operations do not entail any transportation of oil or gas that may be discovered in Camden Bay. If oil is discovered, it will take many years to delineate and develop such an oil reservoir. Only at that time in the future would transportation of oil be an issue. Numerous federal, state, and local government reviews, permits and authorizations will be required prior to any oil transportation from Camden Bay.

Further this Affiant Sayeth Naught.



EXHIBIT ________

DATED this 28th day of March, 1990.

Jerry L. Dees
JERRY L. DEES

SUBSCRIBED AND SWORN TO before me this 28th day of March, 1990.

Marilyn H. Roth
NOTARY PUBLIC IN AND FOR ALASKA
My Commission Expires: 8-24-93



EXHIBIT

## AFFIDAVIT OF JOSEPH P. GREEN

STATE OF ALASKA )
) ss.
THIRD JUDICIAL DISTRICT )

JOSEPH P. GREEN, being duly sworn, does state the following:

1. I am employed by ARCO Alaska, Inc. as a Permit Coordinator. Prior to my employment at ARCO, I was the Director of the Division of Minerals and Energy Management for the State of Alaska, and prior to that I was the Petroleum Administrator for Santa Barbara County, California. I am a registered geologist in the State of California, and a registered engineer in the State of Oklahoma.

2. As a part of my job responsibilities at ARCO, I either obtained or assisted/coordinated the obtaining of all of the permits, authorizations and approvals necessary to drill the ARCO Stinson No. 1 Well.

3. Attached is a chart listing the more significant permits, authorizations and approvals for the ARCO Stinson No. 1 Well. The chart also describes the agency(ies) responsible and gives a brief description of the purpose of the permit, authorization or approval.

4. These permits, authorizations and approvals do not give ARCO the authority to transport Camden Bay oil, if it is discovered. Numerous additional reviews by the federal, state and local governments will be required prior to any transportation of oil from Camden Bay.



EXHIBIT

5. In my opinion, there is very little flexibility in the drilling schedule for the ARCO Stinson No. 1 well. The primary constraint is the Beaufort Sea ice pack, which immobilizes the Concrete Island Drilling Structure ("CIDS") from approximately November to June every year. Also, the Bowhead whale migration and subsistence hunt during September and October of each year make this a controversial time period to conduct oil and gas exploration. Furthermore, oil exploration activity is restricted during unstable ice conditions in the spring (May-July) and fall (October-November) due to oil spill containment and cleanup capability concerns. There is thus very little flexibility in the time of drilling operations.

For these reasons, cessation of drilling operations on the ARCO Stinson No. 1 well would have grave implications. It would very likely require a second entire drilling season to complete the well, which would be extremely expensive.

6. In the course of my work in the petroleum industry, and in particular in the course of obtaining approval of the oil spill contingency plan for the ARCO Stinson No. 1 Well, I have reviewed data concerning the risk of a blowout occurring (other potential oil spills should be nominal in size [<u>maximum</u> 200 gallons] and should be capable of containment on the CIDS). The Oil Spill Risk Analysis model (OSRA) utilized by the MMS in its Environmental Impact Statements (EIS) assigns zero as the probability that a significant oil spill will occur during exploration (none has <u>ever</u> occurred from exploratory drilling on



EXHIBIT

the U.S. Outer Continental Shelf). Dr. Frank B. Martin, Department of Applied Statistics, at the University of Minnesota analyzed MMS blowout statistics for U.S. O.C.S. areas in 1986. The data indicates that 31 blowouts (these were apparently gas blowouts and did not result in any significant oil spill) were reported for 4,824 exploratory wells drilled between 1971 and 1984. Dr. Martin concluded that, based on historical data, the probability of a blowout <u>not</u> occurring is 99.36 percent. The probability that a significant oil spill will <u>not</u> occur is 99.9996 percent. In any event, ARCO's oil spill contingency plan addresses the remote possibility that a blowout could occur.

7. If the Supreme Court were to order DNR to suspend all industrial activity in Camden Bay, several dire consequences would result. First, helicopter flights to the CIDS would <u>have</u> to continue, in order to evacuate the approximately 75 people on the CIDS. Second, safety concerns would require a skeleton crew to maintain the CIDS. Navigational lighting is necessary to protect passing aircraft and watercraft. Third, if the CIDS cannot be removed from Camden Bay during the limited open water season, it would be forced to stay where it is. This would have enormous economic impact on either ARCO or the owner of the CIDS (who would be denied the ability to use it elsewhere).

Further this Affiant Sayeth Naught.

DATED this 29 day of March, 1990.

JOSEPH P. GREEN



EXHIBIT

SUBSCRIBED AND SWORN TO before me this 30th day of March, 1990.

Denise M. Berry
NOTARY PUBLIC IN AND FOR ALASKA
My Commission Expires: 6-3-90



EXHIBIT

# STINSON PERMITS, AUTHORIZATIONS, PLANS, ETC.

| Permit/Authorization/Plan, Etc. | Agency | Comments |
|---|---|---|
| Coastal Zone Consistency Determination | Alaska Division of Governmental Coordination | Coordinates the review by state (Depts. of Environmental Conservation, Fish and Game and Natural Resources), federal (Environmental Protection Agency, Corp. of Engineers, Fish and Wildlife Service) and local government (North Slope Borough), to minimize possible inconsistencies between the various agencies' permit requirements, to ensure all agencies' concerns have been addressed, and to implement the District Coastal Management Plan. |
| Oil Spill Contingency Plan | Alaska Dept. of Environmental Conservation | Requires advance planning for any potential oil spill that could happen. This includes an assessment of oil spill risks and advance response and notification planning. The plan also requires on-site oil spill containment and cleanup equipment and off-site backup equipment. In addition, it requires training of on-site cleanup crews; response teams from Deadhorse, Prudhoe Bay and Kuparuk, the villages of Kaktovik and Nuiqsut; and provides for scheduled and unscheduled inspections and spill cleanup drills. |

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| **National Pollutant Discharge Elimination System (NPDES) Permit** | **Environmental Protection Agency** | **Regulates discharges from the Concrete Island Drilling Structure (CIDS).** |
| **Lease Operations Approval** | **Alaska Dept. of Natural Resources (Div. of Oil & Gas)** | **Requires:**<br>**- barge traffic must be at least one mile offshore**<br>**- environmental orientation program for CIDS occupants**<br>**- polar bear interaction plan**<br>**- coordination with whalers**<br>**- oil spill drill**<br>**- activities be limited to those contained in Plan of Operations** |
| **Certificate of Reasonable Assurance** | **Alaska Dept. of Environmental Conservation** | **Issued pursuant to Section 401 of the Clean Water Act. Certifies reasonable assurance that all drilling activity will comply with the Clean Water Act.** |
| **Development Permit** | **North Slope Borough** | **Assures activities are in compliance with Borough ordinances.** |
| **Drilling Permit** | **Alaska Oil & Gas Conservation Commission** | **Requires adherence to sound engineering principles and practices to prevent resource waste, protect correlative rights, and conduct safe drilling operations.** |

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| Spill Prevention Control and Countermeasure | Alaska Dept. of Environmental Conservation, Alaska Dept. of Natural Resources | A document detailing the procedures followed and special actions taken to prevent hydrocarbon spills; and if a spill occurs, to prevent the material from getting off the drilling structure. |
| Section 10 Anchoring Permit | Corp of Engineeers | Allows CIDS to rest on ocean bottom<br>- stipulations require:<br>- 1500' minimum flight altitude to avoid disturbing wildlife<br>- plan approval by U.S. Fish & Wildlife Service covering wildlife disturbance, oil spill plans, etc.<br>- polar bear monitoring plan |
| Air Quality (Flaring) | Alaska Dept. of Environmental Conservation | Provides strict air emissions standards which must be met, including:<br>- maximum opacity of smoke<br>- maximum pollutant discharges from combustion engines<br>- no test oil burning |
| Plan of Operations | All Agencies | A comprehensive review of the entire operations to be conducted at the Stinson location from move in through drilling/testing, to move out. |

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| Liquid Waste Disposal - down hole | Alaska Dept. of Environmental Conservation | Stipulates rates and total volumes of liquid that can be pumped down the well's annuli. Includes review of pipe integrity and ensures that formation being pumped into has no value as a possible future fresh water source. |
| $H_2S$ Contingency Plan | Alaska Oil & Gas Cconserva-tion Commission | A detailed plan outlining tests for the presence of $H_2S$, actions to be taken if present, and safety equipment, escape plans and emergency aid reviews. |
| Whale Monitoring Plan | Alaska Dept. of Natural Resources | Determines the need for and degree of monitoring plan for areas within whale migration route. |
| Oil/Whalers Agreement | Whaling Village Representatives | Agreement limiting activities to what is acceptable to the whalers during the whale migration. Also includes supplies and services furnished to the Native whalers. |
| Seasonal Drilling Restrictions | Alaska Dept. of Natural Resources | Outlines the areas and degrees of re-stricted activities during the whale migrating season. |

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| Water Use Permit (Seawater) | U.S. Fish & Wild-life Service | Provides standards for using seawater as a source of making freshwater (in this case, through reverse osmosis). |
| Water Use Permit (Freshwater) | Alaska Dept. of Natural Resources (Div. of Land & Water Management) | Allows use of fresh water for drilling purposes. |
| Notice of Financial Responsibility | Alaska Dept. of Environmental Conservation | An agency requirement that the company or individual conducting drilling operations have financial responsibility sufficient to perform properly. |
| Evacuation Plan (CIDS) | U. S. Coast Guard | For safe evacuation of the Concrete Island Drilling Structure (CIDS) in the event an emergency occurred. |
| Aids to Navigation Approval | U. S. Coast Guard | Requires fog horn and visual markings on CIDS. |
| Landing Permit | Federal Aviation Administration | Ensures helicopters and pilots are capable of safe landing on the CIDS. |

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| Food and Drink Permit | Alaska Dept. of Environmental Conservation | Requires strict adherence to health and cleanliness regulations for serving human consumables and for handling associated waste. |





EXHIBIT

**11 AAC 83.153. CONFIDENTIAL REPORTS.** (a) If the commissioner finds that reports or information required under AS 31.05.035(a) contain significant information relating to the valuation of unleased land within a three-mile radius of the well from which these reports or information were obtained, the commissioner will, upon the written request of the owner of the well, keep the reports or information confidential for a reasonable time not to exceed 90 days after disposal of the unleased land, unless the owner of the well gives written permission to release the reports and information at an earlier date. The commissioner will, in his or her discretion, extend confidentiality to reports or information required under AS 31.05.035 from a well located more than three miles from any unleased land if the owner of the well from which these reports or information are derived makes a sufficient showing that the reports or information contain significant information relating to the valuation of unleased land beyond the three-mile radius.

(b) Reports or information for which extended confidentiality is requested or has been granted under AS 31.05.035 will not be eligible for extended confidentiality when

(1) the lease on which the well is drilled has expired; or

(2) the unleased land within a three-mile radius of the well from which the reports or information are obtained is offered in a competitive lease sale, but receives no bids greater than or equal to any minimum bid established for that sale.

(c) As used in this section, "mile" means a statute mile or 5,280 feet.

