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FISCAL NOTE

STATE OF ALASKA

1992 LEGISLATIVE SESSION

BILL NO. SB 369Revision Date: 18-Feb-92Department Affected: Natural ResourcesTitle: Short Title: ASRC SettlementBRU: Natural Resources

Components: _____

Sponsor: Senate RulesRequestor: Senate Oil and GasCOMPONENT SERIAL NO. 439

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
Funding Source:	N/A					

FUNDING: (Thousands of Dollars)

GENERAL FUND	N/A					
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	N/A	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0					
PART-TIME	0.0					
TEMPORARY	0.0					

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Bob LoefflerPhone: 762-2578Division: Oil and GasDate: 18-Feb-92Approved by Commissioner: (B) Harold C. HeinzeDate: 18-Feb-92Agency: Department of Natural ResourcesDistribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
& Impacted Agency(ies).

Attachment

Arctic Slope Regional Corporation Settlement Agreement

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

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

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

STATE OF ALASKA

1992 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: _____

Natural Resources & LawTitle: Short Title: ASRC SettlementBRU: Division of Oil & Gas

Components: _____

Sponsor: Rules CommitteeRequestor: Governor

COMPONENT SERIAL NO. _____

439

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

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

REVENUE						
Funding Source:	N/A					

FUNDING: (Thousands of Dollars)

GENERAL FUND	N/A					
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	N/A	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0					
PART-TIME	0.0					
TEMPORARY	0.0					

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attachment

Prepared by: Bob LoefflerPhone: 762-2578Division: Oil & GasDate: 15-Jan-92Approved by Commissioner: Harold C. Heinz

Date: _____

Agency: Department of Natural ResourcesDistribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
& Impacted Agency(ies).

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WALTER J. RICKEL

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1992

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1132

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would ratify the "1991 Settlement Agreement Between the State of Alaska and the Arctic Slope Regional Corporation" (1991 Settlement Agreement). This bill would resolve longstanding litigation between the State of Alaska and the Arctic Slope Regional Corporation (ASRC) over ownership of potentially valuable mineral lands in the Point Lay and Nuiqsut areas of the North Slope. The litigation arose out of a 1974 land exchange agreement (1974 Agreement), discussed below, which followed passage of the Alaska Native Claims Settlement Act of 1971 (ANCSA). The bill also would remove impediments to title marketability to the disputed lands and to create a long-term partnership between the state and ASRC, aimed at maximizing revenue for both parties.

The 1991 Settlement Agreement - Background

The 1991 Settlement Agreement resolves a dispute over land entitlement stemming from a 1974 land exchange agreement. The 1974 Agreement was intended to resolve state challenges to the BIA- certified eligibility of two ANCSA village corporations by requiring the state and ASRC to exchange certain lands in the Nuiqsut and Point Lay areas, in exchange for which the state agreed to withdraw its challenges to the ANCSA eligibility of Point Lay (Cully Corporation) and Nuiqsut (Kuukpik Corporation).

Under the 1974 Agreement, ASRC agreed to quitclaim any interest it had in 69,120 acres of Nuiqsut area subsurface then tentatively approved to the state, the surface of which Kuukpik Corporation could select under ANCSA. The state agreed to convey to ASRC about 65,000 acres of lands owned by the state in the Point Lay area. Although the state did withdraw its challenges to the eligibility of Point Lay and Nuiqsut, the land exchange provisions of the 1974 Agreement were never completed, for reasons which ASRC and the Department of Natural Resources (DNR) dispute.

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In 1985 Texaco made a promising oil strike northeast of the Nuiqsut area lands. At that point, DNR sought to implement the land exchange provisions of the 1974 Agreement. ASRC refused, asserting that the state had abandoned the 1974 Agreement by 11 years of inaction and that the 1974 Agreement was in violation of the Alaska Statehood Act, the Constitution of Alaska, and various state and federal laws. Negotiations between the parties failed, and litigation was filed in state and federal court.

After the initiation of litigation and extensive motion practice, DNR and ASRC, faced with the uncertainties of litigation and the speculative values of both the Nuiqsut and Point Lay parcels, reentered negotiations and in 1986 reached an agreement in principle that contemplated an even split of the contested uplands at both locations. This "50/50" split of the lands subject to the 1974 Agreement remains at the heart of the 1991 Settlement Agreement.

However, after the basic settlement concept was agreed to in 1986, DNR and ASRC engaged in extensive research and discussions concerning the boundaries, extent, and location of uplands and of the state's wholly-owned submerged lands (to which ASRC was not entitled), and regarding which party would manage the lands involved and under what conditions.

The most difficult issue during settlement negotiations concerned the boundaries, extent, and location of submerged lands. ASRC claimed that the extent of the state's wholly-owned submerged lands (including submerged lands underlying lakes, rivers, and tidelands) totalled substantially less in acreage than that claimed by DNR. The parties realized that the inability to agree on the submerged lands would inevitably result in further litigation and make it difficult if not impossible for either party to market its respective interests. Therefore, the parties tentatively agreed to merge title to the uplands and submerged lands and share the revenue from oil and gas development on a section-by-section basis, with the state to get more than 50 percent when, arguably at least, there were submerged lands in a section.

For three years the parties analyzed aerial photos, maps, United States Fish and Wildlife Service and Bureau of Land Management data, and other data in an effort to reach a common data base for determining what the state's wholly owned submerged lands were and what the uplands to be split between the parties were. It took a settlement conference before a United States District Court judge to force the parties to resolve this issue; in that 1989 settlement conference the parties compromised their respective positions. Since then, the parties have continued to negotiate the details of how the lands would be managed.

The resulting 1991 Settlement Agreement, as recommended to me by Attorney General Cole, has the following principal components:

1. The litigation is dismissed and the rights of the parties under the 1974 Agreement are superseded unless the 1991 Settlement Agreement is overturned by a court.

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2. The state and ASRC acquire by exchange equal, undivided interests in the subsurface estate of all lands previously subject to the 1974 Agreement.

3. The state and ASRC merge their titles to uplands and submerged lands and establish a formula for percentages of undivided ownership, on a section-by-section basis. This merger would resolve all disputes regarding the existence, extent, and location of state-owned submerged lands and avoid, for all time, the ambiguities otherwise created by constantly shifting boundaries caused by accretion, reliction, and avulsion.

4. The state retains the "executive rights" (leasing authority) to lease all lands on behalf of ASRC and the state. ASRC has the opportunity to review and comment on proposed oil and gas lease terms, with a dispute-resolution mechanism in the event of disagreement. ASRC and the state each retain the right to separately enforce the lease with respect to their respective interests.

5. Revenue generated from the undivided interests is paid directly to the state and ASRC, respectively, in proportion to their percentage ownership interests in the subsurface estates.

6. The state did not give up any of its duties to the public imposed by law. The state will still have to determine whether a sale is in the best interest of the state, and must follow relevant procedural requirements for leasing or exploring for natural resources. The state retains all rights under state law to ensure that development of the subsurface complies with laws concerning natural resource management and protection.

The 1991 Settlement Agreement contains a number of complex, technical provisions dealing with existing oil and gas leases at Nuiqsut, status of state submerged lands, boundary problems, and land management rights and duties. The following describes in more detail the major provisions of the settlement agreement.

1991 Settlement Agreement - Substantive Provisions

Under the 1991 Settlement Agreement, the parties agreed to quantify the extent of state-owned submerged lands by splitting the difference between the state's calculations of submerged lands and those of ASRC. Title problems were resolved by combining the interests of the state and ASRC on a section-by-section basis, with each party receiving an undivided percentage ownership reflecting a 50/50 division of the agreed-to uplands within each section, and the state receiving full (i.e., 100 percent) credit for any agreed-to submerged lands within the section. The state retains full sovereign powers over submerged lands, notwithstanding ASRC's undivided ownership interest.

The net effect of the cross-conveyances called for in the 1991 Settlement Agreement is an exchange of undivided interests in the subsurface estate such that the titles to submerged lands and uplands are merged and the parties, for all time, will own their respective undivided percentage interests in each section according to the schedules set out in Exhibits E and F to the 1991 Settlement Agreement. This percentage is fixed and will not change regardless of the amount or location of submerged lands that may be contained in any section from time to time.

In order to eliminate any possible future disputes over the boundary of the settlement area along the coastline and along the National Petroleum Reserve-Alaska (NPRA) boundary, the parties agreed to extend section lines into the ocean and across the NPRA boundary so that the area subject to the 1991 Settlement Agreement will include only full sections whose location can be protracted at any time without reference to changes brought about by accretion, reliction, or avulsion. In this manner, approximately 4,000 acres of ocean submerged lands owned by the state outside the 1974 Agreement area, and approximately 9,000 acres of NPRA subsurface owned by ASRC also outside the 1974 Agreement area, were included in the 1991 Settlement Agreement. In each instance the parties' undivided percentage interest in any section so extended was adjusted to provide a 100 percent credit for lands contributed by the state or ASRC from outside the original 1974 Agreement boundaries.

Finally, the parties agreed that the state would hold the "executive rights" for both parties' interests. As defined in the 1991 Settlement Agreement, "executive rights" empower the state to enter into leases and other subsurface agreements on behalf of both ASRC and the state. The 1991 Settlement Agreement contemplates that the commissioner will exercise the executive rights consistent with statutory constraints; the agreement does not waive any sovereign powers of the state.

The parties to the 1991 Settlement Agreement also discussed the issue of section 6(i) of the Alaska Statehood Act, which generally prohibits the state from alienating any interest in mineral estates it owns. Congress has authorized an exception to this provision under sec. 22(f) of ANCSA, which authorizes exchanges of land with ANCSA corporations. In order to resolve any question as to whether the exchange contemplated in the settlement agreement would require approval of the Secretary of Interior, the state has requested, and expects to receive shortly, an opinion from the Interior Solicitor ruling that no Secretarial approval is required for the 1991 Settlement Agreement.

The Bill

The attached bill ratifies the 1991 Settlement Agreement and establishes procedures for implementing it. Section 1 of the bill sets out the overall purposes of the bill and settlement agreement.

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Section 2 of the bill specifies that the 1991 Settlement Agreement is ratified "notwithstanding any provision of AS 38 or any other provisions of Alaska law." This clarifies that the exchange of undivided interests in land contemplated by the 1991 Settlement Agreement is not subject to the provisions, in particular, of AS 38.50.

AS 38.50 provides authority for exchanges of the state's mineral estate, including the mineral estate in submerged lands. For a variety of reasons, however, that chapter does not provide an appropriate vehicle for the settlement of litigation. For example, AS 38.50 contemplates a voluntary exchange of land for equal values and requires appraisals and a series of public hearings on proposed exchanges. Although the state and ASRC believe that the consideration given and received under the settlement agreement is roughly equal, no effort has been made to appraise the lands. The terms of the exchange are influenced by factors other than land values (which are highly speculative, in any event), including each side's assessment of the risks of litigation. Finally, settlement negotiations have necessarily and appropriately been conducted in closed sessions. Public involvement is provided through the process of legislative ratification, but could not realistically have been provided earlier in the process, as contemplated under AS 38.50.

In addition to addressing AS 38.50, the "notwithstanding any other provision of Alaska law" language is intended to ensure that no other provision of state law might subsequently be raised to challenge the settlement itself. The bill deliberately uses broad language to accomplish this result. This language is intended to make it clear, for example, that in carrying out the provisions of the settlement the commissioner is acting under the mandate of the legislature as provided in this bill and not exercising the commissioner's discretion under other statutory provisions that authorize administrative disposition of state lands. Specifically, this language, together with sec. 3 of the bill, discussed below, relieves the commissioner of any further notice, hearing, or public interest finding requirements before making the conveyances required by the 1991 Settlement Agreement.

The exemption as to other provisions of Alaska law extends, however, only to those actions mandated by the 1991 Settlement Agreement necessary to implement the settlement. The 1991 Settlement Agreement contemplates that, following conveyance, the commissioner will exercise management responsibilities consistent with statutory constraints, and does not waive any sovereign powers of the state. Any exploration and development activities that occur subsequent to the exchange will be fully subject to the normal statutory and regulatory procedures applicable to administration of state lands. Specifically, lease sales will be conducted in the normal manner and all regulatory requirements will be observed, including coastal zone consistency and public interest findings. To the extent that ASRC exercises powers as a landowner, this legislation does not exempt ASRC from federal, state, or local requirements otherwise applicable to private landowners.

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Section 3 of the bill provides that "no statutory or common law rules against perpetuities . . . or restraints on alienation of property shall apply to the settlement agreement . . . or to any interest or power created by it." The 1991 Settlement Agreement commits the state and ASRC permanently to merge their titles with no right of partition, to jointly lease and develop their interests, and to take a number of other steps, including contemplation of sales, with respect to their lands for an indefinite period of time. The law is generally hostile to perpetual restrictions or restraints on alienation. For example, AS 34.27.010 provides that an interest that would violate the rule against perpetuities may be reformed by a court. If these rules were to apply, the 1991 Settlement Agreement might be challenged and stricken down or modified in ways that were never intended.

A major consideration for both the state and ASRC in entering into the 1991 Settlement Agreement is to improve the marketability of title. This objective, and the benefits of the settlement, would be frustrated if the merging of title, prohibition against partition of those interests, and "executive rights" provisions were ever successfully challenged as violative of the rule against perpetuities or as unreasonable restraints on alienation. Accordingly, sec. 3 exempts the 1991 Settlement Agreement from these requirements.

Sections 4 and 5 of the bill outline the authorities and duties of the commissioner of natural resources to carry out the terms of the 1991 Settlement Agreement, including issuing and recording the appropriate land conveyances.

Section 6 of the bill limits the time within which the bill or the 1991 Settlement Agreement can be challenged in court. In order to minimize the possibility that the exchange might be altered or invalidated by a court after the state and ASRC have committed themselves to making the conveyances and taking the other actions required by the 1991 Settlement Agreement, sec. 6 provides that any action challenging the legality of the 1991 Settlement Agreement must be commenced within six months after the effective date of the legislation. A joint lease sale involving lands subject to the settlement agreement is scheduled for December 1992. Any uncertainty as to the validity of the 1991 Settlement Agreement or the implementing legislation could adversely affect the marketability of the leases. Although the six-month limitation period is rather short, the parties most likely to have standing to challenge the settlement agreement are the state and ASRC or entities in privity with them. We believe that the short limitation period is reasonable in light of the extensive past negotiations between the parties and the need to provide some finality to the litigation and to allow for future uses of the lands. Also, sec. 6 of the bill provides that the bill may not be construed as creating any right in any party not privy to the 1991 Settlement Agreement to challenge that Agreement or the Act.

Finally, sec. 7 of the bill waives the sovereign immunity of the state to any suit brought by ASRC to enforce the 1991 Settlement Agreement if that action is commenced in a superior court of the state. The state does not waive its protection from suit in federal court under the eleventh amendment of the Constitution of the United States.

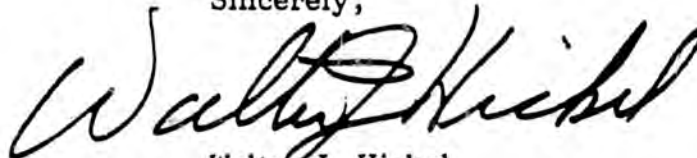
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The 1991 Settlement Agreement is a compromise, and settles highly disputed issues. Because of that, it is not without risks to both the state and ASRC. However, I believe that these risks are outweighed by the benefits to the state of finally resolving this 18-year-old dispute. The 1991 Settlement Agreement not only settles long-standing litigation between ASRC and the state, it also anticipates and resolves disputes regarding the existence, extent, and location of submerged lands owned by the state in the Nuiqsut and Point Lay areas. Finally, by merging title to uplands and submerged lands and vesting "executive rights" in the state, the 1991 Agreement will result in maximum certainty and predictability for potential lessees, which in turn will make the interests of both the state and ASRC more marketable.

Copies of the 1991 Settlement Agreement will be provided to the senate secretary and the clerk of the house. Additional copies are available through the Department of Natural Resources.

I urge your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter J. Hickel". The signature is fluid and cursive, with the first name "Walter" being the most prominent part.

Walter J. Hickel
Governor

SUMMARY SHEET -- HB416/SB369

- * Ratifies the settlement of protracted litigation between the State and the Arctic Slope Regional Corporation ("ASRC") over title to lands in the Colville Delta and Point Lay areas.

- * Improves marketability of title by merging State and Native Corporation subsurface interests, settling all submerged lands conflicts, and providing for joint leasing of lands under the administration of the Commissioner of Natural Resources.

- * Clears obstacles to the leasing of State lands in the Colville Delta 12 miles west of the Kuparuk oil field at a time of industry interest in the area.

- * Forms an historic partnership between the State and ASRC and provides a model for resolution of other disputes between the State and Native Corporations.

- * Will not affect State control over submerged lands beneath navigable waters.

- * Insures that leasing will comply with all statutory and regulatory safeguards, including environmental reviews, applicable to state lease sales.

EXPLANATION OF HB416/SB369¹

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

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

The purpose of this memorandum is to acquaint you with the

¹ This document is a draft prepared by counsel for Arctic Slope Regional Corporation. It is being supplied to House and Senate staff to assist in analysis of HB416/SB369. Additional information and details are still being gathered and will be supplied to staff at a later date. Please refer any questions regarding this draft to counsel for ASRC, David C. Crosby (586-6262).

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

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

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

In ____ the Arctic Slope Native Association filed aboriginal land claims to much of the North Slope, including the Colville Delta. The pendency of these and other Native claims led to the infamous Secretarial land freeze order of 1968, and the eventual settlement of the claims of Alaska Natives by Congress in the Alaska Native Claims Settlement Act of 1971 ("ANCSA"). The basic

land settlement contemplated selection of surface estate surrounding historic village sites by Village Corporations, with conveyance of the subsurface estate under the village land to the appropriate Native Regional Corporation. ANCSA identified roughly 200 Native villages and withdrew __ townships of land, including lands previously Tentatively Approved to the State, in the vicinity of each village. Within this area, eligible Village Corporations organized under ANCSA were permitted to select and receive title to up to three townships (69,120 acres) of lands Tentatively Approved to the State of Alaska.

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

In ____ the Secretary certified eight Inupiat villages in the Arctic Slope region as eligible to receive land benefits under ANCSA. The State of Alaska appealed the certification of two of these villages -- Nuiqsut and Pt. Lay -- on the ground that they did not satisfy the residency requirements for certification. Of the three villages, Nuiqsut, because of its

proximity to Prudhoe Bay and the possibility that ASRC would receive up to three townships of State TA'd lands in the Colville Delta if its certification were upheld, was of the greatest concern. The appeals were contested by ASRC on behalf of its villages.

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

Although the 1974 Settlement Agreement contemplated an immediate exchange of quitclaim deeds to the parties' respective interests, the Department of Natural Resources declined ASRC's proffered conveyance, stating that it would prefer to await

ASRC's receipt of conveyances to the Nuiqsut subsurface before finalizing the exchange. In 197_, the Alaska Supreme Court's ruled in _____ that an attempt to exchange the State's mineral estate with the Cook Inlet Regional Corporation violated Section 6 of the Alaska Statehood Act and was void. The ruling cast a cloud on the the State's ability to convey any mineral estate to ASRC at Pt. Lay.

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

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

substantial coal deposits that could prove valuable in the future.

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

After shaking hands on a conceptual settlement that was believed to be fair to both sides, the negotiations bogged down over the description of the lands that were subject to the settlement. The difficulties focused on the State's claims of ownership to submerged lands underlying bodies of water alleged to be navigable. ASRC took the position that a 1942 public land order (PLO 82) withdrew the entire North Slope of Alaska for national defense purposes and precluded the State from acquiring title to any submerged lands as a matter of law. The matter had been clarified to some extent in the Colville Delta by Section 1431(n) of ANILCA, which retained ownership of the principal

channels (often referred to as the "named channels") of the Colville River "in public ownership" (without specifying whether "public" meant federal or State ownership). Since the United States concede the right of the State of Alaska to select submerged lands in the area covered by the former PLO 82 withdrawal (which was rescinded shortly after statehood), and the State had selected all available lands in the Colville Delta, there was no question that the State was the undisputed owner of submerged lands under the named channels. There agreement ended.

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

especially in the Colville Delta. This fact alone would tend to make titles uncertain and decrease the marketability of title for both owners. Future litigation over the existence and extent of State ownership was almost a certainty.

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

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

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

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

applicable to leasing of State lands. The 1991 Agreement includes provisions to insure that ASRC is treated fairly in the leasing process.

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

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

II. SECTION-BY SECTION ANALYSIS OF THE 1991 AGREEMENT

The following section provides a more detailed section-by-section explanation of the terms of the 1991 Agreement. No

effort has been made to treat each subsection individually. Emphasis is placed on drawing attention to significant provisions and summarizing complex technical provisions.

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

Section 1: LEGISLATIVE APPROVAL. This section provides for submission of the 1991 Agreement to the legislature (1.1) and commits the parties to the form of the legislation approving the same (1.2). The parties may withdraw at any time prior to enactment of an acceptable bill approving the 1991 Agreement (1.3(a)). If an acceptable bill is enacted, the litigation will be dismissed (1.4) and the 1991 Agreement will supercede the obligations of the parties under the 1974 Settlement Agreement, unless the statute, the 1991 Agreement or any conveyance authorized by the 1991 Agreement is set aside by the courts (1.3(b)). The parties commit not to create any third party interests in the lands subject to the 1991 Agreement pending deliberations on the bill (1.5).

2. LANDS SUBJECT TO THE 1991 SETTLEMENT AGREEMENT

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

2.2 describes the current ownership of the Nuiqsut subsurface, including ASRC's right to receive future conveyances, the status of outstanding third party interests created by either the State or ASRC, and State claims of ownership to submerged lands.

2.3 explains possible changes regarding ownership of the Nuiqsut subsurface (and corresponding corrections to ownership percentages) contingent upon disposition of pending Native allotment applications and possible exclusion sections from the settlement area in the event Kuukpik Corporation does not receive title to the surface estate.

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

3. CONVEYANCE OF INTEREST IN LANDS

3.1 commits ASRC to convey to the State the applicable percentage undivided interest, according to Exhibit E, in each section of ASRC's Nuiqsut subsurface as soon as that section has been fully conveyed to ASRC, retaining to itself its own percentage interest, also according to Exhibit E. (Conveyances are not called for until all title contingencies have been resolved.)

