

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

2069 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

87

lands, the 1974 Agreement described the northern boundary of the lands the State was to receive vaguely as a line along the barrier islands, and on the west along the NPR-A boundary, which is equally ill defined.

ASRC's "squaring" proposal is reflected in the 1990 ASRC (Uriel Dutton) redrafted agreement (copy in the binder). At Nuiqsut this would have had the effect of radically lowering ASRC's percentage share of the revenues in the Harrison Bay shoreline sections on the Nechelik delta, but would have given ASRC some small share of Harrison Bay submerged lands, which the State has already leased. The opposite effect would have occurred along a squared off NPR-A boundary, where the State's percentage would have went down, but the State would have received a share of now wholly owned ASRC subsurface inside NPR-A.²³ A similar proposal was made for Point Lay shorelands and barrier islands, which would have radically lowered ASRC's 49% share in the affected sections, but which would have given ASRC a small share of submerged lands in the Chukchi Sea and inside the Kasegaluk Lagoon to which it otherwise would have had no share.

The State rejected the idea of "squaring" off the Point Lay and Harrison Bay shoreline frontage, but expressed interest in the NPR-A boundary proposal; ASRC said all or nothing, so the proposal died.

More recently, ASRC has proposed (copy in the binder) using BLM survey data now extant for resolving the potential future disputes over the NPR-A boundary and Point Lay shoreline areas; in other words, the parties would agree that current data would be used as the reference point for establishing the settlement agreement boundaries for those affected sections of land no matter how the river channels or shorelines altered over time because of accretion or reliction. DNR staff find this proposal attractive, although they wish to wait for BLM survey data for the NPR-A boundary to be finalized before making a final recommendation.

As to the Nechelik delta (Harrison Bay frontage), ASRC proposed using the 1982 DNR tidal datum mapping as a way of determining the exact total amount of acreage in each agreement area section, and using that acreage for all time as the basis of resolving any future dispute about what are, or are not, lands within the agreement area. DNR has taken the proposal one step beyond by tentatively suggesting the use of agreed upon survey

²³A special provision of section 1431 of ANILCA allowed ASRC to select subsurface acreage inside NPR-A if the United States ever took certain development actions. The United States did, and therefore ASRC has received interim conveyances to lands inside NPR-A along the western boundary of the 1974 Agreement lands.

January 11, 1991

points along the coast, using the 1982 tidal mapping it did in conjunction with the Harrison Bay leasing. While this will require adjusting the State's revenue percentage shares downward in certain sections from those percentages agreed to in the November, 1989 federal court settlement conference, it will have the affect of fixing the agreement area boundary at a line which DNR staff believes is favorable (because the trend appears to be that uplands are accreting to the delta shoreline).

No settlement counter-proposal has been made to ASRC yet, and therefore this area of negotiations will be the topic of further discussion with you on January 15, 1991.

B. Land Management.

DNR staff in the Division of Oil and Gas are rightfully concerned about the pitfalls of management on behalf of ASRC. Negotiations have succeeded in securing the right of the State to manage all the lands, and thereby foreclosed much of the potential for ASRC cheating, but have done so at the some unknown cost in management headaches. Some of these problems may be cured by tinkering with the existing draft language governing management rights and duties of the executive (State) and non-executive (ASRC).

An alternative would be to propose to ASRC that the parties manage their own undivided interests, and convert the settlement agreement into one that only resolves the title issues. Some of the advantages and disadvantages of this approach are discussed in the Hugh McIntosh letter dated December 21, 1990 (copy in the binder), and will be discussed further with you on January 15.

V. ADVANTAGES AND DISADVANTAGES OF SETTLEMENT.

Because there is no final settlement as of yet and negotiations continue, there is no requirement that any particular path be pursued, although there would be repercussions from any major change in tentative agreements. Generally speaking, however, some of the advantages of an overall settlement are:

1. If the litigation were to continue and the State lost, it would be left with the Point Lay lands and derive nothing from the Nuiqsut uplands. In other words, a loss would mean that the State would be left at Nuiqsut with only what it could prove it was entitled to under the equal footing doctrine (submerged lands), which in ASRC's view (the State's worst case scenario) could be as low as roughly 20%±.

5/6/91

2. The settlement would divide the revenues from the areas without regard to any future navigability decisions in other areas of the State and without regard to the doctrines of accretion and reliction. This allows leasing to go forward for both parties' benefits.

3. A settlement resolves a 16 year old problem once and for all, without having to reconsider the questions of the eligibility of Point Lay and Nuiqsut Village Corporations ²⁴.

Some of the disadvantages of the settlement are:

1. There is clearly some uncertainty as to the value of the lands. History may prove that in fact the Point Lay lands were more valuable than the Nuiqsut lands, and the State would have been better off keeping the Point Lay lands and giving up the Nuiqsut lands.

2. There is uncertainty with respect to decisions related to navigability for title purposes. Perhaps the settlement will, in hindsight, have sold the State short on submerged lands.

3. Under the current drafts of the settlement, since ASRC and the State are merging title ²⁵ to their lands, the State will be in the unusual position of being a co-owner with a private party of lands which will be managed by the State for and on behalf of the party. In addition, the State is assuming special and burdensome duties to the party, which in turn will require very careful management to ensure that the party's interests are protected at the same time the State's interests are protected.

4. Legislative approval of the settlement may be controversial.

²⁴ As a legal matter, it is probably too late to challenge the eligibility of the two village corporations because of the ANILCA statute of limitations discussed above. However, the litigation of necessity would, for strategic and perhaps other legal reasons, have to explore how the eligibility of those corporations was determined, why the corporations were established where they were established, and so on, in order to show ASRC's motivations. This could have adverse effects on other matters unrelated to the litigation.

²⁵ It should be noted that ASRC sought merger of title because of the special federal corporate income tax advantage it receives for lands it owns under ANILCA. Of course, the less it pays the United States in tax may mean the less it pays the State in corporate income tax to the extent the latter tax is tied to the Internal Revenue Code.

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Conclusion

David Crosby, Esq., litigation counsel for ASRC, early on in the litigation and throughout settlement negotiations has repeatedly said that he has advised his client that the route of litigation was a 50/50 one, and litigation could go either way for either party. We have never told him our own views. However, that is not an unfair evaluation of many of the facts and legal theories pertinent to the litigation, and in our judgment perhaps a generous evaluation of the State's ability to succeed against an abandonment affirmative defense. In turn, the settlement framework now tentatively proposed requires multiple tradeoffs by, and poses uncertain risks for, both of the parties.

We look forward to our meeting and discussing the case with you.

cc: Charles E. Cole, Attorney General
C:\ & A:\HEINZE.MEMO

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

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

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

INTRODUCTION

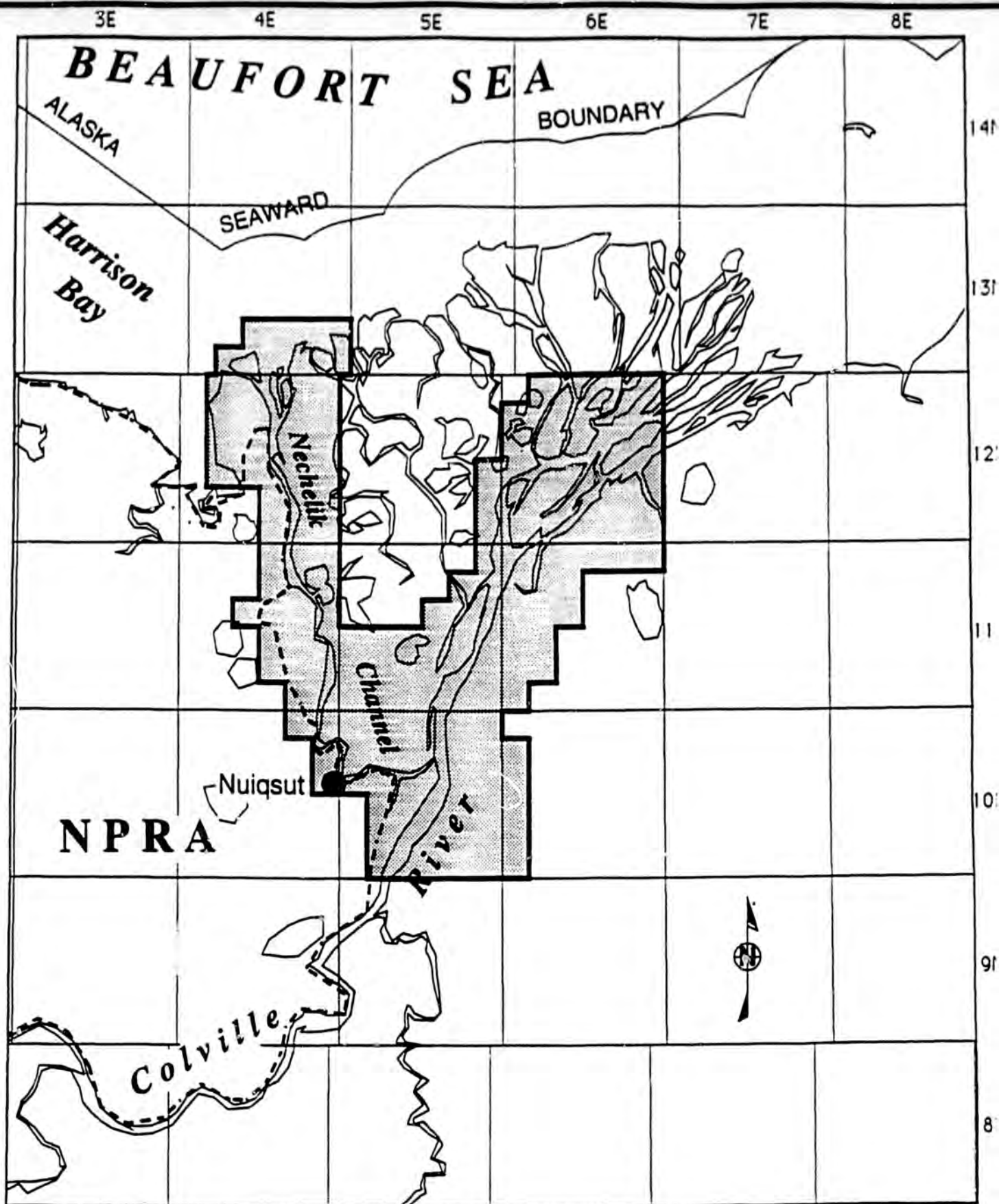
In December 1991, the State of Alaska and the Arctic Slope Regional Corporation (ASRC) settled a long-running legal dispute concerning north slope mineral ownership near Nuiqsut and Point Lay. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange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

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

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

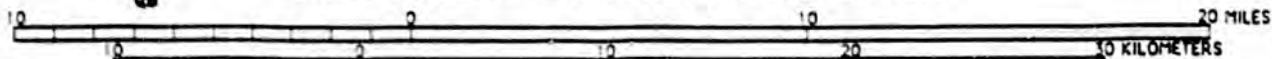
The agreement involves only mineral estate; it does not change the surface ownership. The surface estate of the Point Lay lands is state-owned; the Nuiqsut surface is owned by the village corporation for Nuiqsut, Kuukpik Corporation.

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



Nuiqsut Subsurface

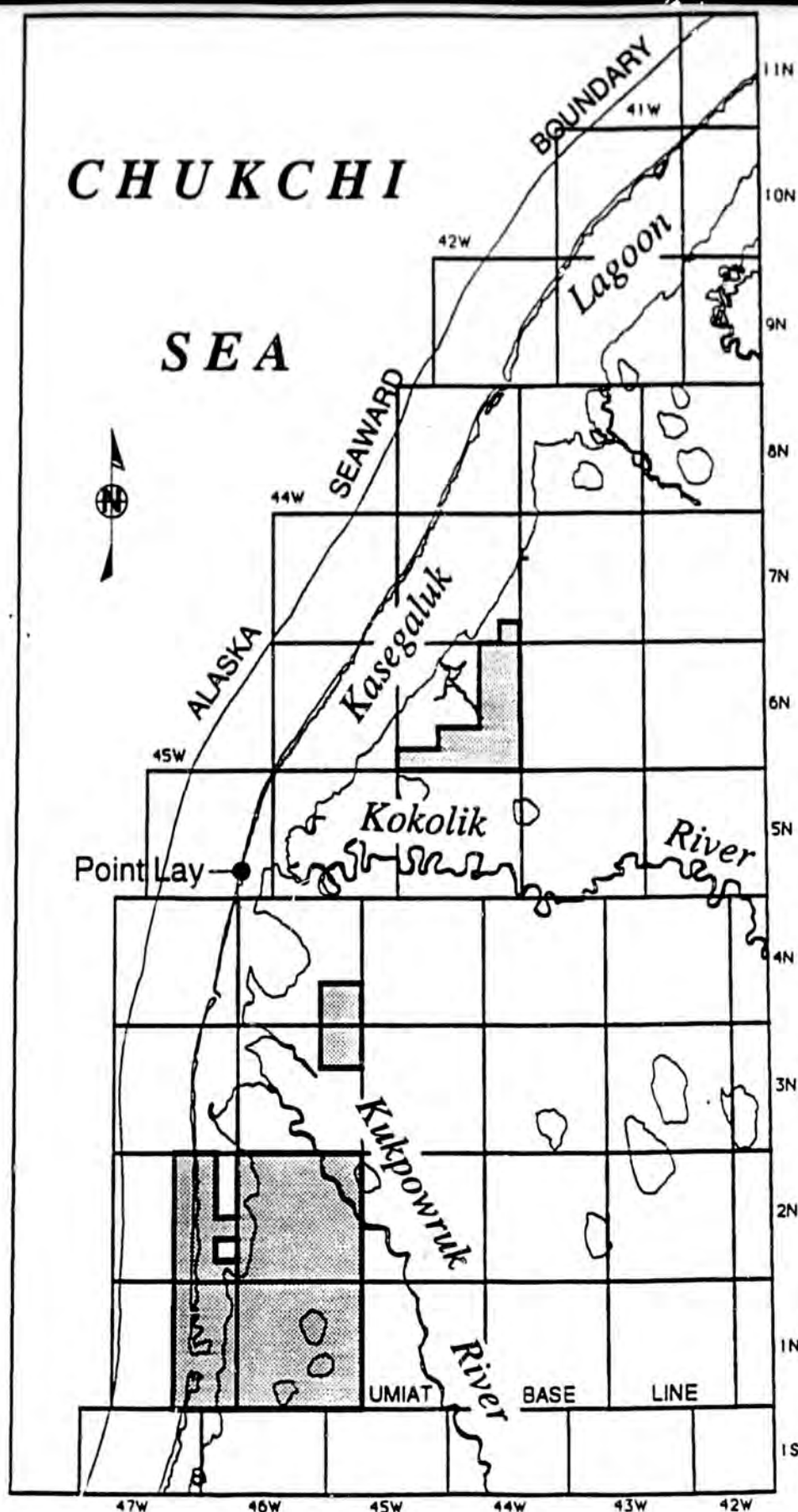
SCALE 1: 317,000 ONE INCH = FIVE MILES APPROX.



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

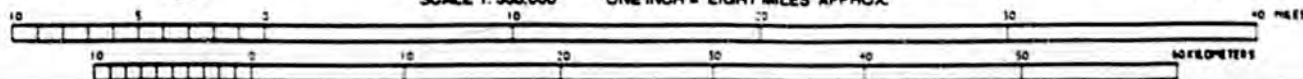
CHUKCHI

SEA



Point Lay Subsurface

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



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

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

SUMMARY OF THE ISSUES

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

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

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

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

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

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

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

TERMS OF THE AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF PROCESS BEFORE A JOINT LEASE SALE.

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

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

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

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

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

4.2 Standard of Performance.

(a) The State shall exercise the Executive Rights granted herein in compliance with the Limited Prudent Landowner Standard, as defined herein, as to the substantive terms and conditions of all Subsurface Agreements¹ and Subsurface Agreement Solicitations¹ to be executed or issued by the State as executive pursuant to this Settlement Agreement. In exercising such Executive Rights, the State shall treat ASRC's interest in the same manner as it treats its own interest and shall not act in a manner intended to benefit itself at the expense of ASRC.