(d) As used in this section, "disposal" means the grant or issuance of an oil and gas lease. (Eff. 3/30/84, Reg. 89)

Authority: AS 31.05.035(c)
AS 38.05.020
AS 38.05.180

**11 AAC 83.155. DAMAGES.** Each lessee or permittee is required to pay any damage that becomes payable under AS 38.05.130 and shall indemnify Alaska and hold it harmless from and against any claims, demands, liabilities and expenses arising from or in connection with the damage. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.130
AS 38.05.145(a)

**11 AAC 83.158. PLAN OF OPERATIONS.** (a) Except as provided in (b) of this section, a plan of operations for all or part of the leased area must be approved by the commissioner before any operations may be undertaken on the leased area if

(1) the state owns all or part of the surface estate of the leased area;

(2) the lease reserves a net profit share to the state; or

(3) the state owns all or part of the mineral estate, but the entire surface estate is owned by a party other than the state, and a surface owner requests that a plan of operations be required by the commissioner for the portion of the leased area owned by that surface owner.

(b) A lease plan of operations is not required for

(1) activities that would not require a land use permit under this title; or

(2) operations undertaken under an approved unit plan of operations in accordance with this title.

(c) Before undertaking operations on the leased area, the lessee shall provide for full payment of all damages sustained by the owner of the surface estate as well as by the surface owner's lessees and permittees, by reason of entering the land. If the surface estate is owned by a party other than the state, the lessee shall also notify the surface owner of his opportunity to request that the commissioner require a plan of operations before allowing operations to be undertaken on the portion of the leased area owned by the requesting surface owner.

(d) An application for approval of a plan of operations must contain sufficient information, based on data reasonably available at the time the plan is submitted for approval, for the commissioner to determine the surface use requirements and impacts directly associated with the proposed operations. An application must include statements and maps or drawings setting out the following:

(1) the sequence and schedule of the operations to be conducted on the leased area, including the date operations are proposed to begin and their proposed duration;

(2) projected use requirements directly associated with the proposed operations, including but not limited to the location and design of well sites, material sites, water supplies, solid waste sites, buildings, roads, utilities, airstrips, and all other facilities and equipment necessary to conduct the proposed operations;

(3) plans for rehabilitation of the affected leased area after completion of operations or phases of those operations; and

(4) a description of operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the leased area and adjacent areas, including fish and wildlife habitats, historic and archeological sites, and public use areas.

(e) In approving a lease plan of operations or an amendment of a plan, the commissioner will require amendments he determines necessary to protect the state's interest. The commissioner will not require any amendment that would be inconsistent with the terms of sale under which the lease was obtained, or with the terms of the lease itself, or which would deprive the lessee of reasonable use of the leasehold interest.

(f) The lessee may, with approval of the commissioner, amend an approved plan of operations.

(g) Upon completion of operations, the lessee shall inspect the area of operations and submit a report indicating the completion date of operations and stating any noncompliance of which the lessee knows, or should reasonably know, with requirements imposed as a condition of approval of the plan.

(h) In submitting a proposed plan of operations for approval, the lessee shall provide 10 copies of the plan if activities proposed are within the coastal zone, and five copies if activities proposed are not within the coastal zone. (Eff. 6/28/81, Reg. 78; am 8/15/82, Reg. 83; am 3/18/83, Reg. 85)

Authority: AS 38.05.020 AS 38.05.145
AS 38.05.130 AS 38.05.180

**11 AAC 83.160. OIL AND GAS LEASE BOND.** (a) Before operations commence on a state oil and gas lease, a bond in the amount of at least $10,000 must be furnished to the department.



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commissioner will, in his discretion, propose modifications which, if accepted by the unit operator, would qualify the plan for approval.

(c) The unit plan of development must be updated and submitted to the commissioner for approval at least 90 days before the expiration date of the previously approved plan, as set out in that plan. The update must describe the extent to which the requirements of the previously approved plan were achieved; if actual operations deviated from or did not comply with the previously approved plan, an explanation of the deviation or noncompliance must be included in the update. The commissioner will approve the updated unit plan of development if it complies with the provisions of 11 AAC 83.303. If the proposed update of a unit plan of development is disapproved, the commissioner will, in his discretion, propose modifications which, if accepted by the unit operator, would qualify the plan for approval. Within 10 days after receipt of an updated unit plan of development, the commissioner will inform the unit operator as to whether the proposed unit plan of development is complete. After the commissioner has determined that an updated unit plan of development is complete as submitted, or as modified by the unit operator following the commissioner's suggestions, the commissioner will have an additional 60 days in which to approve or disapprove the plan; if no action is taken by the commissioner, the update of the unit plan of development is approved.

(d) The unit operator shall submit an annual report to the commissioner describing the operations conducted under the unit plan of development during the preceding year.

(e) The unit operator may, with the approval of the commissioner, amend an approved plan of development. (Eff. 6/28/81, Reg. 78; am 3/18/83, Reg. 85)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.180

**11 AAC 83.345. MODIFICATION OF UNIT AGREEMENTS.** Repealed 6/28/81.

**11 AAC 83.346. UNIT PLAN OF OPERATIONS.** (a) Except as provided in (b) of this section, a unit plan of operations for all or part of the unit area must be approved by the commissioner before any operations may be undertaken on the unit area if

(1) the state owns all or part of the surface estate of the unit area;

(2) the unit includes a lease that reserves a net profit share to the state; or

(3) the state owns all or part of the mineral estate, but the entire surface estate of the unit area is owned by a party other than the state, and a surface owner requests that a unit plan of operations be required by the commissioner for the portion of the unit area owned by that surface owner.

(b) A unit plan of operations will not be required by the commissioner for activities that would not require a land use permit under this title.

(c) Before undertaking operations of the unit area, the unit operator shall provide for full payment of all damages sustained by the owner of the surface estate as well as by the surface owner's lessees and permittees, by reason of entering the land. If the surface estate is owned by a party other than the state, the unit operator shall also notify the surface owner of his opportunity to request that the commissioner require a plan of operations before allowing operations to be undertaken on the unit area owned by the requesting surface owner.

(d) An application for approval of a plan of operations must contain sufficient information, based on data reasonably available at the time the plan is submitted for approval, for the commissioner to determine the surface use requirements and impacts directly associated with the proposed operations. An application must include statements, and maps or drawings, setting out the following:

(1) the sequence and schedule of the operations to be conducted in the unit area, including the date operations are proposed to begin and their proposed duration;

(2) projected use requirements directly associated with the proposed operations, including but not limited to the location and design of well sites, material sites, water supplies, solid waste sites, buildings, roads, utilities, airstrips, and all other facilities and equipment necessary to conduct the proposed operations;

(3) plans for rehabilitation of the affected unit area after completion of operations or phases of those operations; and

(4) a description of operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the unit area and adjacent areas, including fish and wildlife habitats, historic and archeological sites, and public use areas.

(e) In approving a unit plan of operations or an amendment of a plan, the commissioner will require amendments he determines necessary to protect the state's interest. The commissioner will not require any amendment that would be inconsistent with the terms of sale under which the lease was obtained, or with the terms of the lease itself, or which would deprive the lessee of reasonable use of the leasehold interest.

(f) The unit operator may, with the approval of the commissioner, amend an approved plan of operations.

(g) Upon completion of operations, the unit operator shall inspect the area of operations and submit a report indicating the completion date of operations and stating any noncompliance of which the unit operator knows, or should reasonably know, with requirements imposed as a condition of approval of the plan. (Eff. 6/28/81, Reg. 78; am 8/15/82, Reg. 83; am 3/18/83, Reg. 85)

Authority: AS 38.05.020 AS 38.05.145
AS 38.05.130 AS 38.05.180

**11 AAC 83.350. APPROVAL OF FEDERAL UNITS.** Repealed 6/28/81.

**11 AAC 83.351. PARTICIPATING AREA.** (a) At least 90 days before sustained unit production from a reservoir, the unit operator shall submit to the commissioner for approval a description, based on subdivisions of the public land or its aliquot parts, of the proposed participating area. The participating area may include only the land reasonably known to be underlain by hydrocarbons and known or reasonably estimated through use of geological, geophysical, and engineering data to be capable of producing or contributing to production of hydrocarbons in paying quantities. Under 11 AAC 83.371(a), the unit operator also shall submit to the commissioner for approval a proposed division of interest or formula setting out the percentage of production and costs to be allocated to each lease and portion of lease within the participating area. Upon approval by the commissioner, the area of productivity constitutes a participating area.

(b) A separate participating area must be established as provided in (a) of this section for each reservoir delineated, except that with the consent of the commissioner and all working interest owners, any two or more reservoirs or participating areas within the unit may be combined into one participating area. Separate participating areas may be established to distinguish between an oil rim and a gas cap within the same reservoir.

(c) A participating area must be expanded to include acreage reasonably estimated through use of geological, geophysical, and engineering data to be capable of producing or contributing to the production of hydrocarbons in paying quantities, and must be contracted to exclude acreage reasonably proven through use of geological, geophysical, or engineering data to be incapable of producing hydrocarbons in paying quantities, subject to approval by the commissioner. A revised division of interest or formula allocating production and costs must be submitted for approval under 11 AAC 83.371 at the time of expansion or contraction of a participating area. (Eff. 6/28/81, Reg. 78; am 3/18/83, Reg. 85; am 3/30/84, Reg. 89)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.180

**11 AAC 83.355. APPLICATIONS.** Repealed 6/28/81.

**11 AAC 83.356. UNIT AREA; CONTRACTION AND EXPANSION.** (a) A unit must encompass the minimum area required to include all or part of one or more oil or gas reservoirs, or all or part of one or more potential hydrocarbon accumulations.



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DO&G 18-84
LO/Form
(Revised 10-86)
DNR 10-1172

RETURN TO: Division Oil & Gas
P.O. Box 7034
Anchorage, AK 99510
Attn: Bill Van Dyke
Petroleum Manager

# LEASE OPERATIONS APPLICATION FORM

DATE ____________________

Applicant ____________________ ADL # ____________________ (mandatory)

Project ____________________ Bond ____________________

Date permit fee paid ____________________

(effective 1-1-86 application for plan of operations on leased land requires $50.00 fee; payable to State of Alaska, Dept of Revenue) and mail check only to Division of Management, P.O. Box 7034, Anchorage, AK 99510

1) Plan of Operations (Include necessary diagrams) ____________________

(Attach extra sheets if necessary)

2) Location: T____, R____, S____ ____ (Include necessary maps) ____________________

3) Access: ____________________

4) Proposed operation start-up date ____________________

5) Expected completion of permit activity/gravel placement ____________________

6) Project Material:
   A) Amount (pad) ______cy (road) ________cy (other) ____________cy
   B) Acreage covered (pad) ______ (road) ________ (other) __________
   C) Material source ____________________

7) Snow Removal Plan: ____________________

8). Is off road travel required? yes______ no_______
   A) Period of travel ____________________
   B) Equipment ____________________

9) Is a Temporary Water Use Permit required? yes_____ no_____
   A) Purpose ____________________
   B) Sources ____________________
   C) Access ____________________
   D) Maximum withdrawal ____________________

10) Is fuel or any other hazardous material stored on site? yes_____ no_____
   A) Type ____________________
   B) Amount ____________________
   C) Handling proposal ____________________

11) Pipeline Construction:
   A) Location/route ____________________
   B) Number/size ____________________
   C) Type ____________________
   D) Construction access ____________________
   E) Construction period ____________________

12) Rehabilitation plan: ____________________

13) Is any part of this permit confidential? yes____ no____

____________________ (907) ____________________
Authorized Contact Telephone Number

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____________________ | ____________________
Signature | Date

5/30/86

# COASTAL PROJECT QUESTIONNAIRE

The State of Alaska has a system for reviewing and processing all the resource-related permits, leases, and approvals which are required for proposed projects in coastal areas of Alaska. As a project applicant you are required to complete this questionnaire. The questionnaire will help you identify if approvals are required for your project (or a specific phase of your project) from the Departments of Fish and Game, Natural Resources, and Environmental Conservation.