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

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

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

The net effect of the cross-conveyance called for in Section

3 is an exchange of undivided interests in the subsurface estate such that the title to submerged lands and uplands has been merged and the parties, for all time, will own their respective undivided percentage interest in each section according to the schedule set forth in Exhibit E. This percentage is fixed and will not change regardless of the amount or location of submerged lands that may be contained in the section from time to time.

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

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

4.2 requires that the State will be held to a prudent landowner standard, except to the extent that obligations imposed on the State by law require it to act otherwise. The State must treat ASRC's interest in the same manner as it treats its own and may not act so as to benefit itself at the expense of ASRC. The limited prudent landowner standard does not create a fiduciary duty to ASRC by the State. The State may not assign its

executive rights without the consent of ASRC (7.2).

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

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

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

4.9 provides that the State has no right, obligation, or duty to enforce the terms of subsurface agreements once they are

executed. ASRC is responsible for enforcing the terms of any such agreement as they relate to its interests, and the State is not exposed to any liability for failure to enforce such agreements.

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

4.14 precludes communitizing settlement acreage in a lease with non-settlement acreage. Nor will the inclusion of two or more sections of acreage in a common lease result in pooling or communitizing of the interests in those sections. Revenues are shared strictly on a section-by-section basis according to the

respective percentages set out in Exhibit E. This section prevents prejudice that might result to either party if unproductive section could be averaged in with productive sections.

4.15 provides that until sections become fully conveyed such that the parties are obligated to execute cross conveyances with respect to that section, neither party will grant third party interests in any such sections with the consent of the other party.

5. MINIMUM COVENANTS REQUIRED IN ALL SUBSURFACE AGREEMENTS

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

6. SUSPENSION OF EXECUTIVE RIGHTS

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

During any period of time that executive rights is suspended, the rights and duties of the parties to one another are governed by the law of cotenancy in common. Either party may develop the subsurface and the other will still receive its

percentage share of the proceeds, after deduction of the cotenant's costs of development.

7 MISCELLANEOUS RESTRICTIONS ON BOTH PARTIES

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

7.3 provides that neither side may convey its interest in the Point Lay subsurface or the Nuiqsut subsurface with the consent of the other, and any such consent may be conditioned on termination of executive rights. In such case, the respective holders of the percentage interests would be cotenants in common.

8. STATE'S RIGHTS AS SOVEREIGN

8.1 explicitly provides that nothing in the agreement diminishes or affects the sovereign rights of the State with respect to regulation or management of submerged lands, fish and game, or natural resources. ASRC's only recourse is under subsection 8.2 to challenge the constitutionality of a statute, or the validity of a regulation, if it feels that the statute or regulation singles out settlement lands for different treatment from that accorded to other land in the State, or causes injury-in-fact to any rights expressly granted to ASRC under the 1991

Agreement.

9. PREEXISTING LEASES OF THE NUIQSUT SUBSURFACE

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

10. MISCELLANEOUS

This section contains a number of routine provisions

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

11. DEFINITIONS

This Section defines key terms used throughout the 1991 Agreement.

EXHIBITS

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

III. SECTION-BY-SECTION EXPLANATION OF ____ BILL NO. ____.

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

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

Chapter 50 of Title 38 of Alaska Statutes provides authority for exchanges of the State's mineral estate, including the mineral estate in submerged lands. For a variety of reasons, however, that Chapter does not provide an appropriate vehicle for

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

In addition to AS 38.50, the "notwithstanding any other provision of Alaska law" is intended satisfy any other provision of State law that might subsequently be raised to defeat the settlement itself. The Bill deliberately uses broad language to accomplish this result. Among other things, this language is intended to make it clear that in carrying out the provisions of the settlement the Commissioner is acting pursuant to the mandate of the legislature and not exercising his discretion under other statutory provisions that authorize administrative disposition of

state lands. Specifically, this language, together with section 3 of the Bill discussed below, relieve the Commissioner of any further notice, hearing or public interest finding requirements prior to making the conveyances required by the 1991 Agreement.

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

Section 2 also provides that "no statutory or common law rules against perpetuities or restraints of alienation of property shall apply to the the settlement agreement or to any interest or power created by it." The 1991 Agreement commits the State and ASRC permanently to merge their titles with no right of

partition, to jointly lease and develop their interests, and to take a number of other steps with respect to their lands for an indefinite period of time. The law is generally hostile to such perpetual restrictions or restraints on alienation that might be deemed unreasonable. AS 34.27.010, for example, provides that an interest that would violate the rule against perpetuities may be reformed by a court. If the rules apply, the 1991 Agreement could be challenged at any time by the State or ASRC (or possibly in a citizen suit) and stricken down or modified in ways that were never intended.

A major consideration of both the State and ASRC in entering into the 1991 Agreement is improving marketability of title. This objective, and the benefits of the settlement, would be frustrated if the merging of title, prohibition against partition of those interests and executive rights provisions were ever successfully challenged as violative of the rule against perpetuities or as an unreasonable restraint on alienation. Accordingly, Section 2 exempts the 1991 Agreement from these requirements.

Section 3. COMMISSIONER AUTHORITY. This section affirmatively authorizes and directs [THIS LANGUAGE SHOULD BE ADDED TO THE BILL] the Commissioner to carry out the exchange and makes it clear that in doing so he carrying out the mandate of the legislature. The Commissioner is not authorized, however, to

materially amend the 1991 Agreement without coming back to the legislature for approval.

Section 4. RECORDATION. This section requires to the Commissioner to record the 1991 Agreement in the appropriate recording office, incorporate it into the DNR lands record system, and deposit a signed original with the State Archivist, and incorporate.

Section 5. ACTIONS. In order to minimize the possibility that the exchange will have to be unwound after the State and ASRC have committed themselves to making the conveyances and taking the other actions required by the 1991 Agreement, this section provides that any action challenging the legality of the 1991 Agreement must be commenced within thirty days of the effective date of the legislation. The Act itself may not be construed as creating any rights in any party not privy to the 1991 Agreement to challenge that Agreement or the Act. Finally, the Section waives the sovereign immunity of the State of Alaska to any suit brought by ASRC to enforce the 1991 Agreement, provided that any such action is commenced in a Superior Court of the State of Alaska.

Section 6. EFFECTIVE DATE. This Section provides for an immediate effective date in accordance with AS 01.10.070(c).

ALASKA STATE LEGISLATURE

Representative Eileen Panigeo MacLean
Co-Chair House Finance Committee
P.O. Box 830
Barrow, Alaska 99723



WHILE IN JUNEAU
Box V
Juneau, Alaska 99811
465-4525
465-4833

HOUSE OF REPRESENTATIVES

District 22

North Slope
Borough

Anaktuvuk Pass
Atkasuk
Barrow
Kaktovik
Nuiqsut
Point Hope
Point Lay
Wainwright

Northwest Arctic
Borough

Ambler
Buckland
Deering
Kiana
Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
Selawik
Shungnak

MEMORANDUM

DATE: January 29, 1991

TO: Representative Cliff Davidson, Chairman
House Resources Committee

FROM: Representative Eileen P. MacLean *EPM*

SUBJ: Committee Hearing on HB 416

This is to request a hearing on HB 416, an act ratifying an agreement settling litigation between the State of Alaska and the Arctic Slope Regional Corporation; establishing procedures for implementing the agreement; and providing for an effective date.

HB 416 settles an 18 year land dispute between the State of Alaska and the Arctic Slope Regional Corp. The dispute arose when the federal government allowed Nuiqsut and Point Lay village corporations to choose lands for ownership that had been transferred to the state through the Alaska Native Claims Settlement Act. The state protested the selections and agreed to a land exchange however, the exchange was never completed. Oil was discovered in 1984 and both the state and ASRC filed lawsuits against each other.

The agreement provides that the state and ASRC will jointly own oil and gas rights, with the state maintaining a 57% share. This will be the first land agreement where the state and a Native Corporation jointly own land, and it is the first oil and gas sale involving the state and a private owner.

House Resources Committee
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If the legislature does not approve of the settlement this session the terms of the settlement could be called into question. According to DNR, litigation would continue and the state would delay oil and gas leasing of the potentially valuable land.

I respectfully request a hearing on HB 416 in the House Resources Committee at your earliest convenience. If you have any questions, please contact Rena Bukovich of my staff at 465-4525.

I would appreciate your scheduling of the bill, as per our conversation the other day. Thanks Quayana

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

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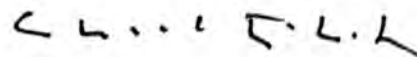
January 14, 1992

The Honorable Sam Cotten
Alaska State Legislature
State Capitol
Juneau, AK 99811-1182

Dear Senator Cotten:

Annexed is a copy of a memorandum prepared last January by Michael J. Frank, Assistant Attorney General, to Commissioner Heinze discussing the settlement agreement between ASRC and the State of Alaska relating the Nuiqsut Point Lay lands litigation and settlement proposal background.

Very truly yours,



Charles E. Cole
Attorney General

CEC:djd

Enclosure

MEMORANDUM

State of Alaska
Department of Law

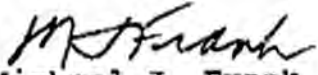
TO: The Honorable Harold Heinze
Commissioner
Department of Natural Resources

DATE: January 11, 1991

FILE NO.:

TEL. NO.: 276-3550

SUBJECT: ASRC-State of Alaska
Nuiqsut Point Lay lands
litigation and settlement
proposal background

FROM: 
Michael J. Frank
Assistant Attorney General

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

This memorandum sets out the background of the Arctic Slope Regional Corporation ("ASRC") and DNR settlement negotiations intended to resolve litigation arising out of a 1974 Agreement for the exchange of lands in the Nuiqsut and Point Lay areas.

I. HISTORY OF ASRC-STATE 1958 THROUGH 1984.

A. General Background.

In Section 4 of the Alaska Statehood Act, Congress left unresolved the question of Alaska Native aboriginal title. At the same time, it granted the new State the right to select over the course of 25 years in excess of 100 million acres of land. Statehood Act, § 6(a) and (b). While the language of section 6 seemed to speak of a present "grant" of lands to the State, the State could not receive the United State's official patent to selected lands until they were surveyed. *Id.*, § 6(g). Because Congress realized that surveys would take a long time, it authorized the State to deal with selected lands prior to survey and patent, but only as follows:

Following the selection of lands by the State and tentative approval of such selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands. (Emphasis supplied.)

Id., § 6(g).

This section became particularly important in the context of settling Alaska Native land claims, because the exact nature of the State's "title" to "tentatively approved" lands was a contested issue. The section also is the source of State power to issue "conditional leases" to oil and gas companies, which leases have significance in the contest of the settlement with ASRC.

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Confidential Attorney-
Client Communication

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In section 6(i) of the Statehood Act Congress expressly included mineral deposits in all land grants made to the State, but subject to a requirement that "all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all the minerals. . . ." Id., § 6(i). While section 6(i) allowed the State to lease mineral deposits as the State legislature might direct, any violation of the section was subject to the threat of a forfeiture action by the United States Attorney General. A detailed history of section 6(i) can be found in State v. Lewis, 559 P.2d 630 (Alaska 1976), cert. denied 432 U.S. 901 (1977) (involving the land exchange between the State, the United States, and Cook Inlet Region, Inc. wherein the section 6(i) mineral reservation requirement was waived), and in Trustees for Alaska v. State, 736 P.2d 324 (Alaska 1987), cert. denied, _____ U.S. _____ (1988) (requiring the State to seek compensation for hard rock mineral disposals in order to be in compliance with section 6(i)).

After becoming a State in 1958, Alaska slowly began making land selections. In the mid-1960s it received the Secretary of the Interior's "tentative approval" to thousands of acres in the Point Lay area in the western Arctic on the Chukchi Sea, and thousands of acres on the Beaufort Sea in the northeastern Arctic. The Beaufort Sea lands included not only the famous Prudhoe Bay uplands, but also lands located near the present municipality of Nuiqsut. These Nuiqsut lands were just east of and adjacent to the National Petroleum Reserve - Alaska's ("NPRA") ¹/ eastern-most boundary.

In the mid-1960s the State also began receiving tentative approval to lands it had selected under the Statehood Act. Alaska Natives protested the tentative approvals, claiming the lands were unavailable for selection by, or conveyance to, the State because they were not vacant lands, being occupied by them from time immemorial. Litigation followed, the result of which posed great uncertainty for State land selections. See State of Alaska v. Udall, 420 F.2d 938 (9th Cir. 1969), cert. denied 397 U.S. 1076 (1970). After the Prudhoe Bay oil field was discovered, it became clear that Congress would have to act to resolve Alaska Native land claims.

B. ANCSA Background.

Congress began active consideration of various land claims bills in the late 1960s. Those advocating for a large land settlement for Alaska Natives argued that unless the Natives were allowed to select State tentatively approved lands, no attractive lands would be available for Native selection, the State having

¹ Formerly Naval Petroleum Reserve No. 4.

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already chosen most of the lands around villages and the otherwise valuable resource lands. The State, while willing to make some tentatively approved lands available for Native selection, took the position that tentatively approved status was tantamount to title, and that the only acts to be accomplished after tentative approval were the ministerial ones of survey and patent by the United States Department of the Interior.

Congress eventually passed the Alaska Native Claims Settlement Act of 1971 ("ANCSA"), 43 U.S.C. 1601 et seq. (as amended). ANCSA called for the creation of 12 regional corporations based on 12 geographic regions, one of which Arctic Slope Native Association represented. ANCSA, § 7(a). Arctic Slope Native Association was, for all practical purposes, the predecessor to ASRC.

ANCSA, section 11(b)(1) also identified a large number of "Native villages subject to this Act". The Secretary of the Interior was required to determine the eligibility of all these listed villages for ANCSA land and money grants within two and one half years. Id., § 11(b)(2). Eligible village corporations organized pursuant to section 8(a) became entitled to select lands, the total quantity of which was dependent on the size of the village's Native population on the 1970 census enumeration date. Id., § 12(a)(1) and 14(a). The Secretary of the Interior was directed by Congress to withdraw large quantities of lands around each eligible village so that selections could be made of lands within the withdrawn area. Id., § 11. Village corporations were to receive the surface estate to their selected lands; the respective regional corporations were to receive the subsurface estate of the village corporation lands. Id., § 14(b) and (f).

Congress resolved the dispute about the nature of the State's title to tentatively approved lands by making not more than 69,120 acres (three townships) of State selected or tentatively approved lands available for a village corporation's selection. Id., § 12(a)(1). Thus, the quality (i.e., value) of a regional corporation's subsurface acreage entitlement was not only dependent on whether a particular village was eligible for ANCSA land benefits, but also dependent on where the village was located. Id., §§ 12 and 14(b). It is worth noting that section 14(f) of ANCSA gives a village corporation the right to consent to any regional corporation exploration or development of minerals from the subsurface estate in the lands within the boundaries of the village. The exact meaning of the consent requirement is sometimes in dispute between village and regional corporations. ASRC, like most regional corporations, has taken the position that the consent requirement is restricted to the core location of the village, and that in any event the consent may not be unreasonably withheld. However, ASRC has nonetheless entered into various advance consent agreements with its village corporations. Also, it should be noted

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that regional corporations were also entitled to select other lands over and above their entitlement to the subsurface estate underlying village corporation lands.

C. Creation of ASRC Village Corporations for Point Lay and Nuiqsut.

Both "Nooiksut" and "Point Lay" were listed in ANCSA. However, these two villages and certain others claiming ANCSA eligibility but not listed as villages in ANCSA received a great deal of press attention in the early 1970s because of many allegations of fraud and accusations that they were "phantom" villages.

Point Lay was an old village, abandoned by the villagers when BIA forced their children to school in Barrow. It is now the location for Cully Corporation, the ANCSA village corporation.

As to Nooiksut, in April 1973 about 200 people moved from Barrow in a highly publicized event to "re-establish" Nooiksut in the Colville Delta. The "re-established" village is now spelled Nuiqsut. It became the headquarters for the ANCSA village corporation Kuugpik Corporation, now spelled Kuukpik.² What the press accounts, and apparently some State and federal employees, misunderstood was that under Department of Interior regulations the eligibility of Nooiksut was evaluated at its purported location in 1970 in Township twelve North, R5E, U.M., not at Nuiqsut's current location in Township ten North. In other words, the "re-establishment" of Nuiqsut was not all that relevant to the ANCSA Nooiksut eligibility issue. And, Department of Interior rules for determining eligibility were quite liberal, too liberal in some minds. Some alleged the rules were very leniently applied, too.

In October, 1973 the Juneau Area Director of the Bureau of Indian Affairs initially determined both Nooiksut and Point Lay, and their respective village corporations, eligible for ANCSA land and money benefits. In early November, 1973 the State protested the proposed Bureau of Indian Affairs' determinations. In the same month both Cully and Kuugpik Corporations filed ANCSA land selections which covered approximately three townships (69,120 acres) of lands in their areas and for which the State had already received tentative approval under the Statehood Act. Eventually the United States Department of Navy joined the State's protest of Nooiksut's ANCSA eligibility claim. These protests made their way to the United States Department of the Interior's Alaska Native Claims Appeal Board.

² Kuukpik apparently means "big river", i.e., the Colville River. The present municipality of Nuiqsut is at the junction of the Colville River and Nechelik Channel.

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D. Settlement of Point Lay and Nooiksut Challenges.

Eventually ASRC initiated settlement negotiations concerning the protests with the State. An Agreement was executed between ASRC, Kuugpik Corporation, and the State of Alaska in March 1974 resolving the protests.

The 1974 Agreement (copy in the binder) required the State to drop its eligibility challenges to the two village corporations (i.e., to Kuugpik and Cully Corporation), which the State promptly did in late March 1974. The Agreement also called for ASRC to "promptly quitclaim" to the State its interest in the subsurface estate in the 69,120 acres of tentatively approved State lands located in the Colville River delta which Kuugpik Corporation had selected, and for the State to "promptly quitclaim" to ASRC "all its right, title, and interest in the fee simple estate" to certain State tentatively approved lands in the Point Lay area. The exchange was to be one under the State's now repealed and replaced land exchange law, AS 38.95.060.³ The Point Lay lands were outside the ANCSA withdrawals for Cully Corporation and ASRC selection, so the effect of the Agreement was to make lands available to ASRC which it could not otherwise select in the Point Lay area.

The principle negotiator on the State's side was Department of Natural Resources ("DNR") Commissioner Charles F. Herbert; the principal negotiator on the ASRC side was James Wickwire, Esq., who is still an ASRC's counsel. Apparently only a few other State people were aware of the negotiations, including then Assistant Attorney General, now Juneau Superior Court Judge Rodger Pegues, and Governor Egan. Note that Egan ran for re-election in 1974, so there is always the possibility that politics played a role in the settlement.

Notwithstanding the mineral conveyance prohibition in section § 6(i) of the Statehood Act, it is very clear that Commissioner Herbert personally intended that ASRC receive the subsurface, including the whole mineral estate, in the Point Lay lands under the Agreement. He has so testified in deposition. ASRC also claims it understood the Agreement to require that, and expected to receive the mineral estate at Point Lay, being unaware of the 6(i) problem. This is somewhat hard to believe. Rodger Pegues told us in an private interview "everyone" was aware of the 6(i) problem, but thought "who will complain"?

Despite the attendant publicity to the "Nooiksut" re-establishment, the Agreement itself received virtually no public attention. It was not publicly disclosed in 1974, as far as we

³ The current law is at AS 38.50.

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know, through any routine public notice. And, notwithstanding each party's promise to "promptly" convey each's interest in the respective parcels of land, it was not until late October 1974 (just before the election) that ASRC (through a Wickwire letter to Commissioner Herbert) offered to quitclaim its interest in the Nuiqsut subsurface to the State. At that time Commissioner Herbert suggested, by return letter to Wickwire and based on Rodger Pegues' advice, that the parties wait until "Native title is established" before deeds were exchanged.

E. Implementation of 1974 Agreement.

Deeds were not exchanged in 1974, and thus the matter sat until 1985, for reasons which the parties were to hotly dispute. Of course, few expected the ANCSA implementation process to be plagued by the litigation and land ownership problems as it has been. To obviate some delays, 43 C.F.R. § 2650.0.-5(h) created the ANCSA "interim conveyance" as a document of title, of sorts, while village and regional corporations waited for boundary surveys prior to patent. ASRC, like most regional corporations, took the position that interim conveyances were equivalent to patent, but this issue was not decided until Congress passed the Alaska National Interest Lands Conservation Act of 1980 ("ANILCA"), Pub. L. 96-487, December 2, 1980, § 1410 (amending § 22(j) of ANCSA to make an "interim conveyance" equivalent to "title" ownership). Nonetheless, ASRC did not receive its first interim conveyance of but a small amount of Nuiqsut subsurface until 1978.

Between 1974 and 1976 the State was involved in a dispute with another regional corporation, Cook Inlet Region, Inc. ("CIRI") over CIRI's selection rights to State lands. The settlement of this problem resulted in the infamous "Terms and Conditions Agreement" ("T&C") between the State of Alaska, the United States and CIRI. The T&C was eventually approved by the State of Alaska Legislature through the passage of a statute in January 1976, following Congressional approval of the exchange in December 1975. Congress amended section 22 of ANCSA to allow the State to convey its mineral interests free of the restrictions in section 6(i) of the Statehood Act so that the CIRI deal could happen. Approval of the T&C was accompanied by much public scrutiny, and outcry from some quarters, and led to the challenge of the T&C in Lewis, supra. It also led in March 1976 to the passage of a new State exchange law, AS 38.50 et seq. and repeal of the old one, AS 38.95.050. AS 38.50 now requires legislative approval of any exchange of lands of value in excess of \$5 million dollars. AS 38.50 was not made retroactive, however. See AS 01.10.090.

ASRC claims that the CIRI deal and attendant public outcry to the deal led to ASRC's first recognition of the potential 6(i) problem. It claims further that a potential lessee of ASRC's expected interest in the Point Lay lands (Chevron, Inc.) opined in

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a March 1977 title report letter that ASRC could not convey any interest in the mineral estate in the Point Lay lands to Chevron because of the section 6(i) restriction. ASRC claims that this title report letter brought the section 6(i) problem clearly to the fore.

In March, 1977 ASRC's oil and gas consultant Thomas Kelly (former DNR Commissioner) contacted Assistant DNR Commissioner Jack Roderick. The DNR files reflect a brief letter from Roderick to Kelly, dated in March, 1977, saying that the Attorney General's Office was looking into the 1974 Agreement, and the State's position would later be made known to ASRC. Roderick has no recall of the letter or the Kelly contact, and says he left State government very quickly thereafter. In any event, apparently no one in ASRC, including Kelly, ever heard any more about the State's "position."

