

SCOMM

93:15

Alaska State Legislature

WHILE IN SESSION:
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DISTRICT 10



CHAIR, OIL & GAS COMMITTEE
VICE CHAIR, LABOR & COMMERCE
COMMITTEE
JUDICIARY COMMITTEE
RESOURCES COMMITTEE
INTERNATIONAL TRADE & COMMERCE
COMMITTEE
ECONOMIC TASK FORCE

Representative Joe Green

TO: Members, House Oil & Gas Committee

FR: Representative Joe Green, Chairman
House Oil & Gas Committee

RE: Committee Hearing/HB 474

DATE: February 24, 1994

I have scheduled a statewide teleconference for the hearing on HB 474 on Monday, February 28.

I am requesting that if you plan to offer amendments, you submit them to my office before noon on Monday the 28th. People on the teleconference network have expressed concern that they have access to all information being reviewed by the committee. By setting a deadline of five hours before the meeting I am attempting to ensure that they have this access.

Amendments not delivered by my office by noon may, of course, be offered in one of the next two committees of referral.

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor



POSITION OF THE NORTH SLOPE BOROUGH ON PROPOSED COASTAL ZONE MANAGEMENT PROGRAM LEGISLATION

Two bills are now before the legislature relating to the State's Coastal Zone Management Program (ACMP). The Borough strongly supports SB 238, and strongly opposes SB 308. These positions are more fully explained below:

SB 238

SB 238 was introduced by Senator Drue Pearce, and has been the subject of several teleconferenced public committee hearings. It is the product of several years' work by Senator Pearce's office and a broad-based working group composed of state resource agency, Division of Governmental Coordination (DGC), and Department of Law ACMP coordinators, representatives from industry and the federal Minerals Management Service (MMS), and ACMP coordinators from several state coastal districts. The group worked diligently, with significant input from others involved in implementation of the ACMP on a daily basis, to craft legislation designed to correct due process problems associated with the current procedures for appeal of coastal consistency determinations to the state Coastal Policy Council (CPC), and to strengthen the role of coastal districts in the consistency review process. Acting on a consensus basis, the group has worked with Senator Pearce to produce a bill which the Borough feels accomplishes those tasks. This change in appeal procedures may not yield state consistency determinations which are always more to the liking of coastal districts and their residents, but it should provide for a more open process resulting in better understood and supportable state decisions.

It is also important to understand that SB 238 has been developed in conjunction with other Working Group efforts aimed at improving the coordination and effectiveness of consistency reviews. Proposed changes to 6 AAC 50 would streamline the process of consistency reviews relating to federal offshore oil and gas lease sales. The changes would require greater exchange of information and early meetings of all parties with the expectation that identification of issues of concern and data gaps, and the open discussion of possible solutions can avoid

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costly litigation, and leave all parties feeling more satisfied with their role in the process. At the same time, a draft Memorandum of Understanding (MOU) between the state DGC and federal MMS has been developed by the Working Group and submitted for approval by state and federal authorities. The MOU will enhance coordination between MMS, DGC, state agencies, and coastal districts in the consistency review of federal offshore lease sales.

SB 238, the proposed 6 AAC 50 changes, and the MOU all have the support of the people who implement the ACMP within state agencies, MMS, industry, and coastal districts. While they may not prove to be the final steps in creating a coastal management program which best serves all state interests, they will contribute to improving the predictability of the system, and importantly, the atmosphere within which important state decisions are made.

SB 308 43474

SB 308 was introduced by the Administration on the morning of February 14, and scheduled for hearing by the Senate Resources Committee at 3:30 that same day. A copy of the Bill was not available in the Barrow Legislative Information Office until 2:30. It was drafted in response to a court decision on January 24, which temporarily enjoined state offshore oil and gas Lease Sale 78, based in part on ACMP issues. Both the substance of this bill, and its attempted fast tracking through the legislature are very troubling. SB 308 is designed to limit the scope of ACMP consistency reviews conducted by the state, and to weaken coastal districts' and the public's ability to participate in full and open discussions of all concerns related to leasing. Although at its heart the federal-state-district coastal zone management structure is designed to provide the maximum public input and control over local development, the Administration has here quickly moved a bill which would significantly alter the balance of the ACMP without making even a minimum effort to contact each of the coastal districts throughout the state. The request of the Coastal District Coalition, comprised of district coordinators for boroughs, other municipalities, and coastal resource service areas around the state, for representation on the Governor's task force formed to respond to the Sale 78 court decision was denied. No state members of the ACMP Working Group were present, or we believe were allowed to testify, before the Senate Resources Committee on SB 308. With the exception of Division of Oil and Gas Director Jim Eason and a representative of ARCO, all of the dozen or so participants in the committee teleconference on February 14 were strongly opposed to the bill, and alarmed at the brief time available for its review.

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SB 308 would restrict consistency reviews to "reasonably foreseeable, nonspeculative, direct effects" of proposed lease sales. If one of the goals of the bill is to avoid costly litigation over proposed lease sales, this language will not get it done. At the same time, while all those involved on a day-to-day basis in implementing the ACMP are moving on a variety of fronts through the Working Group structure to open up the consistency review process, this bill slams the door on the airing of all public concerns. The public frustration which will surely result from enactment of SB 308 will likely stimulate greater, rather than lesser, activity in the courts. The Borough believes that SB 308 is unnecessary legislation which is counterproductive to the more carefully undertaken broad-based efforts now underway to improve the state's Coastal management Program.