Attached is a list of regional agency contacts and a map of the coastal area with the regions delineated. We urge you to contact the appropriate agency staff when you are answering that agency's questions.

Once you have completed the questionnaire and attached the required applications you must submit this packet to the appropriate state agency in the region where the proposed project is to occur. YOUR PROJECT CANNOT BE REVIEWED UNTIL ALL APPLICATIONS ARE RECEIVED. Please use the following instructions for submittal.

All packets must be submitted to the Division of Governmental Coordination, with the following exceptions:

1. If a fee is required, submit the entire packet to the state resource agency with the fee requirement.

2. If confidential information is contained, submit the entire packet to the state resource agency with that requirement.

3. If it is a placer mining activity, submit the Annual Placer Mining Application, instead of the questionnaire, to the Department of Natural Resources.

4. If you only need permits from one state resource agency and no federal agencies, submit the entire packet to the state resource agency requiring the permits.

If one or more federal permits are required, submit the original federal permit application(s) to the federal agency and send a copy of those federal applications to the appropriate state agency along with your packet of other applications.

If you have any questions concerning the process, please contact the Office of Management and Budget, Division of Governmental Coordination. If you have general questions about local, State or federal permits, both in and outside the coastal area, you may wish to contact the Department of Environmental Conservation Permit Information Centers in Fairbanks (452-2340), Anchorage (279-0254) or Juneau (465-2615). Collect calls are accepted.

IF YOUR ANSWERS TO THE FOLLOWING QUESTIONS ARE NOT CORRECT OR COMPLETE AND AN AGENCY DETERMINES THAT YOU DO NEED ONE OF THEIR APPROVALS, THEY WILL NOTIFY YOU AND YOU WILL BE RESPONSIBLE FOR OBTAINING THAT APPROVAL. HOWEVER, THIS IS LIKELY TO CAUSE A DELAY IN THE REVIEW OF YOUR PROJECT. TO AVOID THIS DELAY, WE ENCOURAGE YOU TO SEEK ASSISTANCE FROM AGENCY STAFF IN COMPLETING THE QUESTIONNAIRE.

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* * * * * * * * * * * * * * * * * * * * *

PLEASE ANSWER ALL QUESTIONS. PLEASE INCLUDE MAPS OR PLAN DRAWINGS WITH YOUR PACKET. AN INCOMPLETE QUESTIONNAIRE MAY BE RETURNED AND WILL DELAY THE REVIEW OF YOUR PROJECT.

PART A

Applicant:________________ Contact Person:________________

Address:________________ Address:________________

________________ ________________

Phone (day):________________ Phone (day):________________

Brief description of project or activity, including associated facilities________________

________________________________

________________________________

Starting date for project________________ Ending date for project________________

Location of Project (include nearest community or identifiable land or water body):________

________________________________

Meridian_____ Township_____ Range _____ Section_____ Aliquot Parts_____ USGS Map_____

Is the project on: private land_______ state land_______ federal land_______

municipal land______ ownership not known______

Identify which region of the State the project is in (see attached map):

northern_____ southcentral_____ southeast_____

* * * * * * * * * * * * * * * * * * * *

PART B

| | | Yes | No |
|---|---|---|---|
| 1. | Do you currently have any State or federal approvals/permits for this project? If yes, please list below. | ____ | ____ |

| Permit/Approval Type | Permit/Approval # | Expiration Date |
|---|---|---|
| | | |
| | | |
| | | |

2. Will you be placing structures, or placing fills in any of the following: tidal waters, streams, lakes, wetlands*? ____ ____

* If you are uncertain whether your proposed project area is in a wetland, contact the Corps of Engineers, Regulatory Branch at (907) 753-2720 for a wetlands determination. If you are outside the Anchorage area call toll free 1-800-478-2712.

| | Yes | No |
|---|---|---|
| If yes, have you applied for or do you intend to apply for a U.S. Army Corps of Engineers (COE) permit? (The COE has jurisdiction over activities described above.) Please indicate in Question No. 3 below, when you applied to the COE or when you intend to apply. | ____ | ____ |
| 3. Have you applied or do you intend to apply for other permits from any federal agency? If yes, list below. | ____ | ____ |

| Agency | Permit/Approval Type | Date you submitted or plan to submit application |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

* * * * * * * * * * * * * * * * * * * *

## PART C DEPARTMENT OF NATURAL RESOURCES

| | Yes | No |
|---|---|---|
| 1. Is the proposed project on State-owned land or will you need to cross State lands for access? (Note: In addition to State owned uplands, the State has jurisdiction over most lands below the ordinary high water line of streams, rivers, lakes, and line of mean high tide of the tidelands seaward for three miles.) | ____ | ____ |
| 2. Is any portion of your project placed below the ordinary high water line of a stream, river, lake or other water body? | ____ | ____ |
| 3. Will you be dredging? | ____ | ____ |

If yes, location of dredging:

Meridian (M)_____ Township (T)_____ Range (R)______ Section (Sec)______

Location of disposal site for dredged material:

M______ T______ R_______ Sec______

| | Yes | No |
|---|---|---|
| 4. Will you be filling with rock, sand or gravel? | ____ | ____ |

If yes, amount?_________

Location of source: M______ T_______ R______ Sec______

Location of area to be filled: M______ T ______ R______ Sec______

| | Yes | No |
|---|---|---|
| 5. Do you plan to use any of the following state-owned resources? | ____ | ____ |

Timber

If yes, amount?__________________

Location of source: M______ T______ R______ Sec______

Yes No

**Other Materials** ___ ___

If yes, what material? ______________________ (peat, building stone, silt, overburden, etc.)

Location of source: M________ T________ R________ Sec________

6. Are you planning to use any water? ___ ___

If yes, amount? ______________________

Source? ______________________

7. Will you be building or altering a dam? ___ ___

8. Do you plan to drill a geothermal well? ___ ___

9. Will you be exploring for or extracting coal? ___ ___

10. Will you be exploring for or extracting minerals on state-owned land? ___ ___

11. Will you be exploring for or extracting oil and gas on state-owned land? ___ ___

12. Will you be harvesting timber from 10 or more acres? ___ ___

13. Will you be investigating or removing historic or archeological resources on State-owned lands? ___ ___

14. Will the project be located in a unit of the State Park System (including the Kenai River Special Management Area, State Recreation Areas, State Historic Sites, State Preserves, etc.)? ___ ___

IF YOU CORRECTLY ANSWERED NO TO ALL THESE QUESTIONS, YOU DO NOT NEED APPROVAL FROM THE ALASKA DEPARTMENT OF NATURAL RESOURCES (DNR). GO TO PART D.

IF YOU ANSWERED YES TO ANY OF THESE QUESTIONS, CONTACT DNR TO IDENTIFY AND OBTAIN ANY NECESSARY APPLICATION FORMS.

If you have already contacted DNR, are you now submitting application(s) for permits or approvals? If yes, list DNR approvals for which you are now applying: ____________ ____________ ____________ ___ ___

Have you paid the filing fees required for the DNR permits? ___ ___

If you are not applying for permits, indicate the reason below:

___ a. ______________ (DNR contact) told me on ________(date) that no DNR approvals or permits were required for this project.

___ b. Other. ______________________

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * *



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**PART D DEPARTMENT OF FISH AND GAME** Yes No

1. Will you be working in a stream, river, or lake (this includes running water or on ice, within the active floodplain, on islands, the face of the banks, or the stream tideflats down to mean low tide)? ____ ____

   Name of stream or river______________ Name of lake______________

   If no, go to question number 3.

2. If yes, will you be doing any of the following:

   a) Building of a dam, river training structure or instream impoundment? ____ ____
   b) Using the water? ____ ____
   c) Diverting or altering the natural channel stream? ____ ____
   d) Blocking or damming the stream (temporarily or permanently)? ____ ____
   e) Changing the flow of the water or changing the bed? ____ ____
   f) Pumping water out of the stream or lake? ____ ____
   g) Introducing silt, gravel, rock, petroleum products, debris, chemicals, or wastes of any type into the water? ____ ____
   h) Using the stream as a road (even when frozen), or crossing the stream with tracked or wheeled vehicles, log-dragging or excavation equipment (backhoes, bulldozers, etc.)? ____ ____
   i) Altering or stabilizing the banks? ____ ____
   j) Mining or digging in the beds or banks? ____ ____
   k) Using explosives? ____ ____
   l) Building a bridge (including an ice bridge)? ____ ____
   m) Installing a culvert or other drainage structure? ____ ____
   n) Constructing a weir? ____ ____

3. Is your project located in a State Game Refuge, Critical Habitat Area, or State Game Sanctuary? ____ ____

4. Does your project include the construction and operation of a salmon hatchery? ____ ____

5. Does your project affect or is it related to a previously permitted salmon hatchery? ____ ____

IF YOU CORRECTLY ANSWERED NO TO ALL THESE QUESTIONS, YOU DO NOT NEED A PERMIT FROM THE ALASKA DEPARTMENT OF FISH AND GAME (DFG). GO TO PART E.

IF YOU ANSWERED YES TO QUESTIONS 1-3, CONTACT THE REGIONAL HABITAT DIVISION OFFICE TO IDENTIFY AND OBTAIN ANY NECESSARY APPLICATION FORMS.

IF YOU ANSWERED YES TO QUESTIONS 4-5, CONTACT THE PRIVATE NONPROFIT HATCHERY OFFICE AT F.R.E.D. DIVISION HEADQUARTERS TO OBTAIN INFORMATION AND ANY NECESSARY APPLICATION FORMS.

| | Yes | No |
|---|---|---|
| If you have already contacted DFG, are you now submitting an application for permit(s)? If yes, list DFG approvals for which you are now applying: | ____ | ____ |

________________ ________________ ________________

If you are not applying for permits, indicate the reason below:

___ a. ________________ (DFG contact) told me on ________ (date) that no DFG approvals or permits were required for this project.