What appears to us happened ⁴ is that the Department of Law was contacted in 1977 and a case file was opened by former Assistant Attorney General Thomas Meacham. The Meacham file reflects Meacham's handwritten notes highlighting potential statutory problems with the Agreement (e.g., lack of public notice, no pre-exchange appraisal, and section 6(i), AS 38.50, AS 38.95.060 violations). There may have been an assumption made, too, that the AS 38.50 would apply and thus require legislative approval, since even though AS 38.50 was not expressly retroactive, the exchange of record title to the lands had not yet occurred.

In July, 1977 Roderick's successor, Michael C. T. Smith, requested that DNR's Division of Geophysical and Geological Survey compare the value of the Point Lay and Nuiqsut lands. Smith was the former Director of the DNR Division of Lands, later called the Division of Forest, Land and Water Management and now the Division of Land and Water Management. He had, some people now say, virtually single handedly orchestrated the controversial CIRI T&C. Smith certainly took his lumps in getting the T&C approved in the Legislature, and was thus well aware of the new AS 38.50 legislative approval and equal value exchange requirements. This is why we think he requested DGGS evaluation of the lands, although in our interview with him he said he could not recall.

DGGS evaluated the Point Lay surface and subsurface estate against the subsurface at Nuiqsut, and in August of 1977 found them to be of equal value. The report was very brief and produced in less than three weeks. Of course, it is next to impossible to truly appraise subsurface without at least some

⁴ A few years ago we interviewed all critical witnesses who are still available. Memories of events were vague or non-existent for the most part.

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exploration. The study may have been result oriented----no one remembers the motivation behind it. Smith surmised in our interview that upon his discovery of the 1974 Agreement he might have wanted to see if it was worth pursuing given the passage of time, the need for legislative approval and the questions raised about it.

Apparently Tom Meacham had by July 1977 transferred his file to James Reeves, another Assistant Attorney General. In July 1977 by memorandum Reeves opined to DNR that the 1974 Agreement was legal. Neither the Reeves' memorandum nor the DGGS report were, as far as we can determine, ever communicated to ASRC, as Jack Roderick may (?) have promised.

In December 1977 Ron Swanson, DNR Land Management Officer (and sometimes carrying the title "ANCSA Coordinator") described in a memorandum to Michael C. T. Smith the DGGS report and Reeves' opinion. He then opined "I did not arrive at a definite conclusion as to whether this exchange is good or not. One prohibitive factor to consider is the consequences of trying to break this agreement. The politics of the whole exchange are an uncertainty to me." On January 11, 1978 Swanson and Smith met, and Swanson's handwritten file note reflects "following discussion with Mike today it was decided to sit tight and wait for Nooksut-ASRC to make first move." By this time ASRC had not yet received any Nuiqsut subsurface interim conveyances from the U.S., but it was just about to.

ASRC is aware of all of the foregoing history. ASRC claims this history, and later events which we'll recount below, prove the State abandoned⁵ the 1974 Agreement upon its own recognition of the 6(i) problem. It is not aware of the existence of the Meacham file. ⁶ In May 1978 the Meacham file was

⁵In the context of contract law, "abandonment" is the intentional relinquishment of a known right coupled with some act or failure to act that indicates an intent to abandon. See, e.g., *Jakober v. E.M. Loew's Capitol Theatre, Inc.*, 265 A.2d 429 (R.I. 1970); *Miran Investment Co. v. Medical West Bldg. Corp.*, 414 S.W. 2d 297 (1967). Once a party abandons a contract, the other party to the contract can sue for the breach of performance of any remaining duties owed under the contract by the abandoning party, or simply walk away from the contract, in effect accepting the performance to date as complete satisfaction of the contract.

⁶In fact, we did not discover the Meacham file until well after the first round of discovery in the litigation with ASRC over the 1974 Agreement was completed, it being resurrected in one of our State Archives' searches. We refused in our discovery responses to identify attorney work product or attorney client communications,

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transferred to Shelley Higgins, former Assistant Attorney General, when Reeves departed State employment.

On July 12, 1978 ASRC got its first interim conveyance of Nuiqsut subsurface, of 300+ acres.⁴ The State's tentative approval was rescinded on that acreage, as required by ANCSA. Ideally, the exchange of lands under the 1974 Agreement would have started right then, or had the State any objections or new plans these would have been made known to ASRC and the issues would have been joined for litigation or resolution. The exchange did not begin occurring, however, and in fact the State did nothing.

In late 1979 ASRC's counsel, James Wickwire, contacted Don Argetsinger, Administrative Assistant to the Governor, about the 1974 Agreement. Argetsinger asked Geoff Haynes, Deputy DNR Commissioner, for an update. Ted Smith, then Director of DNR's Forest, Land and Water Management, opined in a memorandum to Haynes dated November 15, 1979 that the 1974 Agreement was of "questionable legality." Ron Swanson sent a memorandum to Haynes dated November 21, 1979, in which he recounted the history and stated that "I still feel that the Nuiqsut agreement is impossible to carry out." ASRC has these memoranda. No State employee got back to ASRC in response to the Wickwire-Argetsinger contact, or contacted ASRC after it received its first interim conveyance in 1978.

Shelley Higgins' own file notes in the Meacham file reflect that she and Swanson talked about the Agreement on November 7, 1980. Her file memo states:

Status report from R.M. Swanson:

Kuugpik Corp. has not to date taken any initiative to implement the exchange. State does not want to start implementation because

and thus did not supplement our responses to ASRC on discovery of the file before we sought and received ASRC's agreement to stay discovery pending settlement negotiations. We anticipated, however, that ASRC would have, had litigation discovery continued, moved to compel identification and disclosure of all documents withheld, and most certainly would have taken Mssrs. Smith and Swanson's depositions.

⁴Under the Alaska National Interest Lands Conservation Act of 1980 ("ANILCA"), section 902(a), 43 U.S.C. 1632, decisions of the Secretary of the Interior are not subject to challenge unless the challenge is made within two years of the decision. The State did not challenge this interim conveyance or subsequent interim conveyances to ASRC or to Kuukpik Corporation.

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there are legal problems in light of 38.05.50 (sic) and State probably got a bad deal. DNR decision--sit tight and ignore 1974 agreement unless and until village corp. or Arctic Slope Regional takes action to implement. DNR file is in "dead" file although matter is subject to possible future action and reopening.

Since there has been no action at all for 2 1/2 years when I inherited the file and DNR does not expect action in the next 6 months, I am closing the AGO file.

As far as we know, ASRC is not aware of this conversation or Shelley Higgins' file memorandum, which we would, in any event, claim were not discoverable.

In a January 1987 interview with Ron Swanson, Swanson indicated to us that the position adopted by Michael C. T. Smith in 1977 was that it was better to keep a known, coal at Point Lay, than to take an unknown, the unexplored Nuiqsut lands, presumably given that DGGs thought the lands of equal value. In the spring of 1977, coincidentally, the State decided not to challenge the village enrollment ⁸ numbers for Nuiqsut. It looked to us as if DNR, at least at the Assistant Commissioner level (Mike Smith), had decided to leave well enough alone as early as January 1978.

In fact, ASRC claims that the State's failure to respond to its 1977 and 1979 inquiries led it to assume that the State had decided to abandon the Agreement.⁹ This was probably fine with ASRC, since the Chevron, Inc. 1977 legal opinion suggested ASRC could not acquire good title to the mineral estate at Point Lay anyway. Also, we might safely surmise that by 1982 ASRC may have

⁸ The number of villagers enrolled to a village corporation determines the corporation's total land entitlement under ANCSA. In other words, the more villagers, the more land to which the village corporation would be entitled to select under ANCSA.

⁹ The common law of contract abandonment suggests that the party to the contract asserting that the other party has abandoned it has the burden of proving the other party took or failed to take action which positively demonstrates an intent to abandon. The intent to abandon need not be communicated to the other party, however. See cases cited in footnote 5. Thus, in this setting ASRC would argue that the State's lack of communication with it despite its repeated inquiries and State action taken inconsistent with its ownership claims under the 1974 Agreement demonstrate the State's intent to abandon the 1974 Agreement.

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had its own information suggesting that some of the Point Lay lands may have been overrated for oil and gas, although we do not know this for a fact.

Having allegedly reached that "abandonment" conclusion, in 1982 ASRC entered into an agreement with Kuukpiik Corporation to set up a gravel extraction business near Nuiqsut----in other words, ASRC began acting as if it was going to retain ownership in the Nuiqsut subsurface notwithstanding the provisions of the 1974 Agreement. This followed shortly after ASRC began getting much larger interim conveyances of Nuiqsut subsurface in November 1982. State officials in DNR responsible for Coastal Zone Management Act review of the proposed gravel extraction operation gave approval to ASRC's plans in early 1983. Note that while under ANCSA sand and gravel is considered part of the subsurface estate, the state considers it owned by the surface estate owner, i.e., does not consider it a mineral or otherwise owned by the subsurface estate owner. Thus, at least arguably the State's acquiescence in the gravel extraction arrangement was not inconsistent with the State's later claim that ASRC was obligated to convey the Nuiqsut subsurface to the State under the 1974 Agreement.

At roughly the same time, DNR's Division of Minerals and Energy Management ("DMEM") (later called the Division of Oil and Gas) announced its five year oil and gas leasing schedule, as required by Alaska law. AS 38.05.180. The leasing schedule proposed a lease sale in 1988 of a good portion of the Nuiqsut lands the State was to receive from ASRC under the Agreement, without mentioning the 1974 Agreement. However, the lease schedule also inconsistently proposed a future State oil and gas lease sale of the Point Lay lands ASRC was to receive, again without mentioning the 1974 Agreement.

To complicate matters further, in June 1983 DMEM transferred to ASRC administration of certain pre-existing State oil and gas leases covering a portion of Nuiqsut lands conveyed to ASRC by interim conveyance¹⁰. This transfer was permitted, but not necessarily required, by section 14(g) of ANCSA. The transfer, signed by DMEM's Kay Brown¹¹, followed an extensive review of the history of the Agreement by DMEM's employees, a request for advice to the Department of Law, and Law's oral advice (through Messrs. Bob Maynard and Tom Koester) that the 1974 Agreement was legal.

¹⁰As of 1986, ASRC had received interim conveyances of about 40,000 acres of subsurface estate of the 69,120 acres promised to the State under the 1974 Agreement.

¹¹Ms. Brown is now in the State House of Representatives. When litigation arose over the 1974 Agreement, she was interviewed and could not recall the "why" of the lease transfers to ASRC.

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In transferring the leases DMEM erroneously did not segregate out submerged lands which ASRC was not entitled to receive under ANCSA.¹² Nor did it tell ASRC it expected to get the leases back if the Agreement was effectuated. In fact, the 1974 Agreement was not mentioned in the lease transfer document at all, despite the fact that DMEM had resurrected its history and sought legal advice on it. DMEM line employees told us they thought it "logical" to transfer the leases to ASRC after the State's tentative approvals were rescinded.

In the spring of 1985 Texaco, Inc. had an oil strike on State owned lands in the Colville River delta northeast of the Nuiqsut lands. At this point, since industry interest in the area increased, the DNR Division of Oil and Gas decided to accelerate its proposed 1988 oil and gas lease sale for the Nuiqsut lands in order to hold the sale in September 1986. Therefore, DNR notified ASRC that it would like to set up a conveyancing schedule for the Point Lay and Nuiqsut lands under the 1974 Agreement--the first State effort to implement its terms since 1974.

ASRC cried foul. It claimed that the State, like ASRC cognizant of legal problems with the Agreement since 1976-77, had abandoned the Agreement. ASRC pointed to the State's Coastal Zone Management Act approval of its gravel extraction business, the State's transfer to it of the oil and gas leases in 1983, and the State's 11 years of silence as evidence of the abandonment of the Agreement.

ASRC met with DNR Commissioner Wunnicke a couple of times. She suggested an interim accommodation----allow the 1986

¹² The State and the federal government are in a dispute whether the Submerged Lands Act, made applicable to the State at Statehood, conferred ownership of certain submerged lands in the Arctic to the State. Certain officials in the United States Department of Interior and ASRC claim that Public Land Order 82 reserved the submerged lands such that they were not conveyed to the State at the time of Statehood. Kucknik Corporation purposely avoided selecting submerged lands which would otherwise be subject to State ownership claims in making their selections in the Colville Delta area. In ANILCA, section 1431(n), Congress ordered that the Colville River bed and its five major channel beds remain in the "public ownership", without indicating whether "public ownership" meant that of the State or federal government. The Department of the Interior has allowed the State to select PLO 82 covered submerged lands, but because of PLO 82 the acreage so selected will be charged against the State's entitlement under the Statehood Act. The Solicitor to the Department of the Interior is now in the process of reviewing PLO 82's application in light of recent case law development in the area of navigability.

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oil and gas sale to go forward, escrow the bonuses, etc., and keep negotiating. At the end of these meetings ASRC rejected the escrow offer, and sued.

II. 1985 LITIGATION.

ASRC filed suit in Federal District Court in Juneau, naming DNR Commissioner Esther C. Wunnicke and Division of Land and Water Management Director Thomas Hawkins as the defendants. ¹³ ASRC claimed the 1974 Agreement violated section 6(i) of the Statehood Act, numerous other State laws, ¹⁴ and ANCSA § 22 (f) (requiring Secretarial approval of ANCSA exchanges). In addition, ASRC also claimed various common law reasons prevent enforcement of the 1974 Agreement, including the alleged "abandonment" of the Agreement by the State, mistake, estoppel, etc.

The State countersued in Anchorage Superior Court for specific performance of the 1974 Agreement. Copies of the Complaints are in the binder. ASRC in response raised as affirmative defenses all the claims it made for declaratory relief in its federal court litigation against Commissioner Wunnicke and Director Hawkins.

We had some initial skirmishes in both pieces of litigation. In Superior Court Judge Karen Hunt dismissed ASRC's affirmative defense that AS 38.50 (the new exchange law) applied to the 1974 Agreement and made it illegal. In federal court, Judge von der Heydt dismissed all of ASRC's State law claims, but not the 6(i) or ANCSA § 22(f) claim. We then filed an abstention motion in federal court on the two federal law claims.

At the same time we moved to dismiss ASRC's 6(i) and AS 38.05.125 affirmative defenses in State court. We argued that ASRC had no cause of action under 6(i), but this issue was later decided against the State in Trustees for Alaska v. State, 736 P.2d 324 (Alaska 1987), cert. denied 108 S.Ct. 2013 (1988). We also said

¹³This was done in attempt to avoid the U.S. Const. Eleventh Amendment prohibition on suing the State in federal court.

¹⁴ The most important of these State laws is AS 38.05.125, which the State contended automatically includes in any contract or deed the State issues a mineral reservation. We argued that the law is designed to protect against inadvertent section 6(i) violations. The significance of this view of AS 38.05.125 is that it makes Commissioner Herbert's personal intentions with respect to the Point Lay mineral estate unimportant. ASRC says, in rebuttal, that it just makes the deal illegal. For settlement purposes, AS 38.05.125 is important because any agreement the State strikes with ASRC will require the legislature to waive AS 38.05.125's strictures, as it did with respect to the CIRI T&C in 1976.

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that 6(i) wasn't violated, because AS 38.05.125 meant that any quitclaim deeds the State gives ASRC for Point Lay will automatically reserve the mineral estate, notwithstanding former Commissioner Herbert's "personal," mistaken intentions to the contrary. ASRC cross-moved for summary judgment in State court. In all of our briefing we exploited as much as possible the "odor" of ASRC's attorney, James Wickwire, and consultant, former DNR Commissioner Thomas Kelly, claiming ignorance of 6(i), ANCSA § 22(f), and numerous other State laws. The near universal case law rule, however, is that a party is never estopped from raising illegality as a defense to enforcement of an illegal contract.

We can give you a more detailed evaluation of the various legal issues raised in the case if you'd like. Suffice it to say now, however, that on some of the legal issues we were initially confident, and on some we gave the State at least an even chance of success. We so advised DNR Commissioner Wunnicke. Once ASRC sued, she decided to let the litigation proceed, rather than to try to strike a deal and solve a very knotty factual and legal problem created by a predecessor, any solution to which would be politically volatile in light of the controversies over the CIRI T&C. She thus early on in the litigation rejected an offer by ASRC that the uplands in dispute be split 50/50.

She later told Jacob Adams, President of ASRC, in a chance and very brief Anchorage meeting, that the problem was a "political" one that could not be resolved in an election year. He asked her to at least call the Department of Law off---to go slow with the litigation. We had been aggressive in pursuit of the case and received an early (April 1987) trial date. Going slow was not possible given court imposed pre-trial deadlines, as Attorney General Hal Brown later explained to the Commissioner.

In the meantime, however, we had completed our State Archives' records review, interviewed virtually all of the State agency people involved, discovered the Shelley Higgins' file memorandum, and thus had pieced the whole mess together as best we could. We advised Commissioner Wunnicke that ASRC's offer to split the uplands 50/50 suddenly looked very good to us in light of the abandonment evidence,¹⁵ and that it was better to get 50 percent of the uplands subsurface than perhaps nothing.

¹⁵ All of the critical State agency people are on both sides' witness lists. We thus anticipated that depositions of Swanson and Smith, coupled with discovery practice, would likely lead to very damaging testimony of abandonment. The other triable issue was mutual mistake, and it was very clear the State had made some major ones.

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She was nonetheless very cool to settlement because (we surmise) the August 1986 gubernatorial primary was approaching, any sudden deal would look contrived for political advantage, and she did not look forward to seeking legislative approval of a settlement, as we advised her would be necessary given ASRC's legal claims that the 1974 Agreement was an illegal "exchange" of lands. We suggested to her, therefore, that we approach ASRC with an offer to meet with it after the primary election, but in the interim discovery and motion practice would be stayed by mutual agreement. Obviously, we didn't want ASRC to find out about the abandonment problem beyond what it then knew, and we wanted to seek ASRC's agreement to a discovery stay once the problem became clear to us to insure that did not happen. She accepted that approach, and ASRC agreed to a September 1986 meeting.

ASRC then went to the Governor Sheffield, and asked that the meeting be moved up----to before the August gubernatorial primary. The Governor wrote ASRC a letter, after consulting with Commissioner Wunnicke, saying the State was committed to trying to settle the dispute, and a pre-primary meeting date was set.

When the pre-primary meeting was held, the idea of a 50/50 split was discussed again, and its concept adopted by DNR. How it would happen was left to later negotiations.

III. 1986 - 1989 SETTLEMENT NEGOTIATIONS AND FEDERAL COURT SETTLEMENT CONFERENCE.

A. Disputed Issues.

The tentative settlement reached by DNR Commissioner Wunnicke was enunciated in the form of a letter agreement of October 1986 (copy in the binder). The meat of this letter was the parties' conceptual agreement to merge title to and share revenues from the uplands and the beds of nonnavigable water bodies (hereinafter all called "uplands") at Point Lay and Nuiqsut equally, that is, 50 percent each. After entering into the letter agreement, the parties engaged in extensive discussions concerning who would manage what lands and under what standards, and concerning the extent of the State's wholly owned submerged lands under navigable water bodies. Without agreement on what were submerged lands wholly owned by the State, the parties would not know what were the uplands they were sharing 50/50.

In the early stages of negotiations, ASRC argued that it should be entitled to manage on both parties' behalf the Nuiqsut lands, and the State should do the same on both parties' behalf at Point Lay. When the State leases and manages lands, the process is competitive and public; ASRC, in contrast, is a private corporation

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which does its business in private. Thus, the State was very concerned about ASRC management of lands on both parties' behalf at Nuiqsut, since it could not know when ASRC might be tempted to, or might in fact, cheat. In order to ensure that ASRC's management would truly be in the State's behalf, the State's oil and gas counsel Charles Meyers, ¹⁶ advised that ASRC be held to certain very detailed prudent landowner standards such that the State would have a cause of action against ASRC if anything sneaky went on. As a quid pro quo, the State offered to have these same exacting standards apply to its management of the Point Lay lands. ASRC nonetheless chafed at the application of such standards to its management of the Nuiqsut lands. Extensive back and forth negotiation and trading of draft agreements concerning management rights and duties ensued.

As mentioned briefly above, perhaps a more important issue concerned the extent of the navigable waters in both areas, and therefore the extent of the State's wholly owned submerged lands to which ASRC would not be entitled to any interest. Under the "equal footing doctrine," see Pollard's Lessee v. Hagan, 44 U.S. (3 How) 212, 229, 11 L.Ed 564 (1845) and its codification in the Submerged Lands Act of 1953, 43 U.S.C. § 1301, the State at the time of statehood became owner of all submerged lands which, for title purposes, are "navigable" inland water bodies in the State. These submerged lands are not available for selection by ANCSA corporations, and are not chargeable against ANCSA corporations or against the State's Statehood Act land entitlements. In addition and of particular importance for the Nuiqsut area lands, in ANILCA, section 1431(n), Congress forbid any ANCSA conveyance of the bed of the Colville River and its five adjacent channels (¹⁷) insisting that they remain in "public ownership." ¹⁸ Finally, in addition

¹⁶ Mr. Meyers was hired by the State as a contract lawyer from the law firm of Gibson, Dunn & Krutcher in Denver, Colorado. He was a long time professor at the Stanford University Law School, and was considered the dean of American oil and gas law, having co-authored the multi-volume and premier treatise, Oil and Gas Law. Shortly after the 50/50 conceptual agreement was reached, Mr. Meyers was retained and helped negotiate with ASRC. After he died about 18 months ago, the State hired Hugh McIntosh of Vinson & Elkins in Washington, D.C., to assist the State in further negotiations and drafting of the settlement agreement. Mr. McIntosh remains on a small contract with the Department of Law.

¹⁷ The channels are the Nechelik, Kupigruak, Elaktoveach, Tamayayak, and Sakoonang.

¹⁸ While the State believes it is the owner of the beds of the Colville River and its five channels under the equal footing doctrine, and notwithstanding PLO 82, the State also has filed

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to the beds of navigable waters the State also owns submerged lands under tidally influenced waters. Tidally influenced waters are considered navigable in law even if not in fact. See Phillips Petroleum Company v. Mississippi, ___ U.S. ___, 108 S. Ct. 791 (1988).

Although the legal test for determining whether a water body is navigable is well settled, applying the legal test in practice is never easy. In Alaska there have been only three federal court cases to reach decision with respect to the navigability of inland water bodies: (1) the Gulkana River decision now on appeal; (2) a case involving the issue of whether float plane use could establish navigability (it can't, said the Ninth Circuit Court of Appeals); and (3) an unreported District Court judgment involving two rivers and two lakes in the Bristol Bay region found navigable. There are also a number of completed and pending Department of the Interior, Board of Land Appeals' cases involving navigability issues.