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

IMPORTANT DEFINITIONS

"Executive Rights" means the exclusive right, power, and authority to formulate and issue Subsurface Agreement Solicitations¹ and to negotiate, formulate, agree upon, execute, and grant Subsurface Agreements¹ pursuant to the terms of this Settlement Agreement.

"Limited Prudent Landowner Standard" means the Prudent Landowner Standard except to the extent that the State is prevented from complying with such standard because of its duties and obligations as sovereign or because of applicable federal or state statutes, regulations, and constitutional provisions, including, but not limited to, those that govern protection of natural resources and procedural requirements for disposal of interests in state lands for leasing, exploration, and development of natural resources, subject, however, to the provisions of subsection 8.2.²

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

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

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

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

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

STATE OF ALASKA

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

WALTER J. HICKEL, GOVERNOR

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

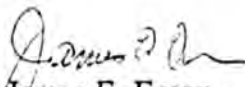
January 3, 1992

Dear Sir or Madame:

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

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

Sincerely,


James E. Eason
Director

Enclosures

STATE OF ALASKA

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

WALTER J. HICKEL, GOVERNOR

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

December 23, 1991

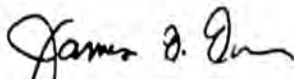
Re: Proposed Oil and Gas Lease Sale 75, Kuparuk Uplands

Dear Potential Bidders, Interested Individuals and Agencies:

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

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

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


James E. Eason
Director

75-7a

Alaska Oil and Gas Association



121 West Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114

January 22, 1992

The Honorable Mike Navarre
Alaska House of Representatives
P. O. Box V, Mail Stop 3100
Juneau, AK 99811

Dear Representative Navarre:

Attached is a revised January 1992 monthly schedule of anticipated industry activity as predicted by members of the AOGA Alaska Arctic Offshore Operations Committee.

I am the designated central contact for conveying information or requests for information to the industry committee. I invite your information or inquiries. My telephone is (907)272-1481 and facsimile is (907)279-8114.

Your comments or suggestions as to the usefulness of the forecast are also welcome, as well as recommendations on persons or organizations you believe we should add to the monthly update distribution list.

Sincerely,

A handwritten signature in cursive script, reading "William W. Hopkins".

WILLIAM W. HOPKINS
Executive Director

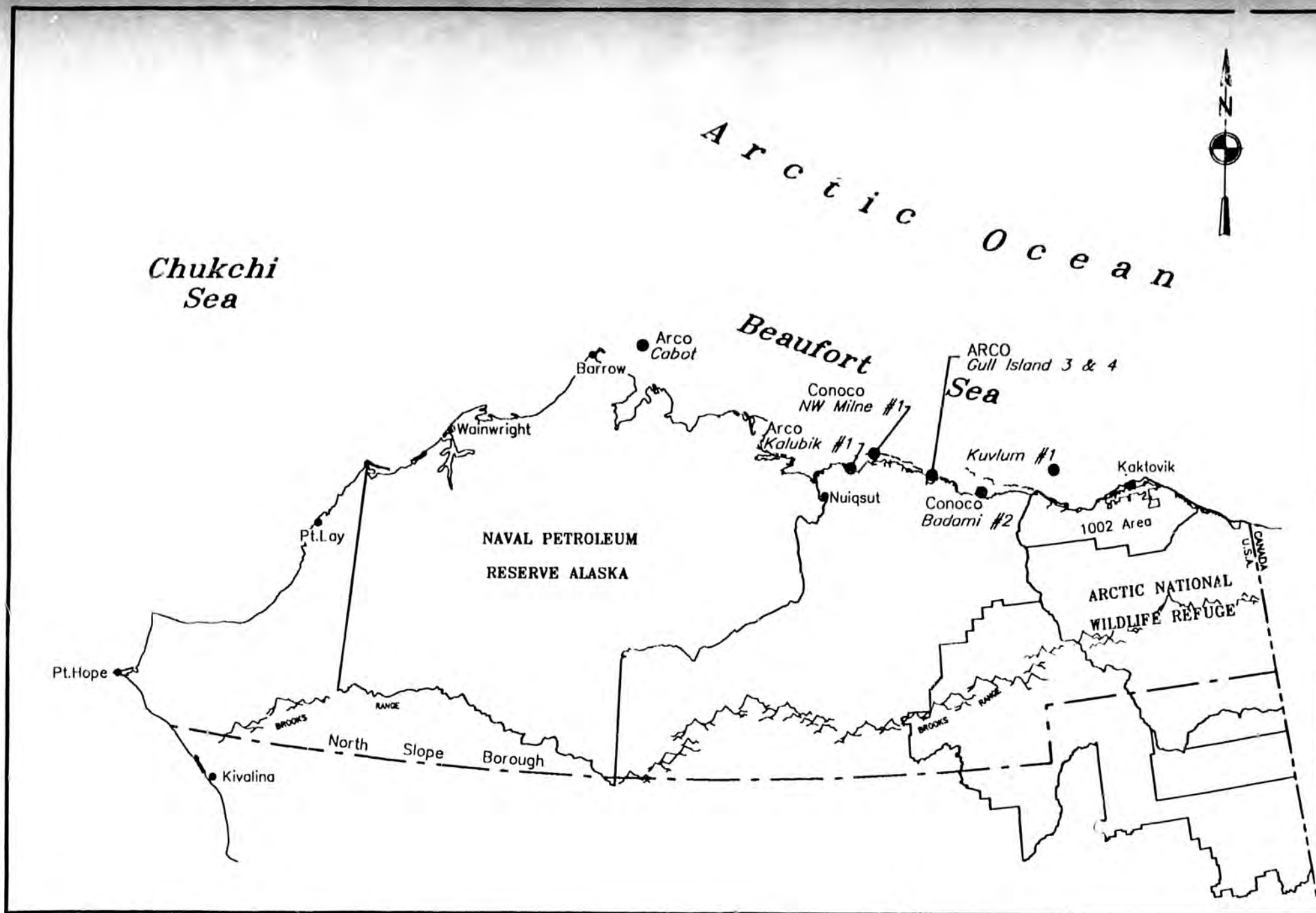
WWH:ts

Attachment

*SAM -
I'd like to talk to
you about this - in conjunction
with the Gov's Exploration
Incentive credit!
Royce
#3706*

Alaska Arctic Offshore Operations Committee
EXPECTED ACTIVITY AS OF 01/20/92

<u>JANUARY 1992</u>	Nov. 91-Mar. 92/ARCO/Beaufort Sea Drilling program (Cabot #1) Jan. 92-Mar. 92/CONOCO/Mikkelsen Bay Drilling Program (Badami #2) Jan. 22, 92/USFWS/Subsistence Hunting Public Hearing in Barrow at 7:00 p.m.
<u>FEBRUARY 1992</u>	Nov. 91-Mar. 92/ARCO/Beaufort Sea Drilling program (Cabot #1) Jan. 92-Mar. 92/CONOCO/Mikkelsen Bay Drilling Program (Badami #2) Feb. 92-Mar. 92/CONOCO/Simpson Lagoon Drilling Program (NW Milne #1) Feb. 92-Apr. 92/AMERADA/Tentative Spuds Jones Is. Well, Spy Is. Well & Thetis Is. Well
<u>MARCH 1992</u>	Nov. 91-Mar. 92/ARCO/Beaufort Sea Drilling program (Cabot #1) Jan. 92-Mar. 92/CONOCO/Mikkelsen Bay Drilling Program (Badami #2) Feb. 92-Mar. 92/CONOCO/Simpson Lagoon Drilling Program (NW Milne #1) Feb. 92-Apr. 92/AMERADA/Tentative Spuds Jones Is. Well, Spy Is. Well & Thetis Is. Well
<u>APRIL 1992</u>	Feb. 92-Apr. 92/AMERADA/Tentative Spuds Jones Is. Well, Spy Is. Well & Thetis Is. Well
<u>MAY 1992</u>	None.
<u>JUNE 1992</u>	None.
<u>JULY 1992</u>	Jul. 92-Aug. 92/AMOCO/Tentative Beaufort Sea Seismic Survey
<u>AUGUST 1992</u>	Jul. 92-Aug. 92/AMOCO/Tentative Beaufort Sea Seismic Survey Aug. 92-Sep. 92/Operator to be determined/Spud Beaufort Sea Exploratory Well (Kuvlum)
<u>SEPTEMBER 1992</u>	Jul. 92-Oct. 92/Operator to be determined/Beaufort Sea Drilling Program (Kuvlum)
<u>OCTOBER 1992</u>	Jul. 92-Oct. 92/Operator to be determined/Beaufort Sea Drilling Program (Kuvlum)
<u>NOVEMBER 1992</u>	None.
<u>DECEMBER 1992</u>	None.
<u>JANUARY 1993</u>	None.



**1992 Industry
Drilling Activity**

1991 SETTLEMENT AGREEMENT
BETWEEN
ARCTIC SLOPE REGIONAL CORPORATION
AND
THE STATE OF ALASKA

**1991 SETTLEMENT AGREEMENT
NUIQSUT ARCTIC SLOPE REGIONAL
CORPORATION AND THE STATE OF ALASKA**

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Exhibits

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1991 SETTLEMENT AGREEMENT
BETWEEN ARCTIC SLOPE REGIONAL
CORPORATION AND THE STATE OF ALASKA

Introduction

The State of Alaska ("State") and Arctic Slope Regional Corporation ("ASRC") sued each other, in two separate lawsuits, over the validity of a March 1974 Agreement ("1974 Agreement"). The lawsuits were entitled:

- (1) *State of Alaska v. Arctic Slope Regional Corporation*, 3AN-85-15523 Civil, Alaska Superior Court, Third Judicial District, filed November 7, 1985.
- (2) *Arctic Slope Regional Corporation v. Lennie Boston-Gorsuch and Gary C. Gustafson*, Civil No. J85-026, United States District Court For Alaska, in Juneau, filed October 2, 1985.

In 1990, the federal court lawsuit was dismissed without prejudice to ASRC's right to refile it. The State and ASRC now wish to dismiss the state court lawsuit, also without prejudice, and settle claims and counterclaims made in the two lawsuits.

The State and ASRC have fully and independently analyzed the strength of their respective litigation positions regarding the enforceability of the 1974 Agreement. In settling, **the parties^{1/}** understand that each gives up the right to discover fully the strength or weakness of the other party's position in exchange for the certainties of settlement and in order to avoid the risk of an unfavorable outcome in the litigation. Resolution of the litigation and uncertainties relating to titles as set out in this Settlement Agreement will result in material benefit both to the State and its citizens and to ASRC, and is in the best interests of the public.

The litigation concerns a dispute between ASRC and the State over the ownership of lands located near Nuiqsut and Point Lay. To settle the dispute, the State and ASRC have agreed in

^{1/}Words and phrases printed in the text of this Agreement in boldface are defined in Section 11.

this Settlement Agreement to effect an exchange of undivided interests in the **subsurface** of all the disputed lands, as authorized under section 22(f) of **ANCSA**, so as to cause the **subsurface** in all these lands to be owned in undivided interests by the State and ASRC. The disputed lands have numerous bodies of water within or adjacent to them. The State claims that many of these bodies of water cover submerged lands which it wholly owns by virtue of the United States Constitution's equal footing doctrine and the federal Submerged Lands Act. For various reasons, ASRC disputes the State's claims. Moreover, the extensive nature of the bodies of water and seacoast makes the boundaries between uplands and submerged lands within portions of the areas subject to the potential of accretion, reliction, and avulsion. The possibility of future disputes about the ownership of and the boundaries between uplands and submerged lands would make it extremely difficult for either the State or ASRC to exploit the lands, whichever party a court might decide owned them. Therefore, in order to eliminate the potential for future ownership disputes, in this Settlement Agreement ASRC and the State have agreed to exchange undivided interests in the **subsurface** in the submerged lands and in the uplands and to establish a fixed revenue sharing percentage for the lands which would not change in the event of accretion, reliction, or avulsion.

Except as provided below in section 6 (governing consequences of separate termination of a **Subsurface Agreement**) and subsection 9.5 (governing division of revenue from certain leases), this Settlement Agreement provides that all **subsurface revenues** related to, or generated by the exploration, development, production, or other exploitation of, or the lease, sale, or other disposition of, any interest in the **Nuiqsut subsurface** and the **Point Lay subsurface** will belong to ASRC or the State, respectively, as the owner of that interest pursuant to Section 3.

ASRC and the State further agree as follows:

1. STATE LEGISLATIVE APPROVAL.

1.1. 1992 Legislative Session.

ASRC and the State will submit this Settlement Agreement to the Second Session of the Seventeenth Alaska Legislature for the Legislature's approval.

1.2. Form of Approval; No Changes Without Mutual Consent.

ASRC and the State will submit a bill to the Legislature approving this Settlement Agreement as set out in Exhibit A. Neither ASRC nor the State will seek changes in the bill without the prior written consent of the other party.

1.3. Effect of Withdrawal of Either Party, Legislative Change, Legislative Approval, or Subsequent Court Invalidation.

(a) This Settlement Agreement will be wholly void and of no effect if either party withdraws from it before the **Final Effective Date**. After such a withdrawal, either party may seek a judicial declaration as to the validity of, and appropriate orders with respect to, the 1974 Agreement and pursue the claims, counterclaims, and defenses asserted in the two lawsuits cited in the Introduction above. Either party may withdraw, without cause, from this Settlement Agreement before the **Final Effective Date** by delivering written notice of withdrawal to the other party.

(b) Subject to paragraph 1.3(a), if the bill as set out in Exhibit A (or another bill approving this Settlement Agreement and mutually approved by the **Commissioner** of Natural Resources and ASRC) becomes law, then thereafter neither the State nor ASRC may seek to enforce the 1974 Agreement or pursue the claims, counterclaims, or defenses asserted in the two lawsuits cited above in the Introduction against each other unless:

(1) the law is adjudged, in a final state or federal court judgment, after all appeals are decided, wholly unconstitutional;

(2) the entirety of this Settlement Agreement is otherwise adjudged, in a final state or federal court

judgment, after all appeals are decided, to be wholly illegal or wholly unenforceable for any reason; or

(3) (i) any conveyance required by this Settlement Agreement, or its subsections 3.1, 3.2, sections 4, 5, 6, 7, 8, 9, or subsection 10.11 (singly or in combination) is determined in a final state or federal court judgment, after all appeals are decided, to be illegal or unenforceable for any reason, and (ii) either the State or ASRC gives written notice to the other that it has elected to rescind this Settlement Agreement within sixty (60) days after all appeals are decided and the judgment becomes final.

(c) The running of any statute of limitations that might bar enforcement of the 1974 Agreement as between the State and ASRC is hereby suspended, until the earliest of: (i) the date when this Settlement Agreement becomes void pursuant to paragraph 1.3(a); (ii) the date when a judgment determining either the law to be wholly unconstitutional as described in subparagraph 1.3(b)(1) or this Settlement Agreement to be wholly illegal or wholly unenforceable as described in subparagraph 1.3(b)(2) becomes final (after all appeals are decided); or (iii) the date on which either the State or ASRC gives notice of rescission of this Settlement Agreement pursuant to subparagraph 1.3(b)(3).

(d) Should a judgment described in subparagraph (1) or (2) or a notice described in subparagraph (3) of paragraph 1.3(b) become final or be given, this Settlement Agreement shall be void and of no effect, and thereafter either party may seek a judicial declaration as to the validity of, and appropriate orders with respect to, the 1974 Agreement and pursue the claims, counterclaims, and defenses asserted in the two lawsuits cited in the Introduction above; provided only that the provisions of paragraphs 1.3(c) and 1.3(e) shall nevertheless be and remain effective.

(e) Should this Settlement Agreement become void as provided in paragraph 1.3(d), the State and ASRC each shall execute and deliver all conveyances and other documents and do all other things necessary or desirable to reconvey interests

conveyed prior to such voidance, to the extent such conveyances were made pursuant to Section 3 of this Settlement Agreement. Reconveyances shall be made subject to **Subsurface Agreements** and other third-party rights created after the Section 3 conveyance pursuant to this Settlement Agreement, if the third party or party to the **Subsurface Agreement** is not affiliated with the party that created the interest or executed the **Subsurface Agreement**, and the rights, estates, and obligations of such third parties shall not be affected or terminated by reason of this Settlement Agreement having become void.