___ b. Other. ______________________________

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

## PART E DEPARTMENT OF ENVIRONMENTAL CONSERVATION

| | Yes | No |
|---|---|---|
| 1. Will a discharge of wastewater from industrial or commercial operations occur? | ____ | ____ |
| 2. Will your project generate air emissions from the following: | | |
| a) Diesel generators totaling more than 10,000 hp? | ____ | ____ |
| b) Other fossil fuel-fired electric generator, furnace, or boiler totaling greater than 10,000 hp, or 9,000kw, or 100,000,000 btu/hr? | ____ | ____ |
| c) Asphalt plant? | ____ | ____ |
| d) Incinerator burning more than 1000 lbs. per hour? | ____ | ____ |
| e) Industrial process? | ____ | ____ |
| 3. Will a drinking water supply be developed that serves more than a single-family residence? | ____ | ____ |
| 4. Will you be processing seafood? | ____ | ____ |
| 5. Will food service be provided to the public or workers? | ____ | ____ |
| 6. Will the project result in dredging or disposal of fill in wetlands or placement of a structure in waterways? (Note: If you are applying to the Corps of Engineers for a permit for this activity, the Corps will automatically request certification from DEC.) | ____ | ____ |
| 7. Is on-lot sewage or greywater disposal involved or necessary? | ____ | ____ |
| 8. Will your project result in the development of a currently unpermitted facility for the disposal of domestic or industrial solid waste? | ____ | ____ |
| 9. Will your project require offshore drilling or vessel transport of oil, or other petroleum products as cargo, or include onshore facilities with an effective storage capacity of greater than 10,000 barrels of such products? | ____ | ____ |

| | Yes | No |
|---|---|---|
| 10. Will your project require the application of oil or pesticides to the surface of the land? | ____ | ____ |

IF YOU CORRECTLY ANSWERED NO TO ALL THESE QUESTIONS, YOU DO NOT NEED A PERMIT OR OTHER APPROVAL FROM THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC). GO TO PART F.

IF YOU ANSWERED YES TO ANY OF THESE QUESTIONS (SEE CLARIFYING NOTE IN NO. 6, ABOVE) CONTACT THE DEC REGIONAL OFFICE TO IDENTIFY AND OBTAIN ANY NECESSARY APPLICATION FORMS.

If you have already contacted the Alaska Department of Environmental Conservation, are you now submitting an application for permit(s)? ____ ____
If yes, list the permits for which you are now applying:

____________ ____________ ____________

If you are not applying for permits, indicate the reason below:

___ a. ______________ (DEC contact) told me on __________ (date) that no DEC approvals or permits were required for this project.

___ b. Other. ______________________________

* * * * * * * * * * * * * * * * * * * *

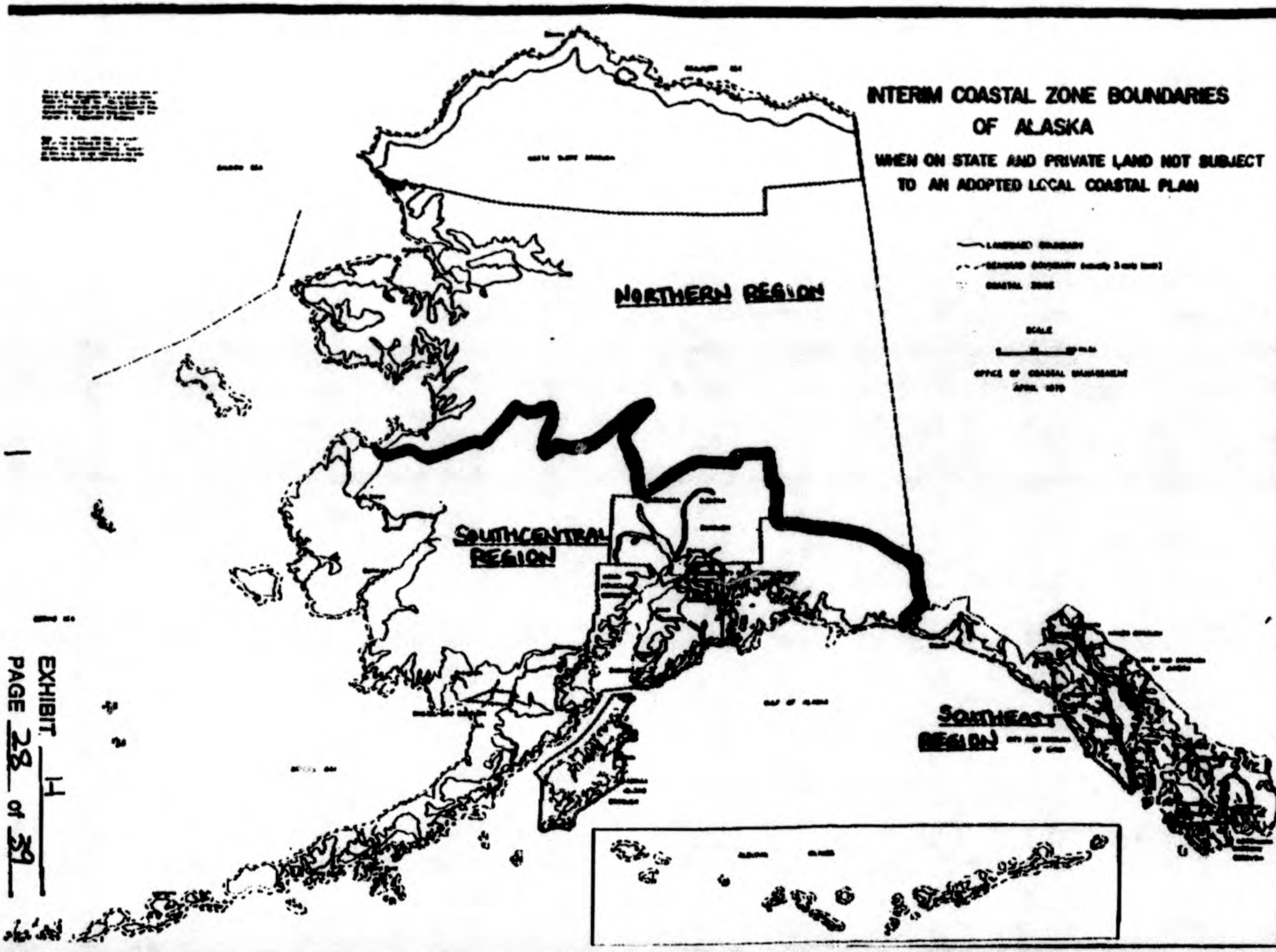
PART F

To the best of my knowledge, this information is accurate and complete.

______________________________ ______________________________
Signed Date

TO COMPLETE YOUR PACKET, PLEASE ATTACH YOUR STATE PERMIT APPLICATIONS AND COPIES OF YOUR FEDERA APPLICATIONS TO THIS QUESTIONNAIRE. PLEASE SUBMIT YOUR PACKET AS INDICATED ON PAGE ONE.

cp questionnaire/PERMIT

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## SOUTHEAST REGIONAL CONTACTS

### DEPARTMENT OF NATURAL RESOURCES

**Oil & Gas Activities**

DNR/Oil and Gas
400 Willoughby Ave.
Juneau, AK 99801
(907) 465-2400
CONTACT: Bob Butts

**Mining Activities**

DNR/Mining
Box 7016
Anchorage, AK 99510
(907) 762-4222
CONTACT: Jerry Gallagher

**Forestry Activities**

DNR/Forestry
400 Willoughby Avenue
Juneau, AK 99801
(907) 762-4500
CONTACT: Jim McAllister

**Agriculture Activities**

DNR/Agriculture
915 S. Bailey
P.O. Box 949
Palmer, AK 99645
(907) 745-7200
CONTACT: Dean Brown

**Activities on State Park Lands**

DNR/Parks
400 Willoughby Avenue, Suite 500
Juneau, AK 99801
(907) 465-4563
CONTACT: Linda Kruger

**All Other Activities**

Southeast District Office
DNR/Land and Water Management
400 Willoughby Avenue, Suite 400
Juneau, AK 99801
(907) 465-3400
CONTACT: Bob Merry

*Street Address:

3601 "C" Street
Frontier Building

### DEPARTMENT OF FISH AND GAME

**DFG/Habitat Division**

P.O. Box 20
Douglas, AK 99824
(907) 465-4290, 465-4291
CONTACTS: Rick Reed or
Janet Hall

**Area Offices**

Department of Fish and Game
P.O. Box 667
Petersburg, AK 99833
(907) 772-3801
CONTACT: Don Cornelius

Department of Fish and Game
425 Main Street, Room 208
Ketchikan, AK 99901
(907) 225-2027
CONTACT: Jack Gustafson

Department of Fish and Game
State Office Building
P.O. Box 510
Sitka, AK 99835
(907) 747-5828
CONTACT: Dave Hardy

**Hatchery Permits**

DFG/FRED Division
1255 West Eighth Street
P.O. Box 3-2000
Juneau, AK 99802
(907) 465-4160
CONTACT: Jerry Madden or
Kevin Duffy

### DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DEC/Southeast Office
P.O. Box 2420
9000 Old Glacier Highway
Juneau, AK 99803
(907) 789-3151
CONTACT: Dick Stokes

### OFFICE OF MANAGEMENT AND BUDGET

Division of Governmental Coordination
Pouch AW
431 N. Franklin Street
Juneau, AK 99811-0165
(907) 465-3562
CONTACT: Diane Meyer
Lorraine Marshall

po/permit

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# SOUTHCENTRAL REGIONAL CONTACTS

## DEPARTMENT OF NATURAL RESOURCES

### Oil & Gas Activities

DNR/Oil and Gas
Box 7034
Anchorage, AK 99510
(907) 561-2020
CONTACT: Bill Van Dyke

### Mining Activities

DNR/Mining*
Box 7016
Anchorage, AK 99510
(907) 762-4222
CONTACT: Jerry Gallagher

### Forestry Activities

DNR/Forestry*
Box 7005
Anchorage, AK 99510
(907) 762-2123
CONTACT: Dan Ketchum

### Agriculture Activities

DNR/Agriculture
915 S. Bailey
P.O. Box 949
Palmer, AK 99645
(907) 745-7200
CONTACT: Dean Brown

### Activities on State Park Lands

DNR/Parks*
Box 7001
Anchorage, AK 99510
(907) 762-4565
CONTACT: Michel D. Lee

### All Other Activities

Public Information*
Southcentral District Office
DNR/Land and Water Management
Box 7005
Anchorage, AK 99510
(907) 762-2207
CONTACT: Elaine Nelson

*Street Address:

3601 "C" Street
Frontier Building

## DEPARTMENT OF FISH AND GAME

DFG/Habitat Division
333 Raspberry Road
Anchorage, AK 99518-1599
CONTACT: (Southcentral):
Phil Brna
Gary Liepitz
Karen Oakley
(907) 267-2284
(Southwest and Western):
Denby Lloyd
Kim Sundberg
(907) 267-2346

### Hatchery Permits

DFG/FRED Division
1255 West Eighth Street
P.O. Box 3-2000
Juneau, AK 99802
(907) 465-4160
CONTACT: Jerry Madden or
Kevin Duffy

## DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DEC/Southcentral Office
437 E Street, Second Floor
Anchorage, AK 99501
274-2533
CONTACT: Bob Flint
Tim Rumfelt

## OFFICE OF MANAGEMENT AND BUDGET

Division of Governmental Coordination
2600 Denali Street, Suite 700
Anchorage, AK 99503-2798
(907) 274-1581
CONTACT: Patty Bielawski
Louise Rand

5/86

# NORTHERN REGIONAL CONTACTS

## DEPARTMENT OF NATURAL RESOURCES

### Oil & Gas Activities

DNR/Oil and Gas
794 University Way
Fairbanks, AK 99701
(907) 474-6085
CONTACT: Ted Bond

### Mining Activities

DNR/Mining*
Box 7016
Anchorage, AK 99510
(907) 762-4222
CONTACT: Jerry Gallagher

### Forestry Activities

DNR/Forestry*
Box 7005
Anchorage, AK 99510
(907) 762-4500
CONTACT: Craig Olson

### Agriculture Activities

DNR/Agriculture
915 S. Bailey
P.O. Box 949
Palmer, AK 99645
(907) 745-7200
CONTACT: Dean Brown