Once a water body is determined navigable, either in fact or because of tidal influence, and therefore the affected submerged lands are deemed owned by the State, one still faces the daunting task of determining the total acreage submerged. This requires establishing the ordinary high water mark for inland water bodies and the mean high tide mark for tidally influenced areas¹⁹. In the simplest of situations this may involve a survey and meandering of shore lines. Meander lines, however, are not determinant of ownership, and thus cannot be used to resolve a title navigability dispute unless the land owners involved are willing to accept the meander lines as boundaries. In areas like those north of the Arctic Circle, where there are a plentitude of water courses, even with a survey initially acceptable to the involved landowners, accretion and reliction pose the potential problems of shifting ownership and the creation of future disputes.

Moreover, there has not yet been a case concluded involving the navigability of an inland lake or stream north of the Arctic Circle. That much of the water north of the Arctic Circle remains in a frozen or flooded condition much of the year compounds the factual, if not the legal, questions associated with

selections for the beds under the Statehood Act.

¹⁹ See e.g., Oklahoma v. Texas, 260 U.S. 606, 625-40, (1923), defining State owned river bed as that which is "kept practically bare of vegetation by the wash of the waters of the river from year to year, in their onward course, although parts of it are dry for months at a time. . . ." Id. at 632. Measuring the extent of tidal influence is discussed in Phillips v. Mississippi, ___ U.S. ___, 108 S. Ct. 791 (1988).

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determining navigability for title purposes. Moreover, the existence of literally thousands of small ponds, seasonal creeks, ever changing rivers and unending "wetlands" pose unique problems for the application of the doctrine of title navigability, problems no doubt exacerbated in Alaska by Congress' attempt in ANCSA to finally and fairly settle Alaska Native land claims. Thus, ASRC and the State have very different views as to what is or is not a navigable water body, with ASRC pointing out at every opportunity that a liberal reading of the title navigability doctrine would leave ASRC and its village corporations' lands much like Swiss cheese, littered with unmanageable holes.

ASRC and the State recognized that an agreement splitting uplands only would not allow resource leasing to go forward unless the potential lessees could also be sure at the time of leasing of who owned what lands, i.e., could be sure of which lands were uplands and which lands were the State's wholly owned submerged lands. Moreover, the potential for later accretion and reliction could create future title problems. Therefore, the parties refocused their negotiations to include not just uplands but also submerged lands. Negotiation efforts in the last three years were therefore devoted to establishing a common database for (hopefully) settling by negotiation what are, at least arguably, the navigable water bodies and therefore what are the State owned submerged lands beneath them.²⁰ The parties' assumption was that if agreement could be reached on this issue, an appropriate revenue split could be established which would credit the State for its claimed ownership of the submerged lands, on a section by section or some other basis. With title merged between the parties, a revenue split decided, and a management scheme established, leasing could go forward and both ASRC and the State would benefit. Absent some kind of arrangement or final court judgment with respect to submerged lands, leasing of the uplands would not be possible, and thus neither party would benefit.

²⁰ ASRC, in an initial attempt to solve the submerged lands problem, proposed that the parties agree on an increment called the "disputed acreage", revenues from which would be escrowed, and all other revenues from the uplands and the "undisputed" submerged lands acreage would be split. The State rejected this approach because of fears about the difficulties of management, and because it would put off settlement of the submerged lands issues to an undefined time and context. The sense of opinion was that time would be on ASRC's side in any navigability dispute, and that if the agreement was going to have to go to the Legislature for approval, it would be worth an attempt to reach a complete resolution of all potential problems.

Hon. Harold C. Heinze
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B. Tentative Resolution Of Issues.

1. Land management.

As noted above, the parties negotiated at length about who would manage what lands and under what standard of care. Eventually ASRC, after insisting on being able to manage the Nuiqsut lands for both parties under few standards, conceded that the State could manage all lands but under the exacting standards the State developed. These standards are outlined in some detail in a May, 1990 settlement draft (copy in binder) prepared by ASRC's oil and gas counsel, Uriel Dutton of Fulbright & Jaworski. As drafted these standards will pose some significant burdens on the State's day to day management of the lands; the State's current oil and gas counsel has suggested some clarifications and modifications to ameliorate some potential problems. These changes have not yet been suggested to ASRC, however, and will have to be the subject of future negotiations.

2. Revenue splits.

The parties' attempt to resolve the submerged lands issue was bottomed on a basic settlement idea: title to the submerged lands and the uplands in each particular section of land would be merged, but the State's percentage share of revenue from each section would be calculated using the following formula in order to give it credit for whatever could be agreed were the submerged lands (i.e., tidally influenced and navigable waterbody acreage for title purposes) wholly owned by the State:

$$\text{State \%} = \frac{(\text{uplands acres} \times 50\%) + (\text{submerged acres} \times 100\%)}{\text{number of acres in agreement area section}}$$

Nuiqsut. Most of the parties' attention in attempting to reach a common database with respect to what are submerged lands has focused on the Nuiqsut lands because most of the water is there and presumably those lands are potentially much more valuable for oil and gas exploration purposes. For over 2 1/2 years both the State and ASRC engaged in an extensive----albeit not particularly fruitful----effort reviewing aerial photographs, BJM and USGS mapping information, and United States Fish and Wildlife Service data in an attempt to reach a common database.

In 1989, ASRC offered to settle using numbers derived by its subsidiary's (Arctic Slope Consulting Engineers Group) analysis of various sources of data in the Colville River delta, except for the two northwestern townships bordering on the NPRA, which ASRC proposed should reflect numbers derived from using DNR coastal datum generated in a 1982 DNR study, and the basis on which the

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State had previously sold Harrison Bay leases.^{21/} While the parties respective positions were ratcheting closer together, it took a settlement conference before Federal District Judge James von der Heydt in November, 1989 to induce the parties to split the difference 50/50 between their respective positions in the Colville River delta area and to agree to what would be the revenue share of the State and ASRC on a section by section basis. These revenue share percentages are now set out in a December 1989 letter from ASRC to us (copy in the binder).

Uncertain boundaries in the Nechelik delta, on the NPR-A, and on Point Lay shorelines were never the subject of negotiations, and therefore were not addressed or resolved in the settlement conference.

Point Lay. The State offered to settle the submerged lands issues by taking 51 versus 49 percent of the revenues generated from the entire area, rather than selecting out particular navigable water bodies and hoping mineral revenues would be derived from submerged lands under those water bodies. In the Point Lay area, DNR had asserted navigability of four lakes and a small portion of the Kukpowruk River, about 3% or so of the entire area; ASRC disputed the 3%. At the settlement conference, ASRC accepted the State's offer as to Point Lay, so the State will receive 51% of all future revenues.

IV. 1990 SETTLEMENT NEGOTIATIONS.

A. Uncertain Boundaries.

The parties had hoped, and in fact had promised United States District Judge von der Heydt, that they would take the settlement to the 1990 Legislature for approval. For various reasons, they were unable to do so.^{22/} Since then ASRC has proposed that the parties settle the uncertain agreement area boundaries noted above by "squaring" them off along protracted section lines, and adjusting the parties respective revenue percentages for the affected sections accordingly. For the Nuiqsut

²¹ DNR surveyors privately advised that in these two northwestern townships the trend seemed to be that accretion was occurring on the coast, creating uplands.

²² After the 1990 Session passed, a miffed Judge von der Heydt dismissed ASRC's case against the State without prejudice to its right to refile it if negotiations fail. The State's Superior Court suit, in which ASRC raises all the same claims it did in its own federal court suit as affirmative defenses, remains alive but dormant because of the mutually agreed upon stay. It is before Judge Karen Hunt.

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.

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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
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DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
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SUMMARY OF THE 1991 SETTLEMENT AGREEMENT
between
ARCTIC SLOPE REGIONAL CORPORATION & STATE OF ALASKA
January 1992

INTRODUCTION

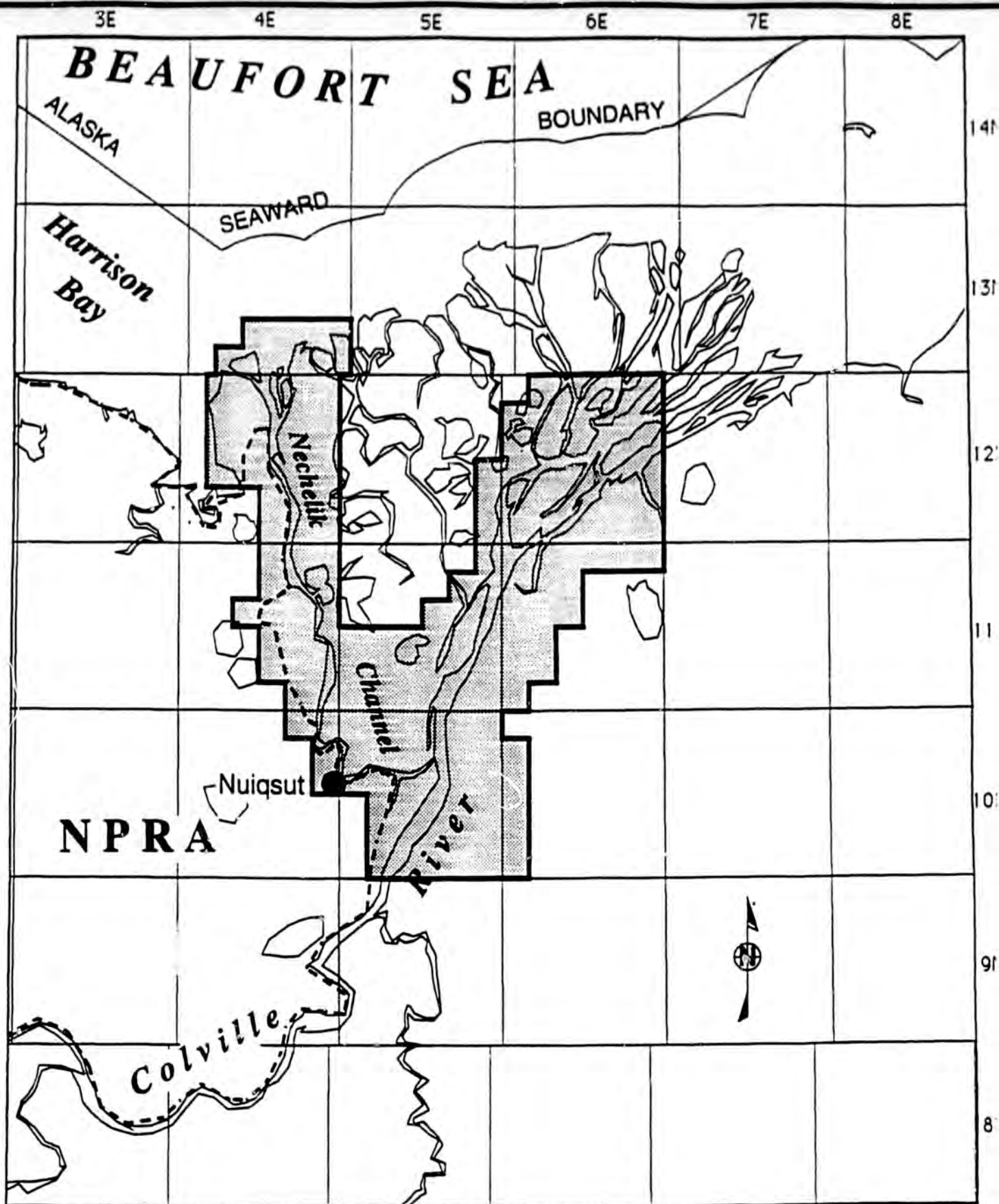
In December 1991, the State of Alaska and the Arctic Slope Regional Corporation (ASRC) settled a long-running legal dispute concerning north slope mineral ownership near Nuiqsut and Point Lay. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange 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.

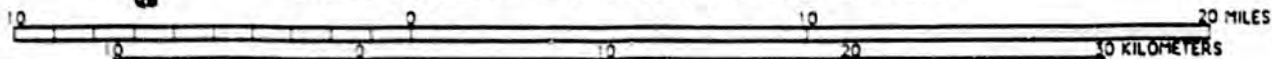
The agreement involves only mineral estate; it does not change the surface ownership. The surface estate of the Point Lay lands is state-owned; the Nuiqsut surface is owned by the village corporation for Nuiqsut, Kuukpik Corporation.

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

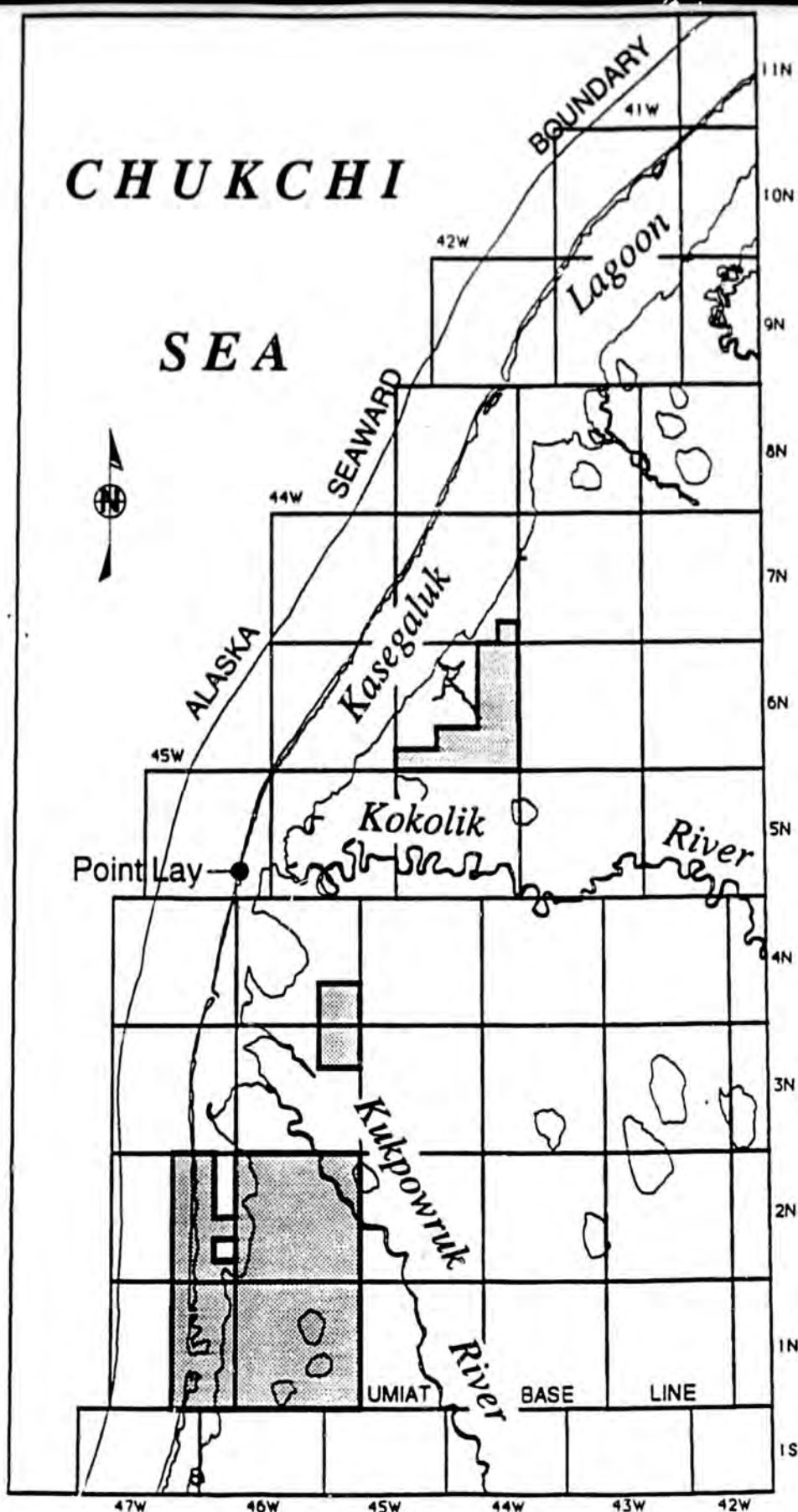
SCALE 1: 317,000 ONE INCH = FIVE MILES APPROX.



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

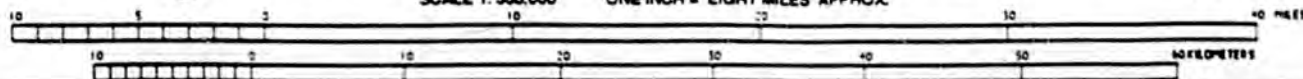
CHUKCHI

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

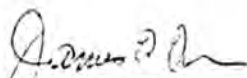
January 3, 1992

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

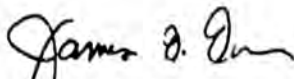
Re: Proposed Oil and Gas Lease Sale 75, Kuparuk Uplands

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

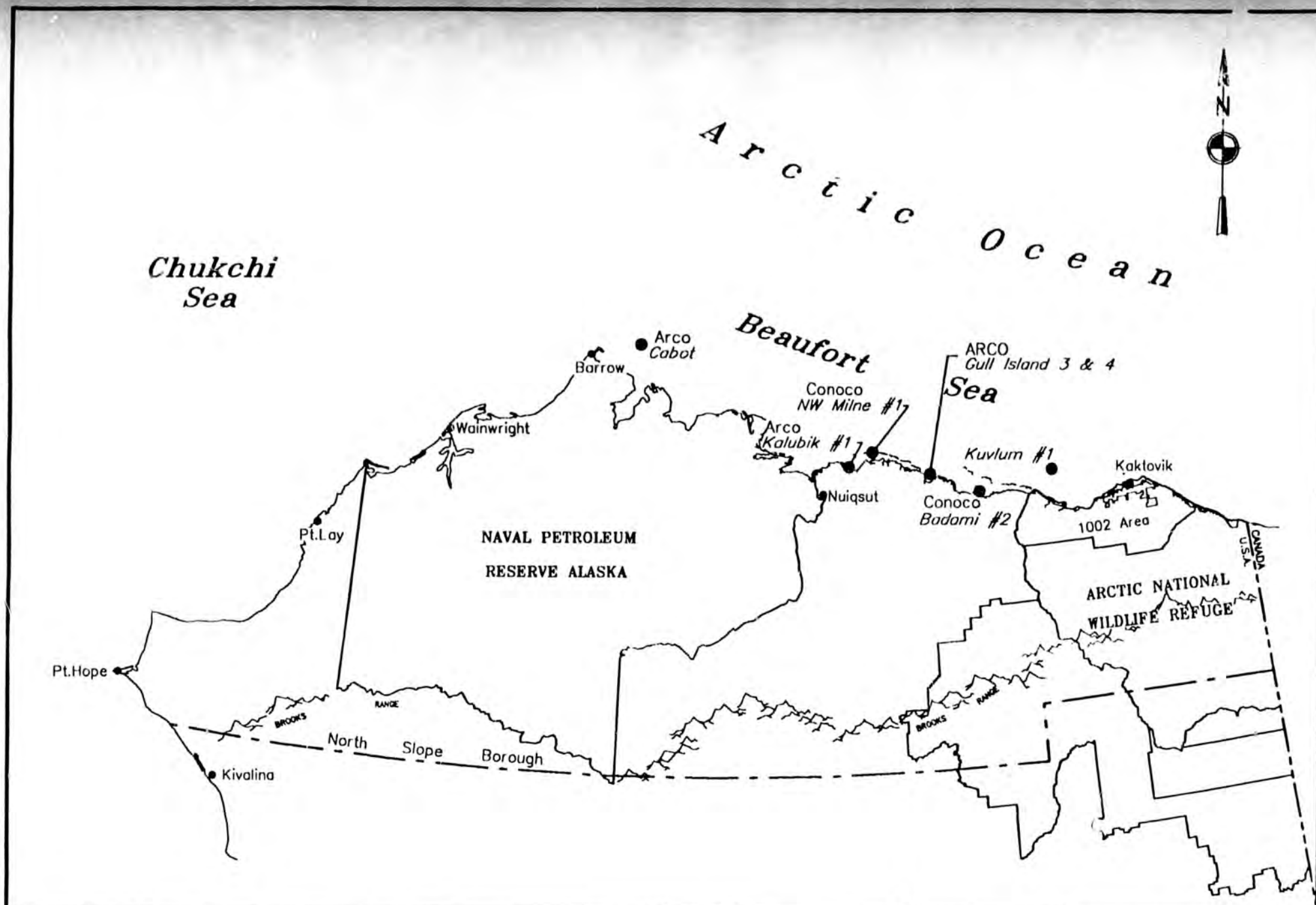
WWH:ts

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

- A State of Alaska Bill (approving Settlement Agreement)
- B Stipulation for Dismissal and Order
- C Maps (Nuiqsut subsurface)

Exhibits

- D Maps (Point Lay subsurface)
- E ASRC and State Percentage Ownership (Nuiqsut subsurface)
- F ASRC and State Percentage Ownership (Point Lay subsurface)
- G Warranty Deed (from ASRC)
- H State of Alaska Patent (Point Lay subsurface and Fully
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- I State of Alaska Patent (Fully Conveyed Sections of Nuiqsut
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- J State of Alaska Assignments of Subsurface Interests and Rights
- K State of Alaska Oil and Gas Lease Agreement

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 **Nuiqsut 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

questioned in an administrative or judicial proceeding. Each party will have the right to intervene at its own expense in any such proceeding.

(e) Each party will, within thirty (30) days, notify the other, in writing, in the event a dispute arises as to the interpretation of a **Subsurface Agreement** concerning either the **Point Lay subsurface** or the **Nuiqsut subsurface** which dispute may affect, directly or indirectly, revenues shared under this Settlement Agreement. In the event the dispute results in an administrative or judicial proceeding involving either party and another ~~person~~, then the other party will have the right to intervene at its own expense in that proceeding.

(f) A party's decision not to intervene as might be allowed under paragraphs (d) and (e) above will not relieve the other party of any obligation otherwise owed under this Settlement Agreement.