1.4. Dismissal of Litigation.

Within ten (10) days after the **Final Effective Date** of this Settlement Agreement, ASRC and the State will file in Superior Court a Stipulation for Dismissal in the form set out in Exhibit B.

1.5. Creation of Third-Party Interests While Bill Is Pending.

Neither ASRC nor the State will create or grant any third-party interest in the **Nuiqsut subsurface** or the **Point Lay subsurface** before the **Final Effective Date** of this Settlement Agreement; thereafter, the creation of third party interests and the management of the **Nuiqsut subsurface** and **Point Lay subsurface** will be governed by the terms of this Settlement Agreement. However, before the **Final Effective Date** of this Settlement Agreement, the State may issue permits, rights-of-way, and the like authorizing surface activities or operations in the area, and either the State or ASRC (acting with respect to those oil and gas leases which it now has the right to administer) may authorize assignments of or routine amendments to existing oil and gas leases affecting sections of the **Nuiqsut subsurface**, so long as these actions do not create a permanent encumbrance with respect to the **subsurface** and the amendments do not materially alter the terms, conditions, or provisions of existing oil and gas leases.

2. LANDS SUBJECT TO 1991 SETTLEMENT AGREEMENT.

2.1. Submerged Lands and Seacoast Boundaries.

(a) ASRC and the State have been unable to reach agreement as to a specific legal definition of "submerged lands" or as to the boundaries, location, or extent of submerged lands included in the **Nuiqsut subsurface** or the **Point Lay subsurface** or as to the proper standards or legal principles or procedures to be applied to determine the existence, boundaries, location, or extent of submerged lands. They also recognize that the boundaries, location, or extent of submerged lands may change because of accretion, reliction, or avulsion. They also realize that the ability of each to lease or exploit or realize benefit from the **subsurface** would be adversely affected by the possibility that future changes in the boundaries, location, or extent of submerged lands could result in changes in ownership. Therefore, the respective undivided interests as provided for in Section 3 of the State and ASRC in the **subsurface** in the entirety of each section or portion of a section of land within the **Nuiqsut subsurface** and the **Point Lay subsurface** will not change or be altered by virtue of any future changes in the boundaries, location, or extent of submerged lands or uplands within a section or portion of a section of land. Conversely, this Settlement Agreement is not intended to be and may not be construed as, an agreement as to the actual extent, if any, of uplands or submerged lands in any area or section, or as an agreement as to the proper standards or legal principles or procedures to be used to establish the existence of, or the boundary between, uplands and submerged lands in any such area or section.

(b) Each reference in this Settlement Agreement to a "section" that includes any area which may now or hereafter be deemed submerged land under the Beaufort Sea, the Chukchi Sea, or the Kasegaluk Lagoon refers to the square or rectangular area (including any area now or hereafter situated within the Beaufort Sea, the Chukchi Sea, or the Kasegaluk Lagoon) encompassed within

a full square or rectangular section (protracted or projected to the extent it is within the Beaufort Sea, the Chukchi Sea, or the Kasegaluk Lagoon) containing approximately 640 acres.

(c) ASRC forever disclaims and quitclaims to the State any interest it now has or may have in the future in lands beneath the Kasegaluk Lagoon within T2N, R45 and R46W, and T1N, R46W, Umiat Meridian, which interest might derive from application of the doctrine of riparian ownership, whether or not these lands are considered submerged lands under federal law; however, nothing in this subparagraph is intended or shall be interpreted to disclaim or quitclaim to the State any interest in the **subsurface** within any of the specific sections of the **Point Lay subsurface** (including lands beneath the Kasegaluk Lagoon) to be conveyed from the State to ASRC under subsection 3.2 of this Settlement Agreement.

(d) The maps attached as Exhibit C (for the **Nuiqsut subsurface**) and as Exhibit D (for the **Point Lay subsurface**) are for illustrative purposes; under AS 09.25.040(6), in the event of a need to construe the descriptive part of any conveyance of real property made under this Settlement Agreement, the maps will be subordinate to the language of the conveyance in the event of any conflict with it.

2.2. Current Ownership of Nuiqsut Lands.

(a) The United States has made the following conveyances to ASRC:

- (1) Interim Conveyance No. 110 dated July 18, 1978;
- (2) Interim Conveyance No. 569 dated November 12, 1982;
- (3) Interim Conveyance No. 621 dated January 7, 1983;
- (4) Interim Conveyance No. 1161 dated April 22, 1986;
- (5) Interim Conveyance No. 1406 dated September 20, 1988; and
- (6) Interim Conveyance No. 1501, dated May 9, 1991.

ASRC warrants to the State that it has not created any oil and gas leases or other third-party interests in the **subsurface** of the lands covered by these interim conveyances except, with respect to Interim Conveyance No. 1406, the rights of Kuukpik Corporation under the **Kuukpik Agreement**.

(b) ASRC is entitled under **ANCSA** to receive from the United States patents to the **subsurface** described in the foregoing interim conveyances and additional interim conveyances, and patents for additional portions of the **Nuiqsut subsurface**. ASRC will not take any action or omit to take any action that might result in it not receiving the interim conveyances and patents to these lands.

(c) The State claims title to all submerged lands within the outermost boundaries of the lands described as the **Nuiqsut subsurface**, and ASRC likewise claims title to, or the right to acquire title to, the **subsurface** in certain of these submerged lands. However, neither the State nor ASRC has agreed as to the effect of Public Land Order 82 (January 22, 1943), 8 Fed. Reg. 1599 (February 4, 1943), or as to a specific legal definition of "submerged lands," or as to the existence, boundaries, location, or extent of submerged lands, or as to the proper standards, legal principles, or procedures to be applied to determine the existence or boundary, location, or extent of submerged lands in any area or section. Additionally, the State or ASRC may hereafter receive patents or interim conveyances from the United States to **Nuiqsut subsurface** within lands covered by one or more or all of the Alaska Native allotment applications described in paragraph 11.12(a), and ASRC may hereafter receive patents or interim conveyances from the United States to **Nuiqsut subsurface** within lands covered by one or more or all of the Alaska Native allotment applications described in paragraph 11.12(b).

(d) The State warrants to ASRC that it has issued only the following oil and gas leases (designated by its Alaska Division of Lands (ADL) numbers) in the **Nuiqsut subsurface**:

ADL No. 25526
ADL No. 25529
ADL No. 25530
ADL No. 356000
ADL No. 356001
ADL No. 356002
ADL No. 356003
ADL No. 356004
ADL No. 356005
ADL No. 365506 (terminated for nonpayment of annual rental
on December 1, 1986)
ADL No. 25535
ADL No. 25536
ADL No. 25537
ADL No. 25539
ADL No. 25556
ADL No. 25540
ADL No. 25541
ADL No. 25554
ADL No. 25555
ADL No. 25560
ADL No. 25561
ADL No. 25562
ADL No. 25563
ADL No. 25577
ADL No. 25578
ADL No. 25579
ADL No. 25596
ADL No. 25597
ADL No. 364466
ADL No. 364468
ADL No. 364469
ADL No. 366201
ADL No. 366202
ADL No. 366203
ADL No. 366204

In addition, the State has created other third party interests in the form of various types of authorizations (such as land or water use permits) with respect to use of or operations on the surface within the **Nuiqsut subsurface** area.

2.3. Possible Changes Regarding Nuiqsut subsurface.

(a) Native Allotment Applications. The State's and ASRC's percentages in certain sections of the **Nuiqsut subsurface** may vary dependent upon the ultimate ownership of the **subsurface** rights in lands covered by certain pending Alaska Native allotment applications. It is possible that in some situations

either the State or ASRC, or in some cases neither the State nor ASRC, will receive a final conveyance from the United States of the **subsurface** rights in the lands covered by those allotment applications. Exhibit E sets forth the State's and ASRC's percentage ownership for different circumstances resulting from the existence of these Alaska Native allotment applications as described in Exhibit E. A conveyance made pursuant to section 3 from the State to ASRC, or from ASRC to the State, shall use the percentages set forth in Exhibit E that correspond to the appropriate situation as described in Exhibit E.

“(b) Kuukpik Overselections. Each of the sections of the **Nuiqsut subsurface** described in Exhibit E has been selected by Kuukpik Corporation for conveyance of the surface estate from the United States to Kuukpik Corporation pursuant to **ANCSA**. If such a conveyance is made, ASRC will receive an interim conveyance or patent from the United States under **ANCSA** to the **subsurface** of those lands. A possibility exists, however, that the total number of acres within the area selected by Kuukpik Corporation may be determined to exceed the total number of acres to which it is entitled to receive a conveyance of the surface estate from the United States under **ANCSA**. If a selection by Kuukpik Corporation of the lands available for selection by it in all of any section or in a part of a **Final Partial Section** described in Exhibit E shall hereafter be rejected or relinquished (so as to terminate the entitlement of Kuukpik Corporation to receive a conveyance of the surface of the lands available for selection by it in that section or part of a section under **ANCSA**), that section or part of a **Final Partial Section**, as more fully described in paragraph 11.12(c), as applicable, shall automatically be excluded from the **Nuiqsut subsurface** and shall not be deemed to be **Nuiqsut subsurface** for purposes of this Settlement Agreement.

2.4. Current Ownership of Point Lay Lands.

The United States has made conveyances to the State that include **Point Lay subsurface** as described in the following patents and tentative approval decision:

- (a) U.S. Patent No. 50-84-0776 dated September 25, 1984;
- (b) U.S. Patent No. 50-84-0777 dated September 25, 1984;
- (c) U.S. Patent No. 50-84-0778 dated September 25, 1984;
- (d) U.S. Patent No. 50-84-0781 dated September 25, 1984; and
- (e) Tentative Approval Decision dated December 23, 1965.

The State also claims title to all submerged lands within the outer boundaries of the lands described as **Point Lay subsurface**, although neither the State nor ASRC has agreed as to the effect of Public Land Order 82 or as to a specific legal definition of "submerged lands" or as to the existence, boundaries, location, or extent of submerged lands or as to the proper standards, legal principles, or procedures to be applied to determine the existence of or the boundary, location, or extent of submerged lands in any area or section. The State warrants to ASRC that it has not issued any oil, gas, or mineral lease with respect to the **Point Lay subsurface**. The State has, however, created other third party interests in the form of various types of authorizations (such as land or water use permits) with respect to use of or operations on the surface within the **Point Lay subsurface** area.

3. CONVEYANCE OF INTEREST IN LANDS.

3.1. ASRC Conveyances.

(a) Fully Conveyed Sections on Final Effective Date.

Within thirty (30) days after the **Final Effective Date** of this Settlement Agreement, ASRC will convey to the State an undivided interest equal to the applicable "State percentage" set out in

Exhibit E in that portion of the **Nuiqsut subsurface** (without regard to whether that **Nuiqsut subsurface** is within uplands or within submerged lands) in each **Fully Conveyed Section** existing as of that date to which ASRC has heretofore acquired title or shall hereafter acquire title before that date, or may thereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within that section. Within thirty (30) days after the **Final Effective Date** of this Settlement Agreement, ASRC will execute and deliver to the State a warranty deed as set out in Exhibit G which conveys the applicable State percentage as set out in Exhibit E for that portion of the **Nuiqsut subsurface** in each **Fully Conveyed Section**, retaining to ASRC an undivided interest equal to the applicable ASRC percentage as set out in Exhibit E with respect to that portion of the **Nuiqsut subsurface** in each section.

(b) Sections That Become Fully Conveyed Sections After the Final Effective Date. As to each section of the **Nuiqsut subsurface** that is not a **Fully Conveyed Section** on the **Final Effective Date** of this Settlement Agreement, this Settlement Agreement will also require that when that section becomes a **Fully Conveyed Section** after the **Final Effective Date**, ASRC shall convey to the State an undivided interest equal to the applicable State percentage set out in Exhibit E in that portion of the **Nuiqsut subsurface** (without regard to whether that **Nuiqsut subsurface** is within uplands or within submerged lands) in that section to which ASRC has acquired title by virtue of an interim conveyance or patent from the United States, or may hereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands in that section. ASRC will execute and deliver to the State a warranty deed as set out in Exhibit G which conveys the applicable State percentage as set out in Exhibit E for that portion of the **Nuiqsut subsurface** in that section no later than thirty (30) days following the date when that section becomes a **Fully Conveyed Section**, retaining to ASRC an undivided interest equal to the

applicable ASRC percentage as set out in Exhibit E with respect to that portion of the **Nuigsut subsurface** in the section. Notwithstanding the foregoing, however, as to the **Final Partial Section**, if any, the warranty deed shall not include or describe any portion of the **Final Partial Section** that is not included in the portion of that section which is deemed to be a **Fully Conveyed Section**. The applicable State and ASRC percentages set out in Exhibit E shall not be changed as to the portion of a **Final Partial Section** included in a **Fully Conveyed Section** by virtue of the exclusion of the remainder of that **Final Partial Section** from the **Nuigsut subsurface**.

3.2. State Conveyances.

(a) Point Lay. Within thirty (30) days after the **Final Effective Date** of this Settlement Agreement, the State will convey to ASRC an undivided interest equal to the applicable ASRC percentage set out in Exhibit F in the **subsurface** in all portions of the **Point Lay subsurface** (without regard to whether that **Point Lay subsurface** is within uplands or within submerged lands) which the State presently holds title to or acquires title to before that date, or may acquire title to after that date by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within the **Point Lay subsurface**. Within thirty (30) days after the **Final Effective Date** of this Settlement Agreement, the State will execute and deliver to ASRC a patent, as set out in Exhibit H, which conveys the applicable ASRC percentage as set out in Exhibit F in those portions of the **Point Lay subsurface**, retaining to the State an undivided interest equal to the applicable State percentage as set out in Exhibit F with respect to the portion of the **Point Lay subsurface** in each of these sections.

(b) Nuigsut.

(1) Fully Conveyed Sections on the Final Effective Date. Within thirty (30) days after the **Final Effective Date** of this Settlement Agreement, the State will convey to ASRC an undivided interest equal to the applicable ASRC

percentage set out in Exhibit E in all portions of the **Nuiqsut subsurface** (without regard to whether the **Nuiqsut subsurface** is within uplands or within submerged lands) in each **Fully Conveyed Section** existing as of that date to which the State presently holds title or acquires title to before that date, or may acquire title to after that date by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within that section. Within thirty (30) days after the **Final Effective Date** of this Settlement Agreement, the State will execute and deliver to ASRC a patent as set out in Exhibit H which conveys the applicable ASRC percentage as set out in Exhibit E in those portions of the **Nuiqsut subsurface** in each of these **Fully Conveyed Sections**, retaining to the State an undivided interest equal to the applicable State percentage set out in Exhibit E in those portions of the **Nuiqsut subsurface** in each section.

(2) Sections That Become Fully Conveyed Sections After the Final Effective Date. There may be sections of **Nuiqsut subsurface** that are not **Fully Conveyed Sections** on the **Final Effective Date** of this Settlement Agreement. When that date occurs, this Settlement Agreement will also require that, when a section becomes a **Fully Conveyed Section**, the State shall convey to ASRC an undivided interest equal to the applicable ASRC percentage set out in Exhibit E in all portions of the **Nuiqsut subsurface** (without regard to whether that **Nuiqsut subsurface** is within uplands or within submerged lands) within that section which the State presently holds title to or acquires title to before that date, or may acquire title to after that date by virtue of any future change in the boundary, location, or extent of submerged lands or uplands in that section. The State will execute and deliver to ASRC a patent, as set out in Exhibit I, conveying to ASRC an undivided interest equal to the applicable ASRC percentage, as set out in Exhibit E, in those portions of the **Nuiqsut subsurface** no later than thirty (30) days following the date when that section becomes a **Fully Conveyed Section**,

retaining to the State an undivided interest equal to the applicable State percentage, as set out in Exhibit E, in those portions of the **Nuiqsut subsurface** in that section; however, as to the **Final Partial Section**, if any, the patent shall not include or describe any portion of the **Final Partial Section** that is not included within the portion of that section which is deemed to be a **Fully Conveyed Section**. The applicable State percentage and ASRC percentage set out in Exhibit E shall not be changed as to the portion of any **Final Partial Section** included in a **Fully Conveyed Section** by virtue of the exclusion of the remainder of that **Final Partial Section** from the **Nuiqsut subsurface**.