### Activities on State Park Lands

DNR/Parks
4418 Airport Way
Fairbanks, AK 99701
(907) 479-4136
CONTACT: Al Meiners or Dave Snarski

### All Other Activities

North Central District Office
DNR/Land and Water Management
4420 Airport Way
Fairbanks, AK 99709
(907) 479-2243
CONTACT: Coyle Berger

*Street Address:

3601 "C" Street
Frontier Building

## DEPARTMENT OF FISH AND GAME

DFG/Habitat Division
1300 College Road
Fairbanks, AK 99701
CONTACT:
(Arctic) Carl Hemming
(907)479-0882
(Interior) Al Townsend
(907)479-0883

### Hatchery Permits

DFG/FRED Division
1255 West Eighth Street
P.O. Box 3-2000
Juneau, AK 99802
(907) 465-4160
CONTACT: Jerry Madden or
Kevin Duffy

## DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DEC/Northern Office
675 Seventh Avenue, Pouch 1601
Fairbanks, AK 99707
(907) 452-1714
CONTACT: Paul Bateman (Arctic)
Joyce Beelman (Interior)

## OFFICE OF MANAGEMENT AND BUDGET

Division of Governmental Coordination
675 Seventh Avenue, Station H
Fairbanks, AK 99701-4596
(907) 456-3084
CONTACT: Jan Sorice
Patti Wightman

po/permit

# ALASKA LAWS, REGULATIONS AND LOCAL ORDINANCES GOVERNING OIL AND GAS OPERATIONS IN ALASKA

1. ALASKA ENVIRONMENTAL CONSERVATION LAW - AS TITLE 46, CHAPTERS 2 AND 3

   ADEC REGULATIONS - TITLE 18 AAC

   Chapter 18 - Coastal Protection Fund
   Chapter 50 - Air Quality Control
   Chapter 60 - Solid Waste Management
   Chapter 70 - Water Quality Standards
   Chapter 72 - Wastewater Disposal
   Chapter 74 - Water and Wastewater Certification
   Chapter 75 - Oil and Hazardous Substances Pollution Control
   Chapter 80 - Drinking Water
   Chapter 90 - Pesticide Control
   Chapter 95 - Administrative Enforcement

   ADEC CERTIFICATES - TITLE 15 AAC

   Certificate of Reasonable Assurance issued under Section 401 of the Clean Water Act in conjunction with the Corps of Engineers Section 404 Clean Water Act permit (40 CFR).

   NPDES certificate issued in conjunction with EPA's NPDES Clean Water Act permit (40 CFR).

   ADEC ALASKA OIL POLLUTION CONTROL LAW - AS TITLE 46

   Chapter 4 - Oil Discharge Contingency Plans

2. ALASKA COASTAL MANAGEMENT ACT - AS TITLE 46, CHAPTER 40
   - AS TITLE 44, CHAPTER 19

   ALASKA COASTAL POLICY COUNCIL REGULATIONS - TITLE 6 AAC

   Chapter 80 - Standards of the Alaska Coastal Management Program
   Chapter 85 - Guidelines for District Coastal Management Programs
   Chapter 50 - Project Consistency with the Alaska Coastal Management Act

3. ALASKA FISH AND GAME LAW - AS TITLE 16

   Chapter 5 - Waters Important to Anadromous Fish

4. ALASKA OIL AND GAS CONSERVATION ACT - AS TITLE 31, CHAPTER 5

   ALASKA OIL AND GAS CONSERVATION COMMISSION REGULATIONS - TITLE 20 AAC, CHAPTER 25

5. PUBLIC LANDS - AS TITLE 38, CHAPTERS 5 and 35

   ADNR REGULATIONS - TITLE 11 AAC
   Chapter 53 - Records, Surveys and Platting
   Chapter 58 - Leasing of Land
   Chapter 62 - Tide and Submerged Lands
   Chapter 67 - Disposal of Land
   Chapter 71 - Timber and Material Sale
   Chapter 80 - Pipeline Right-of-Way Leasing
   Chapter 82 - Mineral Leasing Procedure
   Chapter 83 - Oil and Gas Leasing
   Chapter 88 - Practice and Procedure
   Chapter 93 - Water Management
   Chapter 96 - Miscellaneous Land Use

6. NORTH SLOPE BOROUGH LAND MANAGEMENT REGULATIONS

   Chapter 60 - Development Permits for Oil and Gas Activities

0852E

(COMPETITIVE OIL AND GAS LEASE)
(Revised 1988)
(DNR 10-4057

# STATE OF ALASKA
# DEPARTMENT OF NATURAL RESOURCES

## Competitive Oil and Gas Lease

ADL No.

THIS LEASE is entered into 19 , between the State of Alaska, "the state," and

the lessee," whether one or more, whose sole address for purposes of notification under Paragraph 25 is

In consideration of the cash payment made by the lessee to the state, which payment includes the first year's rental and any required cash bonus, and subject to the provisions of this lease, including applicable stipulation(s) and mitigating measures attached to this lease and by this reference incorporated in this lease, the state and the lessee agree as follows:

1 GRANT (a) Subject to the provisions in this lease, the state grants and leases to the lessee, without warranty, the exclusive right to drill for, extract, remove, clean, process, and dispose of oil, gas, and associated substances in or under the following described tract of land:

SAMPLE

containing approximately acres, more or less (referred to in this lease as the "leased area"); the nonexclusive right to conduct within the leased area geological and geophysical exploration for oil, gas, and associated substances; and the nonexclusive right to install pipelines and build structures on the leased area to find, produce, save, store, treat, process, transport, take care of, and market all oil, gas, and associated substances and to house and board employees in its operations on the leased area. The rights granted by this lease are to be exercised in a manner which will not unreasonably interfere with the rights of any permittee, lessee or grantee of the state consistent with the principle of reasonable concurrent uses as set out in article VIII, section 8 of the Alaska Constitution.

(b) For the purposes of this lease, the leased area contains the legal subdivisions as shown on the attached plat marked Exhibit A.

(c) If the leased area is described by protracted legal subdivisions and, after the effective date of this lease, the leased area is surveyed under the public land rectangular system, the boundaries of the leased area are those established by that survey, when approved, subject, however, to the provisions of applicable regulations relating to those surveys. If for any reason the leased area includes more acreage than the maximum permitted under applicable law (including the "rule of approximation" authorized in AS 38.05.145 and defined in AS 38.05.965 (17), this lease is not void and the acreage included in the leased area must be reduced to the permitted maximum. If the state determines that the leased area exceeds the permitted acreage and notifies the lessee in writing of the amount of acreage that must be eliminated, the lessee must have 60 days after that notice to surrender one or more legal subdivisions included in the leased area comprising at least the amount of acreage that must be eliminated. Any subdivision surrendered must be located on the perimeter of the leased area as originally described. If a surrender is not filed within 60 days, the state may terminate this lease as to the acreage that must be eliminated by mailing notice of the termination to the lessee describing the subdivision eliminated.

(d) If the State of Alaska's ownership interest in the oil, gas, and associated substances in the leased area is less than an entire and undivided interest, the grant under this lease is effective only as to the state's interest in that oil, gas, and associated substances, and the royalties and rentals provided in this lease must be paid to the state in the proportion that the state's interest bears to the entire undivided fee.

(e) The state makes no representations or warranties, express or implied, as to title, or access to, or quiet enjoyment of, the leased area. The state is not liable to the lessee for any deficiency in title to the leased area, nor is the lessee or any successor in interest to the lessee entitled to any refund due to deficiency in title for any rentals, bonuses, or royalties paid under this lease.

2 RESERVED RIGHTS. (a) The state, for itself and others, reserves all rights not expressly granted to the lessee by this lease. These reserved rights include, but are not limited to:

(1) the right to explore for oil, gas, and associated substances by geological and geophysical means;

(2) the right to explore for, develop, and remove natural resources other than oil, gas, and associated substances on or from the leased area;

(3) the right to establish or grant easements and rights-of-way for any lawful purpose, including without limitation for shafts and tunnels necessary or appropriate for the working of the leased area or other lands for natural resources other than oil, gas, and associated substances;

(4) the right to dispose of land within the leased area for well sites and well bores of wells drilled from or through the leased area to explore for or produce oil, gas, and associated substances in and from lands not within the leased area; and

(5) the right otherwise to manage and dispose of the surface of the leased area or interests in that land by grant, lease, permit, or otherwise to third parties.

(b) The rights reserved may be exercised by the state, or by any other person or entity acting under authority of the state, in any manner that does not unreasonably interfere with or endanger the lessee's operations under this lease.

3 TERM. This lease is issued for an initial primary term of                years from the effective date of this lease. The term may be extended as provided in Paragraph 4 below.

4 EXTENSION. (a) This lease will be extended automatically if and for so long as oil or gas is produced in paying quantities from the leased area.

(b) This lease will be extended automatically if it is committed to a unit agreement approved or prescribed by the state, and will remain in effect for so long as it remains committed to that unit agreement.

(c) (1) If the drilling of a well whose bottom hole location is in the leased area has commenced as of the date on which the lease otherwise would expire and is continued with reasonable diligence, this lease will continue in effect until 90 days after cessation of that drilling and for so long as oil or gas is produced in paying quantities from the leased area.

(2) If oil or gas in paying quantities is produced from the leased area, and if that production ceases at any time, this lease will not terminate if drilling or reworking operations are commenced on the leased area within six months after cessation of production and are prosecuted with reasonable diligence; if those drilling or reworking operations result in the production of oil or gas, this lease will remain in effect for so long as oil or gas is produced in paying quantities from the leased area.

(d) If there is a well capable of producing oil or gas in paying quantities on the leased area, this lease will not expire because the lessee fails to produce that oil or gas unless the state gives notice to the lessee, allowing a reasonable time, which will not be less than six months after notice, to place the well into production, and the lessee fails to do so. If production is established within the time allowed, this lease is extended only for so long as oil or gas is produced in paying quantities from the leased area.

(e) If the state directs or approves in writing a suspension of all operations on or production from the leased area (except for a suspension necessitated by the lessee's negligence), or if a suspension of all operations on or production from the leased area has been ordered under federal, state, or local law, the lessee's obligation to comply with any express or implied provision of this lease requiring operations or production will be suspended, but not voided, and the lessee shall not be liable for damages for failure to comply with that provision. If the suspension occurs before the expiration of the primary term, the primary term will be extended at the end of the period of the suspension by adding the period of time lost under the primary term because of the suspension. If the suspension occurs during an extension of the primary term under this paragraph, upon removal of that suspension, the lessee will have a reasonable time, which will not be less than six months after notice that the suspension has been removed, to resume operations or production. For the purposes of this subparagraph, any suspension of operations or production specifically required or imposed as a term of sale or by any stipulation made a part of this lease will not be considered a suspension ordered by law.

(f) If the state determines that the lessee has been prevented by force majeure, after efforts made in good faith, from performing any act that would extend the lease beyond the primary term, this lease will not expire during the period of force majeure. If the force majeure occurs before the expiration of the primary term, the primary term will be extended at the end of the period of force majeure by adding the period of time lost under the primary term because of the force majeure. If the force majeure occurs during an extension of the primary term under this paragraph, the lease will not expire during the period of force majeure plus a reasonable time after that period, which will not be less than 60 days, for the lessee to resume operations or production.