10.12. Rule of Evidence 408.

Alaska Evidence Rule 408 and Federal Rule of Evidence 408 both proscribe the admission into evidence of discussions of compromise and settlement, except under certain circumstances. This Settlement Agreement is in settlement of disputed matters. Accordingly, neither this Settlement Agreement nor any of its provisions may be introduced as evidence in any lawsuit concerning the enforceability of any provision of the 1974 Agreement, be construed to be an admission against either party as to the enforceability of any provision of the 1974 Agreement, or be used for any purpose other than enforcement of this Settlement Agreement. Draft settlement proposals and written or oral statements made with respect to this Settlement Agreement's negotiation (including those that might be made in efforts to secure passage of a law under section 1), are for purposes of settlement only, and may not be deemed admissions by either party, or otherwise deemed admissible as evidence in a lawsuit concerning the enforceability of the 1974 Agreement.

10.13. Assignment; Delegation.

The assignment of any rights and the delegation of any duties under this Settlement Agreement are prohibited except as might be expressly allowed in subsection 7.3 above. Subject to the restrictions of section 7, the terms and provisions of this Settlement Agreement shall inure to the benefit of and be binding upon ASRC and the State, and each party's successors and assigns.

10.14. Other Documents and Actions.

The parties agree to execute and deliver to each other such documents and instruments, including the Exhibits, as provided for herein, and take such other actions as shall be reasonably necessary and appropriate to implement, effectuate, and carry out the intentions of this Settlement Agreement.

10.15. Remedies and Specific Performance.

Both ASRC and the State expressly agree that each may enforce its rights hereunder by any and all remedies available under law or equity. Both ASRC and the State agree that irreparable damage would occur if any of the provisions of this Settlement Agreement were not performed in accordance with their specific terms or were otherwise breached. It is therefore agreed that ASRC and the State shall be entitled to an injunction or injunctions to prevent breaches of this Settlement Agreement and to enforce specifically the terms and provisions of it in a Superior Court of the State of Alaska, in addition to any other remedy to which they are entitled at law or in equity. Nothing in this Settlement Agreement or implementing legislation, however, shall be construed to create any right of action, direct or otherwise, in any person not a party to this Settlement Agreement.

11. DEFINITIONS.

11.1. Action Notice.

"Action Notice" means a written notice given by the State to ASRC, in the absence of an **Approval Agreement**, setting forth the **substantive terms and conditions** of a proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** and

describing the **Nuligaut subsurface** or **Point Lay subsurface** affected by it as more fully set forth in paragraph 4.3(d) of this Settlement Agreement.

11.2. ANCSA.

"**ANCSA**" means the Alaska Native Claims Settlement Act of 1971 (Pub. L. 92-203, 43 U.S.C. §§ 1601 et seq., as amended), and "**ANILCA**" means the Alaska National Interest Lands Conservation Act of 1980 (Pub L. 96-487, December 2, 1980).

11.3. Approval Agreement.

"**Approval Agreement**" means a written agreement executed by the State and ASRC setting forth the **substantive terms and conditions** of a proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** as more fully set forth in paragraph 4.3(c) of this Settlement Agreement.

11.4. Commissioner.

"**Commissioner**" means the Commissioner of the Department of Natural Resources of the State of Alaska.

11.5. Consultant Group.

"**Consultant Group**" means the panel consisting of **Qualified Independent Consultants** established to hear and decide protests of **Action Notices** as more fully set forth in paragraph 4.3(h) of this Settlement Agreement.

11.6. Consultant Opinion.

"**Consultant Opinion**" means an opinion issued by a **Qualified Independent Consultant** deciding a protest as more fully set forth in paragraph 4.3(j) of this Settlement Agreement.

11.7. Director.

"**Director**" means the Director of the Division of Oil and Gas within the Department of Natural Resources of the State of Alaska.

11.8. Executive Rights.

"**Executive Rights**" means the exclusive right, power, and authority to formulate and issue **Subsurface Agreement Solicitations** and to negotiate, formulate, agree upon, execute,

and grant **Subsurface Agreements** pursuant to the terms of this Settlement Agreement.

11.9. Fair Market Value.

"**Fair market value**" means the amount of money that an informed purchaser, willing but not obligated to buy, would pay an informed seller, willing but not obligated to sell, for particular property, goods, or services.

11.10. Final Effective Date.

"**Final Effective Date**" means the effective date, as determined under AS 01.10.070, of a state law approving this Settlement Agreement as set out in Exhibit A or in such other form as may be approved in writing by both ASRC and the Commissioner of Natural Resources.

11.11. Final Partial Section.

"**Final Partial Section**" means a section of **Nuiqsut subsurface** described in Exhibit E as to which the Bureau of Land Management grants to Kuukpik Corporation the surface estate in less than all the lands selected by Kuukpik Corporation in the section in order not to exceed the total number of acres as to which Kuukpik Corporation is entitled to receive a conveyance of the surface estate under **ANCSA**.

11.12. Fully Conveyed Section.

"**Fully Conveyed Section**" means, as of any relevant date, a section of **Nuiqsut subsurface** described in Exhibit E as to which ASRC has, as of that date, theretofore received one or more interim conveyances or patents from the United States conveying to ASRC the **Nuiqsut subsurface** in all lands in that entire section to which ASRC is or can become entitled pursuant to **ANCSA**; provided, further, that:

(a) no section of **Nuiqsut subsurface** listed in this paragraph shall be deemed to be a "**Fully Conveyed Section**" before the date when all Alaska Native allotment applications affecting that section and listed in this paragraph have been approved and granted or rejected or withdrawn and all **Nuiqsut subsurface** within that section now covered by those Alaska Native allotment applications has either been patented or tentatively approved to the State or

conveyed to ASRC by an interim conveyance or patent from the United States:

<u>Township</u>	<u>Section</u>	<u>Native Allotment application</u>
T10N, R5E UM	16	F11723, Sarah Kunaknana
T10N, R5E UM	17	F11723, Sarah Kunaknana
T10N, R5E UM	32	F14607, Leffingwell Erikloak
T10N, R5E UM	33	F14607, Leffingwell Erikleak
T12N, R6E UM	1	F13833, Annie Allen
T12N, R6E UM	1	F13834, Jim T. Allen
T12N, R6E UM	2	F13833, Annie Allen
T12N, R6E UM	2	F13834, Jim T. Allen
T12N, R6E UM	10	F14315, Lena Baker
T12N, R6E UM	11	F13833, Annie Allen
T12N, R6E UM	11	F13835, Neil Allen
T12N, R6E UM	11	F14315, Lena Baker
T12N, R4E UM	10	F11949, Abraham Woods
T12N, R4E UM	11	F11949, Abraham Woods
T12N, R4E UM	14	F11949, Abraham Woods
T12N, R4E UM	15	F11949, Abraham Woods
T12N, R4E UM	15	F11951, Joeb O. Woods
T12N, R4E UM	14	F11951, Joeb O. Woods

(b) no section of **Nuiqsut subsurface** listed in this paragraph shall be deemed to be a "**Fully Conveyed Section**" before the earlier of (i) the date when all **Nuiqsut subsurface** within that section now covered by an Alaska Native allotment application listed in this paragraph has been conveyed to ASRC by an interim conveyance or patent from the United States, or (ii) the date when it is finally determined (by final administrative or judicial decision after conclusion of all appeals) or by written acknowledgment by ASRC that ASRC is not entitled to receive an interim conveyance or patent from the United States of the **subsurface** within that section now covered by that Alaska Native allotment application:

<u>Township</u>	<u>Section</u>	<u>Native Allotment application</u>
T12N, R4E UM	15	F11947, Nany Woods
T12N, R4E UM	15	F11943, Lydia Woods Sovlik
T12N, R4E UM	22	F11943, Lydia Woods Sovlik

and

(c) when ASRC receives an interim conveyance or patent to the **Nuiqsut subsurface** in all the lands in a **Final Partial Section** in which the surface estate has been granted to Kuukpik Corporation, that portion of the **Final Partial**

Section which shall thereupon be deemed to be a **Fully Conveyed Section** shall be determined by dividing the **Final Partial Section** into sixteen (16) equal quarter-quarter subsections (each constituting either the NE, NW, SW, or SE quarter of the NE, NW, SW, or SE quarter of the **Final Partial Section**), with the entirety of each quarter-quarter subsection within which any **subsurface** is granted to ASRC in the interim conveyance or patent of **subsurface** from the United States to ASRC to be included in the **Fully Conveyed Section**, and with the remainder of the **Final Partial Section** to be excluded from the **Nuiqsut subsurface** as provided for in paragraph 2.3(b).

11.13. Kuukpik Agreement.

"**Kuukpik Agreement**" means the agreement a copy of which is attached as Exhibit K.

11.14. Legal Rate of Interest.

"**Legal rate of interest**" means that rate of simple (not compounded) interest earned on money due and owing as established under AS 45.45.010(a) (or any similar or successor legislation hereafter enacted) at the time the principal sum becomes due and owing.

11.15. Limited Prudent Landowner Standard.

"**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.

11.16. Nuiqsut subsurface.

"**Nuiqsut subsurface**" means the **subsurface** in all the uplands and submerged lands now and hereafter existing in the following lands, all located within the Umiat Meridian (subject, if applicable, to the provisions of paragraph 2.3(b) above):

T.10N., R.4E., U.M.

Secs. 1, 2, 12, 13.

T.10N., R.5E., U.M.
Secs. 1-18, 20-29, 32-36.

T.10N., R.6E., U.M.
Secs. 7, 18, 19, 30, 31.

T.11N., R.4E., U.M.
Secs. 1-3, 10-16, 22-27, 35, 36.

T.11N., R.5E., U.M.
Secs. 1, 11-15, 19-36.

T.11N., R.6E., U.M.
Secs. 1-9, 16-20, 29-31.

T.12N., R.4E., U.M.
Secs. 1-5, 8-17, 20-27, 34-36.

T.12N., R.5E., U.M.
Secs. 24, 25, 36.

T.12N., R.6E., U.M.
Secs. 1-5, 7-36.

T.13N., R.4E., U.M.
Secs. 25-28, 32-36.

11.17. The parties.

"The parties" means ASRC and the State; unless the context clearly refers to a third party, "party" means either ASRC or the State.

11.18. Person.

"Person" means a natural person and all types of private or governmental entities, including but not limited to all such entities listed in AS 01.10.060(7), and any corporate subsidiary or joint venture.

11.19. Point Lay subsurface.

"Point Lay subsurface" means the subsurface in all uplands and submerged lands now and hereafter existing in the following lands, all located within the Umiat Meridian:

T.1N., R.45W., U.M.
Secs. 1-36.

T.1N., R.46W., U.M.
Secs. 1-3, 10-15, 22-27, 34-36.

T.2N., R.45W., U.M.
Secs. 1-36.

T.2N., R.46W., U.M.
Secs. 2, 3, 10, 11, 14, 15, 22-24, 26, 27, 34-36.

T.3N., R.45W., U.M.
Secs. 1, 2, 11, 12.

T.4N., R.45W., U.M.
Secs. 25, 26, 35, 36.

T.6N., R.43W., U.M.
Secs. 1, 2, 11-14, 23-28, 31-36.

T.7N., R.43W., U.M.
Sec. 36.

11.20. Proposed Action Notice.

"Proposed Action Notice" means a written notice given by the State to ASRC describing the portion of **Nuiqsut subsurface** or **Point Lay subsurface** involved in a proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** and the nature (and, to the extent then known by the State, the proposed terms) of that proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** as more fully set forth in paragraph 4.3(b) of this Settlement Agreement.

11.21. Protest Notice.

"Protest Notice" means a written notice given by ASRC to the State protesting an **Action Notice** and stating the objections of ASRC to **substantive terms and conditions** of a proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation**, as more fully set forth in paragraph 4.3(e) of this Settlement Agreement.

11.22. Prudent Landowner Standard.

"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.

11.23. Qualified Independent Consultant.

"Qualified Independent Consultant" means a member of the Consultant Group as more fully set forth in paragraph 4.3(h) of this Settlement Agreement.

11.24. 7(i) Agreement.

"7(i) Agreement" means the Section 7(i) Settlement Agreement reached in 1982 between ASRC and other ANCSA Regional Corporations.

11.25. Substantive terms and conditions.

"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 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.

11.26. Subsurface.

"Subsurface" means all interests in oil, gas, or other minerals, now known or discovered in the future in, on, or under land (including all depths, formations, and horizons), together with all rights, privileges, benefits, and powers conferred upon the owner of that interest with respect to the use and occupation of the surface of, and the subsurface depths under, the lands that may be necessary, convenient, or incidental to the possession and enjoyment (and including, without limitation, exploring, drilling, developing, producing, mining, saving, handling, treating, transporting, marketing, and operating the

oil, gas, or other minerals). However, "**subsurface**" does not include any "mineral" that on January 3, 1959, was subject to location under the mining laws of the United States, does not include sand and gravel (whether or not of an uncommon variety), and does not include water.

11.27. Subsurface Agreement.

"**Subsurface Agreement**" means any oil, gas, or mineral lease or other contract or agreement granting or agreeing to grant to any person any right, title, or interest in or to any **Nuiqsut subsurface** or **Point Lay subsurface** or any right, license or permit to explore for, develop, produce, or otherwise exploit oil, gas, or other minerals in, on, or under any **Nuiqsut subsurface** or **Point Lay subsurface**; however, a contract or agreement to sell, exchange, or otherwise dispose of oil, gas, or minerals after severance or production thereof from the **subsurface** is not a "**Subsurface Agreement**." Also, a surface authorization given pursuant to the State's sovereign authority (such as land- or water-use permits) is not a **Subsurface Agreement** whether or not the authorization is given in support of development of the **Nuiqsut Subsurface** or the **Point Lay Subsurface**. Likewise, a license or permit authorizing the licensee or permittee to conduct seismic exploration on the **Nuiqsut subsurface** area or **Point Lay subsurface** area (which license or permit does not grant any right to drill exploratory or development wells or otherwise to produce or remove or acquire any right or interest in oil, gas or other minerals or **subsurface revenues**) is not a **Subsurface Agreement**, although such license or permit shall be subject to the provisions of subsection 10.3.

11.28. Subsurface Agreement Solicitation.

"**Subsurface Agreement Solicitation**" means a request for bids, notice of lease sale, or other form of solicitation of bid proposals or offers for **Subsurface Agreements**; however, for purposes of this Settlement Agreement, the "issuance" of or to "issue" a **Subsurface Agreement Solicitation** includes, when applicable, the execution and delivery of a **Subsurface Agreement**

as described in that **Subsurface Agreement Solicitation** in acceptance of a bid or offer received in response to that **Subsurface Agreement Solicitation**.

11.29. Subsurface revenues.

"**Subsurface revenues**" means all bid deposits, bonuses, rents, net profits, royalties, the proceeds of sale or exchanges, benefits, or any other thing of value that is received and is attributable to or generated from the exploration, development, production, or other exploitation of, or lease, sale, exchange, or other disposition of any interest in the **Nuiqsut subsurface** or the **Point Lay subsurface**, as applicable, except as expressly otherwise provided in paragraph 7.3(b) of this Settlement Agreement.. **Subsurface revenues** includes all rents, profits, and royalties, the proceeds of sales or exchanges, benefits, or any other thing of value that is received and is attributable to or generated from the oil and gas leases described in section 9 attributable to any part of the **Nuiqsut subsurface**. When **subsurface revenues** are received in a form other than cash or cash equivalents, the cash **fair market value** at the time of the receipt will be included in and considered as **subsurface revenues**.

Subsurface revenues does not include taxes of any kind owed to the State by any **person**, including ASRC. **Subsurface revenues** also does not include the customary fees charged by the State in connection with the filing of an application for a permit, lease, license, or mining claim, mining lease, or mining leasehold location that are generally applicable to all such applications and are not limited to or different in amount with respect to applications pertaining to **Nuiqsut subsurface** or **Point Lay subsurface** as compared to other **subsurface** areas, or other like generally applicable fees customarily charged by the State for authorizations, publications, or services.

11.30. Unauthorized Action.

"**Unauthorized Action**" means the execution or issuance by the State as executive of any **Subsurface Agreement** or

Subsurface Agreement Solicitation which has not, within six (6) months before execution or issuance thereof, either:

(a) been approved by an **Approval Agreement** as to its **substantive terms and conditions** pursuant to paragraph 4.3(c); or

(b) been the subject of an **Action Notice** received by ASRC pursuant to paragraph 4.3(d) with respect to which ASRC has failed to give a **Protest Notice** to the State pursuant to paragraph 4.3(e) within ten (10) days after receipt of that **Action Notice**; or

(c) been the subject of a **Consultant Opinion** rendered pursuant to paragraph 4.3(j) concluding that execution or issuance thereof either would or would not be consistent with the standard set forth in paragraph 4.2(a) of this Settlement Agreement.

12. SIGNATURES.

This Settlement Agreement is being signed in five (5) counterparts, to be effective as of the date of execution hereof set out below by the last of the parties named below who are executing this Settlement Agreement on behalf of ASRC and the State, respectively. Each will be deemed an original; however, all constitute one and the same agreement.

ARCTIC SLOPE REGIONAL CORPORATION

Executed:
December 17, 1991

By Jacob Adams
Name: Jacob Adams
Title: President

STATE OF ALASKA

BY: ATTORNEY GENERAL
CHARLES E. COLE

Executed:
December 13, 1991

By Charles E. Cole
Name:
Title:

AND

BY: STATE OF ALASKA
DEPARTMENT OF NATURAL
RESOURCES

Executed:
December 17, 1991

By Harold C. Heinze
Harold C. Heinze,
Commissioner

THE STATE OF ALASKA §
 § ss.
3rd JUDICIAL DISTRICT §

This is to certify that on the 17th day of December, 1991, before me appeared Jacob Adams, the person who has been lawfully authorized as the President of Arctic Slope Regional Corporation, a corporation organized and existing under the laws of the state of Alaska, to execute the foregoing document; that Jacob Adams executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

Shirley Howes
Notary Public in and for Alaska

My Commission Expires: July 10, 1994

THE STATE OF ALASKA

§
§
§

ss.

2nd JUDICIAL DISTRICT

This is to certify that on the 13th day of December, 1991, before me appeared Charles E. Cole, the person who has been lawfully delegated the authority of Charles E. Cole, the Attorney General, State of Alaska, to execute the foregoing document; that he executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

Gerrine Lindblom

Notary Public in and for Alaska

My Commission Expires: 9-11-92

THE STATE OF ALASKA

§
§
§

ss.

3rd JUDICIAL DISTRICT

This is to certify that on the 17th day of December, 1991, before me appeared Harold C. Heinze, the Commissioner, Department of Natural Resources, State of Alaska; that Harold C. Heinze executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

Shirley Haines

Notary Public in and for Alaska

My Commission Expires: July 10, 1994

EXHIBIT A

IN THE _____

BY THE _____ COMMITTEE BY
REQUEST OF THE GOVERNOR

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE—SECOND SESSION

A BILL

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

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

- * Sec. 1. PURPOSE. The purpose of the Act is to provide for the settlement of certain claims raised in litigation between the State of Alaska and Arctic Slope Regional Corporation in "State of Alaska v. Arctic Slope Regional Corporation," Alaska Superior Court, Third Judicial District, Case No. 3AN-85-15523.
- * Sec. 2. RATIFICATION. Notwithstanding any other provision of Alaska law, the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and the State of Alaska" (including the Exhibits to it) is incorporated herein by reference and is hereby ratified as to the rights, duties, agreements, and obligations of the State of Alaska provided for or contemplated in it. No statutory or common law rules against perpetuities or restraints of alienation of property shall apply to the settlement agreement or to any interest or power created by it.
- * Sec. 3. COMMISSIONER AUTHORITY. The commissioner of natural resources is authorized to carry out and perform the settlement agreement, including, without limitation, executing and delivering patents to Arctic Slope Regional

Corporation as provided for in the settlement agreement, notwithstanding any procedural requirement or other provision of the Alaska Statutes that might otherwise be deemed a restriction on the commissioner's authority to do so. However, the commissioner may not materially amend the settlement agreement without legislative approval.

- * Sec. 4. RECORDATION. (a) The commissioner of natural resources shall record a true and authenticated photocopy of the settlement agreement and any conveyance document required thereby in the recording office of the appropriate recording district, and incorporate the settlement agreement in the lands records system maintained by the Department of Natural Resources.

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

- * Sec. 5. ACTIONS. (a) No person may bring an action challenging the legality of the settlement agreement, in whole or in part, or a provision of this act, unless the action is commenced in a state superior court within thirty (30) days after the effective date of this act.

(b) The State of Alaska waives its sovereign immunity from suit by Arctic Slope Regional Corporation or its successors or assigns seeking to enforce or protect rights conferred on Arctic Slope Regional Corporation under the settlement agreement, but only if that action is brought in state superior court. Nothing in this act is intended to waive the State of Alaska's U.S. Constitution Eleventh Amendment immunity from suit in federal court.

(c) Nothing in this act is intended to create a right in any person to challenge the legality of all or part of the settlement agreement or this act.

- * Sec. 6. This act takes effect immediately in accordance with AS 01.10.070(c).

EXHIBIT B

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

STATE OF ALASKA,	§
	§
Plaintiff,	§
	§
vs.	§
	§
ARCTIC SLOPE REGIONAL	§
CORPORATION,	§
	§
Defendant.	§
	§

Case No. 3AN-85-15523

STIPULATION FOR DISMISSAL

The parties, through counsel, hereby stipulate to dismiss this action without prejudice, each party to bear its own costs, including attorney's fees. This dismissal is made pursuant to the terms of the 1991 Settlement Agreement Between Arctic Slope Regional Corporation And The State Of Alaska.

Dated: _____, 1991 WICKWIRE, SEWARD, GREENE & CROSBY

By _____
David C. Crosby

Attorneys for the defendant, Arctic
Slope Regional Corporation

CHARLES E. COLE
ATTORNEY GENERAL
STATE OF ALASKA

Dated: _____, 1991

By _____

Assistant Attorney General for
plaintiff, State of Alaska

ORDER

It is so ordered this _____ day of _____,
1991, in Anchorage, Alaska.