3.3. Changes Relating to Submerged Lands.

No change in the boundary, location, or extent of submerged lands or uplands within any section or part of a section of the **Nuiqsut subsurface** or the **Point Lay subsurface** will alter, increase, or diminish the percentage of the subsurface owned by ASRC or by the State, respectively, in the **Nuiqsut subsurface** or the **Point Lay subsurface** in the land affected by such a change as set out in Exhibits E or F, as applicable.

4. SUBSURFACE AGREEMENTS AFFECTING NUIQSUT SUBSURFACE AND POINT LAY SUBSURFACE; GRANT OF RIGHTS TO EXECUTIVE; RIGHTS AND DUTIES OF EXECUTIVE.

4.1. Grant of Executive Rights.

ASRC, on behalf of itself and its successors and assigns, hereby grants and conveys the **Executive Rights** to the State as executive with respect to (i) the undivided interests in **Point Lay subsurface** and **Nuiqsut subsurface** which are conveyed by the State to ASRC from time to time pursuant to this Settlement Agreement, effective as of the effective date of the conveyance of those respective interests to ASRC, and (ii) the undivided interests in **Nuiqsut subsurface** retained by ASRC in **Fully Conveyed Sections** in which ASRC conveys undivided interests to the State from time to time pursuant to this Settlement

Agreement, effective as of the effective date of the conveyance of an undivided interest in the subsurface in those respective Fully Conveyed Sections from ASRC to the State.

4.2. Standard of Performance.

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

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

4.3. Notice and Consultation; Resolution of Disputes.

(a) Right of ASRC to Review Subsurface Agreements and Subsurface Agreement Solicitations. ASRC will have the right to have its representatives review and make comments or suggestions concerning proposed drafts of Subsurface Agreements and Subsurface Agreement Solicitations proposed to be recommended by the Director to, or executed by, the Commissioner (subject to lawful or, if not required by law, reasonable confidentiality requirements), and to observe any otherwise private negotiations between the State and third parties concerning proposed Subsurface Agreements and Subsurface Agreement Solicitations. The State may in its discretion incorporate ASRC's comments.

(b) Notice of Proposed Action to ASRC; Consultation. The State will consult in good faith with ASRC before the State as executive issues any Subsurface Agreement Solicitation. If a Subsurface Agreement is not preceded by a Subsurface Agreement Solicitation, the State will consult in good faith with ASRC before executing that Subsurface Agreement. In either instance, consultation will occur prior to the Director's recommendation to

the **Commissioner**, or in the absence of a **Director's** recommendation, before issuance or execution, as appropriate, by the State as executive. The State may in its discretion incorporate ASRC's comments. At least one hundred and eighty (180) days before execution or issuance of a **Subsurface Agreement** or **Subsurface Agreement Solicitation**, the State will deliver to ASRC a written **Proposed Action Notice** describing in as much detail as is reasonably possible the location of the **Nuiqsut subsurface** or the **Point Lay subsurface** involved, and the nature (and, to the extent then known by the State, the proposed terms) of the proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** to be recommended by the **Director** or executed or issued by the **Commissioner**, as applicable.

(c) **Approval Agreements**. ASRC and the State shall endeavor in good faith to agree in a written **Approval Agreement** upon the **substantive terms and conditions** of all proposed **Subsurface Agreements** and proposed **Subsurface Agreement Solicitations** with respect to which a **Proposed Action Notice** is given to ASRC. If the State, within six (6) months after the execution of an **Approval Agreement**, executes or issues a **Subsurface Agreement** or **Subsurface Agreement Solicitation** consistent with the **substantive terms and conditions** of the **Approval Agreement**, ASRC shall not thereafter have a right to make any claim against the State based on an assertion that the execution or issuance of that **Subsurface Agreement** or **Subsurface Agreement Solicitation** failed to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, and ASRC shall be held to have agreed that such execution or issuance was in compliance with the standard set forth in paragraph 4.2(a) hereof.

(d) **Failure to Agree; Action Notice**. Unless an **Approval Agreement** with respect to a **Proposed Action Notice** has already been executed, the State will give a written **Action Notice** to ASRC by certified mail, return receipt requested, no sooner than twenty-five (25) days after giving the **Proposed**

Action Notice but at least fifteen (15) days before the **Director** makes a recommendation to the **Commissioner** for execution or issuance of (or, in the absence of a recommendation by the **Director**, before the execution or issuance by the **Commissioner** of) any **Subsurface Agreement** or **Subsurface Agreement Solicitation** referred to in the **Proposed Action Notice**. The **Action Notice** will describe the **Nuiqsut subsurface** or the **Point Lay subsurface** involved and will set forth in detail the **substantive terms and conditions** of the proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation**.

~(e) **Protest Notice; Effect of Failure to Protest.**
ASRC may, within ten (10) days after receipt of an **Action Notice**, give a written **Protest Notice** to the State by certified mail, return receipt requested. The **Protest Notice** shall state in reasonable detail ASRC's objections to **substantive terms and conditions** of the proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** described in the **Action Notice**, and shall request that the dispute be referred to a **Qualified Independent Consultant**. If ASRC does not give a **Protest Notice** to the State within ten (10) days after receipt of an **Action Notice**, and if the State executes or issues a **Subsurface Agreement** or **Subsurface Agreement Solicitation** consistent with the **Action Notice** within six (6) months of ASRC's receipt of the **Action Notice**, ASRC shall not thereafter have a right to make any claim against the State based on an assertion that the execution or issuance of that **Subsurface Agreement** or **Subsurface Agreement Solicitation** failed to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, and ASRC shall be held to have agreed that such execution or issuance was in compliance with the standard set forth in paragraph 4.2(a) hereof.

(f) **Referral of Protests to Qualified Independent Consultant.** If ASRC timely gives a **Protest Notice** with respect to an **Action Notice**, the protest shall be referred to a **Qualified Independent Consultant** to be selected by random drawing. The random drawing shall be effected promptly, and in any event

within five (5) days after delivery of the **Protest Notice**, and shall be conducted in the presence of representatives of the State and ASRC. The names of all the **Qualified Independent Consultants** who are then members of the **Consultant Group** shall be placed on identical cards in a covered container, and one name shall be drawn at random from it to select the **Qualified Independent Consultant** to whom the **Protest Notice** shall be referred. If the **Qualified Independent Consultant** so selected is not available (or becomes unavailable for any reason after selection but before rendering a **Consultant Opinion**), then the **Protest Notice** shall be assigned promptly to another **Qualified Independent Consultant** selected by random drawing as described above, and so on, until a **Qualified Independent Consultant** has been selected who renders a **Consultant Opinion** with respect to the **Protest Notice**.

(g) Deferral of Decision Pending Consultant Opinion.

If ASRC timely gives a **Protest Notice** with respect to a proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** described in an **Action Notice**, the State will take no further action with respect to the same until a written **Consultant Opinion** has been issued by a **Qualified Independent Consultant** to whom the **Protest Notice** has been referred.

(h) Qualifications, Selection, Removal, and Replacement of Qualified Independent Consultants.

(1) Establishment of Consultant Group. The **Consultant Group** shall initially consist of and include the following six (6) **persons**, each of whom shall be a **Qualified Independent Consultant**:

Cass Arley
3108 Wentworth
Anchorage, Alaska 99508

Harry Jamison
P. O. Box 4666
Sun River, Oregon 99707

Marv Mangus
1045 East 27th Avenue
Anchorage, Alaska 99508

Tom Marshall
1569 Birchwood
Anchorage, Alaska 99508

Fritz Nagel
6442 Geronimo Circle
Anchorage, Alaska 99504

Tom Wilson
766 Dos Hermanos Road
Santa Barbara, California 93111

(2) "Independent" Defined. A **person** shall not be deemed to be "independent" from the State and ASRC if that **person** is an employee, officer, director or elected official of the State or any agency, bureau, or department of the State or of ASRC or any subsidiary of ASRC or other **person** controlled by ASRC or a shareholder of ASRC or if that **person** is engaged as an agent, consultant, or independent contractor to provide services to or perform services for the State or any agency, bureau or department of the State or ASRC or any subsidiary of ASRC or other **person** controlled by ASRC; however, the engagement of a member of the **Consultant Group** to render a **Consultant Opinion** with reference to a dispute between ASRC and the State under this subsection 4.3 shall not cause that member to cease to be "independent."

(3) Removal of Qualified Independent Consultants. By written agreement, the State and ASRC can, at any time or times, remove any **person** from the **Consultant Group** and substitute another **person** as a member of the **Consultant Group**. Further, if at any time a member of the **Consultant Group** is not independent from both the State and ASRC, then either the State or ASRC shall have the right, by giving written notice to the other, to remove that member from the **Consultant Group**.

(4) Replacement of Qualified Independent Consultants. If at any time any member of the **Consultant Group**

shall decline to serve as a member of the **Consultant Group**, shall be removed, or shall resign or otherwise become unavailable to serve as a member of the **Consultant Group**, then upon written request given by the State or ASRC to the other, the State and ASRC shall endeavor to agree in writing upon a replacement. If agreement is not reached within fifteen (15) days after delivery of the request, then at any time thereafter, before a replacement has been named by agreement of the State and ASRC, either the State or ASRC may give written notice to the remaining members of the **Consultant Group** and require that those remaining members, by majority vote, select and name a replacement. Any replacement so named shall be, as determined in the good faith judgment of a majority of the remaining members, independent from both the State and ASRC and qualified by training and experience to render opinions as to whether a proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** complies with the standard set forth in paragraph 4.2(a) of this Settlement Agreement. At any time, the State and ASRC may, by written agreement, either increase or decrease the number of members of the **Consultant Group**, in which event the agreement shall specify, as applicable, the existing member or members to be removed from the **Consultant Group** or the additional **persons** to be added to the **Consultant Group**.

(5) **Confidentiality**. The State and ASRC may each require that any **Qualified Independent Consultant** execute a confidentiality agreement agreeing to observe reasonable confidentiality restrictions with respect to any data or information provided by the State or ASRC, respectively, to the **Qualified Independent Consultant**, including any confidentiality restrictions imposed by law with respect to data or information provided by the State.

(6) **Liability of Qualified Independent Consultants**. No **Qualified Independent Consultant** shall have any liability whatsoever to the State or ASRC for an opinion expressed in good faith in a **Consultant Opinion**, regardless of

whether the opinion may thereafter be determined to be correct or incorrect. No **Qualified Independent Consultant** shall be rendered ineligible for future employment by either ASRC or the State by reason of serving as a **Qualified Independent Consultant** or rendering a **Consultant Opinion**. Any **Qualified Independent Consultant** may accept employment in any matter if tendered by the State or ASRC, subject only to the right of the State or ASRC to remove that **Qualified Independent Consultant** from the **Consultant Group** pursuant to subparagraph 4.3(h)(3) above.

(7) Payment of Qualified Independent Consultant's Fees and Expenses. ASRC shall pay the reasonable fees and expenses of each **Qualified Independent Consultant** to whom a **Protest Notice** is referred for rendition of a **Consultant Opinion**. If, however, the **Consultant Opinion** concludes that the execution or issuance of the proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** described in the State's **Action Notice** would not be in compliance with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, the State shall reimburse ASRC for the reasonable fees and expenses of each **Qualified Independent Consultant** to whom that **Protest Notice** was referred.

(i) Procedures Before Qualified Independent Consultant. ASRC and the State shall be entitled to provide any written information or materials they desire and to have their representatives, economists, geologists, and other consultants and experts make oral presentations to the **Qualified Independent Consultant** to whom a **Protest Notice** is referred. Copies of all documentary information, written arguments, or other materials of whatever nature presented to the **Qualified Independent Consultant** by either ASRC or the State shall be served on the other party. Either the State or ASRC may impose reasonable confidentiality restrictions on any confidential material thus served on the other party. There will be no ex parte communications by the State or ASRC with the **Qualified Independent Consultant**. The State and ASRC shall each have the right to be present when oral

presentations are made to the **Qualified Independent Consultant**, and these oral presentations shall be recorded by the **Qualified Independent Consultant**. Subject to such confidentiality restrictions as are imposed under subparagraph 4.3(h)(5) above, the **Qualified Independent Consultant** shall also have the right to consult with others and to make whatever other investigations and inquiries as the **Qualified Independent Consultant** sees fit to assist in formulating the **Consultant Opinion**. The **Qualified Independent Consultant** shall preserve a complete record of all documentary information, written and oral arguments and presentations, and other information, data, and opinions or materials considered by the **Qualified Independent Consultant** in formulating the **Consultant Opinion**.

(j) **Consultant Opinion and Timeliness**. Except in response to a direct request for information from the **Qualified Independent Consultant**, neither the State nor ASRC may present information to the **Qualified Independent Consultant** after day fifteen (15) following the day the **Qualified Independent Consultant** receives referral of the **Protest Notice** pursuant to paragraph 4.3(f). A **Qualified Independent Consultant** to whom a **Protest Notice** is referred shall deliver a written **Consultant Opinion** to the State and ASRC within twenty (20) days after the date on which the **Qualified Independent Consultant** receives written notice from either ASRC or the State of the referral of the **Protest Notice** to that **Qualified Independent Consultant** pursuant to subparagraph 4.3(f). The **Consultant Opinion** shall explain whether, in the opinion of the **Qualified Independent Consultant**, the execution or issuance by the State, as executive, of the proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** described in the **Action Notice** which is the subject of ASRC's **Protest Notice** would be in compliance with the standard set forth in paragraph 4.2(a) of this Settlement Agreement.

(k) **Effect of Consultant Opinion Upholding Proposed Action by Executive**. If a **Consultant Opinion** concludes that the execution or issuance by the State as executive of a proposed

Subsurface Agreement or Subsurface Agreement Solicitation would be in compliance with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, and the State within six (6) months thereafter executes or issues a **Subsurface Agreement or Subsurface Agreement Solicitation** consistent with the **Consultant Opinion**, then ASRC shall not thereafter have a right to make any claim against the State based on an assertion that the execution or issuance of that **Subsurface Agreement or Subsurface Agreement Solicitation** failed to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, and ASRC shall be held to have agreed that such execution or issuance was in compliance with the standard set forth in paragraph 4.2(a) hereof.

(1) Effect of Consultant Opinion Not Upholding the Executive. If a **Consultant Opinion** concludes that the execution or issuance by the State as executive of a proposed **Subsurface Agreement or Subsurface Agreement Solicitation** would not be in compliance with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, the State shall nevertheless have the power as executive to execute or issue that proposed **Subsurface Agreement or Subsurface Agreement Solicitation** and thereby bind both the State and ASRC as owners of the **Nuiqsut subsurface** or the **Point Lay subsurface** involved; however, ASRC shall have the right, subject to any applicable statute of limitations, to institute suit against the State in a state superior court to recover any damages that may have been suffered by ASRC as a result of the failure of any of the **substantive terms and conditions** of that **Subsurface Agreement or Subsurface Agreement Solicitation** to which ASRC objected in its **Protest Notice** to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement. If a suit is filed, the court shall give effect to the determination of the **Qualified Independent Consultant** in the **Consultant Opinion** that the State's action in executing or issuing the **Subsurface Agreement or Subsurface Agreement Solicitation** failed to comply with the standard set

forth in paragraph 4.2(a) of this Settlement Agreement, unless the court determines, based solely on a review by the court of the record compiled by the **Qualified Independent Consultant** as required in paragraph 4.3(i) (rather than in a *de novo* trial of the issue), that the decision of the **Qualified Independent Consultant** in the **Consultant Opinion** was arbitrary and capricious or contrary to applicable law. If the state superior court sustains the **Consultant Opinion** of the **Qualified Independent Consultant**, it shall proceed to determine (in a *de novo* trial of the issue) the amount of the damages, if any, that have been suffered by ASRC as a result of the failure of any of the **substantive terms and conditions** of the **Subsurface Agreement** or **Subsurface Agreement Solicitation** to which ASRC objected in its **Protest Notice** to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement.