George N. Ahmaogak, Sr. 15 February 1994
Mayor Date

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 22, 1994

James Eason, Director
State of Alaska
Department of Natural Resources
Division of Oil and Gas
P.O. Box 107034
Anchorage, Alaska 99510-0734

Dear Jim:

You have asked that the Department of Law comment on the authority of the Department of Natural Resources (DNR) to restrict or condition an oil and gas lessee's use of leased lands after issuance of a lease.¹ DNR may condition a lessee's right to use of the lands within a lease on authority arising from two bases: (1) the statutory right to include conditions in leases when issued and (2) the state's police power to regulate uses to protect the public health, safety, and welfare.

The Alaska Land Act provides the statutory right to include conditions in a lease, as follows:

Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interest in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state.

AS 38.05.035(e). Therefore, when a final finding that the sale of oil and gas leases is in the best interest of the state includes mitigation measures restricting or reserving the right to restrict uses, those measures must then be incorporated into leases issued pursuant to that sale. Any bidder is therefore on

¹ This letter addresses only oil and gas leases and does not address subsequent permits or authorizations by other agencies.

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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notice that restrictions pursuant to the mitigation measures may be imposed on any lease issued in that sale and that a bid submitted is presumed to account for such risks. In order for a lease to be validly executed, a potential lessee must execute and return both a lease form and the attached mitigation measures which are incorporated by reference into the lease. The lessee has then taken the lease subject to such potential future restrictions.

The director may also, through the police power of the state, regulate uses to protect the public health, safety, and welfare when approving a plan of exploration, development, or operations. Exercise of this power is reflected in both AS 38.05.035(3) (above) and in the current lease form (DOG 9208) subparagraph 9(f) which states:

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

When police power restrictions deprive a property owner of use of the property involved, the question arises of whether a "taking" of property has occurred that requires compensation under the Fifth Amendment to the U.S. Constitution. The Supreme Court recently delineated when compensation for such is required in Lucas v. South Carolina Coastal Council, 112 U.S. 2866 (1992). Under Lucas, compensation is not required if "regulatory action [has] the effect of eliminating the land's only economically productive use" when the use would not have been allowed under "existing rules and understandings." 112 U.S. at 2900, 2901. Therefore, where requirements such as compliance with the Alaska Coastal Management Plan and other environmental restrictions (including the sale terms, lease terms, and mitigation measures) exist at the time of lease issuance, imposing restrictions pursuant to those requirements, even if the restrictions eliminate all economically productive uses of the property, does not give rise to a taking requiring compensation.

Under the current lease terms (subparagraph 9(f) above), a restriction that is consistent with the sale terms, lease terms, mitigation measures, or environmental regulatory schemes existing at the time of the lease issuance will not be a taking requiring compensation because the lessee bid and accepted the lease with notice of such potential restrictions.

Additionally, under the last standard of the limits on such restrictions in that subparagraph, any use contrary to such a restriction cannot be a "reasonable use" of the leasehold interest that was offered to and accepted by the lessee.²

In summary, DNR may restrict or condition uses of leased areas based on its statutory and police power authority. The terms, mitigation measures, statutes, and regulations existing at the time of the lease issuance determine when such restrictions result in a taking which requires compensation.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

1
By: *Barbara F. Fullmer*

Barbara F. Fullmer
Assistant Attorney General

BFF/lwr

²Under subparagraph 20 of the current lease form, the state may cancel a lease with appropriate compensation under certain situations involving "continued operations [that] probably will cause serious harm or damage to biological resources, to property, to mineral resources, or to the environment (including the human environment)" where "the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time" and the advantages of cancellation outweigh the advantages of continuing the lease. Such a cancellation differs from a restriction that eliminates beneficial use of a lease because it is a voluntary and discretionary act on the state's part to terminate all rights under the lease under certain conditions, without regard to whether a compensable taking under Lucas has occurred.

THEY SAY OIL & GAS LEASING IS BROKEN

Has the Commissioner considered both offshore oil and gas development and a fishery as water dependent and (sic) activities?

... no discussion of a significant public need for the lease sale

Appellants' motion to stay (lease sale 78) is granted

Superior Court order staying Lease Sale 78

... DNR should undertake seismic studies prior to the sale to identify particular areas having special hazards

DNR has not demonstrated that it has taken all feasible and prudent steps to maximize conformance with the ACMP

Brief to the Supreme Court by:

Trustees for Alaska
Alaska Environmental Center
The Sierra Club
Nat'l Parks and Conservation Assoc.
The Wilderness Society

... Noah fails to adequately evaluate the cumulative effect of current and planned oil and gas exploration and development activities on the Inlet or explain how the sale can proceed without such an analysis

Brief to the Superior Court on Sale 78 by:

Trustees for Alaska
Ninilchik Traditional Council
Alaska Environmental Center
Greenpeace
Kenai Peninsula Fishermen's Assoc.
United Cook Inlet Drift Assoc.

DNR failed to take a hard look at the impact of (offshore) Sale 55 on the (onshore) Porcupine Caribou Herd, and on the subsistence users of this herd.