JUDGE OF THE SUPERIOR COURT

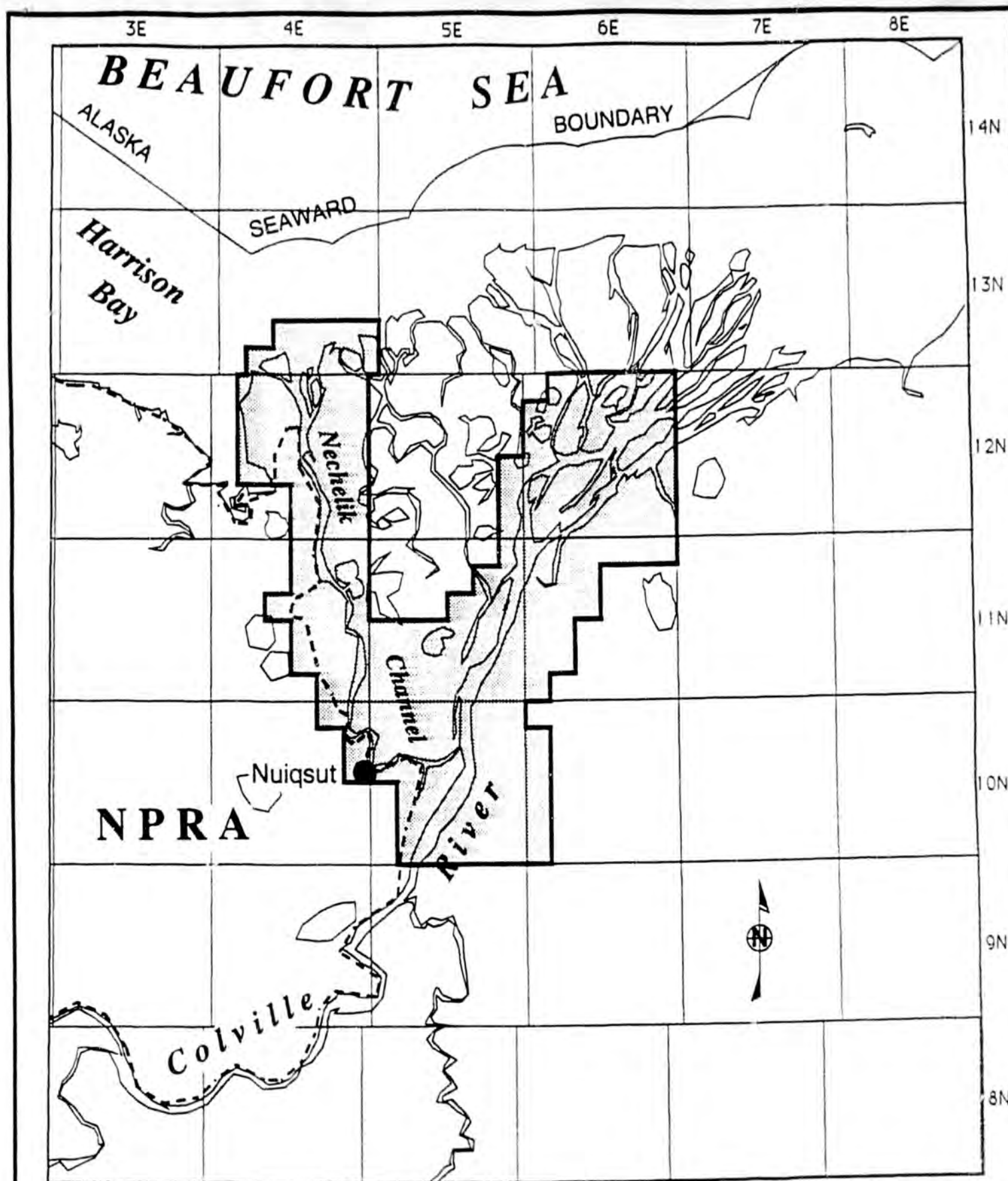
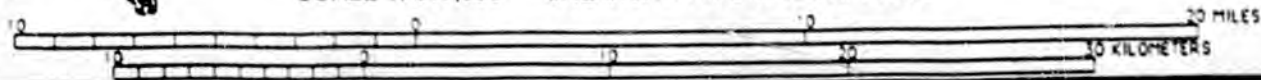


Exhibit C

Nuiqsut Subsurface

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

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



CHUKCHI

SEA

Point Lay

ALASKA

SEAWARD

Kasegaluk

Kokolik

River

Kukpowruk

River

UMIAT

BASE

LINE

BOUNDARY

Lagoon

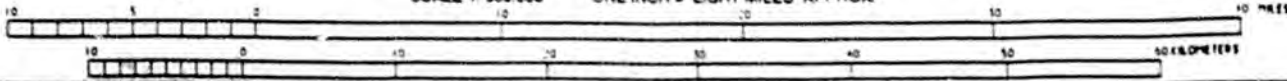


Exhibit D
Point Lay Subsurface

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

EXHIBIT E

ASRC AND STATE PERCENTAGE OWNERSHIP (NUIQSUT SUBSURFACE)

<u>Township/Section</u>	<u>ASRC Percentage</u>	<u>State Percentage</u>	<u>ASRC</u>
T10N, R4E Umiat Meridian			
Section: 1	44.93%	55.07%	640
2	92.14%	7.86%	640
12	79.05%	20.95%	640
13	94.45%	5.55%	640
T10N, R5E Umiat Meridian			
Section: 1	42.55%	57.45%	640
2	36.70%	63.30%	640
3	19.25%	80.75%	640
4	50.00%	50.00%	640
5	50.00%	50.00%	640
6	50.00%	50.00%	609
7	48.90%	51.10%	612
8	49.48%	50.52%	640
9	50.00%	50.00%	640
10	21.78%	78.22%	640
11	42.61%	57.39%	640
12	49.75%	50.25%	640
13	50.00%	50.00%	640
14	49.58%	50.42%	640
15	18.00%	82.00%	640
16	41.43%	58.57%	640
17	79.43%	20.57%	640
18	65.13%	34.87%	615
20	83.54%	16.46%	640
21	43.62%	56.38%	640
22	26.61%	73.39%	640
23	50.00%	50.00%	640
24	50.00%	50.00%	640
25	50.00%	50.00%	640
26	50.00%	50.00%	640
27	45.27%	54.73%	640
28	21.42%	78.58%	640
29	53.88%	46.12%	640
32	See Alternative Outcomes for T10N, R5E		
33	See Alternative Outcomes for T10N, R5E		
34	48.98%	51.02%	640
35	50.00%	50.00%	640
36	50.00%	50.00%	640
T10N, R5E UM: Alternate Outcomes for Sections Affected by Alaska Native Allotment Applications			
Section 33, Native Allotment Application F14607			
Approved	30.18%	69.82%	640
Rejected	41.11%	58.89%	640
Section 32, Native Allotment Application F14607			
Approved	24.46%	75.54%	640
Rejected	26.05%	73.95%	640

<u>Township/Section</u>	<u>ASRC Percentage</u>	<u>State Percentage</u>	<u>Acreage</u>
T10N, R4E Umiat Meridian			
Section: 7	50.00%	50.00%	612
18	50.00%	50.00%	515
19	50.00%	50.00%	617
30	50.00%	50.00%	620
31	50.00%	50.00%	623
T11N, R4E Umiat Meridian			
Section: 1	46.49%	53.51%	640
2	42.75%	57.25%	640
3	89.75%	10.25%	640
10	97.61%	2.39%	640
11	29.41%	70.59%	640
12	23.13%	76.87%	640
13	32.45%	67.55%	640
14	46.37%	53.63%	640
15	60.20%	39.80%	640
16	99.66%	0.34%	640
22	78.65%	21.35%	640
23	49.33%	50.67%	640
24	39.49%	60.51%	640
25	36.59%	63.41%	640
26	51.25%	48.75%	640
27	97.40%	2.60%	640
35	69.49%	30.51%	640
36	39.03%	60.97%	640
T11N, R5E Umiat Meridian			
Section: 1	36.31%	63.69%	640
11	42.32%	57.68%	640
12	17.22%	82.78%	640
13	22.52%	77.48%	640
14	37.21%	62.79%	640
15	49.99%	50.01%	640
19	47.12%	52.88%	601
20	44.21%	55.79%	640
21	50.00%	50.00%	640
22	42.74%	57.26%	640
23	31.65%	68.35%	640
24	33.89%	66.11%	640
25	49.35%	50.65%	640
26	20.39%	79.61%	640
27	32.39%	67.61%	640
28	49.94%	50.06%	640
29	49.14%	50.86%	640
30	49.83%	50.17%	604
31	50.00%	50.00%	607
32	50.00%	50.00%	640
33	49.80%	50.20%	640
34	14.34%	85.66%	640
35	30.37%	69.63%	640
36	46.60%	53.40%	640
T11N, R6E Umiat Meridian			
Section: 1	49.02%	50.98%	640
2	50.00%	50.00%	640
3	50.00%	50.00%	640
4	50.00%	50.00%	640
5	41.98%	58.02%	640
6	19.22%	80.78%	593

<u>Township/Section</u>	<u>ASRC Percentage</u>	<u>State Percentage</u>	<u>Acreage</u>
7	39.48%	60.52%	596
8	44.08%	55.92%	640
9	49.84%	50.16%	640
16	50.00%	50.00%	640
17	44.93%	55.07%	640
18	45.77%	54.23%	599
19	49.50%	50.50%	601
20	45.17%	54.83%	640
29	49.31%	50.79%	640
30	50.00%	50.00%	604
31	50.00%	50.00%	607

T12N, R4E Umiat Meridian

Section: 1	44.69%	55.36%	640
2	45.38%	54.62%	640
3	36.58%	73.42%	640
4	42.31%	57.69%	640
5	23.81%	76.19%	640
8	35.40%	64.60%	640
9	48.47%	51.53%	640
10	See Alternative Outcomes for T12N, R4E		
11	See Alternative Outcomes for T12N, R6E		
12	46.68%	53.32%	640
13	44.91%	55.09%	640
14	See Alternative Outcomes for T12N, R4E		
15	See Alternative Outcomes for T12N, R4E		
16	53.79%	46.21%	640
17	30.37%	69.63%	640
20	12.55%	87.45%	640
21	73.77%	26.23%	640
22	See Alternative Outcomes for T12N, R4E		
23	49.95%	50.05%	640
24	48.03%	51.97%	640
25	44.21%	55.79%	640
26	39.82%	60.18%	640
27	92.00%	8.00%	640
34	99.82%	0.18%	640
35	40.76%	59.24%	640
36	49.28%	50.72%	640

T12N, R4E UM: Alternate Outcomes for Sections Affected by Alaska Native Allotment Applications

Section 10, Native Allotment Application F11949

Approved	29.61%	70.39%	640
Rejected	30.39%	69.61%	640

Section 11, Native Allotment Application F11949

Approved	47.13%	52.87%	640
Rejected	48.30%	51.70%	640

Section 14, Native Allotment Applications F11949 and F11951

Both approved	35.55%	64.45%	640
F11949 approved, F11951 rejected	43.36%	56.64%	640
F11949 rejected, F11951 approved	42.19%	57.81%	640
Both rejected	50.00%	50.00%	640

Township/Section	ASRC Percentage	State Percentage	Acreage
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Section 15, Native Allotment Applications F11949, F11951, F11947¹, and F11943¹

F11949	F11951	F11947 ¹	F11943 ¹			
Approved	Approved	Approved	Approved	41.66%	58.34%	640
Rejected	Approved	Approved	Approved	45.56%	54.44%	640
Approved	Rejected	Approved	Approved	46.34%	53.66%	640
Approved	Approved	Rejected	Approved	28.33%	71.67%	640
Approved	Approved	Approved	Rejected	38.28%	61.72%	640
Rejected	Rejected	Approved	Approved	50.25%	49.75%	640
Rejected	Approved	Rejected	Approved	33.13%	66.87%	640
Rejected	Approved	Approved	Rejected	42.41%	57.59%	640
Approved	Rejected	Rejected	Approved	34.09%	65.91%	640
Approved	Rejected	Approved	Rejected	43.24%	56.76%	640
Approved	Approved	Rejected	Rejected	23.17%	76.83%	640
Rejected	Approved	Rejected	Rejected	28.31%	71.69%	640
Rejected	Rejected	Approved	Rejected	47.37%	52.63%	640
Rejected	Rejected	Rejected	Approved	38.89%	61.11%	640
Approved	Rejected	Rejected	Rejected	29.34%	70.66%	640
Rejected	Rejected	Rejected	Rejected	34.48%	65.52%	640

Section 22, Native Allotment Application F11943

Approved	52.63%	47.37%	640
Rejected	40.05%	50.95%	640

T12N, R5E Umiat Meridian

Section: 24	50.00%	50.00%	640
25	40.29%	59.71%	640
36	41.58%	58.42%	640

T12N, R6E Umiat Meridian

Section: 1	See Alternative Outcomes for T12N, R6E		
2	See Alternative Outcomes for T12N, R6E		
3	37.42%	62.58%	640
4	30.44%	69.56%	640
5	39.57%	60.43%	640
7	39.12%	60.88%	580
8	37.87%	62.13%	640
9	36.02%	63.98%	640
10	See Alternative Outcomes for T12N, R6E		
11	See Alternative Outcomes for T12N, R6E		
12	23.74%	76.26%	640
13	23.22%	76.78%	640
14	32.74%	67.26%	640
15	22.43%	77.57%	640
16	28.11%	71.89%	640
17	36.61%	63.39%	640
18	40.59%	59.41%	583
19	38.54%	61.46%	585
20	25.71%	74.29%	640
21	34.35%	65.65%	640
22	28.29%	71.71%	640

¹ Alaska Native Allotment Application F11943 or Alaska Native Allotment Application F11947 (or both, as applicable) shall be deemed to have been "rejected" for purposes of this Exhibit E as to a section of Nuiqsut subsurface affected thereby if that section becomes a Fully Conveyed Section as defined in subsection 11.12 of the Settlement Agreement before all Nuiqsut subsurface within that section covered by that Alaska Native Allotment Application has been conveyed to ASRC by an interim conveyance or patent from the United States.

<u>Township/Section</u>	<u>ASRC Percentage</u>	<u>State Percentage</u>	<u>Acreage</u>
23	22.61%	77.39%	640
24	40.58%	59.42%	640
25	44.58%	55.42%	640
26	49.26%	50.74%	640
27	28.25%	71.75%	640
28	31.69%	68.31%	640
29	46.40%	53.60%	640
30	29.67%	70.33%	588
31	33.10%	66.90%	591
32	26.59%	73.41%	640
33	33.17%	66.83%	640
34	50.00%	50.00%	640
35	50.00%	50.00%	640
36	47.80%	52.20%	640

T12N, R6E UM: Alternate Outcomes for Sections Affected by Alaska Native Allotment Applications

Section: 1, Native Allotment Applications F13833 and F13834

Both approved	15.48%	84.52%	640
F13833 approved, F13834 rejected	23.29%	76.71%	640
F13833 rejected, F13834 approved	17.12%	82.88%	640
Both rejected	24.93%	75.07%	640

Section: 2, Native Allotment Applications F13833, F13834, and F13835

All approved	21.77%	78.23%	640
F13833 F13834 F13835			
Approved Rejected Rejected	29.26%	70.74%	640
Approved Approved Rejected	24.58%	75.42%	640
Approved Rejected Approved	26.45%	73.55%	640
Rejected Approved Rejected	33.88%	66.12%	640
Rejected Approved Approved	31.07%	68.93%	640
Rejected Rejected Approved	35.75%	64.25%	640
All rejected	38.56%	61.44%	640

Section: 10, Native Allotment Applications F14315

Approved	28.27%	71.73%	640
Rejected	36.79%	63.21%	640

Section: 11, Native Allotment Applications F13833, F13835, and F14315

All approved	9.01%	90.99%	640
F13833 F13835 F14315			
Approved Rejected Rejected	22.68%	77.32%	640
Approved Approved Rejected	12.99%	87.01%	640
Approved Rejected Approved	18.70%	81.30%	640
Rejected Approved Rejected	14.55%	85.45%	640
Rejected Approved Approved	10.57%	89.43%	640
Rejected Rejected Approved	20.26%	79.74%	640
All rejected	24.24%	75.76%	640

T13N, R4E Umiat Meridian

Section: 25	16.32%	83.68%	640
26	1.91%	98.09%	640
27	4.26%	95.74%	640
28	0.21%	99.79%	640
32	10.38%	89.62%	640
33	23.04%	76.96%	640
34	32.35%	67.65%	640
35	39.48%	60.52%	640
36	42.65%	57.35%	640

EXHIBIT F

ASRC AND STATE PERCENTAGE OWNERSHIP (POINT LAY SUBSURFACE)

<u>Township</u>	<u>Section</u>	<u>ASRC Percentage</u>	<u>State Percentage</u>	<u>Acreage</u>
T1N,	Meridian			
Sect		49.00%	51.00%	640
		49.00%	51.00%	640
		49.00%	51.00%	640
		49.00%	51.00%	640
		49.00%	51.00%	640
6		49.00%	51.00%	626
7		49.00%	51.00%	628
8		49.00%	51.00%	640
9		49.00%	51.00%	640
10		49.00%	51.00%	640
11		49.00%	51.00%	640
12		49.00%	51.00%	640
13		49.00%	51.00%	640
14		49.00%	51.00%	640
15		49.00%	51.00%	640
16		49.00%	51.00%	640
17		49.00%	51.00%	640
18		49.00%	51.00%	631
19		49.00%	51.00%	634
20		49.00%	51.00%	640
21		49.00%	51.00%	640
22		49.00%	51.00%	640
23		49.00%	51.00%	640
24		49.00%	51.00%	640
25		49.00%	51.00%	640
26		49.00%	51.00%	640
27		49.00%	51.00%	640
28		49.00%	51.00%	640
29		49.00%	51.00%	640
30		49.00%	51.00%	636
31		49.00%	51.00%	639
32		49.00%	51.00%	640
33		49.00%	51.00%	640
34		49.00%	51.00%	640
35		49.00%	51.00%	640
36		49.00%	51.00%	640
T1N, R46W Umiat Meridian				
Section:	1	22.20%	77.80%	640
	2	3.06%	96.94%	640
	3	6.51%	93.49%	640
	10	3.45%	96.55%	640
	11	2.37%	97.63%	640
	12	16.46%	83.54%	640
	13	27.95%	72.05%	640
	14	11.48%	88.52%	640
	15	7.27%	92.73%	640
	22	4.21%	95.79%	640
	23	15.47%	84.53%	640
	24	32.16%	67.84%	640
	25	42.88%	57.12%	640
	26	9.95%	90.05%	640

<u>Township/Section</u>	<u>ASRC Percentage</u>	<u>State Percentage</u>	<u>Acreage</u>
27	10.03%	89.97%	640
34	7.27%	92.73%	640
35	1.68%	98.32%	640
36	47.85%	52.15%	640
T2N, R45W Umiat Meridian			
Section: 1	49.00%	51.00%	640
2	49.00%	51.00%	640
3	49.00%	51.00%	640
4	49.00%	51.00%	640
5	49.00%	51.00%	640
6	13.66%	86.34%	610
7	1.20%	98.80%	613
8	48.23%	51.77%	640
9	49.00%	51.00%	640
10	49.00%	51.00%	640
11	49.00%	51.00%	640
12	49.00%	51.00%	640
13	49.00%	51.00%	640
14	49.00%	51.00%	640
15	49.00%	51.00%	640
16	49.00%	51.00%	640
17	49.00%	51.00%	640
18	22.67%	77.33%	616
19	7.14%	92.86%	618
20	49.00%	51.00%	640
21	49.00%	51.00%	640
22	49.00%	51.00%	640
23	49.00%	51.00%	640
24	49.00%	51.00%	640
25	49.00%	51.00%	640
26	49.00%	51.00%	640
27	49.00%	51.00%	640
28	49.00%	51.00%	640
29	49.00%	51.00%	640
30	16.57%	83.43%	621
31	32.25%	67.75%	623
32	49.00%	51.00%	640
33	49.00%	51.00%	640
34	49.00%	51.00%	640
35	49.00%	51.00%	640
36	49.00%	51.00%	640
T2N, R46W Umiat Meridian			
Section: 2	1.99%	98.01%	640
3	3.06%	96.94%	640
10	3.06%	96.94%	640
11	3.06%	96.94%	640
14	5.90%	94.10%	640
15	2.30%	97.70%	640
22	3.45%	96.55%	640
23	3.60%	96.40%	640
24	0.38%	99.62%	640
26	5.74%	94.26%	640
27	5.36%	94.64%	640
34	7.27%	92.73%	640
35	1.30%	98.70%	640
36	13.40%	86.60%	640

<u>Township/Section</u>	<u>ASRC Percentage</u>	<u>State Percentage</u>	<u>Acreage</u>
T3N, R45W Umiat Meridian			
Section: 1	49.00%	51.00%	640
2	49.00%	51.00%	640
11	49.00%	51.00%	640
12	49.00%	51.00%	640
T4N, R45W Umiat Meridian			
Section: 25	49.00%	51.00%	640
26	49.00%	51.00%	640
35	49.00%	51.00%	640
36	49.00%	51.00%	640
T6N, R43W Umiat Meridian			
Section: 1	49.00%	51.00%	640
2	49.00%	51.00%	640
11	49.00%	51.00%	640
12	49.00%	51.00%	640
13	49.00%	51.00%	640
14	49.00%	51.00%	640
23	49.00%	51.00%	640
24	49.00%	51.00%	640
25	49.00%	51.00%	640
26	49.00%	51.00%	640
27	49.00%	51.00%	640
28	49.00%	51.00%	640
31	49.00%	51.00%	623
32	49.00%	51.00%	640
33	49.00%	51.00%	640
34	49.00%	51.00%	640
35	49.00%	51.00%	640
36	49.00%	51.00%	640
T7N, R43W Umiat Meridian			
Section: 36	49.00%	51.00%	640

EXHIBIT G

WARRANTY DEED

This warranty deed is made from Arctic Slope Regional Corporation, an Alaska corporation ("ASRC"), whose mailing address is P. O. Box 129, Barrow, Alaska 99723, to the State of Alaska ("State"), whose mailing address is Chief, Title Administration Section, Division of Land, State of Alaska, Department of Natural Resources, 3601 C Street, Suite 960, Anchorage, Alaska 99503.

W I T N E S S E T H :

This warranty deed is made pursuant to the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and the State of Alaska" ("Settlement Agreement"), which was ratified and approved by the Alaska Legislature in chapter __ SLA 199__ and to which reference is here made for all purposes. The Settlement Agreement has been recorded in the recording office of the Barrow recording district and has been noted in the lands records system maintained by the State's Department of Natural Resources.