(m) **Unauthorized Action by Executive.** If the execution or issuance by the State as executive of a **Subsurface Agreement** or **Subsurface Agreement Solicitation** is an **Unauthorized Action** as defined in subsection 11.30 of this Settlement Agreement, then ASRC shall have the right, subject to any applicable statute of limitations, to institute suit against the State in a state superior court; and, if ASRC shall establish in that suit (in a *de novo* trial of the issue) that **substantive terms and conditions** of that **Subsurface Agreement** or **Subsurface Agreement Solicitation** did not comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, ASRC shall have the right to recover any damages that were suffered by it as a result of such failure of the State to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement. A suit by ASRC under this paragraph shall not affect the rights of a lessee or other third party under a **Subsurface Agreement** that has been executed by the State in exercise of the **Executive Rights** granted in this Settlement Agreement. The fact that execution or issuance by the State as executive of a **Subsurface Agreement** or **Subsurface Agreement Solicitation** is an **Unauthorized**

Action as defined in subsection 11.30 of this Settlement Agreement shall not invalidate any **Subsurface Agreement** executed by the State as executive in exercise of the **Executive Rights** granted in this Settlement Agreement.

4.4. Subsurface Agreements to Be in Writing.

Any **Subsurface Agreement** affecting the **Nuiqsut subsurface** or the **Point Lay subsurface** which the State executes as executive will be void and unenforceable unless in writing. The State shall deliver a copy of it to ASRC within ten (10) days of its execution.

4.5. Effect of Confidentiality Provisions in Subsurface Agreements.

In accepting delivery of a copy of a **Subsurface Agreement**, ASRC agrees to be bound by whatever lawful or, if not required by law, reasonable requirements of confidentiality exist in the **Subsurface Agreement** between the State and the third party; however, no confidentiality agreement shall prohibit ASRC from introducing in evidence whatever information concerning the **Subsurface Agreement** that may be necessary or appropriate to prove the nature of the action taken by the State in a suit filed by ASRC which is authorized under the provisions of paragraph 4.3(1) or 4.3(m).

4.6. Powers of Executive Following Execution and Delivery of Subsurface Agreement.

After execution and delivery of a **Subsurface Agreement** by the State, except only as specifically provided in subsection 5.2 below, the State shall have no right, power or duty as executive to negotiate or execute any amendment or change of or with respect to that **Subsurface Agreement** insofar as to the interests of ASRC in the **subsurface** covered or affected by that **Subsurface Agreement**. Rather, subject only to subsection 5.2 below, ASRC shall have sole responsibility for and the right and power to negotiate and execute any amendment or supplement of or with respect to that **Subsurface Agreement** insofar only as to the interests of ASRC in the **subsurface** covered or affected by that

Subsurface Agreement; and the State shall have sole responsibility for and the right and power to negotiate and execute any amendment or supplement of or with respect to that **Subsurface Agreement** insofar only as to the interests of the State in the **subsurface** covered or affected by that **Subsurface Agreement**.

4.7. Direct Payment of Subsurface Revenues.

Without the prior written consent of ASRC, the State will not accept payment or delivery of any **subsurface revenues** paid or payable for or becoming due under any **Subsurface Agreement** negotiated or executed by the State in exercise of its **Executive Rights** hereunder if the **subsurface revenue** is attributable to the ASRC percentage interest in the **Nuiqsut subsurface** or the **Point Lay subsurface**. The State shall include in each **Subsurface Agreement** the requirement that all **subsurface revenues** attributable to the ASRC percentage interest be paid directly to ASRC as provided for in subsection 5.1, unless ASRC gives other written directions as to payment. If either the State or ASRC receives **subsurface revenues** attributable to the interest of the other, those **subsurface revenues** shall be held in trust and promptly paid over or delivered to the proper party. An exception to the direct payment requirement of this subsection may be made for bid deposits as set forth in subsection 5.1.

4.8. No Duty of State to Conduct Operations.

The State shall have no duty to ASRC to conduct or perform geological or geophysical studies or surveys or to conduct, perform, or supervise exploration, testing, drilling, mining, development, production, marketing, or other operations on or with respect to any portion of the **Nuiqsut subsurface** or the **Point Lay subsurface**. The parties intend that the State shall discharge its obligations under this agreement solely by issuing **Subsurface Agreement Solicitations** and by entering into **Subsurface Agreements** with third parties and shall not be obligated to undertake exploration, development, production, or marketing directly or for the account of ASRC.

4.9. Separate Rights of ASRC and State to Enforce Subsurface Agreements and to Protect Subsurface Interests.

The State shall have no right, authority, power, obligation, or duty to ASRC to enforce the termination provisions concerning an ASRC interest, or the obligations, duties, or covenants of any third party concerning an ASRC interest under or in connection with any **Subsurface Agreement** authorized herein and shall have no liability as executive to ASRC for failure or refusal by any third party to perform or observe termination provisions, or obligations, duties, or covenants. With respect only to its undivided interests, after execution of any **Subsurface Agreement** authorized herein, ASRC shall have the right and responsibility in its own discretion to enforce directly any termination provisions, obligations, duties, or covenants, express or implied, undertaken by or imposed by virtue of such **Subsurface Agreement** with respect only to ASRC's interests, subject only to the provisions of subsection 5.2 (if applicable); and (likewise subject to the provisions of subsection 5.2, if applicable) the State shall have like rights and responsibilities acting solely in its own behalf as owner of its undivided interests. In any instance where there is a potential drainage of oil or gas from the **Nuiqsut subsurface** or the **Point Lay subsurface** that may affect the rights of ASRC or the State in that **subsurface**, the State, acting in its own behalf and with respect to its interests in that **subsurface**, shall have the right to seek to prevent the drainage by causing development to take place by third parties pursuant to any applicable **Subsurface Agreement** or by petitioning the Alaska Oil and Gas Conservation Commission under AS 31.05 and 20 AAC 25 (or any other applicable statutes and regulations currently in effect or hereafter enacted). Likewise, ASRC, acting in its own behalf and with respect to its interests in the **subsurface**, shall have the independent right to seek to prevent such drainage by causing development to take place by third parties pursuant to any

applicable **Subsurface Agreement** or by petitioning the Alaska Oil and Gas Conservation Commission for such protection and orders as may be issued under AS 31.05 and associated regulations (or any other applicable statutes and regulations currently in effect or hereafter enacted).

4.10. **Interests Included in Lease.**

Any lease or other **Subsurface Agreement** authorized hereby may, as determined by the State:

(a) cover oil only, gas only, or any other mineral (limited to minerals included in the **subsurface**) only, or any two or more of these substances,

(b) cover all depths or be limited to a particular stratum or strata,

(c) cover one or more areas of differing sizes, and

(d) cover areas that are not contiguous, but subject to subsection 4.14 below.

4.11. **Kuukpik Corporation Consents.**

(a) The State shall endeavor to obtain any consents required under the **Kuukpik Agreement** that are necessary for the exploration and development of the **subsurface** and production of oil, gas, or other minerals pursuant to any **Subsurface Agreement** executed by the State as executive, if, and to the extent that the **Kuukpik Agreement** is valid, enforceable, and applicable; and the State shall also endeavor to obtain any consent required under section 14(f) of **ANCSA**, if applicable. ASRC will likewise exercise its best efforts to obtain Kuukpik Corporation's consent, if its consent is necessary; but ASRC shall not be liable or responsible to the State for failure or inability to obtain this consent, and shall have no obligation to pay or agree to pay any consideration to obtain this consent. Likewise, the State shall not be obligated to pay any consideration for any required consent or be liable to ASRC for any diminution in value of any of ASRC's undivided interest in the **Nuiqsut subsurface** due to the State's failure or inability to obtain a requisite consent; nor shall a failure to do so be deemed not to comply

with the standard set forth in paragraph 4.2(a) of this Settlement Agreement. Nor shall the State be required to lease or contract with respect to all or part of any section of land that includes **subsurface** for which consent was lawfully required but could not be obtained by the State in accordance with this Settlement Agreement. The State shall not have the right or power to commit ASRC to pay any consideration to Kuukpik Corporation for any consent required or asserted to be required under the **Kuukpik Agreement** or under section 14(f) of **ANCSA** or to grant or assign or commit ASRC to grant or assign to Kuukpik Corporation any interest in ASRC's interests in **Nuiqsut subsurface** or **Point Lay subsurface** or any **subsurface revenues** from them or attributable to them as consideration for or to induce Kuukpik Corporation to grant any consent required or asserted to be required under the **Kuukpik Agreement** or under section 14(f) of **ANCSA** without ASRC's prior written consent. Subject to paragraph 4.11(b), nothing in this Settlement Agreement is intended or shall be construed as an acknowledgment or agreement that the consent of Kuukpik Corporation is required for any particular activity.

(b) Each of ASRC and the State covenants and agrees that unless Kuukpik Corporation or any authorized representative of Kuukpik Corporation (i) contests or attacks the validity or legality of this Settlement Agreement or of the law approving this Settlement Agreement referred to in section 1 hereof, or (ii) opposes the adoption by the Legislature or the approval by the Governor of the bill approving this Settlement Agreement referred to in section 1 hereof, then neither ASRC nor the State shall at any time question, deny, or contest the validity or legality of any term or provision of the **Kuukpik Agreement** insofar as to any portion of the **Nuiqsut subsurface** therein provided to be covered or affected thereby. However, nothing in this paragraph is intended or shall be construed to limit or in anywise affect the right of ASRC and the State, and either of them, to assert and maintain any position as to the appropriate

and intended meaning, interpretation, construction, or effect of any term or provision of the **Kuukpiik Agreement**.

4.12. Designated Party for Notices.

In the event that ASRC conveys or assigns any of its undivided interest in the **Nuiqsut subsurface** or the **Point Lay subsurface** to one or more third parties under subsection 7.3 of this Settlement Agreement, ASRC and the one or more third parties shall be required to designate one party to receive and deliver all communications hereunder, including, but not limited to, notices, agreements, and protests under subsection 4.3 hereof; in the absence of a designation the State shall be entitled to deliver and receive communications solely with ASRC as the designated party to receive notices. In no event will the State be required to communicate both with ASRC and with other parties under this Settlement Agreement. Notices, agreements, or protests to or from the designated party shall constitute notices, agreements, and protests to and from ASRC and the third parties.

4.13. Waiver of Partition.

Both ASRC and the State are co-owners of the **Nuiqsut subsurface** and the **Point Lay subsurface** and recognize that circumstances may arise under subsection 6.1 or paragraph 7.3(a) whereby the **parties** each may own and independently negotiate and execute **Subsurface Agreements** covering their undivided interest only in portions of the **subsurface**, and it is not in the interest of the **parties** that their undivided interests be subject at any time to compulsory or involuntary partition. Therefore, the **parties** expressly waive any right to seek partition, and agree that partition may not be imposed as a remedy under any circumstance with regard to this Settlement Agreement or the **Nuiqsut subsurface** or the **Point Lay subsurface** or any part of or interest in it.

4.14. No Outside Acreage in Leases: No Communitized Leases.

The State as executive shall not have the right, power, or obligation to grant any oil, gas, or mineral lease or other **Subsurface Agreement** covering any part of ASRC's interest in the **Nuiqsut subsurface** or **Point Lay subsurface** and additionally covering any part of or any interest in additional lands that are not included in the **Nuiqsut subsurface** or in the **Point Lay subsurface**, as applicable. Further, the inclusion in one lease or **Subsurface Agreement** of interests in two or more sections of **Nuiqsut subsurface** or **Point Lay subsurface** in which the State and ASRC have varying undivided percentage interests shall not result in communitizing or pooling the interests of the State and ASRC in **subsurface revenues** under that lease or **Subsurface Agreement** from or attributable to such respective sections of **Nuiqsut subsurface** or **Point Lay subsurface**. Notwithstanding Section 14(g) of **ANCSA**, from and after the **Final Effective Date** of this Settlement Agreement, the royalty payable under any oil and gas lease covering any part or parts of the **Nuiqsut subsurface** issued before that date shall not be pooled or communitized. Oil or gas produced from any particular section or part of a section covered by any such lease shall be owned by the **person** or **persons** who own the **subsurface** in that particular section or part of a section, without regard to ownership of the **subsurface** in any other section or part of a section covered by that lease. The oil and gas is not shared with owners of the subsurface in any other section or part of a section of the land that may be contained in that lease. Thus, for example, any oil or gas produced after the **Final Effective Date** of this Settlement Agreement from a section of **Nuiqsut subsurface** in which the State and ASRC then own undivided interests in the **subsurface** as set out in Exhibit E shall be owned by the State and ASRC in proportion to their respective undivided interests in the **Nuiqsut subsurface** in that particular section without regard to the ownership of other sections or parts of sections that may be contained in that particular lease.

4.15. **Nuiqsut Subsurface Outside Fully Conveyed Sections.**

The State as executive shall not have the right, power, or obligation to grant any oil, gas, or mineral lease or other **Subsurface Agreement** covering, or to exercise any power or authority as holder of executive rights under this Settlement Agreement with respect to, any part of or interest in the **Nuiqsut subsurface** in any section listed in Exhibit E before the date when that section becomes a **Fully Conveyed Section**. Until a section of **Nuiqsut subsurface** listed in Exhibit E has become a **Fully Conveyed Section**, no oil, gas, or mineral lease or other **Subsurface Agreement** or grant of any third party rights covering or affecting any interest in **Nuiqsut subsurface** in that section shall be made or granted by either the State or ASRC without the joint and mutual approval and consent in writing of both ASRC and the State; however, the State may grant or create other third party interests in the form of various types of authorizations (such as land or water use permits) with respect to use of or operations on the surface within any such section.

5. **MINIMUM COVENANTS REQUIRED IN ALL SUBSURFACE AGREEMENTS.**

Certain minimum covenants, described below, shall be part of and shall be deemed to be included in any **Subsurface Agreement** executed by the State as executive affecting the **Nuiqsut subsurface** or **Point Lay subsurface**:

5.1. **Direct Payment Covenant.**

Whenever the State as executive enters into any **Subsurface Agreement** of any kind with any **person** which concerns ASRC's interest in the **Nuiqsut subsurface** or **Point Lay subsurface**, then in that **Subsurface Agreement** that **person** will expressly agree and covenant for itself and its successors and assigns to pay in money or in product, as applicable, any and all **subsurface revenues** attributable to the undivided interest owned by ASRC, and payable for or becoming due under the **Subsurface Agreement**, directly to ASRC, with payment in product to be delivered at the location provided for in the **Subsurface Agreement** and with monetary payments to be made to ASRC at

Arctic Slope Regional Corporation
(1230 Agvik Street)
P. O. Box 129
Barrow, Alaska 99723
Attention: President

or at such other address as the ASRC President or any Vice President of ASRC may notify the **person** of in writing.

Notwithstanding the foregoing provisions of this subsection, however, when the State enters into an agreement with a prospective bidder or bidders at a competitive lease sale or other bidding arrangement concerning offers or bids to enter into a **Subsurface Agreement** with the State as executive for the **Nuqsut subsurface** or **Point Lay subsurface** under the terms of which arrangement bid deposits are required to be refunded to unsuccessful bidders, the agreement may provide that all of these bid deposits are to be paid to the State; however, each bid deposit will be held by the State in escrow pending its refund or acceptance of the related bid and the applicable ASRC percentage of each bid deposit that is not required to be refunded to the bidder shall constitute trust funds in the hands of the State and shall promptly be paid over by the State to ASRC when a determination is made that the bid deposit is not required to be refunded to the bidder.