Alaska Supreme Court

YOU CAN FIX IT

DIVISION OF OIL & GAS
POSITION PAPER

IT'S A FACT

Since The Inception Of Competitive Leasing in 1959:

- Over 75 Lease Sales Have Been Held
- Over 80 Best Interest Findings Have Been Compiled
- Over 25 Million Acres Have Been Offered For Lease
And Over 11 Million Acres Have Been Leased
- Over 3,800 Wells Have Been Drilled
- The State Has Collected Over \$45 Billion In Bonuses,
Rents, Royalties and Taxes
- Competitive Oil And Gas Lease Sales Have Been The
Cornerstones On Which Alaska's Economy Has Been
Built—And Have Provided Benefits To ALL Alaskans

AFTER 35 YEARS OF OIL & GAS LEASING

- The courts—and not the Legislature or the Executive Branch—are setting the state's leasing policy
- The Supreme Court says the Best Interest Findings under Title 38 are insufficient
- The Superior Court cannot determine whether lease sales are consistent with ACMP unless all potential future development can be described
- The Superior Court is unable to determine that there is a significant public need for the lease sale
- The Ombudsman finds that although we have met or exceeded all legal requirements, the process—as defined in current statute—is not “fair”

WHAT IS THE PROBLEM?

With 85% of State Revenue At Stake

HOW DO WE FIX IT?

FIRST, UNDERSTAND THE PROBLEM

- Under Title 38, the commissioner must take a “hard look” at “the salient factors” in best interest findings that an oil and gas lease sale should be held.
- However, through a series of Supreme Court decisions beginning in 1987 and continuing through this year, the court has systematically rejected the commissioner's authority both to determine what are the salient factors and “how much” analysis is “enough” before proceeding with a lease sale.
- Both the Alaska Supreme Court, and now the Superior Court, have ruled that best interest findings under Title 38 and ACMP consistency determinations for lease sales under title 46 cannot rely upon deferred consistency reviews of post-sale projects until specific exploration or development projects are proposed.
- Since no one can predict the consequences of a lease sale, litigants are encouraged to speculate on the sufficiency of the commissioner's considerations on future events, and the courts have become the arbiter of what is “proper weight” and “adequate analysis.” Arguments over “how many angels might someday come to sit on the head of the pin” are disrupting the leasing program, frustrating legislative intent and threatening the state's future economic health.

TO FIX IT

THE STATUTES MUST BE CHANGED

- Modify Title 38, the oil and gas leasing statutes, and Title 46, the ACMP statutes, to clarify legislative intent
- Eliminate the opportunity for courts to substitute their judgment by providing clear guidance as to the scope of best interest findings and ACMP findings and consistency determinations for lease sales
- Regulatory “fixes” do not carry the force of law and will NOT solve the problem

IF LEGISLATION IS NOT PASSED

- Continued disruption and delay of lease sales
- Lost reliability of lease sale process
- Loss of industry participation
- Lost state revenue
- Increased litigation costs
- Increased unemployment as service industry contracts

WHAT THIS LEGISLATION DOES

- “Tightens” the scope of the best interest finding and ACMP determination for leasing
- Creates a best interest finding and ACMP procedure
 - that is factual, fair and timely
 - that is more likely to withstand judicial and public scrutiny
- Provides for meaningful public review process and directs the commissioner to determine best interest and find consistency when
 - valid, material and relevant facts are known and considered
 - required permits meet established standards

BOTTOM LINE

**This Legislation More Clearly
Defines Legislative Intent With
Respect To Oil and Gas Lease Sales**

TITLE 38 AND THE ACMP STATUTES NEED TO BE AMENDED

IF THIS LEGISLATION IS NOT ADOPTED

- We must accept jeopardizing ALL future lease sales
- We must accept the inevitable loss of revenue
- We must accept the increased costs of litigation
- We must accept the court's opinion that oil and gas leasing is not in the public interest
- We must accept the court's opinion that oil and gas exploration cannot coexist with fishing
- We must accept that spending tens of millions of dollars for more "studies" is a necessary use of revenue
- We must accept that leasing cannot occur if there is an alleged risk to the environment, no matter how remote or unlikely that risk may be

WITHOUT THIS LEGISLATION

We must accept the continuing erosion of the Legislature's authority and judgment to special interest groups and the courts

THE RECORD SENDS THE FOLLOWING MESSAGES . . .

Consistency with the ACMP (Sale 78)

Trustees for Alaska:

"Direct conflicts exist between oil and gas exploration and development activities and fishing and large vessel traffic. Consequently, oil and gas exploration and development activities must give way to those activities which are of higher priority; fishing and large vessel traffic...the decision to proceed with Sale 78 is not consistent with 6 AAC 80.040 and thus not consistent with the ACMP."

"...Noah fails adequately to evaluate the cumulative effect of current and planned oil and gas exploration and development activities on the Inlet or explain how the sale can proceed without such analysis."

Alaska Superior Court:

"...the Court cannot divine the basis for the consistency determination. First, there is no discussion of the priority required in 6 AAC 80.040. Has the Commissioner considered both offshore oil and gas development and a fishery as water dependent and (sic) activities? Or, is oil and gas a water related activity?...There is no discussion of a significant public need for the lease sale ...6 AAC 80.130(d) requires a finding of no feasible prudent alternative to meet the public need for the proposed use and a finding that all feasible and prudent steps to maximize conformance with standards will be taken."