Now, therefore, in consideration of the premises, the mutual covenants and agreements contained herein and in the Settlement Agreement, and other good and valuable consideration (the receipt and sufficiency of which are all hereby acknowledged), ASRC and the State hereby agree as follows:

1. Definitions. In this warranty deed, the following definitions apply:

(a) "**Subsurface**" means all interests in oil, gas, or other minerals, now known or discovered in the future in, on, or under land (including all depths, formations, and horizons), together with all rights, privileges, benefits, and powers conferred upon the owner of that interest with respect to the use and occupation of the surface of, and the subsurface depths under, the lands that may be necessary, convenient, or incidental to the possession and enjoyment (and including, without

limitation, exploring, drilling, developing, producing, mining, saving, handling, treating, transporting, marketing, and operating the oil, gas or other minerals). However, "subsurface" does not include any "mineral" that on January 3, 1959, was subject to location under the mining laws of the United States, does not include sand and gravel (whether or not of an uncommon variety), and does not include water.

(b) **"State percentage"** means, as to each different section or portion of a section of Nuiqsut subsurface described in Exhibit A hereto, the undivided percentage interest described as the **"State percentage"** following the description of that particular section or portion of a section in Exhibit A.

(c) **"ASRC percentage"** means, as to each different section or portion of a section of Nuiqsut subsurface described in Exhibit A hereto, the undivided percentage interest described as the **"ASRC percentage"** following the description of that particular section or portion of a section in Exhibit A.

(d) **"Parcel"** means, as to each entire section of Nuiqsut subsurface described in Exhibit A, the entirety of that section; and as to less than all of a section of Nuiqsut subsurface described in Exhibit A, **"parcel"** means only that part of the section so described.

(e) **"Person"** means a natural person and all types of private or governmental entities, including but not limited to all entities listed in AS 01.10.060(7), and any corporate subsidiary or joint venture.

(f) **"Nuiqsut subsurface"** means the subsurface in all the uplands and submerged lands now and hereafter existing in the lands described in subsection 11.16 of the Settlement Agreement (subject, if applicable, to the provisions of paragraph 2.3(b) of the Settlement Agreement).

(g) **"Subsurface revenues"** means all bid deposits, bonuses, rents, net profits, royalties, the proceeds of sales or exchanges, benefits, or any other thing of value that is received and is attributable to or generated from the exploration,

development, production, or other exploitation of, or lease, sale, exchange, or other disposition of any interest in the Nuiqsut subsurface, except as expressly otherwise provided in paragraph 7.3(b) of the Settlement Agreement. "**Subsurface revenues**" includes all rents, profits and royalties, the proceeds of sales or exchanges, benefits, or any other thing of value that is received and is attributable to or generated from the oil and gas leases described in section 9 of the Settlement Agreement attributable to any part of the Nuiqsut subsurface. When "**subsurface revenues**" are received in a form other than cash or cash equivalents, the cash fair market value at the time of the receipt will be included in and considered as "**subsurface revenues**."

"**Subsurface revenues**" does not include taxes of any kind owed to the State by any person, including ASRC.

"**Subsurface revenues**" also does not include the customary fees charged by the State in connection with the filing of an application for a permit, lease, license, or mining claim, mining lease, or mining leasehold location that are generally applicable to all such applications and are not limited to or different in amount with respect to applications pertaining to Nuiqsut subsurface as compared to other subsurface areas, or other like generally applicable fees customarily charged by the State for authorizations, publications or services.

(h) "**Fair market value**" means the amount of money that an informed purchaser, willing but not obligated to buy, would pay an informed seller, willing but not obligated to sell, for particular property, goods, or services.

2. Conveyance. Pursuant to the Settlement Agreement, ASRC hereby grants, assigns, and conveys to the State the applicable State percentage set out in Exhibit A hereto in and to the subsurface in all those portions of the Nuiqsut subsurface (without regard to whether that Nuiqsut subsurface is within uplands or submerged lands) in the respective parcels of Nuiqsut subsurface in the Barrow recording district in the State of

Alaska described in Exhibit A hereto to which ASRC has heretofore 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 within those respective parcels of Nuiqsut subsurface.

3. Reservation. Pursuant to the Settlement Agreement, in making this grant, assignment, and conveyance, ASRC reserves and excepts to itself and its successors and assigns, the applicable ASRC percentage set out in Exhibit A in and to the subsurface in the portions of the Nuiqsut subsurface now and hereafter existing in the respective parcels of Nuiqsut subsurface described in paragraph 2 above.

4. Future Changes. As provided for in the Settlement Agreement, the State has granted or will grant to ASRC one or more patents (collectively, the "State Patent") conveying to ASRC the applicable ASRC percentage set out in Exhibit A in and to the subsurface in all those portions of the Nuiqsut subsurface (without regard to whether that Nuiqsut subsurface is within uplands or submerged lands) in the respective parcels of Nuiqsut subsurface described in Exhibit A hereto to which the State has heretofore acquired title, or may hereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within those respective parcels of Nuiqsut subsurface, reserving to the State the applicable State percentage set out in Exhibit A in the subsurface in those portions of the Nuiqsut subsurface now and hereafter existing in those respective parcels of Nuiqsut subsurface. This warranty deed is not intended and shall not be construed to grant to the State any interest in the ASRC percentage in any Nuiqsut subsurface which has been or is conveyed from the State to ASRC pursuant to the State Patent, and it is intended by ASRC and the State that, after giving effect to this warranty deed and the State Patent, the entirety of the Nuiqsut subsurface in each of the parcels described in this warranty deed and in the State

Patent shall be owned by ASRC and the State in undivided interests in proportion to the applicable ASRC percentage and the applicable State percentage, respectively, set out in Exhibit A. Further, pursuant to the Settlement Agreement, it is expressly stipulated and provided that the respective undivided ownership interests of the State (that is, the applicable State percentage set out in Exhibit A) and of ASRC (that is, the applicable ASRC percentage set out in Exhibit A) in the Nuiqsut subsurface in each respective parcel of Nuiqsut subsurface described in Exhibit A will not change by virtue of any future change in the boundary, location, or extent of uplands or submerged lands within that parcel.

5. Leases. To the extent that any oil and gas lease previously granted by the State to any person and described in paragraph 2.2(d) of the Settlement Agreement is presently valid and in force and effect as to the subsurface in any parcel of the Nuiqsut subsurface described in Exhibit A, this conveyance is made subject to that oil and gas lease, and subsurface revenues payable under and in connection with that oil and gas lease as to that parcel of the Nuiqsut subsurface after the effective date of this deed shall be owned by the State and ASRC in proportion to the applicable State percentage and applicable ASRC percentage set out in Exhibit A as more fully provided in the Settlement Agreement. Nothing herein is intended or shall be construed to validate or reinstate any oil or gas lease that is not otherwise valid and extant.

6. Habendum. To have and to hold the applicable undivided State percentage interest set out in Exhibit A in and to the portions of the Nuiqsut subsurface now and hereafter existing in the respective parcels of the Nuiqsut subsurface described in paragraph 2 of this deed, together with all and singular the tenements, hereditaments, and appurtenances thereto appertaining, unto the State and its successors and assigns, forever, subject to and in accordance with the terms and provisions of the Settlement Agreement. ASRC does hereby bind itself and its

successors and assigns, to warrant and forever defend all and singular the interests hereby conveyed unto the State (its successors and assigns) against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under ASRC, but not otherwise, subject in all respects to the Settlement Agreement and to the other matters to which this warranty deed is made subject as set forth herein.

7. Further Assurances. The parties agree to take all further actions and execute, acknowledge, and deliver any further documents that are necessary or useful in carrying out the purposes of this warranty deed. Without limitation to the foregoing, ASRC agrees to execute, acknowledge and deliver to the State all additional instruments, notices, and other documents and to do all other and further acts and things as may be necessary to more fully and effectively grant, convey, and assign to the State the interests conveyed hereby and intended to be so conveyed.

8. Governing Law. The validity of this warranty deed shall be governed by and it shall be construed in accordance with the laws of the State of Alaska.

9. Counterparts. This warranty deed may be executed in any number of counterparts and each counterpart shall be deemed to be an original instrument, but all counterparts shall constitute but one conveyance.

10. Successors and Assigns. Subject to the provisions of the Settlement Agreement, this warranty deed shall bind and enure to the benefit of ASRC and the State and the respective successors and assigns of each of them. The covenants and provisions of this warranty deed and of the Settlement Agreement shall be covenants running with the land.

11. Prior Warranties. ASRC hereby assigns to the State with full right of subrogation, to the extent so transferable, the benefit of and the right to enforce the covenants and warranties, if any, which ASRC is entitled to enforce with respect to the interests in the Nuiqsut subsurface provided

herein to be conveyed to the State, including those against any assignors and other predecessors in title.

12. Deed Effective Date. This warranty deed is effective and takes effect as of *[Use, as applicable, in deeds executed pursuant to paragraph 3.1(a) of the Settlement Agreement,* _____, 199__, the date SLA 199__ became effective, or *in deeds executed pursuant to paragraph 3.1(b) of the Settlement Agreement,* _____, 199__, the date the parcels (whether one or more) of Nuiqsut subsurface described in Exhibit A became "**Fully Conveyed Sections**" as defined in the Settlement Agreement].

ARCTIC SLOPE REGIONAL CORPORATION

By _____
Name: _____
Title: _____

THE STATE OF ALASKA

§

§

ss.

§

_____ JUDICIAL DISTRICT

This is to certify that on the _____ day of _____, 199__, before me appeared Jacob Adams, the person who has been lawfully authorized as the President of Arctic Slope Regional Corporation, a corporation organized and existing under the laws of the state of Alaska, to execute the foregoing document; that Jacob Adams executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

Notary Public in and for Alaska

My Commission Expires: _____

EXHIBIT A
TO WARRANTY DEED FROM
ARCTIC SLOPE REGIONAL CORPORATION
TO THE STATE OF ALASKA

1. All of section _____, T_____N, R_____E, Umiat Meridian ("UM"), as described in Interim Conveyance from the United States of America to Arctic Slope Regional Corporation ("ASRC") dated _____, 19_____, recorded in _____.

State percentage_____%; ASRC percentage_____%.

2. The following described portion of section _____, T_____N, R_____E, UM, described in _____ from _____ to ASRC dated _____, 19_____, recorded in _____:

INSERT DESCRIPTION

State percentage_____%; ASRC percentage_____.

General Format: Each section or portion of a section to be described separately with a reference to the Interim Conveyance, Patent, etc., granting subsurface in all or part of such section or portion of a section to ASRC. State percentage and ASRC percentage to be set out separately for each section or portion of a section.

All references in this Exhibit A and in the foregoing Warranty Deed to a "section" of land shall be construed to refer to the entirety of the area (including any area now or hereafter situated within the Beaufort Sea) encompassed within a full square or rectangular section (protracted or projected to the extent, if any, it is within the Beaufort Sea) containing approximately 640 acres.

SIGNED FOR IDENTIFICATION:

ARCTIC SLOPE REGIONAL CORPORATION

By_____

EXHIBIT H

STATE OF ALASKA

PATENT NO. _____

This patent is made from the State of Alaska, through its Department of Natural Resources ("State"), whose mailing address is Chief, Title Administration Section, Division of Land, State of Alaska, Department of Natural Resources, 3601 C Street, Suite 960, Anchorage, Alaska 99503, pursuant to chapter ____ SLA 199__, to Arctic Slope Regional Corporation, an Alaska corporation ("ASRC"), whose mailing address is P. O. Box 129, Barrow, Alaska 99723.

W I T N E S S E T H :

This patent is made pursuant to the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and the State of Alaska" ("Settlement Agreement"), which was ratified and approved by the Alaska Legislature in chapter ____ SLA 199__ and to which reference is here made for all purposes. The Settlement Agreement has been recorded in the recording office of the Barrow recording district and has been noted in the land records system maintained by the State's Department of Natural Resources.

Now, therefore, in consideration of the premises, the mutual covenants and agreements contained herein and in the Settlement Agreement, and other good and valuable consideration (the receipt and sufficiency of which are all hereby acknowledged), ASRC and the State hereby agree as follows:

1. Definitions. In this patent, the following definitions apply:

(a) "**Subsurface**" means all interests in oil, gas, or other minerals, now known or discovered in the future in, on, or under land (including all depths, formations, and horizons), together with all rights, privileges, benefits, and powers conferred upon the owner of that interest with respect to the use and occupation of the surface of, and subsurface depths under,

the lands that may be necessary, convenient, or incidental to the possession and enjoyment (including, without limitation, exploring, drilling, developing, producing, mining, saving, handling, treating, transporting, marketing, and operating the oil, gas, or other minerals). However, "**subsurface**" does not include any "mineral" that on January 3, 1959, was subject to location under the mining laws of the United States, does not include sand and gravel (whether or not of an uncommon variety), and does not include water.

(b) "**State percentage**" means, as to each different section or portion of a section of Nuiqsut subsurface described in Exhibit A hereto, the undivided percentage interest described as the "**State percentage**" following the description of that particular section or portion of a section in Exhibit A. "**State percentage**" means, as to each different section of Point Lay subsurface described in Exhibit B hereto, the undivided percentage interest described as the "**State percentage**" following the description of that particular section in Exhibit B.

(c) "**ASRC percentage**" means, as to each different section or portion of a section of Nuiqsut subsurface described in Exhibit A hereto, the undivided percentage interest described as the "**ASRC percentage**" following the description of that particular section or portion of a section in Exhibit A. "**ASRC percentage**" means, as to each different section of Point Lay subsurface described in Exhibit B hereto, the undivided percentage interest described as the "**ASRC percentage**" following the description of that particular section in Exhibit B.

(d) "**Parcel**" means, as to each entire section of Nuiqsut subsurface or Point Lay subsurface described in Exhibit A or B, the entirety of that section; and as to less than all of a section of Nuiqsut subsurface described in Exhibit A, "**parcel**" means only that portion of the section so described.

(e) "**Nuiqsut subsurface**" means the subsurface in all the uplands and submerged lands now and hereafter existing in the lands described in subsection 11.16 of the Settlement Agreement

(subject, if applicable, to the provisions of paragraph 2.3(b) of the Settlement Agreement).

(f) **"Point Lay subsurface"** means the subsurface in all the uplands and submerged lands now and hereafter existing in the lands described in subsection 11.19 of the Settlement Agreement.

(g) **"Subsurface revenues"** means all bid deposits, bonuses, rents, net profits, royalties, the proceeds of sales or exchanges, benefits, or any other thing of value that is received and is attributable to or generated from the exploration, development, production, or other exploitation of, or lease, sale, exchange, or other disposition of any interest in the Nuiqsut subsurface or Point Lay subsurface, except as otherwise expressly provided in paragraph 7.3(b) of the Settlement Agreement. **"Subsurface revenues"** includes all rents, profits and royalties, the proceeds of sales or exchanges, benefits, or any other thing of value that is received and is attributable to or generated from the oil and gas leases described in section 9 of the Settlement Agreement attributable to any part of the Nuiqsut subsurface. When **"subsurface revenues"** are received in a form other than cash or cash equivalents, the cash fair market value at the time of the receipt will be included in and considered as **"subsurface revenues."**

"Subsurface revenues" does not include taxes of any kind owed to the State by any person, including ASRC.

"Subsurface revenues" also does not include the customary fees charged by the State in connection with the filing of any application for a permit, lease, license, or mining claim, mining lease, or mining leasehold application that are generally applicable to all such applications and are not limited to or different in amount with respect to applications pertaining to Nuiqsut subsurface or Point Lay subsurface as compared to other subsurface areas, or other like generally applicable fees customarily charged by the State for authorizations, publications, or services.

(h) "**Person**" means a natural person and all types of private or governmental entities, including but not limited to all such entities listed in AS 01.10.060(7), and any corporate subsidiary or joint venture.

(i) "**Fair market value**" means the amount of money that an informed purchaser, willing but not obligated to buy, would pay an informed seller, willing but not obligated to sell, for particular property, goods, or services.

2. Conveyance. Pursuant to the Settlement Agreement, the State hereby grants, assigns, and conveys to ASRC and its successors and assigns

(a) the applicable ASRC percentage set out in Exhibit A hereto in and to the subsurface in all those portions of the Nuiqsut subsurface (without regard to whether that Nuiqsut subsurface is within uplands or submerged lands) in the respective parcels of Nuiqsut subsurface in the Barrow recording district in the State of Alaska described in Exhibit A hereto to which the State has heretofore acquired title in any manner other than by virtue of the ASRC Deed described below, or may hereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within those respective parcels of Nuiqsut subsurface, and

(b) the applicable ASRC percentage set out in Exhibit B hereto in and to the subsurface in all those portions of the Point Lay subsurface (without regard to whether that Point Lay subsurface is within uplands or submerged lands) in the respective parcels of Point Lay subsurface in the Barrow recording district in the State of Alaska described in Exhibit B hereto to which the State has heretofore acquired title in any manner, or may hereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within those respective parcels of Point Lay subsurface.

3. Reservation. Pursuant to the Settlement Agreement, in making this grant, assignment, and conveyance, the State reserves and excepts to itself and its successors and assigns

(a) the applicable State percentage set out in Exhibit A in and to the subsurface in the portions of the Nuiqsut subsurface now and hereafter existing in the respective parcels of Nuiqsut subsurface described in subparagraph 2(a) above, and

(b) the applicable State percentage set out in Exhibit B in and to the subsurface in the portions of the Point Lay subsurface now and hereafter existing in the respective parcels of Point Lay subsurface described in subparagraph 2(b) above.

4. Future Changes. As provided for in the Settlement Agreement, ASRC has granted or will grant to the State one or more warranty deeds (collectively, the "ASRC Deed") conveying to the State the applicable ASRC percentage set out in Exhibit A in and to the subsurface in all those portions of the Nuiqsut subsurface (without regard to whether that Nuiqsut subsurface is within uplands or submerged lands) in the respective parcels of Nuiqsut subsurface described in Exhibit A hereto to which ASRC has heretofore acquired title, or may hereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within those respective parcels of Nuiqsut subsurface, reserving to ASRC the applicable ASRC percentage set out in Exhibit A in the subsurface in those portions of the Nuiqsut subsurface now and hereafter existing in those respective parcels of Nuiqsut subsurface. This patent is not intended and shall not be construed to grant to ASRC any interest in the State percentage in any Nuiqsut subsurface which has been or is conveyed from ASRC to the State pursuant to the ASRC Deed, and it is intended by the State and ASRC that, after giving effect to this patent and the ASRC Deed, the entirety of the Nuiqsut subsurface in each of the parcels described in this patent and in the ASRC Deed shall be owned by the State and ASRC in undivided interests in proportion to the applicable State percentage and the applicable ASRC percentage, respectively, set out in Exhibit A. Further, pursuant to the Settlement Agreement, and both with respect to the Point Lay subsurface and the Nuiqsut subsurface, it is expressly stipulated and provided that the

respective undivided ownership interests of ASRC (that is, the applicable ASRC percentage set out in Exhibit A as to Nuiqsut subsurface and the applicable ASRC percentage set out in Exhibit B as to Point Lay subsurface) and of the State (that is, the applicable State percentage set out in Exhibit A as to Nuiqsut subsurface and the applicable State percentage set out in Exhibit B as to Point Lay subsurface) in each respective parcel of Nuiqsut subsurface described in Exhibit A and in each respective parcel of Point Lay subsurface described in Exhibit B, respectively, will not change by virtue of any future change in the boundary, location, or extent of uplands or submerged lands within said parcel.

5. Leases. To the extent that any oil and gas lease previously granted by the State to any person and described in paragraph 2.2(d) of the Settlement Agreement is presently valid and in force and effect as to the subsurface in any parcel of the Nuiqsut subsurface described in Exhibit A, this conveyance is made subject to that oil and gas lease, and subsurface revenues payable under and in connection with that oil and gas lease as to that parcel of the Nuiqsut subsurface after the effective date of this patent shall be owned by the State and ASRC in proportion to the applicable State percentage and applicable ASRC percentage as more fully provided in the Settlement Agreement. Nothing herein is intended or shall be construed to validate or reinstate any oil or gas lease that is not otherwise valid and extant.

6. Habendum. To have and to hold the applicable undivided ASRC percentage interest set out in Exhibit A in and to the portions of the Nuiqsut subsurface now and hereafter existing in the respective parcels of the Nuiqsut subsurface described in subparagraph 2(a) of this patent and the applicable undivided ASRC percentage interest set out in Exhibit B in and to the portions of the Point Lay subsurface now and hereafter existing in the respective parcels of the Point Lay subsurface described in subparagraph 2(b) of this patent, together with all and singular the tenements, hereditaments, appurtenances, rights,

encumbrances, and actions thereto appertaining, unto ASRC and its successors and assigns, forever, subject to and in accordance with the terms and provisions of the Settlement Agreement. The State hereby binds itself and its successors and assigns, to warrant and forever defend all and singular the interests hereby conveyed unto ASRC (its successors and assigns) against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under the State, but not otherwise, but subject in all respects to the Settlement Agreement and to the other matters to which this patent is made subject as set forth in it.

7. Further Assurances. The parties agree to take all further actions and execute, acknowledge, and deliver any further documents that are necessary or useful in carrying out the purposes of this patent. Without limitation to the foregoing, the State agrees to execute, acknowledge, and deliver to ASRC all additional instruments, notices, and other documents and to do all other and further acts and things as may be necessary to more fully and effectively grant, convey, and assign to ASRC the interests conveyed hereby and intended to be so conveyed.

8. Governing Law. The validity of this patent shall be governed by and it shall be construed in accordance with the laws of the State of Alaska.

9. Counterparts. This patent may be executed in any number of counterparts and each counterpart shall be deemed to be an original instrument, but all counterparts shall constitute but one conveyance.

10. Successors and Assigns. Subject to the provisions of the Settlement Agreement, this patent shall bind and enure to the benefit of the State and ASRC and the respective successors and assigns of each of them. The covenants and provisions of this patent and of the Settlement Agreement shall be covenants running with the land.

11. Prior Warranties. The State hereby assigns to ASRC with full right of subrogation, to the extent so transferable,

the benefit of and the right to enforce the covenants and warranties, if any, which the State is entitled to enforce with respect to the interests in the Nuiqsut subsurface and Point Lay subsurface provided herein to be conveyed to ASRC, including those against any assignors and other predecessors in title.

12. Patent Effective Date. Chapter ____ SLA 199__ became effective on _____, 199__, and this patent is effective and takes effect as of that date.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

By _____
Director, Division of Land

THE STATE OF ALASKA §
 § SS.

JUDICIAL DISTRICT §

This is to certify that on the ____ day of _____, 199__, before me appeared _____, the person who has been lawfully delegated the authority of _____, the Director of the Division of Land, Department of Natural Resources, State of Alaska, to execute the foregoing document; that _____ executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

Notary Public in and for Alaska
My Commission Expires: _____

ACCEPTANCE

Arctic Slope Regional Corporation accepts title to the applicable ASRC percentage in the subsurface in the above-described property subject to the obligations set forth in this patent.