(g) Nothing in subparagraph (e) or (f) suspends the obligation to pay royalties or other production or profit-based payments to the state from operations on the leased area that are not affected by any suspension or force majeure, or suspends the obligation to pay rentals.

5 RENTALS. (a) The lessee shall pay annual rental to the state in accordance with the following rental schedule:

(1) For the first year, $1.00 per acre or fraction of an acre;

(2) For the second year, $1.50 per acre or fraction of an acre;

(3) For the third year, $2.00 per acre or fraction of an acre;

(4) For the fourth year, $2.50 per acre or fraction of an acre;

(5) For the fifth year and following years, $3.00 per acre or fraction of an acre, provided that the state may increase the annual rental rate as provided by law upon extension of this lease beyond the primary term.

(b) Annual rental paid in advance is a credit on the royalty or net profit share due under this lease for that year.

(c) The lessee shall pay the annual rental to the State of Alaska (or any depository designated by the state with at least 60 days notice to the lessee) in advance, on or before the annual anniversary date of this lease. The state is not required to give notice that rentals are due by billing the lessee. If the state's (or depository's) office is not open for business on the annual anniversary date of this lease, the time for payment is extended to include the next day on which that office is open for business. If the annual rental is not paid timely, this lease automatically terminates as to both parties at 11:59 p.m., Alaska Standard Time, on the date by which the rental payment was to have been made.

6. RECORDS. The lessee shall keep and have in its possession books and records showing the development and production (including records of development and production expenses) and disposition (including records of sales prices, volumes, and purchasers) of all oil, gas, and associated substances produced from the leased area. The lessee shall permit the State of Alaska or its agents to examine these books and records at all reasonable times. These books and records of development, production, and disposition must employ methods and techniques that will ensure the most accurate figures reasonably available without requiring the lessee to provide separate tankage or meters for each well. The lessee shall use standard and consistent accounting procedures.

7. APPORTIONMENT OF ROYALTY FROM APPROVED UNIT. The state's royalty share of the unit production allocated to each separately owned tract must be regarded as royalty to be distributed to and among, or the proceeds of it paid to, the state, free and clear of all unit expenses and free of any lien for them. Under this provision, the state's royalty share of any unit production allocated to the leased area will be regarded as royalty to be distributed to, or the proceeds of it paid to, the state, free and clear of all unit expenses (and any portion of those expenses incurred away from the unit area), including, but not limited to, expenses for separating, cleaning, dehydration, gathering, saltwater disposal, and preparing oil, gas, or associated substances for transportation off the unit area, and free of any lien for them.

8. PAYMENTS. All payments to the State of Alaska under the lease must be made payable to the state in the manner directed by the state, and, unless otherwise specified, must be tendered to the state at

DEPARTMENT OF NATURAL RESOURCES
P.O. BOX 7034
ANCHORAGE, ALASKA 99510-7034
ATTENTION: REVENUE UNIT

or to any depository designated by the state with at least 60 days notice to the lessee.

9. PLAN OF OPERATIONS. (a) Except as provided in subparagraph (b) below, no lease operations may be undertaken on the leased area until a plan of operations has been approved by the state if

(1) the State of Alaska owns all or part of the surface estate of the leased area;

(2) the lease reserves a net profit share to the State of Alaska; or

(3) the State of Alaska owns all or part of the mineral estate, but the entire surface estate of the leased area is owned by a party other than the State of Alaska and a surface owner requests that a plan of operations be required by the state for the portion of the leased area owned by that surface owner.

(b) A lease plan of operations will not be required by the state for

(1) lease operations that would not require a land use permit under 11 AAC; or

(2) lease operations undertaken under an approved unit plan of operations in accordance with 11 AAC.

(c) Before undertaking operations on the leased area, the lessee shall provide for full payment of all damages sustained by the owner of the surface estate as well as by the surface owner's lessees and permittees by reason of entering the land. If the surface estate is owned by a party other than the State of Alaska, the lessee shall also notify the surface owner of his opportunity to request that the state require a plan of operations before allowing lease operations to be undertaken on the portion of the leased area owned by the requesting surface owner.

(d) The lessee shall file with the state 10 copies of its proposed plan of operations if the proposed operations are within the coastal zone, and five copies if the proposed operations are not within the coastal zone.

(e) An application for approval of a plan of operations must contain sufficient information, based on data reasonably available at the time the plan is submitted for approval, for the state to determine the surface use requirements and impacts directly associated with the proposed operations. An application must include statements and maps or drawings setting out the following:

(1) the sequence and schedule of the operations to be conducted on the leased area, including the date operations are proposed to begin and their proposed duration;

(2) projected use requirements directly associated with the proposed operations, including but not limited to the location and design of well sites, material sites, water supplies, solid waste sites, sumps, buildings, roads, utilities, airstrips, and all other facilities and equipment necessary to conduct the proposed operations;

(3) plans for rehabilitation of the affected leased area after completion of operations or phases of those operations; and

(4) a description of operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the leased area and adjacent areas, including fish and wildlife habitats, historic and archeological sites, and public use areas.

(f) In approving a lease or unit plan of operations, or an amendment of a plan, the state will require amendments it determines necessary to protect the state's interest, including the environment. The state will not require any amendment that would be inconsistent with the terms of sale under which the lease was obtained or with the terms of the lease itself, or would deprive the lessee of reasonable use of the leasehold interest.

(g) The lessee may, with the approval of the state, amend an approved plan of operations.

(h) Approval by the state of a plan of operations or any modifications of a plan of operations signifies only that the state has no objection to the operations outlined in the plan from the standpoint of the lease administrator and does not relieve the lessee of its obligation to obtain approvals and permits required by other governmental agencies having regulatory authority over those operations.

(i) All of the lessee's operations on the leased area must be in conformance with the approved plan of operations.

(j) Upon completion of operations, the lessee shall inspect the area of operations and submit a report indicating the completion date of operations and stating any noncompliance of which the lessee knows, or should reasonably know, with requirements imposed as a condition of approval of the plan.

10. PLAN OF DEVELOPMENT. (a) Except as provided in subparagraph (d) below, within 12 months after certification of a well capable of producing oil, gas, or associated substances in paying quantities, the lessee shall file two copies of an application for approval by the state of an initial plan of development that must describe the lessee's plans for developing the leased area. No development of the leased area may occur until a plan of development has been approved by the state.

(b) The plan of development must be revised, updated, and submitted to the state for approval annually before or on the anniversary date of the previously approved plan. If no changes from an approved plan are contemplated for the following year, a statement to that effect must be filed for approval in lieu of the required revision and update.

(c) The lessee may, with the approval of the state, subsequently modify an approved plan of development.

(d) If the leased area is included in an approved unit, the lessee will not be required to submit a separate lease plan of development for unit activities.

11. LOGS AND OTHER RECORDS OF OPERATIONS. (a) The lessee shall file with the state all logs, geological and geophysical surveys taken, a description of all tests run for each well drilled on the leased area, and a plat showing the exact location of each well, within 30 days after each well or survey has been completed, suspended, or abandoned.

(b) Any information filed by the lessee with the state in connection with this lease will be available at all times for the use of the state and its agents, subject to the duty to keep the information confidential as provided in AS 38.05.035(a)(9), AS 31.05.035, and applicable regulations.

12 DIRECTIONAL DRILLING This lease may be maintained in effect by directional wells whose bottom hole location is on the leased area but that are drilled from locations on other lands not covered by this lease. In those circumstances, drilling will be considered to have commenced on the leased area when actual drilling is commenced on those other lands for the purpose of directionally drilling into the leased area. Production of oil or gas from the leased area through any directional well surfaced on those other lands, or drilling or reworking of that directional well, will be considered production or drilling or reworking operations on the leased area for all purposes of this lease. Nothing contained in this paragraph is intended or will be construed as granting to the lessee any interest, license, easement, or other right in or with respect to those lands in addition to any interest, license, easement, or other right that the lessee may have lawfully acquired from the state or from others.

13 DILIGENCE AND PREVENTION OF WASTE (a) The lessee shall exercise reasonable diligence in drilling, producing, and operating wells on the leased area unless consent to suspend operations temporarily is granted by the state.

(b) Upon discovery of oil or gas on the leased area in quantities that would appear to a reasonable and prudent operator to be sufficient to recover ordinary costs of drilling, completing, and producing an additional well in the same geologic structure at another location with a reasonable profit to the operator, the lessee must drill those wells as a reasonable and prudent operator would drill, having due regard for the interest of the state as well as the interest of the lessee.

(c) The lessee shall perform all operations under this lease in a good and workmanlike manner in accordance with the methods and practices set out in the approved plan of operations and plan of development, with due regard for the prevention of waste of oil, gas, and associated substances and the entrance of water to the oil and gas-bearing sands or strata to the destruction or injury of those sands or strata, and to the preservation and conservation of the property for future productive operations. The lessee shall carry out at the lessee's expense all orders and requirements of the State of Alaska relative to the prevention of waste and to the preservation of the leased area. If the lessee fails to carry out these orders, the state will have the right, together with any other available legal recourse, to enter the leased area to repair damage or prevent waste at the lessee's expense.

(d) The lessee shall securely plug in an approved manner any well before abandoning it.

14 OFFSET WELLS The lessee shall drill such wells as a reasonable and prudent operator would drill to protect the state from loss by reason of drainage resulting from production on other land. Without limiting the generality of the foregoing sentence, if oil or gas is produced in a well on other land not owned by the State of Alaska or on which the State of Alaska receives a lower rate of royalty than under this lease, and that well is within 500 feet in the case of an oil well or 1,500 feet in the case of a gas well of lands then subject to this lease, and that well produces oil or gas for a period of 30 consecutive days in quantities that would appear to a reasonable and prudent operator to be sufficient to recover ordinary costs of drilling, completing, and producing an additional well in the same geological structure at an offset location with a reasonable profit to the operator, and if, after notice to the lessee and an opportunity to be heard, the state finds that production from that well is draining lands then subject to this lease, the lessee shall within 30 days after written demand by the state begin in good faith and diligently prosecute drilling operations for an offset well on the leased area. In lieu of drilling any well required by this paragraph, the lessee may, with the state's consent, compensate the state in full each month for the estimated loss of royalty through drainage in the amount determined by the state.

15 UNITIZATION (a) The lessee may unite with others, jointly or separately, in collectively adopting and operating under a cooperative or unit agreement for the exploration, development, or operation of the pool, field, or like area or part of the pool, field, or like area that includes or underlies the leased area or any part of the leased area whenever the state determines and certifies that the cooperative or unit agreement is in the public interest.

(b) The lessee agrees, within six months after demand by the state, to subscribe to a reasonable cooperative or unit agreement that will adequately protect all parties in interest, including the state. The state reserves the right to prescribe such an agreement.

(c) With the consent of the lessee, and if the leased area is committed to a unit agreement approved by the state, the state may establish, alter, change, or revoke drilling, producing, and royalty requirements of this lease as the state determines necessary or proper to secure the proper protection of the public interest.