DNR:

Analysis of ACMP consistency was included in the Preliminary Best Interest Finding which the court failed to look at when making its decision to stay the sale. The court appears to accept without question that potential offshore oil and gas development is not a water-dependent activity. DNR took a hard look at the requirements and issues of 6 AAC 80.130. The court created of its own accord the argument that DNR did not comply with 6 AAC 80.130, then relied on its own unsupported argument, without examination of the relevant parts of the record or response from DNR, to impose the stay.

Trustees for Alaska:

"The Court has further stated that environmentally protective purposes "require that at the time DNR reviews any...permit application it consider the probable 'cumulative impact' of all anticipated activities which will be part of [the project in question] whether or not the activities are part of the project under review. If DNR determines that the cumulative impact is problematic, the problems must be resolved before the initial permit is approved." (emphasis added)

Best Interest Finding (Sale 78)

Trustees for Alaska:

"Because Noah has failed to adequately address these issues in the 'best interest' finding and explain how they fit into the 'best interest' equation, the finding is legally deficient".

Geophysical Hazards (Sale 50)

Trustees for Alaska:

DNR violated the ACMP "by utterly failing (emphasis added) to identify known geophysical hazard areas within the Sale 50 area as required by 6 AAC 80.050(a). DNR does not consider geophysical hazards until it reviews a company's plans of operations. In contrast, MMS has demonstrated that an identification of geophysical hazards is practical at the lease sale stage."

Alaska Supreme Court:

"The geophysical hazards in a given area could be such as to make any use or activity inconsistent with the ACMP...we conclude that this case must be remanded to DNR with instructions to identify and report on known and substantially possible areas of geophysical hazards within Sale 50...a draft environmental impact statement for a federal sale just north of Sale 50 deals with faults and earthquakes in the Camden Bay area in much greater detail than the State's decisional document."

DNR:

"The Court has understated DNR's efforts to identify geophysical hazards...On the basis of its consideration of the existing information, DNR identified and discussed the known

potential geophysical hazards in the Sale 50 area....Unless the court is to require DNR to go beyond the express language of the regulation, there is nothing more to be done."

DNR's petition for rehearing was denied.

Archeological Resources (Sale 50)

Trustees for Alaska:

DNR failed to identify or describe any of the historic, prehistoric and archeological resources in the Sale 50 area; and DNR deferred analysis of such data to the exploration and production stages of development.

Alaska Supreme Court:

"DNR's decision to defer identification of archeological sites does not comply with 6 AAC 80.150. The regulation clearly requires the identification of archeological sites, but it does not state when they are to be identified. In our view the regulation is most reasonably interpreted to require...the identification of known archeological sites at the initial sale stage...DNR must comprehensively survey the known data, set out the results, and state its conclusions."

DNR:

"Because unrestricted availability to information concerning the nature and location of any archeological resource increases the threat to site destruction, access to such information is closed to the general public by the Alaska Office of History and Archeology. Authority for this policy is contained in AS 9.25.120 and 16 U.S.C. § 47 (O)....DNR is required to withhold specific information regarding those sites until the plan of operations stage..."

DNR's petition for rehearing was denied.

Transportation (Sale 55)

Trustees for Alaska:

"DNR failed to discuss how development would occur, the riskiness of any methods chosen, and whether, in light of the risk, the lease sale was in the best interests of the state..."

Alaska Supreme Court:

"DNR did not take a hard look at the transportation issue in making its best-interest determination for Sale 55...the Finding concludes that offshore development would be "feasible" without use of ANWR, but does not discuss how the oil would be transported or what risks these methods would pose."

DNR:

"DNR, in its final finding, ...requires that lessees submit a detailed plan of operations for approval before conducting any exploratory or development operations, and imposes 26 restrictions or terms as a condition of the approval of plans of operations...Seven of these terms...specifically address environmental concerns arising from the transportation of oil and gas. DNR recognizes that the transport of oil and gas by pipeline is environmentally preferable to transport by tanker. DNR carefully considered the impact that the unchanged legal status of ANWR might have, and the risks presented by various oil and gas transportation methods that might be necessary to develop Sale 55 tracts."

The Porcupine Caribou Herd (Sale 55)

Trustees for Alaska:

"The Final Best Interest Finding... does not address the impacts of the sale on the Porcupine Caribou Herd nor does it indicate how these impacts are factored into the 'best interest' equation. This failure on behalf of DNR also reveals the inadequacy of DNR's analysis of the effect of the sale on the subsistence activities of the people of Alaska."

Alaska Supreme Court:

"Although DNR asserts that development 'should not' affect ANWR or the caribou that utilize ANWR, DNR has made no finding to this effect. Rather, it has simply made the unsupported assumption that offshore development cannot affect caribou."

DNR:

"[AS 38.05.035(g)] requires that DNR thoroughly consider the effects of an oil and gas lease sale on fish and wildlife species and the subsistence uses of those species in the sale area (emphasis added). However, it does not require DNR to extend its consideration to potential effects on species located outside the sale area. As the Porcupine Caribou Herd is clearly not found in the sale area, DNR did not violate the statute."

DNR's petition for rehearing was denied

Goodnews Bay Offshore Prospecting Permit (OPP) Disposal

Alaska Supreme Court:

"The State's argument that it could have done little more to fully assess the impacts of mining in the region than it did at the OPP stage is significantly undercut by evidence of comparable federal studies. The record indicates that the federal government has conducted environmental impact studies for offshore mining based on various mining scenarios.