5.2. Royalty Valuation.

Notwithstanding the provisions of subsections 4.6, 4.9, and 5.1 of this Settlement Agreement, each **Subsurface Agreement** (if any there be) executed by the State as executive that includes a provision empowering or authorizing the **Commissioner** or the State to determine or establish the monetary value, or the minimum monetary value, of any share of oil, gas, or other substance payable to the State as royalty or otherwise pursuant to that **Subsurface Agreement** (as distinguished from calculating the monetary value solely by reference to specific objective factors described or provided for in the **Subsurface Agreement**) shall provide that if the monetary value, or the minimum monetary value, of any share of oil, gas, or other substance payable to

the State or payable to the State and ASRC under the **Subsurface Agreement** is, under the terms of the **Subsurface Agreement**, determined or established by the **Commissioner** or the State, then such determination or establishment shall be made solely by the **Commissioner** or by the State, as applicable (and not by ASRC or any of its officers), and shall be effective to establish the monetary value or minimum monetary value (as applicable) of the share of the oil, gas, or other substance payable both to ASRC and to the State under the applicable provisions of the **Subsurface Agreement**. If the **Commissioner** or the State determines, or agrees with the third **person** involved, that the monetary value, or minimum monetary value, of the share of oil, gas, or other substance payable to the State under a **Subsurface Agreement** is not required or permitted to be, or should not be, determined or established by the **Commissioner** or the State under the terms of that **Subsurface Agreement**, the decision of the **Commissioner** or the State in making such determination or agreement shall be binding upon ASRC, and ASRC shall not have the right to require that the monetary value, or minimum monetary value, of the ASRC percentage share of the oil, gas, or other substance payable to ASRC under that **Subsurface Agreement** be determined or established by the **Commissioner** or the State unless the **Commissioner** or the State shall thereafter change such determination or agreement with reference to determining or establishing the monetary value, or minimum monetary value, of the State percentage share of the oil, gas or other substance payable to the State under that **Subsurface Agreement**. Subject to the provisions of the last preceding sentence, if the State shall become involved in litigation or arbitration proceedings with a **person** holding a **Subsurface Agreement** involving a dispute whether the terms of the **Subsurface Agreement** require or permit the **Commissioner** or the State to determine or establish the monetary value, or the minimum monetary value, of the share of the oil, gas, or other substance payable to the State or ASRC under that **Subsurface Agreement**, the State shall notify ASRC of those

proceedings, and ASRC shall have the right to intervene and participate in the proceedings with reference to that dispute.

Neither the **Commissioner** nor the State shall have any liability to ASRC for or with respect to a decision made by the **Commissioner** or the State in fixing or determining the monetary value, or minimum monetary value, of the share of oil, gas, or any other substance payable to ASRC and to the State pursuant to any **Subsurface Agreement** or for a determination or agreement made by the **Commissioner** or the State that the **Commissioner** or the State is not required or permitted to, or should not, establish or determine the monetary value, or the minimum monetary value, of any oil, gas or other substances payable to ASRC and the State under the terms of a **Subsurface Agreement**.

5.3. Other Covenants.

Whenever the State as executive enters into a **Subsurface Agreement** with any person that concerns the **Nuiqsut subsurface** or the **Point Lay subsurface**, then in that **Subsurface Agreement** the person will expressly agree and covenant for itself, and its successors and assigns, with respect to that **Subsurface Agreement** and that **Nuiqsut subsurface** or **Point Lay subsurface** and the operations and activities of that person on it and in connection with it, to:

(a) file jointly with ASRC and 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 thirty (30) days after each well or survey has been completed, suspended, or abandoned; and, after conducting seismic exploration on the leased area, to provide both to ASRC and to the State the same notification and review privileges as is required to be provided to the State under 11 AAC 91.210 or other applicable regulations hereafter adopted;

(b) exercise reasonable diligence in mining, and in drilling, producing, and operating oil and gas wells;

(c) upon discovery of minerals, including oil or gas, in quantities sufficient to recover reasonable costs of mining, or in the case of oil or gas to recover reasonable costs of drilling, completing, and operating additional

well(s) in the same geological structure at other locations with a reasonable profit to the operator, expand the mining operation or drill such additional wells as a reasonable and prudent operator would;

(d) perform all operations with due care and in a good and workmanlike manner in accordance with modern methods and practices with due regard for the prevention of waste, and for the prevention (in the case of oil and gas) of water drainage to the oil- and gas-bearing sands or strata and to the preservation and conservation of the property for future productive operations, and to carry out at the **person's** expense all orders and requirements of public officials relative to the prevention of waste and to the preservation of the **subsurface** area subject to the **Subsurface Agreement**;

(e) securely plug in an approved manner any oil or gas well before abandoning it;

(f) drill such wells as a reasonable and prudent operator would drill to protect the premises from drainage of hydrocarbons;

(g) use modern geological and geophysical techniques in exploration and development;

(h) cause any identified commercial deposits or reservoirs to be reasonably developed and produced;

(i) subscribe to reasonable cooperative or unit agreements proposed by the State or ASRC, or otherwise legally imposed, provided that no voluntary pooling or unit agreement may be entered into without the written consent of each of ASRC and the State with respect to their respective interests;

(j) keep open for inspection and audit at all reasonable times all mines, wells, improvements, machinery, reports, and records relative to operations, surveys, or investigations, and furnish copies of and extracts from any such reports or records on demand, subject to reasonable confidentiality requirements;

(k) allow ASRC the option to take its ASRC percentage of the royalties or other interest in production in money (measured by such valuation provisions as are contained in the lease or other **Subsurface Agreement** applicable both to the interests of the State and of ASRC, or, in the absence of such provisions, measured by **fair market value**) or in product after proper notice as provided for in the **Subsurface Agreement** whether or not the State elects to do so, and provide further that all agreements for the sale or

mortgage or other disposition of an interest in oil, gas, or other minerals shall be made subordinate to these rights to take such royalty share of production in kind;

(l) allow ASRC to have the right to enforce all the terms of the **Subsurface Agreement** (whether express or implied) directly on its own behalf and with respect only to ASRC's undivided interests in **subsurface** covered thereby, including any provision allowing termination of the **Subsurface Agreement** for a breach of its terms, whether or not the State elects to do so with respect to the undivided interests of the State in that **subsurface**;

(m) allow ASRC to have the right to petition the **Commissioner** of Natural Resources or the Alaska Oil and Gas Conservation Commission for such unitization orders and other protections as may be allowed by law; and

(n) acknowledge and agree that the applicable terms of this Settlement Agreement are incorporated by reference.

6. **SUSPENSION OF THE EXECUTIVE RIGHTS.**

6.1. **Suspension of the Executive Rights.**

(a) Suspension of the **Executive Rights** for Refusal of the State to Act. At any time when ASRC believes that the State would be required by the **Prudent Landowner Standard** to issue a **Subsurface Agreement Solicitation** or execute a **Subsurface Agreement** with respect to any portion of the **Nuiqsut subsurface** or the **Point Lay subsurface**, ASRC may give written notice to the State identifying the portion of the **subsurface** involved and requesting that the State as executive issue or execute an appropriate **Subsurface Agreement Solicitation** or **Subsurface Agreement** with respect to that portion. If the State refuses to issue or execute a **Subsurface Agreement Solicitation** or **Subsurface Agreement** in response to ASRC's request, the State shall inform ASRC in writing whether (i) that refusal is based upon a conclusion by the State that the issuance or execution thereof would not be required under the **Prudent Landowner Standard** or (ii) that refusal is based upon a public interest determination or finding by the State that the State, in application of the **Limited Prudent Landowner Standard** to its conduct as holder of the **Executive Rights**, is prevented from

complying with the **Prudent Landowner Standard** with reference to issuance or execution of a **Subsurface Agreement Solicitation** or **Subsurface Agreement** as requested by ASRC because of its duties and obligations as sovereign or because of applicable federal or state statutes, regulations, and constitutional provisions. If the State's refusal to issue or execute a **Subsurface Agreement Solicitation** or **Subsurface Agreement** is based upon a public interest determination or finding as described in clause (ii) of the last preceding sentence, then ASRC shall have the right, at its election and at any time prior to the issuance or execution by the State as executive of a **Subsurface Agreement Solicitation** or **Subsurface Agreement** covering the subject portion of the **subsurface**, to give written notice to the State suspending the **Executive Rights** as to the portion of the **subsurface** as to which ASRC had requested that the State issue or execute a **Subsurface Agreement Solicitation** or **Subsurface Agreement**. Said notice shall describe the portion of the **subsurface** as to which the **Executive Rights** are to be suspended and shall be acknowledged by ASRC as required for the recordation of instruments affecting title to real property. Promptly upon receipt of said notice, the State shall execute and shall likewise acknowledge the notice to evidence its receipt thereof and shall record the same in the recording office of the appropriate recording district.

(b) Suspension of the **Executive Rights** Because of Separate Termination of **Subsurface Agreement**. As provided in subsections 4.6 and 4.9 and paragraph 5.3(1), ASRC and the State each has the independent right and power to enforce cancellation and termination provisions in **Subsurface Agreements** covered by this Settlement Agreement, insofar as to its undivided percentage interest in the **subsurface** covered or affected by the **Subsurface Agreement**. Upon cancellation and termination of a **Subsurface Agreement**, in whole or in part, by one only of ASRC or the State insofar only as to its undivided interest in a portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** whereby the undivided interest of one only of ASRC or the State in any

portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** is no longer subject to that **Subsurface Agreement**, then the **Executive Rights** shall be suspended as to that portion of the **Nuiqsut subsurface** or **Point Lay subsurface**.

6.2 Rights and Duties During Suspension of the Executive Rights.

Subject to subsection 6.3, it is stipulated and agreed that during any period while the **Executive Rights** of the State are suspended as to a portion of the **Nuiqsut subsurface** or **Point Lay subsurface** pursuant to subsection 6.1, the following shall occur: ~

(a) The **Executive Rights** of the State shall be suspended as to the percentage interest of ASRC in that portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** and the State shall have no right, power, duty, or obligation as executive as to the interest of ASRC in that portion; and

(b) Each party shall own its undivided interest in that portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** as a cotenant having all rights and obligations of ownership of such undivided interest, including, but not limited to, the exclusive power and right to execute **Subsurface Agreements** covering all or part of its undivided interest as to that portion of the **Nuiqsut subsurface** or the **Point Lay subsurface**.

6.3. Return of the Executive Rights.

After the suspension of the **Executive Rights** as to any portion of the **Nuiqsut subsurface** or **Point Lay subsurface** as provided in subsection 6.1, the **Executive Rights** will return to the State as to such portion under the following circumstances:

(a) If at any time after giving a notice suspending the **Executive Rights** as to any portion of the **subsurface** pursuant to paragraph 6.1(a) and prior to the execution by ASRC of a **Subsurface Agreement** covering ASRC's percentage interest in that portion of the **subsurface**, ASRC, at its election, executes, acknowledges, and records in the recording office of the appropriate recording district a notice terminating the suspension of the **Executive Rights** as to the portion of the **subsurface** described in such notice;

(b) If ASRC executes a **Subsurface Agreement** covering its undivided interest in a portion of the **Nuiqsut**

subsurface or Point Lay Subsurface as to which the **Executive Rights** have been suspended pursuant to paragraph 6.1(a), and if at any time thereafter neither ASRC's nor the State's undivided interest in that portion of the **Nuiqsut subsurface or Point Lay subsurface** then remains subject to any **Subsurface Agreement**; or

(c) If at any time after the suspension of the **Executive Rights** as to a portion of the **Nuiqsut subsurface or Point Lay subsurface** pursuant to paragraph 6.1(b) neither ASRC's nor the State's undivided interest in that portion of the **Nuiqsut subsurface or Point Lay subsurface** then remains subject to any **Subsurface Agreement**.

As to the portion of the **subsurface** described in a notice from ASRC terminating the suspension of the **Executive Rights** as to that portion pursuant to paragraph (a) of this subsection 6.3, and in either of the circumstances described in paragraph (b) or paragraph (c) of this subsection 6.3 when neither ASRC's nor the State's undivided interest in a portion of the **Nuiqsut subsurface or the Point Lay subsurface** is then subject to any **Subsurface Agreement**, the **Executive Rights** granted the State under section 4 of this Settlement Agreement shall automatically and immediately return to and be exclusively exercised by the State as to that portion of the **Nuiqsut subsurface or Point Lay subsurface**, subject, however, to the terms and provisions of sections 4, 5, and 7 and (if it thereafter again becomes applicable) this section 6.

7. MISCELLANEOUS RESTRICTIONS ON BOTH PARTIES.

7.1. Prohibitions on Self-Development.

Absent the written consent of the other party, neither the State nor ASRC may alone or in a joint venture or other joint enterprise of any sort with any **person**, become a lessee of or explore, develop, produce from, or otherwise exploit any portion of the **Nuiqsut subsurface or the Point Lay subsurface** as long as that portion is subject to the **Executive Rights** granted in this Settlement Agreement. However, nothing in this section prohibits

(a) ASRC or the State from entering the lands to inspect and observe the activities of a **person** who has a **Subsurface Agreement** concerning the **Nuiqsut subsurface or the Point Lay subsurface**;

(b) ASRC or the State from entering the lands to perform such actions as are reasonably necessary to take its share of **subsurface revenues** earned under this Settlement Agreement in kind;

(c) the State, when acting as the executive, from conducting, at its sole risk and expense or by agreement and in conjunction with ASRC, seismic or other geological or geophysical surveys of the **Nuiqsut subsurface** or the **Point Lay subsurface**; or

(d) the State from exercising any sovereign power it may have over uplands, submerged lands, or water, regardless of any ownership interest in the **Nuiqsut subsurface** or **Point Lay subsurface**, or from conducting resource assessment programs on state-owned lands, subject, however, to the provisions of subsection 8.2 of this Settlement Agreement.

7.2. Assignments of Executive Rights.

The State may not assign or delegate the **Executive Rights** granted under section 4 of this Settlement Agreement without the prior written consent of ASRC, except as allowed under subsection 7.3.

7.3. Conveyances Prohibited.

(a) Except as to **Subsurface Agreements** authorized under subsection 6.2 of this Settlement Agreement, neither the State (acting solely on its own behalf, and not as executive) nor ASRC (acting solely on its own behalf) may convey, by sale, exchange, or otherwise, all or any interest in its undivided percentage interest in all or any portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** without the prior written consent of the other party. Both the State and ASRC may condition consent to a conveyance upon the termination of the **Executive Rights** and rights, duties, and obligations of the executive with respect to the undivided interest of the nonexecutive in the portion of the **Nuiqsut subsurface** or **Point Lay subsurface** to be conveyed. If such consent is given, and the **Executive Rights** are terminated as to that portion of the **Nuiqsut subsurface** or **Point Lay subsurface** affected, then the rights and obligations of the owners of that portion affected will be as described in subsection 6.2 of this Settlement Agreement and

there shall be no return of the **Executive Rights** as provided in subsection 6.3.

(b) If the State (acting solely on its own behalf, and not as executive) or ASRC (acting solely on its own behalf) makes a conveyance, by sale, exchange, or otherwise, to another **person** of all or any interest in its undivided percentage interest in all or any portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** after having obtained the consent of the other party to make that conveyance as required in paragraph 7.3(a) above, the consideration received by the State or ASRC, as applicable, for the conveyance shall not be deemed to be **subsurface revenues** for purposes of this Settlement Agreement, so that the other party (whose undivided interest in the **Nuiqsut subsurface** or the **Point Lay subsurface** is not being conveyed to that other **person**) shall have no right to receive any share of that consideration pursuant to this Settlement Agreement.

(c) The State's consent under paragraph 7.3(a) to a transfer of ASRC's entire interest in the **Nuiqsut subsurface** and the **Point Lay subsurface** is not required if the transfer occurs because of ASRC's merger or consolidation with another corporation under AS 10.06.530-10.06.582 or AS 10.06.960 (or any similar or successor corporate merger or consolidation legislation hereafter enacted).

(d) Subject to the terms, conditions, limitations, and provisions of paragraphs (a), (b), and (c) of this subsection 7.3, any assignment or conveyance by ASRC or the State to any **person** of any interest in its undivided percentage interest in all or any portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** shall, to the extent (and only to the extent) applicable under the terms and provisions of this Settlement Agreement, be made expressly subject to this Settlement Agreement and the assignment of **Executive Rights** provided herein.