Dated this _____ day of _____,
199__.

ARCTIC SLOPE REGIONAL CORPORATION

By _____
Jacob Adams, President

THE STATE OF ALASKA §
 § ss.
_____ JUDICIAL DISTRICT §

This is to certify that on the _____ day of _____, 199__, before me appeared Jacob Adams, the person who has been lawfully authorized as the President of Arctic Slope Regional Corporation, a corporation organized and existing under the laws of the state of Alaska, to execute the foregoing document; that Jacob Adams executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A
TO PATENT NO. _____
FROM THE STATE OF ALASKA TO
ARCTIC SLOPE REGIONAL CORPORATION

1. All of section _____, T _____ N, R _____ E, Umiat Meridian ("UM"), in the Barrow recording district, state of Alaska.

State percentage—____%; ASRC percentage—____%.

2. The following described portion of section _____, T _____ N, R _____ E, UM, in the Barrow recording district, state of Alaska: _____

INSERT DESCRIPTION

State percentage—____%; ASRC percentage—____%.

General Format: Each section or portion of a section to be described separately with State percentage and ASRC percentage to be set out separately for each section or portion of a section.

All references in this Exhibit A and in the foregoing patent to a "section" of land containing Nulqsut subsurface refer to the entirety of the area (including any area now or hereafter situated within the Beaufort Sea) encompassed within a full square or rectangular section (protracted or projected to the extent, if any, it is within the Beaufort Sea) containing approximately 640 acres.

SIGNED FOR IDENTIFICATION

By _____
Name: _____
Title: _____

EXHIBIT B
TO PATENT NO. _____
FROM THE STATE OF ALASKA TO
ARCTIC SLOPE REGIONAL CORPORATION

1. All of section _____, T _____ N, R _____ E, Umiat Meridian ("UM"), in the Barrow recording district, state of Alaska.

State percentage—____%; ASRC percentage—____%.

2. All of section _____, T _____ N, R _____ E, UM, in the Barrow recording district, state of Alaska.

State percentage—____%; ASRC percentage—____%.

General Format: Each section to be described separately with State percentage and ASRC percentage to be set out separately for each section.
--

All references in this Exhibit B and in the foregoing patent to a "section" of land containing Point Lay subsurface refer to the entirety of the area (including any area now or hereafter situated within the Chukchi Sea or the Kasegaluk Lagoon) encompassed within a full square or rectangular section (protracted or projected to the extent, if any, it is within the Chukchi Sea or the Kasegaluk Lagoon) containing approximately 640 acres.

SIGNED FOR IDENTIFICATION

By _____
Name: _____
Title: _____

EXHIBIT I

STATE OF ALASKA

PATENT NO. _____

This patent is made from the State of Alaska, through its Department of Natural Resources ("State"), whose mailing address is Chief, Title Administration Section, Division of Land, State of Alaska, Department of Natural Resources, 3601 C Street, Suite 960, Anchorage, Alaska 99503, pursuant to chapter ____ SLA 199__, to Arctic Slope Regional Corporation, an Alaska corporation ("ASRC"), whose mailing address is P. O. Box 129, Barrow, Alaska 99723.

W I T N E S S E T H :

This patent is made pursuant to the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and the State of Alaska" ("Settlement Agreement"), which was ratified and approved by the Alaska Legislature in chapter ____ SLA 199__ and to which reference is here made for all purposes. The Settlement Agreement has been recorded in the recording office of the Barrow recording district and has been noted in the land records system maintained by the State's Department of Natural Resources.

Now, therefore, in consideration of the premises, the mutual covenants and agreements contained herein and in the Settlement Agreement, and other good and valuable consideration (the receipt and sufficiency of which are all hereby acknowledged), ASRC and the State hereby agree as follows:

1. Definitions. In this patent, the following definitions apply:

(a) "**Subsurface**" means all interests in oil, gas, or other minerals, now known or discovered in the future in, on, or under land (including all depths, formations and horizons), together with all rights, privileges, benefits and powers conferred upon the owner of that interest with respect to the use and occupation of the surface of, and subsurface depths under,

the lands that may be necessary, convenient, or incidental to the possession and enjoyment (including, without limitation, exploring, drilling, developing, producing, mining, saving, handling, treating, transporting, marketing and operating oil, gas, or other minerals). However, "**subsurface**" does not include any "mineral" that on January 3, 1959, was subject to location under the mining laws of the United States, does not include sand and gravel (whether or not of an uncommon variety), and does not include water.

(b) "**State percentage**" means, as to each different section or portion of a section of Nuiqsut subsurface described in Exhibit A hereto, the undivided percentage interest described as the "**State percentage**" following the description of such particular section or portion of a section in Exhibit A.

(c) "**ASRC percentage**" means, as to each different section or portion of a section of Nuiqsut subsurface described in Exhibit A hereto, the undivided percentage interest described as the "**ASRC percentage**" following the description of such particular section or portion of a section in Exhibit A.

(d) "**Parcel**" means, as to each entire section of Nuiqsut subsurface described in Exhibit A, the entirety of that section; and as to less than all of a section of Nuiqsut subsurface described in Exhibit A, "parcel" means only that portion of the section so described.

(e) "**Nuiqsut subsurface**" means the subsurface in all the uplands and submerged lands now and hereafter existing in the lands described in subsection 11.16 of the Settlement Agreement (subject, if applicable, to the provisions of paragraph 2.3(b) of the Settlement Agreement).

(f) "**Subsurface revenues**" means all bid deposits, bonuses, rents, net profits, royalties, the proceeds of sales or exchanges, benefits, or any other thing of value that is received and is attributable to or generated from the exploration, development, production, or other exploitation of, or lease, sale, exchange, or other disposition of any interest in the

Nuiqsut subsurface, except as otherwise expressly provided in paragraph 7.3(b) of the Settlement Agreement. **"Subsurface revenues"** includes all rents, profits, and royalties, the proceeds of sales or exchanges, benefits, or any other thing of value that is received and is attributable to or generated from the oil and gas leases described in section 9 of the Settlement Agreement attributable to any part of the Nuiqsut subsurface. When **"subsurface revenues"** are received in a form other than cash or cash equivalents, the cash fair market value at the time of the receipt will be included in and considered as **"subsurface revenues."**

"Subsurface revenues" does not include taxes of any kind owed to the State by any person, including ASRC.

"Subsurface revenues" also does not include the customary fees charged by the State in connection with the filing of any application for a permit, lease, license, or mining claim, mining lease, or mining leasehold application that are generally applicable to all such applications and are not limited to or different in amount with respect to applications pertaining to Nuiqsut subsurface as compared to other subsurface areas, or other like generally applicable fees customarily charged by the State for authorizations, publications, or services.

(g) **"Person"** means a natural person and all types of private or governmental entities, including but not limited to all entities listed in AS 01.10.060(7), and any corporate subsidiary or joint venture.

(h) **"Fair market value"** means the amount of money that an informed purchaser, willing but not obligated to buy, would pay an informed seller, willing but not obligated to sell, for particular property, goods, or services.

2. Conveyance. Pursuant to the Settlement Agreement, the State hereby grants, assigns, and conveys to ASRC and its successors and assigns the applicable ASRC percentage set out in Exhibit A hereto in and to the subsurface in all those portions of the Nuiqsut subsurface (without regard to whether that Nuiqsut

subsurface is within uplands or submerged lands) in the respective parcels of Nuiqsut subsurface in the Barrow recording district in the State of Alaska described in Exhibit A hereto to which the State has heretofore acquired title in any manner other than by virtue of the ASRC Deed described below, or may hereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within those respective parcels of Nuiqsut subsurface.

3. Reservation. Pursuant to the Settlement Agreement, in making this grant, assignment, and conveyance, the State reserves and excepts to itself and its successors and assigns, the applicable State percentage set out in Exhibit A in and to the subsurface in the portions of the Nuiqsut subsurface now and hereafter existing in the respective parcels of Nuiqsut subsurface described in paragraph 2 above.

4. Future Changes. As provided for in the Settlement Agreement, ASRC has granted or will grant to the State one or more warranty deeds (collectively, the "ASRC Deed") conveying to the State the applicable ASRC percentage set out in Exhibit A in and to the subsurface in all those portions of the Nuiqsut subsurface (without regard to whether that Nuiqsut subsurface is within uplands or submerged lands) in the respective parcels of Nuiqsut subsurface described in Exhibit A hereto to which ASRC has heretofore acquired title, or may hereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within those respective parcels of Nuiqsut subsurface, reserving to ASRC the applicable ASRC percentage set out in Exhibit A in the subsurface in those portions of the Nuiqsut subsurface now and hereafter existing in those respective parcels of Nuiqsut subsurface. This patent is not intended and shall not be construed to grant to ASRC any interest in the State percentage in any Nuiqsut subsurface which has been or is conveyed from ASRC to the State pursuant to the ASRC Deed, and it is intended by the State and ASRC that, after giving effect to this patent and the ASRC Deed, the entirety of

the Nuiqsut subsurface in each of the parcels described in this patent and in the ASRC Deed shall be owned by the State and ASRC in undivided interests in proportion to the applicable State percentage and the applicable ASRC percentage, respectively, set out in Exhibit A. Further, pursuant to the Settlement Agreement, it is expressly stipulated and provided that the respective undivided ownership interests of ASRC (that is, the applicable ASRC percentage set out in Exhibit A) and of the State (that is, the applicable State percentage set out in Exhibit A) in each respective parcel of Nuiqsut subsurface described in Exhibit A will not change by virtue of any future change in the boundary, location or extent of uplands or submerged lands within said parcel.

5. Leases. To the extent that any oil and gas lease previously granted by the State to any person and described in paragraph 2.2(d) of the Settlement Agreement is presently valid and in force and effect as to the subsurface in any parcel of the Nuiqsut subsurface described in Exhibit A, this conveyance is made subject to that oil and gas lease, and subsurface revenues payable under and in connection with that oil and gas lease as to that parcel of the Nuiqsut subsurface after the effective date of this patent shall be owned by the State and ASRC in proportion to the applicable State percentage and applicable ASRC percentage as more fully provided in the Settlement Agreement. Nothing herein is intended or shall be construed to validate or reinstate any oil or gas lease which is not otherwise valid and extant.

6. Habendum. To have and to hold the applicable undivided ASRC percentage interest set out in Exhibit A in and to the portions of the Nuiqsut subsurface now and hereafter existing in the respective parcels of the Nuiqsut subsurface described in paragraph 2 of this patent, together with all and singular the tenements, hereditaments, appurtenances, rights, encumbrances, and actions thereto appertaining, unto ASRC and its successors and assigns, forever, subject to and in accordance with the terms and provisions of the Settlement Agreement. The State does

hereby bind itself and its successors and assigns to warrant and forever defend all and singular the interests hereby conveyed unto ASRC (its successors and assigns) against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under the State, but not otherwise, but subject in all respects to the Settlement Agreement and to the other matters to which this patent is made subject as set forth in it.

7. Further Assurances. The parties agree to take all such further actions and execute, acknowledge and deliver such further documents that are necessary or useful in carrying out the purposes of this patent. Without limitation to the foregoing, the State agrees to execute, acknowledge and deliver to ASRC all such other additional instruments, notices and other documents and to do all such other and further acts and things as may be necessary to more fully and effectively grant, convey and assign to ASRC the interests conveyed hereby and intended to be so conveyed.

8. Governing Law. The validity of this patent shall be governed by and it shall be construed in accordance with the laws of the State of Alaska.

9. Counterparts. This patent may be executed in any number of counterparts and each counterpart shall be deemed to be an original instrument, but all such counterparts shall constitute but one conveyance.

10. Successors and Assigns. Subject to the provisions of the Settlement Agreement, this patent shall bind and enure to the benefit of the State and ASRC and the respective successors and assigns of each of them. The covenants and provisions of this patent and of the Settlement Agreement shall be covenants running with the land.

11. Prior Warranties. The State hereby assigns to ASRC with full right of subrogation, to the extent so transferable, the benefit of and the right to enforce the covenants and warranties, if any, which the State is entitled to enforce with

respect to the interests in the Nuiqsut subsurface provided herein to be conveyed to ASRC, including those against any assignors and other predecessors in title.

12. Patent Effective Date. This patent is effective and takes effect as of _____, 199__, the date the parcels (whether one or more) of Nuiqsut subsurface described in Exhibit A became "**Fully Conveyed Sections**" as defined in the Settlement Agreement.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

By _____
Director, Division of Land

THE STATE OF ALASKA §
 § ss.
_____ JUDICIAL DISTRICT §

This is to certify that on the ____ day of _____, 199__, before me appeared _____, the person who has been lawfully delegated the authority of _____, the Director of the Division of Land, Department of Natural Resources, State of Alaska, to execute the foregoing document; that _____ executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

Notary Public in and for Alaska
My Commission Expires: _____

ACCEPTANCE

Arctic Slope Regional Corporation accepts title to the applicable ASRC percentage in the subsurface in the above-described property subject to the obligations set forth in this patent.

Dated this _____ day of _____,
199__.

ARCTIC SLOPE REGIONAL CORPORATION

By _____
Jacob Adams, President

THE STATE OF ALASKA §
 § ss.
_____ JUDICIAL DISTRICT §

This is to certify that on the _____ day of _____, 199__, before me appeared Jacob Adams, the person who has been lawfully authorized as the President of Arctic Slope Regional Corporation, a corporation organized and existing under the laws of the state of Alaska, to execute the foregoing document; that Jacob Adams executed that document under legal authority and with knowledge of its contents; and that this act was performed freely and voluntarily upon the premises and for the purposes stated in the document.

Witness my hand and official seal the day and year in this certificate first above written.

Notary Public in and for Alaska
My Commission Expires: _____

EXHIBIT A
TO PATENT NO. _____
FROM THE STATE OF ALASKA TO
ARCTIC SLOPE REGIONAL CORPORATION

1. All of section _____, T _____ N, R _____ E, Umiat Meridian ("UM"), in the Barrow recording district, state of Alaska.

State percentage—____%; ASRC percentage—____%.

2. The following described portion of section _____, T _____ N, R _____ E, UM, in the Barrow recording district, state of Alaska: _____

INSERT DESCRIPTION

State percentage—____%; ASRC percentage—____%.

General Format: Each section or portion of a section to be described separately with State percentage and ASRC percentage to be set out separately for each section or portion of a section.

All references in this Exhibit A and in the foregoing patent to a "section" of land containing Nuiqsut subsurface refer to the entirety of the area (including any area now or hereafter situated within the Beaufort Sea) encompassed within a full square or rectangular section (protracted or projected to the extent, if any, it is within the Beaufort Sea) containing approximately 640 acres.

SIGNED FOR IDENTIFICATION

By _____
Name: _____
Title: _____

EXHIBIT J

NOTICE OF ASSIGNMENTS
OF
SUBSURFACE INTERESTS AND RIGHTS
UNDER STATE OF ALASKA
OIL AND GAS LEASE

TO: [NAME AND ADDRESS OF LESSEE]

This notice pertains to the following oil and gas lease (the "Subject Lease") issued by the State of Alaska:

Oil and Gas Lease ADL _____ [If applicable, add: (originally number ADL _____)] describing the following lands in the Barrow recording district, State of Alaska:

Township _____ North, Range _____ East, Umiat Meridian:

section _____: all (640 acres)
section _____: all (640 acres)*

Containing _____ acres, more or less (the "Lease Premises").

[*If less than all, describe portion and acres.]

Notice is hereby given that:

1. The State of Alaska ("State") and Arctic Slope Regional Corporation ("ASRC") entered into the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and The State of Alaska" ("Settlement Agreement") which was ratified and approved by the Alaska Legislature in chapter ____ SLA 199__. The Settlement Agreement has been recorded in the recording office of the Barrow recording district and has been noted in the lands records system maintained by the State's Department of Natural Resources.

2. Pursuant to the Settlement Agreement, by warranty deed made effective as of _____, 199__, ASRC conveyed to the State an undivided percentage interest (the "State Percentage") in and to all portions of the subsurface in the respective sections in the Lease Premises owned by ASRC, including both uplands and submerged lands now and hereafter existing, as follows:

Section No.

State Percentage

3. Pursuant to the Settlement Agreement, by patent no. _____ made effective as of _____, 199__, the State conveyed to ASRC an undivided percentage interest (the "ASRC Percentage") in and to all portions of the subsurface in the respective sections in the Lease Premises owned by the State, including both uplands and submerged lands now and hereafter existing, as follows:

Section No.

ASRC Percentage

4. As provided in the Settlement Agreement, no change in the boundary, location, or extent of submerged lands or uplands within any section of the Lease Premises will alter, increase, or diminish the State Percentage or the ASRC Percentage of the subsurface and rentals, royalties, and other subsurface revenues in and attributable to such section owned by the State and ASRC, respectively.

5. As provided in the Settlement Agreement and notwithstanding any provision of section 14(g) of the Alaska Native Claims Settlement Act of 1971 ("ANCSA"), all rentals, royalties, and other subsurface revenues with respect to and payable on account of production of oil or gas from each section of the Lease Premises shall be owned by and payable to the State and ASRC, respectively, in proportion to the State Percentage and ASRC Percentage in that particular section and shall not be pooled or communitized with or payable to the owners of the subsurface in any other section of the Lease Premises.

6. As provided for in the Settlement Agreement, the lessee under the Subject Lease is hereby directed to pay all rentals, royalties, and other subsurface revenues becoming payable by the lessee under the Subject Lease after the effective date of the warranty deed and patent described in paragraphs 2 and 3 above, as follows:

(a) To ASRC, to the extent of the applicable ASRC Percentage in the subsurface in the particular section of the Lease Premises with respect to which such rentals, royalties, or other subsurface revenues become payable, at the following address (or such other address of which notice is hereafter given by ASRC to such lessee):

(b) To the State, to the extent of the applicable State Percentage in the subsurface in the particular section of the Lease Premises with respect to which such rentals, royalties, or other subsurface revenues become payable, at the following address (or such other address of which notice is hereafter given by the State to such lessee):

7. Notices from the lessee under the Subject Lease to the "lessor" under the Subject Lease after the effective date of the warranty deed and patent described in paragraphs 3 and 4 above are to be given both to ASRC, at the address shown in paragraph 6(a) above (or such other address of which notice is hereafter given by ASRC to the lessee) and to the State at the address shown in paragraph 6(b) above (or to such other address of which notice is hereafter given by the State to the lessee).

8. As provided in the Settlement Agreement, from and after the effective date of the warranty deed and patent described in paragraphs 2 and 3 above, and notwithstanding any contrary provision of section 14(g) of ANCSA:

(a) As to the applicable State Percentage in each respective section of the Lease Premises, the State shall have the right and responsibility, with respect only to its State Percentage interest, in its own discretion to administer and enforce directly any termination provisions, duties, obligations, and covenants, express or implied, undertaken by or imposed by virtue of the Subject Lease; and

(b) As to the applicable ASRC Percentage in each respective section of the Lease Premises, ASRC shall have the right and responsibility, with respect only to its ASRC Percentage interest, in its own discretion to administer and enforce directly any termination provisions, duties, obligations, and covenants, express or implied, undertaken by or imposed by virtue of the Subject Lease.

9. Nothing in this notice is intended or shall be construed to ratify, validate, or reinstate the Subject Lease as to any land or interest therein as to which the Subject Lease is not otherwise presently valid and in force and effect.

10. The effective date of this notice is the same date as the effective date of the deed and patent described in paragraphs 2 and 3 above.

STATE OF ALASKA

By _____
Director, Division of Land,
Department of Natural Resources

ARCTIC SLOPE REGIONAL CORPORATION

By _____
(Name) _____
(Title) _____

A G R E E M E N T

THIS AGREEMENT entered into this 21 day of January, 1987, is by ARCTIC SLOPE REGIONAL CORPORATION ("ASRC"), a corporation authorized pursuant to Section 7 of the Alaska Native Claims Settlement Act, 85 Stat. 688, 691, 43 U.S.C. 1606 ("ANCSA"), and duly organized under the laws of the State of Alaska, and KUUKPIK CORPORATION ("Kuukpik"), a corporation authorized pursuant to Section 8 of ANCSA and duly organized under the laws of the State of Alaska. ASRC and Kuukpik are collectively referred to as "the parties".

W I T N E S S E T H:

WHEREAS, ASRC desires to exercise its option under § 1431(o) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 2542, Pub. L. 96-487 ("ANILCA"), to acquire the subsurface estate of lands, all or part of the surface estate of which has been selected by and has been or will be conveyed to Kuukpik within the National Petroleum Reserve in Alaska ("NPR-A") (referred to hereinafter as the "ASRC Subsurface"); and

WHEREAS, the option of ASRC to acquire the ASRC Subsurface will expire on January 26, 1987, unless extended; and

WHEREAS, it is in the best interests of ASRC and Kuukpik for ASRC to exercise its option under § 1431(o) of ANILCA; and

WHEREAS, the concurrence of Kuukpik is required under § 1431(o) of ANILCA prior to the exercise of ASRC's option to acquire the ASRC Subsurface; and

WHEREAS, the parties recognized that Kuukpik may condition its concurrence under § 1431(o) of ANILCA to require its further consent for ASRC, its successors and assigns, to conduct oil and gas exploration activities that may occur with respect to the ASRC Subsurface, and to conduct any future development activities, including but not limited to oil and gas development and production and sand and gravel extraction, that may occur with respect to the ASRC Subsurface (referred to hereinafter as "Exploration and Development Activities"); and

WHEREAS, Kuukpik is willing to give its conditional concurrence to ASRC for acquisition of the ASRC Subsurface under § 1431(o) of ANILCA.

NOW, THEREFORE, in consideration of their mutual promises and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto consent and agree as follows:

1. Kuukpik hereby gives its concurrence for ASRC to exercise its option under § 1431(o) of ANILCA to acquire the ASRC Subsurface, but Kuukpik expressly conditions its concurrence in such acquisition of the ASRC Subsurface by reserving the right to consent to any Exploration and Development Activities that ASRC, its successors and assigns, may engage in from time to time with respect to the ASRC Subsurface.

2. ASRC agrees that it will not engage in any Exploration and Development Activities with respect to the ASRC Subsurface without first obtaining the consent referred to in Paragraph 1 of this Agreement.

ARCTIC SLOPE REGIONAL CORPORATION

Date: 1/16/87

BY Jacob Adam

KUUKPIK CORPORATION

Date: 1/21/87

BY Joe Nul. [unclear]