DNR can emulate these studies." (emphasis added)

**FAILURE TO ADOPT THIS LEGISLATION WILL
MAINTAIN THE STATUS QUO—AND GUARANTEE AN
UNCERTAIN ECONOMIC FUTURE FOR ALASKA**

THE ALASKA SUPREME COURT WOULD HAVE DNR DO NEPA-LIKE BEST INTEREST FINDINGS FOR ITS LEASE SALES

"The record indicates that the federal government has conducted environmental impact studies....DNR can emulate these studies."

Alaska Supreme Court—Goodnews Bay Decision

WHAT WOULD BE THE COST?

DNR's Best Interest Findings, prepared by a staff of five, average \$105,000 each

- The Minerals Management Service (MMS) EIS's average \$500,000 each
- MMS employs 53 people in their leasing section, which is responsible for producing the EIS
- MMS has spent \$72.6 million for environmental studies within the Cook Inlet region

**DNR Would Have To Greatly Increase Its Operating Budget And
Staff Level In Order To Fund The Necessary Environmental Studies
And Prepare The Document**

Would The Number Of Sales Decrease? YES!

- In 14 years of leasing since 1979, DNR has held 42 lease sales, averaging three sales per year
- MMS has held only 15 Alaska OCS lease sales in the 17 years since 1976, when the Federal program began in Alaska
- With increased best interest finding requirements, DNR would be able to conduct only one lease sale every 18 months

Would EIS's Prevent Lawsuits? NO!

- Based on alleged NEPA violations and on the EIS findings, lawsuits were filed against half of the MMS lease sales
- These lawsuits resulted in two sales being enjoined, and two sales being postponed by MMS

CONCLUSION:

Given the required funding for staff and environmental studies, DNR could emulate the federal EIS process.

However, doing so would mean a tremendous increase in operating costs; a significant reduction in the number of lease sales held; a decrease in state revenue; a delay in future revenue resulting from new discoveries; and no guarantee that litigation would be reduced.

DESPITE THE STUDIES, DESPITE THE TREMENDOUS EXPENSE

**NO OIL OR GAS HAS BEEN PRODUCED FROM ALASKA'S
FEDERAL WATERS**

SALE 78 – THE PROBLEM – A CASE STUDY

TRUSTEES CREATE A CONFLICT:

"There is ample—and uncontroverted—evidence that these uses and activities simply cannot coexist with certain oil and gas exploration and development activities. To take a simple example, assume that an oil company purchases a marine tract south of Kasilof and, during exploration, discovers a commercially viable deposit of oil. The company then places a production platform on its tract, in the heart of the fishing grounds. Given the area's extreme tides and strong currents no fishing could occur within, at best, a half-mile circle around the platform. The danger is simply too great that a net, or a boat, will get wrapped up with the platform."

Trustees, et al, "Response to State's Petition to the Alaska Supreme Court for Review of Sale 78 Injunction"

REALITY:

There is no evidence of incompatibility—ample, uncontroverted or otherwise—just allegations and speculation. That speculation, however, is inconsistent with the actual "evidence" of coexistence of fishing, subsistence, and oil and gas exploration and development activities in Cook Inlet. The "fishing corridor" itself currently has valid leases within its boundaries and it has in the past been the site of several exploratory wells. Nevertheless, the Superior Court accepted Trustees' "evidence" of incompatibility as a basis for its Injunction of Sale 78.

In the case of Sale 78, there are no known, absolute conflicts at the lease sale stage. As in all lease sales, there is the potential for conflicts, depending upon what is proposed to occur, when it may occur, where it may occur, and for how long it may occur. By retaining flexibility to entertain alternative proposals which may be conditioned to achieve "consistency," the state remains able to at least try to accommodate competing uses of its resources. In those instances where accommodation is impossible, it retains the authority to disallow the proposed activity.

Under the Sale 78 lease provisions, for example, the following alternative scenarios could be accommodated.

- The "corridor" tracts may or may not receive bids—if there were no bids, there is no conflict.
- If bids and leases within the corridor are issued, there still is no assurance of a conflict. There may or may not ever be an application to drill an exploratory well on the tracts. If there isn't, there is no conflict.
- If there is an application, it may or may not be for a location which creates a conflict. For example, it may be accessible from adjacent acreage—either onshore or offshore.
- It may present a potential conflict that can be avoided through alternative site selection or scheduling so that the activity can be conducted when there are no commercial, subsistence or sport fishing activities.
- If an exploratory well can be accommodated, it may or may not result in a commercial discovery. If there is no commercial discovery, there is no conflict from development that will not occur.

In selecting Sale 78 lease terms, DNR adopted Term 13 to allow for a subsequent site-specific evaluation of alternatives in light of potential conflicts, while retaining full authority to disallow activities which cannot be made consistent with the ACMP or which are found not to be in the state's best interest.

"Term 13: To prevent conflicts with subsistence and commercial fishing operations, the Director may restrict lease-related use. In enforcing this term the division, during review of plans of operation, will work with other agencies and the public to assure that potential conflicts are identified and avoided to the fullest extent possible. Available options include alternative site selection, requiring directional drilling, and seasonal drilling restrictions."