8. STATE'S RIGHTS AS SOVEREIGN.

8.1. Neither the State's conveyance to ASRC of an interest in the **Nuiqsut subsurface** or the **Point Lay subsurface**, including submerged lands, nor any term or provision of this Settlement Agreement, is intended or may be construed to waive, give up, alter, or affect in any way any sovereign right of the State (as that right or rights may exist at any time under applicable law) to regulate or manage navigable or nonnavigable rivers, streams, creeks, lakes, or ponds, or other bodies of water extending over submerged lands, or to regulate the appropriation of water, or to manage fish and game resources or other natural resources, including, but not limited to, laws and regulations that govern protection of natural resources and procedural requirements for disposal of interests in State lands for leasing, exploration, and development of natural resources. In exercising or declining to exercise the **Executive Rights** conferred and imposed on the State under this Settlement Agreement, the State shall be entitled to and shall observe and conform to statutes and regulations governing these resources, subject, however, to the provisions of subsection 8.2.

8.2. Nothing in this Settlement Agreement, including this section 8, shall be construed as a waiver by ASRC of its right to challenge the constitutionality of any statute or the validity of any regulation enacted or adopted after the **Final Effective Date** of this Settlement Agreement that singles out the **Nuiqsut subsurface** or the **Point Lay subsurface** for treatment different from that accorded to other lands within the State of Alaska, or that causes any injury-in-fact to any rights expressly granted to ASRC under this Settlement Agreement. It is agreed, however, that such a challenge will not challenge or attempt to void or terminate the rights of a third party under a **Subsurface Agreement** executed by the State in exercise of the **Executive Rights** in accordance with the terms and conditions of this Settlement Agreement.

9. PREEXISTING LEASES OF THE NUIQSUT SUBSURFACE.

9.1. Lease Description.

(a) In 1983, the State waived the right to administer the following oil and gas leases affecting portions of the **Nuiqsut subsurface** which had already been conveyed to ASRC by the United States:

<u>LEASE</u>	<u>MONTH/DAY RENTAL DUE DATE</u>	<u>ANNUAL RENTAL</u>	<u>PER DAY ALLOCATION (ANNUAL RENTAL/365=)</u>
ADL No. 356000	Feb. 1	\$ 3720.00	\$ 10.19
ADL No. 356001	Feb. 1	\$ 3840.00	\$ 10.52
ADL No. 356002	Feb. 1	\$ 1920.00	\$ 5.26
ADL No. 356003	Feb. 1	\$ 5760.00	\$ 15.78
ADL No. 356004	Feb. 1	\$ 1920.00	\$ 5.26
ADL No. 356005	Feb. 1	\$ 3840.00	\$ 10.52
ADL No. 25540	Feb. 1	\$ 2560.00	\$ 7.01
ADL No. 25541	Feb. 1	\$ 2560.00	\$ 7.01
ADL No. 25554	Feb. 1	\$ 2560.00	\$ 7.01
ADL No. 25555	Feb. 1	\$ 2560.00	\$ 7.01

(b) The State has not yet waived the right to administer the following State oil and gas leases affecting portions of the **Nuiqsut subsurface** which have already been conveyed to ASRC by the United States by interim conveyance or patent:

<u>LEASE</u>	<u>MONTH/DAY RENTAL DUE DATE</u>	<u>ANNUAL RENTAL</u>	<u>PER DAY ALLOCATION (ANNUAL RENTAL/365=)</u>
ADL No. 25526	Feb. 1	\$ 1055.00	\$ 2.89
ADL No. 25529	Feb. 1	\$ 2015.00	\$ 5.52
ADL No. 364469	Aug. 1	\$ 10674.00	\$ 29.24
ADL No. 366201	Feb. 1	\$ 1230.00	\$ 3.37
ADL No. 366202	Feb. 1	\$ 1181.00	\$ 3.24
ADL No. 366203	Feb. 1	\$ 640.00	\$ 1.75
ADL No. 366204	Feb. 1	\$ 531.00	\$ 1.45

(c) Additionally, the following State oil and gas leases affect portions of the **Nuiqsut subsurface** that may in the future be conveyed to ASRC by the United States:

<u>LEASE</u>	<u>MONTH/DAY</u> <u>RENTAL</u> <u>DUE DATE</u>	<u>ANNUAL RENTAL</u>	<u>PER DAY ALLOCATION</u> <u>(ANNUAL</u> <u>RENTAL/365=)</u>
ADL No. 25530	Feb. 1	\$ 30.00	\$ 0.08
ADL No. 25535	Feb. 1	\$ 1920.00	\$ 5.26
ADL No. 25536	Feb. 1	\$ 640.00	\$ 1.75
ADL No. 25537	Feb. 1	\$ 2437.00	\$ 6.68
ADL No. 25539	Feb. 1	\$ 1808.00	\$ 4.95
ADL No. 25556	Feb. 1	\$ 1179.00	\$ 3.23
ADL No. 25560	Feb. 1	\$ 2560.00	\$ 7.01
ADL No. 25561	Feb. 1	\$ 1288.00	\$ 3.53
ADL No. 25562	Feb. 1	\$ 1920.00	\$ 5.26
ADL No. 25563	Feb. 1	\$ 2560.00	\$ 7.01
ADL No. 25577	Feb. 1	\$ 2560.00	\$ 7.01
ADL No. 25578	Feb. 1	\$ 1949.00	\$ 5.34
ADL No. 25579	Feb. 1	\$ 2491.00	\$ 6.82
ADL No. 25596	Feb. 1	\$ 2501.00	\$ 6.85
ADL No. 25597	Feb. 1	\$ 2512.00	\$ 6.88
ADL No. 364466	Aug. 1	\$ 13029.00	\$ 35.70
ADL No. 364468	Aug. 1	\$ 11112.00	\$ 30.44

9.2. Leases Covering Fully Conveyed Sections on Final Effective Date.

(a) On the **Final Effective Date** of this Settlement Agreement, as to each of the leases identified in paragraphs 9.1(a) and 9.1(b) (subject to the provisions of subsection 9.4 below, if applicable):

(1) as to the applicable State percentage in **Nuiqsut subsurface** covered by each lease, the State shall have the right and responsibility, with respect only to its undivided interests, in its own discretion to administer and enforce directly any termination provisions, duties, and covenants, express or implied, undertaken by or imposed by virtue of each lease as provided in subsections 4.6 and 4.9 of this Settlement Agreement in the same manner as if that lease had been executed pursuant to this Settlement Agreement, and the State shall likewise have the right and responsibility, as contemplated in subsections 4.7 and 5.1 of this Settlement Agreement, to receive payment directly from the lessee of the applicable State percentage of all **subsurface revenues** attributable to the **Nuiqsut subsurface** which the lessee is thereafter obligated to pay under the terms of the lease; and

(2) as to the applicable ASRC percentage in **Nuiqsut subsurface** covered by each lease, ASRC shall have the right and responsibility, with respect only to its undivided interests, in its own discretion to administer and enforce

directly any termination provisions, duties, and covenants, express or implied, undertaken by or imposed by virtue of each lease as provided in subsections 4.6 and 4.9 of this Settlement Agreement in the same manner as if that lease had been executed pursuant to this Settlement Agreement, and ASRC shall likewise have the right and responsibility, as contemplated in subsections 4.7 and 5.1 of this Settlement Agreement, to receive payment directly from the lessee of the applicable ASRC percentage of all **subsurface revenues** attributable to the **Nuiqsut subsurface** which the lessee is thereafter obligated to pay under the terms of the lease.

(b) On the **Final Effective Date** of this Settlement Agreement, each of the leases described in paragraphs 9.1(a) and 9.1(b) of this Settlement Agreement will become subject to the rights of the State and ASRC under and pursuant to sections 4 and 5 and the other provisions of this Settlement Agreement as if those leases had been executed pursuant to and in full compliance with the rights, powers, duties, and obligations of the State as executive under this Settlement Agreement, and any reservation to the State, or any release or transfer from the State to ASRC of rights to "administer" these leases as provided in section 14(g) of **ANCSA** shall thereafter be waived and ineffective to the end that the administration of these leases shall be governed and controlled by the terms and provisions of this Settlement Agreement.

(c) Within thirty (30) days after the **Final Effective Date** of this Settlement Agreement, ASRC and the State will join in executing and will deliver to each of the lessees under the leases described in paragraphs 9.1(a) and 9.1(b) a notice of the provisions of and of the rights of the State and ASRC, respectively, with respect to those leases under this subsection 9.2, in the form set out in Exhibit J.

9.3. Additional Outstanding Leases.

(a) Subject to the provisions of subsection 9.4 below, in each instance after the **Final Effective Date** of this Settlement Agreement when a section of **Nuiqsut subsurface** covered by any lease identified in paragraph 9.1(c) becomes a **Fully**

Conveyed Section, then, effective immediately and automatically as of that date:

(1) as to the applicable State percentage in **Nuiqsut subsurface** covered by that lease, the State shall have the right and responsibility, with respect only to its undivided interest, in its own discretion to administer and enforce directly any termination provisions, duties, and covenants, express or implied, undertaken by or imposed by virtue of that lease as provided in subsections 4.6 and 4.9 of this Settlement Agreement in the same manner as if the lease had been executed pursuant to and in full compliance with the rights, powers, duties, and obligations of the State as executive under this Settlement Agreement, and the State shall likewise have the right and responsibility, as contemplated in subsections 4.7 and 5.1 of this Settlement Agreement, to receive payment directly from the lessee of the applicable State percentage of all **subsurface revenues** attributable to the **Nuiqsut subsurface** that the lessee is thereafter obligated to pay under the terms of the lease; and

(2) as to the applicable ASRC percentage in **Nuiqsut subsurface** covered by the lease, ASRC shall have the right and responsibility, with respect only to its undivided interest, in its own discretion to administer and enforce directly any termination provisions, duties, and covenants, express or implied, undertaken by or imposed by virtue of that lease as provided in subsections 4.6 and 4.9 of this Settlement Agreement in the same manner as if the lease had been executed pursuant to and in full compliance with the rights, powers, duties, and obligations of the State as executive under this Settlement Agreement, and ASRC shall likewise have the right and responsibility, as contemplated in subsections 4.7 and 5.1 of this Settlement Agreement, to receive payment directly from the lessee of the applicable ASRC percentage of all **subsurface revenues** attributable to the **Nuiqsut subsurface** that the lessee is thereafter obligated to pay under the terms of the lease.

(b) When a section of **Nuiqsut subsurface** covered by a lease described in paragraph 9.1(c) becomes a **Fully Conveyed Section** after the **Final Effective Date** of this Settlement Agreement, then (subject to subsection 9.4 below, if applicable) that lease will become subject to the rights of the State and ASRC pursuant to sections 4 and 5 and the other provisions of this Settlement Agreement as if the lease had been executed pursuant to and in full compliance with the rights, powers,

duties, and obligations of the State as executive under this Settlement Agreement, and any reservation to the State or release or transfer from the State to ASRC of rights to "administer" that lease as provided in section 14(g) of ANCSA shall thereafter be waived and ineffective to the end that the administration of the lease shall thereafter be governed and controlled by the terms and provisions of this Settlement Agreement.

(c) Within thirty (30) days after any section of **Nuiqsut subsurface** covered by a lease described in paragraph 9.1(c) becomes a **Fully Conveyed Section** after the **Final Effective Date** of this Settlement Agreement, ASRC and the State will join in executing and will deliver to the lessee under that lease a notice of the provisions of and of the rights of the State and ASRC, respectively, with respect to that lease under this subsection 9.3, in the form set out in Exhibit J.

9.4. Segregation of Leased Lands.

On or before the **Final Effective Date** of this Settlement Agreement as to leases described in paragraph 9.1(b), and effective on or before the date when a section of **Nuiqsut subsurface** covered by a lease described in paragraph 9.1(c) becomes a **Fully Conveyed Section**, the State is entitled to and shall segregate out those leased lands not included in a **Fully Conveyed Section** of **Nuiqsut subsurface** covered by that lease and thereby create two leases out of the lease, so as to make the provisions of subsection 9.2 or 9.3 (as applicable) effective only as to that lease covering the **Nuiqsut subsurface** that is coextensive with the land included in one or more **Fully Conveyed Sections** of **Nuiqsut subsurface**.

9.5. Division of Revenue From Certain Leases.

Payments of bonus and rentals have been and may be made by lessees under oil and gas leases covering portions of the **Nuiqsut subsurface**. All of these bonus payments have been received by the State, and either or both the State and ASRC have received certain rental payments made under various leases listed in subsection 9.1 of this Settlement Agreement. To avoid any

dispute as to entitlement to receive or retain these bonus or rental payments and any other **subsurface revenues** attributable to the **Nuiqsut subsurface** that the lessees hereafter become obligated or elect to pay under the leases, **the parties** agree that:

(a) Payments Received Before 1991. The State shall be entitled to retain all bonus payments paid to the State before January 1, 1991, for and in connection with all leases identified in section 9 of this Settlement Agreement.

(b) 9.1(a) Leases. ASRC shall be entitled to retain all annual rentals paid to it under each lease listed in paragraph 9.1(a) of this Settlement Agreement before the **Final Effective Date** of this Settlement Agreement, except that the portion of the annual rentals for the year of the lease term during which the **Final Effective Date** occurs (allocated on a per day basis over that entire year of the lease term) attributable to the period after the **Final Effective Date** of this Settlement Agreement shall be prorated between ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest in the **Nuiqsut subsurface** covered by the lease. All **subsurface** revenues paid under that lease after the **Final Effective Date** of this Settlement Agreement shall be paid directly to and owned by ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest, respectively, in the **Nuiqsut subsurface** covered by that lease.

(c) 9.1(b) Leases. The State shall be entitled to retain all annual rentals paid to it under each lease listed in paragraph 9.1(b) of this Settlement Agreement prior to the **Final Effective Date** of this Settlement Agreement, except that the portion of the annual rentals attributable to **Nuiqsut subsurface** for the year of the lease term during which the **Final Effective Date** occurs (allocated on a per day basis over that entire year of the lease term) attributable to the period after the **Final Effective Date** of this Settlement Agreement shall be prorated between ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest in the **Nuiqsut subsurface** covered by that lease. All **subsurface revenues** paid under that lease attributable to **Nuiqsut subsurface** after the **Final Effective Date** of this Settlement Agreement shall be paid directly to and owned by ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest in the **Nuiqsut subsurface** covered by that lease.

(d) 9.1(c) Leases. The State shall be entitled to retain all annual rentals paid to it under each lease listed in paragraph 9.1(c) of this Settlement Agreement before the later of (i) the **Final Effective Date** of this Settlement Agreement or (ii) the date when a section of **Nuiqsut subsurface** covered by the lease becomes a **Fully Conveyed Section**, except that the portion of the annual rentals attributable to that **Fully Conveyed Section** for the year of the lease term during which that section of **Nuiqsut subsurface** becomes a **Fully Conveyed Section** (allocated on a per day basis over that entire year of the lease term) attributable to the period after that section of **Nuiqsut subsurface** became a **Fully Conveyed Section** shall be prorated between ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest in the **Nuiqsut subsurface** in that **Fully Conveyed Section** covered by that lease. All **subsurface revenues** paid under each lease attributable to **Nuiqsut subsurface** in a **Fully Conveyed Section** after the date when that section has become a **Fully Conveyed Section** shall be paid directly to and owned by ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest in the **Nuiqsut subsurface** in that **Fully Conveyed Section** covered by that lease.

(e) Cash Settlement. A cash settlement shall be made between the State and ASRC within thirty (30) days after the **Final Effective Date** of this Settlement Agreement and within thirty (30) days after each section of **Nuiqsut subsurface** covered or affected by a lease described in paragraph 9.1(c) becomes a **Fully Conveyed Section**, to effect the proration of the **subsurface** rentals required by paragraphs 9.5(b), (c), and (d). In the event that funds have not been appropriated to make any necessary cash payment to ASRC, the State will seek an appropriation in the first available Session of the Legislature.