(d) Except as otherwise provided in this subparagraph, where only a portion of the leased area is committed to a unit agreement approved or prescribed by the state, that commitment constitutes a severance of this lease as to the unitized and nonunitized portions of the leased area. The portion of the leased area not committed to the unit will be treated as a separate and distinct lease having the same effective date and term as this lease and may be maintained only in accordance with the terms and conditions of this lease, statutes, and regulations. Any portion of the leased area not committed to the unit agreement will not be affected by the unitization or pooling of any other portion of the leased area, by operations in the unit, or by suspension approved or ordered for the unit. If the leased area has a well certified as capable of production in paying quantities on it before commitment to a unit agreement, this lease will not be severed. If any portion of this lease is included in a participating area formed under a unit agreement, the entire leased area will remain committed to the unit and this lease will not be severed.

16 INSPECTION The lessee shall keep open at all reasonable times, for inspection by any duly authorized representative of the State of Alaska, the leased area, all wells, improvements, machinery, and fixtures on the leased area, and all reports and records relative to operations and surveys or investigations on or with regard to the leased area or under this lease. Upon request, the lessee shall furnish the State of Alaska with copies of and extracts from any such reports and records.

17 SUSPENSION The state may from time to time direct or approve in writing suspension of production or other operations under this lease.

18 ASSIGNMENT, PARTITION, AND CONVERSION This lease, or an interest in this lease, may, with the approval of the state, be assigned, subleased, or otherwise transferred to any person or persons qualified to hold a lease. No assignment, sublease, or other transfer of an interest in this lease, including assignments of working or royalty interests and operating agreements and subleases, will be binding upon the state unless approved by the state. The lessee shall remain liable for all obligations under this lease accruing prior to the approval by the state of any assignment, sublease, or other transfer of an interest in this lease. All provisions of this lease will extend to and be binding upon the heirs, administrators, successors, and assigns of the state and the lessee. Applications for approval of an assignment, sublease, or other transfer must comply with all applicable regulations and must be filed within 90 days after the date of final execution of the instrument of transfer. The state will approve a transfer of an undivided interest in this lease unless the transfer would adversely affect the interests of Alaska or the application does not comply with applicable regulations. The state will disapprove a transfer of a divided interest in this lease if the transfer covers only a portion of the lease or a separate and distinct zone or geological horizon unless the lessee demonstrates that the proposed transfer of a divided interest is reasonably necessary to accomplish exploration or development of the lease, the lease is committed to an approved unit agreement, the lease is allocated production within an approved participating area, or the lease has a well certified as capable of production in paying quantities. The state will make a written finding stating the reasons for disapproval of a transfer of a divided interest. Where an assignment, sublease, or other transfer is made of all or a part of the lessee's interest in a portion of the leased area, this lease may, at the option of the state or upon request of the transferee and with the approval of the state, be severed, and a separate and distinct lease will be issued to the transferee having the same effective date and terms as this lease.

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19 SURRENDER. The lessee at any time may file with the state a written surrender of all rights under this lease or any portion of the leased area comprising one or more legal subdivisions or, with the consent of the state, any separate and distinct zone or geological horizon underlying the leased area or one or more legal subdivisions of the leased area. That surrender will be effective as of the date of filing, subject to the continued obligations of the lessee and its surety to make payment of all accrued royalties and to place all wells and surface facilities on the surrendered land or in the surrendered zones or horizons in condition satisfactory to the state for suspension or abandonment. After that, the lessee will be released from all obligations under this lease with respect to the surrendered lands, zones, or horizons.

20. DEFAULT AND TERMINATION; CANCELLATION. (a) The failure of the lessee to perform timely its obligations under this lease, or the failure of the lessee otherwise to abide by all express and implied provisions of this lease, is a default of the lessee's obligations under this lease. Whenever the lessee fails to comply with any of the provisions of this lease (other than a provision which, by its terms, provides for automatic termination), and fails within 60 days after written notice of that default to begin and diligently prosecute operations to remedy that default, the state may terminate this lease if at the time of termination there is no well on the leased area capable of producing oil or gas in paying quantities. If there is a well on the leased area capable of producing oil or gas in paying quantities, the lease may be terminated by an appropriate judicial proceeding. In the event of any termination under this subparagraph, the lessee shall have the right to retain under the lease any and all drilling or producing wells for which no default exists, together with a parcel of land surrounding each well or wells and rights-of-way through the leased area that are reasonably necessary to enable the lessee to drill, operate, and transport oil or gas from the retained well or wells.

(b) The state may cancel this lease at any time if the state determines, after the lessee has been given notice and a reasonable opportunity to be heard, that (1) continued operations pursuant to this lease probably will cause serious harm or damage to biological resources, to property, to mineral resources, or to the environment (including the human environment), (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and (3) the advantages of cancellation outweigh the advantages of continuing this lease in effect. Any cancellation under this subparagraph will not occur unless and until operations under this lease have been under suspension or temporary prohibition by the state, with due extension of the term of this lease, continuously for a period of five years or for a lesser period upon request of the lessee. Any cancellation under this subparagraph will entitle the lessee to receive compensation as the lessee demonstrates to the state is equal to the lesser of (1) the value of the cancelled rights as of the date of cancellation, with due consideration being given to both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and stipulations, liability for clean-up costs or damages, or both, in the case of an oil spill, and all other costs reasonably anticipated under this lease, or (2) the excess, if any, over the lessee's revenues from this lease (plus interest on the excess from the date of receipt to date of reimbursement) of all consideration paid for this lease and all direct expenditures made by the lessee after the effective date of this lease and in connection with exploration or development, or both, under this lease, plus interest on that consideration and those expenditures from the date of payment to the date of reimbursement.

21 RIGHTS UPON TERMINATION. Upon the expiration or earlier termination of this lease as to all or any portion of the leased area, the lessee will be directed in writing by the state and will have the right at any time within a period of one year after the termination, or any extension of that period as may be granted by the state, to remove from the leased area or portion of the leased area all machinery, equipment, tools, and materials. Upon the expiration of that period or extension of that period and at the option of the state, any machinery, equipment, tools, and materials that the lessee has not removed from the leased area or portion of the leased area become the property of the state or may be removed by the state at the lessee's expense. At the option of the state, all improvements such as roads, pads, and wells must either be abandoned and the sites rehabilitated by the lessee to the satisfaction of the state, or be left intact and the lessee absolved of all further responsibility as to their maintenance, repair, and eventual abandonment and rehabilitation. Subject to the above conditions, the lessee shall deliver up the leased area or those portions of the leased area in good condition.

22. DAMAGES AND INDEMNIFICATION. (a) No rights under the AS 38.05.125 reservation may be exercised by the lessee until the lessee has provided to pay the owner of the land, his lessees and permittees, upon which the AS 38.05.125 reserved rights are sought to be exercised, full payment for all damage sustained by the owner by reason of entering the land. If the owner for any reason does not settle the damages, the lessee may enter the land after posting a surety bond determined by the state, after notice and an opportunity to be heard, to be sufficient as to form, amount, and security to secure to the owner, his lessees and permittees, payment for damages, and may institute legal proceedings in a court of competent jurisdiction where the land is located to determine the damages which the owner of the land may suffer. The lessee agrees to pay for any damages that may become payable under AS 38.05.130 and to indemnify the state and hold it harmless from and against any claims, demands, liabilities, and expenses arising from or in connection with such damages. The furnishing of a bond in compliance with this paragraph will be regarded by the state as sufficient provision for the payment of all damages that may become payable under AS 38.05.130 by virtue of this lease.

(b) The lessee shall indemnify the state for, and hold it harmless from, any claim, including claims for loss or damage to property or injury to any person caused by or resulting from any act or omission committed under this lease by or on behalf of the lessee. The lessee is not responsible to the state under this subparagraph for any loss, damage, or injury caused by or resulting from the sole negligence of the state.

(c) The lessee expressly waives any defense to an action for breach of a provision of this lease or for damages resulting from an oil spill or other harm to the environment that is based on an act or omission committed by an independent contractor in the lessee's employ. The lessee expressly agrees to assume responsibility for all actions of its independent contractors.

23. BONDS. (a) If required by the state, the lessee shall furnish a bond prior to the issuance of this lease in an amount equal to at least $5 per acre or fraction of an acre contained in the leased area, but no less than $10,000, and must maintain that bond as long as required by the state.

(b) The lessee may, in lieu of the bond required under (a) above, furnish and maintain a statewide bond in accordance with applicable regulations.

(c) The state may, after notice to the lessee and a reasonable opportunity to be heard, require a bond in a reasonable amount greater than the amount specified in (a) above where a greater amount is justified by the nature of the surface and its uses and the degree of risk involved in the types of operations being or to be carried out under this lease. A statewide bond will not satisfy any requirement of a bond imposed under this subparagraph, but will be considered by the state in determining the need for and the amount of any additional bond under this subparagraph.

(d) If the leased area is committed in whole or in part to a cooperative or unit agreement approved or prescribed by the state, and the unit operator furnishes a statewide bond, the lessee need not maintain any bond with respect to the portion of the leased area committed to the cooperative or unit agreement.

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24. AUTHORIZED REPRESENTATIVES. The Director of the Division of Oil and Gas, Department of Natural Resources, State of Alaska, and the person executing this lease on behalf of the lessee shall be authorized representatives for their respective principals for the purposes of administering this lease. The state or the lessee may change the designation of its authorized representative or the address to which notices to that representative are to be sent by a notice given in accordance with Paragraph 25 below. Where activities pursuant to a plan of operations are underway, the lessee shall also designate, pursuant to a notice under Paragraph 25 below, by name, job title, and address, an agent who will be present in the state during all lease activities.

25. NOTICES; PROTEST. (a) Any notices required or permitted under this lease must be by electronic media producing a permanent record or in writing and must be given personally or by registered or certified mail, return receipt requested, addressed as follows:

TO THE STATE:

DIRECTOR, DIVISION OF OIL AND GAS
DEPARTMENT OF NATURAL RESOURCES
P.O. BOX 7034
ANCHORAGE, ALASKA 99510-7034

TO THE LESSEE:

(b) Any notice given under this paragraph will be effective when delivered to the above authorized representative.

(c) A lessee who wishes to protest the amount of money due the state under the lease or any action of the state regarding a provision of this lease must file a written protest with the Division of Oil and Gas within 30 days after the mailing date of the state's notice or bill. A lessee who fails to file a protest within the required time waives any further right to protest. The state will establish the administrative appeal procedure to be followed and will inform the lessee of the procedure no later than 30 days after the filing of the written protest.

26. STATUTES AND REGULATIONS. This lease is subject to all applicable state and federal statutes and regulations in effect on the effective date of this lease, and insofar as is constitutionally permissible, to all statutes and regulations placed in effect after the effective date of this lease. A reference to a statute or regulation in this lease includes any change in that statute or regulation whether by amendment, repeal and replacement, or other means. This lease does not limit the power of the State of Alaska or the United States of America to enact and enforce legislation or to promulgate and enforce regulations affecting, directly or indirectly, the activities of the lessee or its agents in connection with this lease or the value of the interest held under this lease. In case of conflicting provisions, statutes and regulations take precedence over this lease.

27. INTERPRETATION. This lease is to be interpreted in accordance with the rules applicable to the interpretation of contracts made in the State of Alaska. The paragraph headings are not part of this lease and are inserted only for convenience. The state and the lessee expressly agree that the law of the State of Alaska will apply in any judicial proceeding affecting this lease.