Adopt This Legislation To Fix The System

WALTER J. HICKEL
GOVERNOR



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 15, 1994

RECEIVED
FEB 15 1994

*The Honorable Joe Green
Chairman
House Oil and Gas Committee
Capitol Building, Room 114
Juneau, AK 99811*

Dear Representative Green:

As a result of several unfavorable court decisions, the Administration simply cannot guarantee the continued efficacy of the state's oil and gas leasing program. Each of the decisions has had the effect of expanding the scope of best interest findings and coastal zone consistency determinations well beyond the letter of the law, and, we believe, beyond the intent of the Legislature. The court has made clear that, in the absence of specific legislative intent to the contrary, it will set oil and gas leasing policy by imposing its own standards on the scope and content of best interest findings and coastal zone consistency determinations related to lease sales.

Following the most recent adverse decision, the Superior Court's injunction of Lease Sale 78, Governor Hickel asked that I coordinate the Administration's review of statutory amendments necessary to address this problem. Participants in that review included the Commissioners of Commerce and Economic Development, Environmental Conservation, Fish and Game, and Natural Resources, as well as the Director of the Division of Governmental Coordination, other representatives of the Governor's Office and me.

We have carefully reviewed the language of H.B. 474 and are convinced that it represents a realistic common-sense approach toward resolving the growing threat to the state's leasing program. We believe that its careful definition of the scope of best interest finding and CZM determinations, coupled with an explicit acceptance of phased determinations when the agency has the authority to further condition subsequent project approvals, will discourage litigation based upon speculation and better serve the public interest.

GOVERNOR'S POSITION STATEMENT

*The Honorable Joe Green
February 15, 1994
Page 2*

Your committee's bill will also further several other goals to which the Administration is committed. It will ensure a best interest finding and CZM consistency procedure that is factual, fair and timely. It will also reduce litigation risks substantially, and, therefore, reduce litigation costs. We believe that H.B. 474 will accomplish these worthwhile goals while providing for meaningful and undiminished public review and participation in the leasing program.

On behalf of the Administration, I appreciate the willingness of you and your committee to promptly address this difficult issue. I pledge our full and undivided support in working to assure passage of H.B. 474.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Shelby Stastny". The signature is fluid and cursive, with the first name "J." being small and the last name "Stastny" being larger and more prominent.

*J. Shelby Stastny
Director of Management and Budget*

Oil and Gas Lease Sale 78

Public Notification Process

The Division of Oil & Gas mailing list for notification of proposed lease sales is comprised of the following:

- State and federal agencies
- Oil companies
- Boroughs, municipalities and village councils
- Newspapers
- Radio and TV stations
- Environmental and pro-development organizations
- Individuals expressing interest in lease sales
- All legislators

The sequence of public notification was as follows. Only those notifications in **bold** print were required by law; all others were done voluntarily by the Division of Oil and Gas:

- Oct 9, 1989 : Call for Comments (lists areas to be added to leasing schedule)
sent to all on mailing list
- Jan 1991: **Sale Added to Five-Year Leasing Program**
published in Five-Year Oil and Gas Leasing Program
- Feb 26, 1991: Call for Comments (General Information)
sent to all on mailing list
- Oct 22, 1991: Supplemental Call for Comments (area expanded to Homer)
sent to all on mailing list
- Jul 21, 1992: Call for Nominations
sent to oil companies on mailing list
- Oct 27, 1992: Call for Comments (Socioeconomic and Environmental Info)
sent to all on mailing list
- Jul 15, 1993: **Notice of Intent to Issue Final Finding and Decision**
sent to all on mailing list
ads in newspapers (Anchorage, Juneau, Fairbanks, Kenai, Homer*)
*Also published on Jul 22
sent to all affected post offices within sale area for posting

PUBLIC NOTIFICATION PROCESS

Certified Letter to Boroughs and Municipalities

sent to affected boroughs and municipalities

Preliminary Finding of the Director

sent to state and federal agencies

multiple Copies sent to local libraries and to State Library in Juneau

sent to boroughs and municipalities

sent to organizations and individuals who have commented

Public Service Announcement

sent to local radio and TV stations

Aug 12, 1993: Kenai Peninsula Borough Public Hearing in Homer

Aug 13, 1993: Notice of Extension of Deadline for Comments Until Aug 24
published in Anchorage, Juneau, Kenai, Fairbanks, and Homer papers

Oct 19, 1993: **Final Finding of Director**

sent to state and federal agencies

sent to legislators from affected area

sent to all who commented on Preliminary Finding

multiple copies sent to local libraries and to State Library in Juneau

Certified Letter to Boroughs and Municipalities

sent to affected boroughs and municipalities

Sale Announcement

sent to all on Mailing List

published in local and statewide papers (same as for Aug 13 Notice)

posted at all affected post offices within sale area

Public Service Announcement

sent to local radio and TV stations

Nov 18, 1993: Kenai Peninsula Borough Assembly Public Hearing in Ninilchik

Jan 25, 1994: **Lease Sale 78** (Stayed by the Superior Court)

CFR 930.37(c)

Federal Register, Vol. 44, No. 123, 6-25-79, p. 92

(c) *In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project from planning to completion, only one consistency determination will be required. However, in cases where major Federal decisions related to a proposed development project will be made in phases based upon developing information, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (e.g., planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project continues to be consistent to the maximum extent practicable with the State's management program. (emphasis added)*

House Special Committee on Oil and Gas
PROPOSED AMENDMENTS TO HB 474

- 1) PAGE 2, LINE 5** after the word "establish" insert "in the written finding"

Passed _____

Did Not Pass _____

- 2) PAGE 2, LINE 8** replace the word "nonspeculative" with the word "significant"