9.6. No Waiver as Against Lessees.

Nothing in this section 9 is intended or shall be construed as a waiver by ASRC or by the State of any right as against any lessee under any of the leases described in paragraphs 9.1(a), (b), and (c), including, without limitation, any right with respect to rentals or other **subsurface revenues** becoming payable by these lessees under the terms of their leases before the **Final Effective Date** of this Settlement Agreement or, as to leases listed in paragraph 9.1(c), becoming payable by these lessees under the terms of their leases with respect to **Nuiqsut subsurface** in any section before the date when that

section becomes a **Fully Conveyed Section**. As to leases listed in paragraph 9.1(a), the State shall be entitled to retain all rentals or other **subsurface revenues**, if any, that the lessees become obligated or elect to pay to the State under the lease terms before the **Final Effective Date** of this Settlement Agreement. As to leases listed in paragraph 9.1(b), ASRC shall be entitled to retain all rentals or other **subsurface revenues**, if any, that the lessees become obligated or elect to pay to ASRC under the lease terms before the **Final Effective Date** of this Settlement Agreement. As to leases listed in paragraph 9.1(c), ASRC shall be entitled to retain all rentals or other **subsurface revenues**, if any, that the lessees become obligated or elect to pay to ASRC under the lease terms attributable to **Nuiqsut subsurface** in any section before the date that the section becomes a **Fully Conveyed Section**.

10. MISCELLANEOUS.

10.1. Confidentiality.

Except as otherwise required by law, all information, including but not limited to geological, geophysical, and well data that either ASRC or the State receives from the other party as a result of either party's respective rights and obligations under this Settlement Agreement that is not otherwise publicly available will be considered proprietary information and kept strictly confidential. Before any disclosure of this information by either party that is made on the grounds that disclosure is "required by law," the party seeking to make disclosure will confer with the other party, identify the information to be disclosed, identify the **person(s)** to whom disclosure is to be made, and state the basis for its conclusion that disclosure is "required by law."

10.2. Audit and Review.

Upon reasonable notice, ASRC and the State will be entitled to audit and review all books, records, federal or state tax returns, data, and information possessed by the other party that is potentially relevant to the calculation, determination,

or payment of **subsurface revenues** that have been incorrectly or improperly received or are otherwise required to be held in trust and paid over to the other party under section 4 or 5 of this Settlement Agreement.

10.3. **Subsurface Data Disclosure.**

If, before the **Final Effective Date** of this Settlement Agreement, ASRC has received or has access to and the right to obtain copies of well logs, reports of well tests, and other geological and geophysical data, obtained from the **Nuiqsut subsurface** or the **Point Lay subsurface**, ASRC will provide the State with access to and copies of this information except when restricted by contract or law from doing so. If the State is entitled by law to this information from third parties, it will first seek to obtain the information from them. ASRC will make a good faith effort to obtain the consent of the lessee (if consent is contractually required), to provide the State with access to and copies of all logs, reports, and data concerning the leases, but ASRC will not be required to pay money or any other consideration to a third party to obtain their consent. The State will provide ASRC with access to and copies of well logs, reports of well tests, and other geological and geophysical data it has heretofore obtained or hereafter obtains, or has access to and the right to obtain copies of, except when restricted by contract or by law from doing so. The State will make a good faith effort to obtain consent for release of this information to ASRC when consent is required, but the State will not be required to pay money or any other consideration to a third party to obtain that consent. In each instance when either the State or ASRC grants a license or permit to any person to conduct seismic exploration within the **Nuiqsut subsurface** area or **Point Lay subsurface** area (which license or permit is not a **Subsurface Agreement** as defined in subsection 11.27), any person accepting such a license or permit or conducting or causing to be conducted any seismic exploration operations within the **Nuiqsut subsurface** area or **Point Lay subsurface** area pursuant to any such license or

permit shall be conclusively deemed to have, and shall thereby have, (i) expressly consented to and waived any prohibition with respect to (including, without limitation, granting any consent required by and waiving any prohibition imposed by any law, regulation or contract) the disclosure by the one of **the parties** who granted such license or permit to the other of **the parties** of all information, data, and materials with respect to such seismic exploration operation and information obtained or developed incident thereto or as a result thereof which is provided or caused to be provided by such licensee or permittee to the one of **the parties** who granted such license or permit (including, without limitation, the right to make and retain copies of any such information, data, or materials), but provided that the one of **the parties** to whom such information, data, or materials is thus disclosed shall be obligated to maintain confidentiality with respect to such information, data, or materials as regards all other persons in the same manner and to the same extent (if any) as is required by law, regulation, or contract of the one of **the parties** who granted such license or permit, and (ii) agreed to permit each of **the parties** and its representatives to review, examine and (at its expense) copy and retain copies of all raw and all processed geophysical data, information, and materials obtained or developed by such licensee or permittee incident to or as a result of or based upon such seismic survey operation, but provided that, if requested by such licensee or permittee, **the parties** (or such one of **the parties** who has reviewed, examined, or copied such data, information, or materials) shall maintain confidentiality with respect to such data, information, and materials and shall not disclose same to other persons other than to its or their employees and consultants (who shall be required to agree that they will likewise maintain confidentiality with respect thereto) or as required by law. As cotenants owning the **Nuiqsut subsurface** and the **Point Lay subsurface**, the State and ASRC covenant and agree that the power or right of each of the State and ASRC to authorize other persons

to conduct seismic exploration operations on the **Nuiqsut subsurface** area or **Point Lay subsurface** area pursuant to licenses or permits (which are not **Subsurface Agreements** as defined in subsection 11.27) granted by the State or ASRC is and shall be expressly subject to the terms and provisions of the last preceding sentence of this subsection, which shall be deemed covenants running with the land and shall be binding upon any licensee or permittee accepting such a license or permit or conducting or causing to be conducted any seismic exploration operation within the **Nuiqsut subsurface** area or **Point Lay subsurface** area, without the necessity of reference thereto or inclusion thereof in such license or permit.

10.4. Setoff.

Neither ASRC nor the State may claim a setoff against moneys owed either party under this Settlement Agreement, or owed under any other agreement or law, in order to reduce any payment of **subsurface revenues** due under this Settlement Agreement, except as follows:

(a) If the Legislature fails or refuses, in a timely manner, to appropriate for payment any sum the State might owe ASRC under this Settlement Agreement and for which ASRC has no right to enforce a direct payment from a third person under subsection 5.1, then ASRC may, in making any payment of any sum due the State, deduct (as a setoff from the total amount due) the unappropriated amount the State owes ASRC.

(b) If either ASRC or the State secures a state or federal court judgment against the other party, then the amount of the unpaid judgment (including attorneys' fees and costs awarded by the court) and any post judgment interest, may be set off against any payment otherwise due under this Settlement Agreement.

10.5. Notification and Consultation Concerning Disputes.

(a) Neither ASRC nor the State may initiate litigation against the other party to enforce or to seek a declaration of the effect of any provision of this Settlement Agreement unless a written demand is delivered to the other party describing in reasonable detail:

(1) the nature of the dispute between the parties;

(2) the legal and factual basis for any action or compensation demanded; and

(3) the action or compensation demanded.

The party receiving the demand will have thirty (30) days from receipt to deliver a response, in writing, to the demanding party. If no written response is received within thirty (30) days, the party making the demand may thereafter, but not before, initiate litigation against the other party to enforce or to seek a declaration of the effect of any provision of this Settlement Agreement. If a timely written response is received, **the parties** will have thirty (30) additional days to consult and to attempt settlement of the dispute. If no settlement is reached within that thirty (30) day period, then either party may thereafter initiate litigation against the other party to enforce or seek a declaration of the effect of any provision of this Settlement Agreement. The notice requirements of this paragraph (a) will not alter the effect of any applicable statute of limitations on ASRC's or the State's claims.

(b) ASRC will notify the State if it has knowledge that a party to a lease or other **Subsurface Agreement** affecting the **Nuiqsut subsurface** or the **Point Lay subsurface** has, in ASRC's judgment, breached a term of that lease or other **Subsurface Agreement**. The notice will be given to the State at least thirty (30) days before ASRC files any suit against any **person** concerning the breach; however, in the case of an emergency or other circumstance in which, in ASRC's good faith judgment, ASRC may suffer irreparable harm if filing of a suit is delayed, ASRC may file suit against any such **person** before expiration of the thirty (30) day period. Likewise, the State will notify ASRC if it has knowledge that a party to a lease or other **Subsurface Agreement** affecting the **Nuiqsut subsurface** or the **Point Lay subsurface** has, in the State's judgment, breached a term of that lease or other **Subsurface Agreement**. The notice will be given to ASRC at least thirty (30) days before the State files any suit against any **person** concerning the breach; however, in the case of

an emergency or other circumstance in which, in the State's good faith judgment, the State may suffer irreparable harm if filing of a suit is delayed, the State may file suit against any such person before expiration of the thirty (30) day period.

10.6. Payment of Legal Rate of Interest.

If either the State or ASRC incurs the direct responsibility to make a payment (or delivery of product, if in kind) due under this Settlement Agreement, and is late in doing so, the payee shall be entitled to the **legal rate of interest** on the amount due from the date payment should have been made or the product delivered. If the delivery was to be in kind, the "amount due" will be its **fair market value** at the date and place delivery was due.

10.7. Interpretation.

(a) This Settlement Agreement will be construed and enforced in accordance with and governed by the laws of the State of Alaska.

(b) Both ASRC and the State are jointly and equally responsible for the drafting of this Settlement Agreement. An ambiguity, if any, in this Settlement Agreement may not be construed against one party or the other as its drafter. This Settlement Agreement will be construed independently of any draft settlement proposals or draft settlement documents.

(c) In implementing the terms and intent of this Settlement Agreement, ASRC and the State understand that it is an enforceable contract between them. Each will deal with the other to implement it in accordance with its terms in good faith and fairly or in accordance with any applicable higher standard of conduct that may be imposed elsewhere in this Settlement Agreement.

(d) The captions used in this Settlement Agreement are for convenience only and will not control or affect the meaning or construction of any of its provisions.

(e) This Settlement Agreement incorporates all Exhibits that are referred to in it. In turn, when an Exhibit to

this Settlement Agreement, such as a deed, references an attached exhibit, the attached exhibit will be incorporated in the Exhibit.

(f) This Settlement Agreement contains the entire agreement and understanding of the State and ASRC with respect to its subject matter. Except as provided with respect to the 1974 Agreement in subsection 1.3 of this Settlement Agreement, all prior understandings, agreements, promises, warranties, representations, covenants, or other undertakings between the parties with respect to its subject matter are revoked upon the **Final Effective Date** of this Settlement Agreement.

(g) Nothing in this Settlement Agreement abrogates or limits the State's powers or duties under the common law public trust doctrine, or article VIII, section 14 of the Alaska Constitution, or AS 38.05.127-38.05.128.

(h) This Settlement Agreement does not create, validate, or reinstate any third party interest which is not otherwise valid and extant.

(i) Nothing in this Settlement Agreement shall diminish or affect in any way any rights of the State with respect to Kuukpik Corporation under the 1974 Agreement.

10.8. Amendment; Waiver; Consent.

No amendment or waiver of a right under this Settlement Agreement, or consent required by a provision of this Settlement Agreement, will be effective unless made in a writing signed by each party, and (if required by law) submitted to the Alaska Legislature for approval. For the State, both the Attorney General and the **Commissioner** must sign for a change or waiver to be effective. For ASRC, its President or any Vice President may sign.

10.9. Notices.

(a) To be effective, any notice or other communication given under this Settlement Agreement must be in writing and will be deemed to have been given if (i) delivered in person or deposited in the United States mail, sent by registered or

certified mail, return receipt requested and first-class postage prepaid, or (ii) sent by telecopy or other electronic transmission and confirmed by a copy deposited in the United States mail, sent by registered or certified mail, return receipt requested and first-class postage prepaid, in each case addressed to the party for whom it is intended, as follows:

(i) If to ASRC: Arctic Slope Regional Corporation
(1230 Agvik Street)
P. O. Box 129
Barrow, Alaska 99723
Attention: Jacob Adams, President
Telecopy No.: (907) 852-5733

With a copy to: Wickwire, Greene, Crosby &
Seward, P.C.
National Building, Suite 506
1008 Western Avenue
Seattle, Washington 98104
Attention: James Wickwire
Telecopy No.: (206) 623-5670

(ii) If to the State: The State of Alaska
Department of Natural Resources
Division of Oil and Gas
P. O. Box 107034
Anchorage, Alaska 99510-7034
Telecopy No.: (907) 562-3852

With a copy to: The State of Alaska
Department of Natural Resources
Division of Oil and Gas
P. O. Box 107034
Anchorage, Alaska 99510-7034
Attention: Carol Wilkinson,
Lease Administration
Telecopy No.: (907) 562-3852

The names and addresses of a party may be changed by written notice to the other party pursuant to this provision.

(b) Each of the parties will, within thirty (30) days, notify the other, in writing (i) if it enters into an agreement or takes an action to amend, supplement, extend, authorize suspension of operations under, or terminate a **Subsurface Agreement** as to its undivided interest in any **Nuiqsut subsurface** or **Point Lay subsurface** covered thereby, (ii) if it makes an

assignment or conveyance to any **person** permitted under section 7 of any of its rights or duties under this Settlement Agreement or of all or any interest in its undivided percentage interest in all or any portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** as described in paragraph 7.3(b), (iii) if it determines that a **Subsurface Agreement** covering its undivided interest in any portion of the **Nuiqsut subsurface** or **Point Lay subsurface** has terminated or expired or been relinquished by the holder thereof as to all or any portion of such **subsurface**, (iv) if it executes a **Subsurface Agreement** covering its interest only in any portion of the **Nuiqsut subsurface** or **Point Lay subsurface** as to which the **Executive Rights** have been suspended pursuant to subsection 6.1, or (v) as to ASRC, if it has executed and recorded a notice pursuant to paragraph 6.3(a) terminating the suspension of the **Executive Rights** as to a portion of the **Nuiqsut subsurface** or **Point Lay Subsurface**.

10.10. Attorneys' Fees.

If a court action is commenced to enforce or to seek a declaratory judgment as to the effect of any provision of this Settlement Agreement by either the State or ASRC, then the court as part of its judgment shall award the prevailing party its actual attorneys' fees (measured at a reasonable hourly rate for private practitioners in the locale of the litigation) and costs.

10.11. Defense of Settlement Agreement and Property Interests.

(a) Except as the obligation is solely ASRC's under paragraph (b) below, the State and ASRC will jointly and in good faith defend the legality and enforceability of the provisions of this Settlement Agreement in any litigation brought by any **person**. In the event that ASRC or the State is named as a party to litigation contesting the legality or enforceability of any provision of this Settlement Agreement under claims other than those that might be made under **ANCSA** or the **7(1) Agreement**, then the other party will seek to intervene and align itself as a party with the named party. The State and ASRC each will bear

its own costs, including attorneys' fees, incurred in such litigation.

(b) ASRC will defend, indemnify, and hold the State harmless from any claims made by any **person** to the interests in the **Nuiqsut subsurface** or to the **subsurface revenues** attributable to such interest in the **Nuiqsut subsurface** that the State is entitled to pursuant to this Settlement Agreement, if those claims are made under **ANCSA** or the **7(1) Agreement**. ASRC will not oppose a timely motion to intervene by the State in that litigation.

(c) ASRC will not, directly or indirectly, support or cause to be brought by itself or by any other **person** any challenge in any forum or proceeding to the State's title to or ownership of the applicable State percentage in and to the **Nuiqsut subsurface** or the **Point Lay subsurface** provided in this Settlement Agreement to be conveyed to or reserved by the State. Likewise, the State will not, directly or indirectly, support or cause to be brought by itself or by any other **person** any challenge in any forum or proceeding to ASRC's title to or ownership of the applicable ASRC percentage in and to the **Nuiqsut subsurface** or the **Point Lay subsurface** provided in this Settlement Agreement to be conveyed to or reserved by ASRC. Except as otherwise expressly provided in subsection 2.3 of this Settlement Agreement, loss or failure of title to any part of or interest in the **Nuiqsut subsurface** or the **Point Lay subsurface** shall not alter or affect the ownership as between ASRC and the State, in undivided interests in proportion to the applicable ASRC percentage and the applicable State percentage, respectively, of the remaining parts of or interests in the **Nuiqsut subsurface** or the **Point Lay subsurface** as provided for in this Settlement Agreement.

(d) Each party will, within thirty (30) days, notify the other, in writing, in the event that the title to all or part of any interest in the **subsurface** (including uplands and submerged lands) affected by this Settlement Agreement is