28. INTEREST IN REAL PROPERTY. It is the intention of the parties that the rights granted to the lessee by this lease constitute an interest in real property in the leased area.

29. WAIVER OF CONDITIONS. The state reserves the right to waive any breach of a provision of this lease, but any such waiver extends only to the particular breach so waived and does not limit the rights of the state with respect to any future breach; nor will the waiver of a particular breach prevent cancellation of this lease for any other cause or for the same cause occurring at another time. Notwithstanding the foregoing, the state will not be deemed to have waived a provision of this lease unless it does so in writing.

30. SEVERABILITY. If it is finally determined in any judicial proceeding that any provision of this lease is invalid, the state and the lessee may jointly agree by a written amendment to this lease that, in consideration of the provisions in that written amendment, the invalid portion will be treated as severed from the lease and that the remainder of this lease, as amended, will remain in effect.

31. LOCAL HIRE. The lessee is encouraged to hire and employ local and Alaska residents to the extent they are available and qualified for work performed on the leased area.

32. CONDITIONAL LEASE. If all or a part of the leased area is land that has been selected by the state under laws of the United States granting lands to the state, but the land has not been patented to the state by the United States, then this lease is a conditional lease as provided by law until the patent becomes effective. If for any reason the selection is not finally approved, or the patent does not become effective, any rental, royalty, or other production or profit-based payments made to the state under this lease will not be refunded.

33. NONDISCRIMINATION. The lessee and the lessee's contractors and subcontractors may not discriminate against any employee or applicant because of race, religion, marital status, change in marital status, pregnancy, parenthood, physical handicap, color, sex, age, or national origin as set out in AS 18.80.220. The lessee and its contractors and subcontractors must, on beginning any operations under this lease, post in a conspicuous place notices setting out this nondiscrimination provision.

34. DEFINITIONS. All words and phrases used in this lease are to be interpreted where possible in the manner required in respect to the interpretation of statutes by AS 01.10.040. However, the following words have the following meanings unless the context unavoidably requires otherwise:

(1) "oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods, including liquid hydrocarbons known as distillate or condensate recovered by separation from gas other than at a gas processing plant;

(2) "gas" means all natural gas (except helium gas) and all other hydrocarbons produced that are not defined in this lease as oil;

(3) "associated substances" means all substances except helium produced as an incident of production of oil or gas by ordinary production methods and not defined in this lease as oil or gas;

(4) "drilling" means the act of boring a hole to reach a proposed bottom hole location through which oil or gas may be produced if encountered in paying quantities, and includes redrilling, sidetracking, deepening, or other means necessary to reach the proposed bottom hole location, testing, logging, plugging, and other operations necessary and incidental to the actual boring of the hole;

(5) "reworking operations" means all operations designed to secure, restore, or improve production through some use of a hole previously drilled, including, but not limited to, mechanical or chemical treatment of any horizon, plugging back to test higher strata, etc.;

(6) "paying quantities" means quantities sufficient to yield a return in excess of operating costs, even if drilling and equipment costs may never be repaid and the undertaking considered as a whole may ultimately result in a loss. quantities are insufficient to yield a return in excess of operating costs unless those quantities, not considering the costs of transportation and marketing, will produce sufficient revenue to induce a prudent operator to produce those quantities, and

(7) "force majeure" means war, riots, acts of God, unusually severe weather, or any other cause beyond the lessee's reasonable ability to foresee or control and includes operational failure of existing transportation facilities and delays caused by judicial decisions or lack of them.

35 ROYALTY ON PRODUCTION Except for oil, gas, and associated substances used on the leased area for development and production or unavoidably lost, the lessee shall pay to the state as a royalty percent in amount or value of the oil, gas, and associated substances saved, removed, or sold from the leased area and of the gas from the leased area used on the leased area for extraction of natural gasoline or other products.

36 VALUE (a) For the purposes of computing royalties due under this lease, the value of royalty oil, gas, or associated substances shall not be less than the highest of

(1) the field price received by the lessee for the oil, gas, or associated substances.

(2) the volume-weighted average of the three highest field prices received by other producers in the same field or area for oil of like grade and gravity, gas of like kind and quality, or associated substances of like kind and quality at the time the oil, gas, or associated substances are sold or removed from the leased or unit area or the gas is delivered to an extraction plant if that plant is located on the leased or unit area. if there are less than three prices reported by other producers, the volume-weighted average will be calculated using the lesser number of prices received by other producers in the field or area;

(3) the lessee's posted price in the field or area for the oil, gas, or associated substances; or

(4) the volume-weighted average of the three highest posted prices in the same field or area of the other producers in the same field or area for oil of like grade and gravity, gas of like kind and quality or associated substances of like kind and quality at the time the oil, gas, or associated substances are sold or removed from the leased or unit area or the gas is delivered to an extraction plant if that plant is located on the leased or unit area. if there are less than three prices posted by other producers, the volume-weighted average will be calculated using the lesser number of prices posted by other producers in the field or area.

(b) If oil, gas, or associated substances are sold away from the leased or unit area, the term "field price" in subparagraph (a) above will be the cash value of all consideration received by the lessee or other producer from the purchaser of the oil, gas, or associated substances, less the reasonable costs of transportation away from the leased or unit area to the point of sale. The "reasonable costs of transportation" are as defined in 11 AAC 83.228–11 AAC 83.229 as those regulations exist on the effective date of this lease.

(c) In the event the lessee does not sell in an arm's-length transaction the oil, gas, or associated substances after removal from the leased or unit area, the term "field price" in subparagraphs (a) and (b) above will mean the price, on the leased or unit area, the lessee would expect to receive for the oil, gas, or associated substances if the lessee did sell the oil, gas, or associated substances in an arm's-length transaction. The lessee shall determine this price in a consistent and logical manner using information available to the lessee and report that price to the state.

(d) The state may establish minimum values for the purposes of computing royalties on oil, gas, or associated substances obtained from this lease, with consideration being given to the price actually received by the lessee, to the price or prices paid in the same field or area for production of like quality, to posted prices, to prices received by the lessee and other producers from sales occurring away from the leased area, and to other relevant matters. In establishing minimum values, the state may use, but is not limited to, the methodology for determining "prevailing value" as defined in 11 AAC 83.227 in circumstances where terms of a contract set a single price for oil, gas, or associated substances for periods of longer than six years without adjustments tied to market conditions, or where the terms of a contract set prices which do not reasonably reflect market conditions for production from that field or area prevailing at the time the contract is executed or renegotiated, or where fraud or an intent to evade payment is demonstrated. Each minimum value determination will be made only after the lessee has been given notice and a reasonable opportunity to be heard. Under this provision, it is expressly agreed that the minimum value of royalty oil, gas, or associated substances under the lease may not necessarily equal the price of the oil, gas, or associated substances.

37 ROYALTY IN VALUE. Unless the state elects to receive all or a portion of its royalty in kind as provided in Paragraph 38 below, the lessee shall pay to the state that value of all royalty oil, gas, and associated substances as determined under Paragraph 36 above. Royalty paid in value will be free and clear of all lease expenses (and any portion of those expenses that is incurred away from the leased area), including, but not limited to, expenses for separating, cleaning, dehydration, gathering, saltwater disposal, and preparing the oil, gas, or associated substances for transportation off the leased area. All royalty that may become payable in money to the State of Alaska must be paid on or before the last day of the calendar month following the month in which the oil, gas, or associated substances are produced. The amount of all royalty in value payments which are not paid when due under this lease or which are subsequently determined to be due as the result of a redetermination will bear interest from the date the obligation accrued, until it is paid in full, at a variable annual rate equal to 1.25 percent plus the prime rate as announced from time to time by the Bank of America, San Francisco, California. Royalty payments must be accompanied by copies of run tickets or other information relating to valuation of royalty as the state may require which may include, but is not limited to, evidence of sales, shipments, and amounts of gross oil, gas, and associated substances produced.

38 ROYALTY IN KIND. (a) At the state's option, which may be exercised from time to time upon not less than 90 days' notice to the lessee, the lessee shall deliver all or a portion of the state's royalty oil, gas, or associated substances produced from the leased area in kind. Delivery will be on the leased area or at a place mutually agreed to by the state and the lessee, and must be delivered to the State of Alaska or to any individual, firm, or corporation designated by the state.

(b) Royalty oil, gas, or associated substances delivered in kind must be delivered in good and merchantable condition and be of pipeline quality, and must be free and clear of all lease expenses (and any portion of those expenses incurred away from the leased area), including, but not limited to, expenses for separating, cleaning, dehydration, gathering, saltwater disposal, and preparing the oil, gas, or associated substances for transportation off the leased area.

(c) After having given notice of its intention to take, or after having taken its royalty oil, gas, or associated substances in kind, the state, at its option and upon 90 days' notice to the lessee, may elect to receive a different portion or none of its royalty in kind. If, under federal regulations, the taking of royalty oil, gas, or associated substances in value by the state creates a supplier-purchaser relationship, the lessee hereby waives its right to continue to receive royalty oil, gas, or associated substances under that relationship, and further agrees that it will require any purchasers of the royalty oil, gas, or associated substances likewise to waive any supplier-purchaser rights.

(d) The lessee shall furnish storage for royalty oil and natural gas liquids produced from the leased or unit area to the same extent that the lessee provides storage for the lessee's share of oil and natural gas liquids. The lessee shall not be liable for the loss or destruction of stored royalty oil and natural gas liquids from causes beyond the lessee's reasonable control.

(e) If a state royalty purchaser refuses or for any reason fails to take delivery of oil, gas, or associated substances, or in an emergency, and with as much notice to the lessee as is practical or reasonable under the circumstances, the state may elect without penalty to underlift for up to six months all or a portion of the state's royalty on oil, gas, or associated substances produced from the leased or unit area and taken in kind. The state's right to underlift is limited to the portion of royalty oil, gas, or associated substances that the royalty purchaser refused or failed to take delivery of, or the portion necessary to meet the emergency condition. Underlifted oil, gas, or associated substances may be recovered by the state at a daily rate not to exceed 10 percent of its royalty interest share of daily production at the time of the underlift recovery.

39. REDUCTION OF ROYALTY. After initial production for two years from the field in which the leased or unit area is located has occurred, the state, in its discretion, may reduce the lessee's obligations to pay royalty on all of the leased area or on any tract or portion of the leased area segregated for royalty purposes upon (1) request by the lessee, (2) a clear showing by the lessee that the revenue from all oil, gas, and associated substances produced from the field is insufficient to produce a reasonable rate of return with respect to the lessee's total investment in the field, and (3) a clear showing by the lessee that a reduction in royalty will increase total production from the field.

40. EFFECTIVE DATE. This lease takes effect on , 19

BY SIGNING THIS LEASE, the state as lessor and the lessee agree to be bound by its provisions.

LESSEE

By: ______________________

Title: ______________________

By: ______________________

Title: ______________________

STATE OF ALASKA

By: ______________________

Title: ______________________

STATE OF ALASKA )
) ss.
Third Judicial District )

This is to certify that on , 19 , before me appeared of the Division of Oil and Gas of the State of Alaska, Department of Natural Resources, and who executed this lease and acknowledged voluntarily signing it on behalf of the State of Alaska as lessor.

Notary public in and for Alaska.
My commission expires:

INSERT NOTARY ACKNOWLEDGMENT OF LESSEE'S SIGNATURE HERE.