Passed _____

Did Not Pass _____

- 3) PAGE 2, LINE 10** after the word "limit" insert "in the written finding"

Passed _____

Did Not Pass _____

- 4) PAGE 2, LINE 12** replace the word "law" with "statutes and regulations"

Passed _____

Did Not Pass _____

- 5) PAGE 2, LINE 17** replace the word "law" with "statutes and regulations"

Passed _____

Did Not Pass _____

- 6) PAGE 2, LINE 19** replace the word "relevant" with the word "material"

Passed _____

Did Not Pass _____

7) **PAGE 2, LINE 23** after the word "limit" insert "in the written finding"

Passed _____

Did Not Pass _____

8) **PAGE 2, LINE 24** replace the word "law" with "statutes and regulations"

Passed _____

Did Not Pass _____

9) **PAGE 4, LINE 9** remove all words after "finding and that are" and insert attachment #1

Passed _____

Did Not Pass _____

10) **PAGE 4, LINE 10** omit lines 10 through 12

Passed _____

Did Not Pass _____

11) **PAGE 4, LINES 13 through 29**
remove the letters "(A)" through "(H)" and
replace with "(i)" through "(viii)"
chronologically

Passed _____

Did Not Pass _____

12) **PAGE 4, LINE 17** remove the word "nonspeculative"

Passed _____

Did Not Pass _____

13) PAGE 5, LINES 1 through 8

remove the letters "(I)" through "(K)" and
replace with "(ix)" through "(xi)"
chronologically

Passed _____

Did Not Pass _____

14) PAGE 5, LINE 10

replace "(2)" with "(3)"

Passed _____

Did Not Pass _____

15) PAGE 5, LINE 12

replace "(3)" with "(4)"

Passed _____

Did Not Pass _____

16) PAGE 5, LINE 15

remove "(a)" and the remainder of the
line

Passed _____

Did Not Pass _____

17) PAGE 5, LINES 16 through 31

remove all material and replace with
attachment #2

Passed _____

Did Not Pass _____

18) PAGE 6, LINE 1

remove lines 1 through 5

Passed _____

Did Not Pass _____

19) PAGE 6, LINE 6

replace "(c)" with "(b)"

Passed _____

Did Not Pass _____

20) PAGE 6, LINE 7

replace the first "party" with "officer or state agency" and remove the last two words of the line

Passed _____

Did Not Pass _____

21) PAGE 6, LINE 8

remove the word "responsible"

Passed _____

Did Not Pass _____

22) PAGE 6, LINE 12

after the word "project" insert the words "or phase of a project"

Passed _____

Did Not Pass _____

ATTACHMENT #1

- (A) material to the issues that were raised during the period allowed for receipt of public comment, and
- (B) within the scope of the administrative review that was established by the director under (e) (1) of this section;

and

- (2) facts that are known to the director at the time of preparation of the finding and that are
 - (A) within the scope of the administrative review that was established by the director under (e) (1) of this section, and
 - (B) material to the following matters:

ATTACHMENT #2

(a) If a use or activity is developed or authorized in discrete phases, and each phase will require agency decisions regarding permits, the office or state agency responsible for the consistency determination for a particular phase

(1) will, in its discretion, limit the consistency review to that phase if

(A) an office or state agency must carry out a subsequent consistency review before any later phase may proceed; and

(B) the office or state agency responsible has conditioned the consistency review for that phase on a requirement that any additional uses or activities authorized in any later phase be consistent with the Alaska Coastal Management Program; and

(2) shall, if the consistency review is limited pursuant to section 1 above, conduct the consistency review of the phase and make the consistency review based on

(A) applicable statutes and regulations;

(B) the facts pertaining to the uses or activities proposed for that phase that are

(i) known to the office or state agency responsible or made a part of the record during the consistency review; and

(ii) material to the consistency review; and

(C) the reasonably foreseeable, significant, direct effects of the uses or activities proposed for that phase.

Alaska State Legislature

While in Fairbanks
119 N. Cushman St.
Suite 203
Fairbanks, AK 99701
907-456-8161



While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-2327
907-465-4713

Representative Joe Sitton

MEMORANDUM

TO: Representative Joe Green, Chair
House Special Committee on Oil and Gas

FROM: Representative Joe Sitton *J.S./et*

SUBJECT: House Bill 474

DATE: February 24, 1994

As you know, a death in my immediate family prevents me from being at the February 28 meeting of the House Oil and Gas Committee. However, I have asked my staff to draft this memo on my behalf with some of my concerns and comments. I would like to request that I have an opportunity to review this legislation in committee before any action is taken; House Bill 474 represents some major policy changes and this will be my only opportunity (and for some other committee members as well) to have input.

I believe that it is extremely important - in view of the public testimony which the committee has heard - to truly understand what this bill does and what its implications are. In other words, I wish for the committee to deliberate and discuss some issues and I would like to be present to ask questions and see if some of the concerns can be addressed in this committee.

As one example, I would request that the Attorney General be present to explain step-by-step exactly what happened in the litigation of Lease Sale 50, Lease Sale 55 and Lease Sale 78. I understand that the Attorney General has said that the state has never "had a lease sale invalidated." This raises the question again of whether or not this legislation is really needed.

One major question which must be asked relates to Section 1. How does the Department understand Section 1 (e)(1)(a)? Does the Department intend to adopt regulations to define the scoping etc. or will it just be a matter of the director exercising his own discretion?

Questions have also been raised about this legislation possibly placing the state out of compliance with the federal program. I wish to learn more about this. Additionally, how much money does the state receive from the federal government for the coastal zone program? What does the state stand to lose financially if we are out of compliance?

These are just some of the concerns which I believe need to be addressed - there are others - and I think it is appropriate for this to be done in the House Oil and Gas Committee.

Your attention to this request would be appreciated.

ALASKA OIL AND GAS ASSOCIATION
POSITION
ON
SB 308/HB474
ADMINISTRATIVE ACTION RELATING TO LAND

February 25, 1994

The Alaska Oil and Gas Association (AOGA) is a trade association whose member companies account for the majority of oil and gas exploration, production, transportation and marketing activities in Alaska.

AOGA supports a full analysis of all issues and concerns through the best interest finding process for each lease sale. The Association feels that the current statutes and regulations were designed to do just that.

However, ^{we are} ~~AOGA~~ is concerned by the uncertainty that has been created by recent rulings of the courts interpreting the current law.

AOGA supports certainty in the process so that DNR's scope of review can be defined during the administrative review process and not by the courts. We feel that most of the people testifying today would agree with that. The scope of the review should be defined by the administrative review process and not by the courts. The only question is how to define that scope of review.

AOGA believes that the scope of review for the best interest finding for oil and gas lease sales should cover three things.

First, through review of the information available to the Director, the director should determine those issues that should be addressed during the review.

Second, all public comments should be considered in determining what the scope of the review should be.

Third, the legislature has determined that those items listed in AS 38.05.035(g) should be a part of the scope of review.

If the Director, the public, and the legislature do not consider an issue to be of sufficient concern then the courts should not be allowed to decide it should have been covered in the best interest finding.

AOGA believes that the intent of this bill is directed at providing certainty in the scope of review.

AOGA supports SB308/HB474.

**Doyon, Limited**

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Tel: (907) 452-4755 Fax: (907) 456-6785
Toll Free in Alaska: 1-800-478-4755

February 17, 1994

VIA FAX: (907) 465-4316

The Honorable Joe Green
Chairman
House Oil and Gas Committee
Capitol Building, Room 114
Juneau, Alaska 99811

RE: SB 308/HB 474 (oil and gas leasing)

Dear Representative Green:

We have followed closely the recent court decisions which are unnecessarily interfering with the State's oil and gas leasing program. The courts are substituting their opinions for those of the Legislature due to what they believe is a lack of legislative intent in authorizing legislation.

Passage of the above referenced legislation will provide the statutory changes needed to get the State out of endless litigation which is frustrating the purposes of the leasing program. The leasing program is an important part of the continued viability of a stable oil and gas industry in Alaska. We ask for your support.

Sincerely,

Morris Thompson
President and CEO

MT:JQM:rls

Post-It™ brand fax transmittal memo 7671 # of pages > 2	
To: <i>Spec Com O & G</i>	From: <i>Val LIO</i>
Co: <i>Oil & Gas Telon</i>	Co.
Dept: <i>HB 474</i>	Phone # <i>835-2111</i>
Fax # <i>465-4316</i>	Fax # <i>835-2017</i>

P.O. Box 1353
Valdez, AK 99686
Phone: 907-835-4300
Fax: 907-835-5679

To: Chairman Green, and members of the House Special Committee on Oil and Gas
From: Nancy R. Lethcoe, President
Date: February 28, 1994

As a business organization, AWRTA can appreciate the wishes of the Department of Natural Resources to have the legislature pass a bill that will decrease litigation costs and avoid increased unemployment. However, AWRTA believes that this bill may increase unemployment and litigation costs by giving priority to Alaska's extractive industries — timber, mining, and oil and gas — at the expense of the tourism industry which is also based on Alaska's natural resources.

We have reached this conclusion after listening to Mr. Eason's testimony before the Senate Resources and Finance committees. When questioned about the meaning of the words "direct" and "indirect," Mr. Eason explained that the fact that spills will occur is a direct effect, whereas the resource and economic damages to other industries and the natural resources on which they depend is an indirect effect. Currently, both direct and indirect effects are considered when making a written finding. ~~SB 308~~ limits findings to considering only the direct effects. *HB 474*

While we appreciate the need to provide for a fair business atmosphere for the extractive industries, we ask you to consider whether it is wise to do this at the expense of the tourism and other industries based on Alaska's renewable resources. In particular, we are concerned that this change directly affects the tourism industry. As many of you know, the courts have ruled that tourism businesses do not have legal standing to recover economic damages sustained by a spill. Following the 1989 spill, tourism business operating in areas physically oiled, either went out of business completely, significantly reduced their business, or relocated to other areas. The economic effects lasted for several years. Businesses in the spill impacted areas also suffered. For example, in the years following the spill, Valdez, which was 25 miles from the oiled area, had a 40% decline in cruise ship landings. The summer of 1994 will be the first year that cruise ship landings will have equaled or exceeded the 1988-1989 level. The loss of cruise ship traffic cost Valdez tourism businesses such as gift shops and restaurants a minimum of 2 million dollars. According to the State Visitor Statistics Program, the total loss of tourism business to

Valdez in 1989 alone was \$12 million. It is, of course, true that the spill caused an economic boom in other parts of the Valdez economy, but this was at the expense of tourism businesses. None of these damages are recoverable. Prevention is the tourism industry's only protection.

Alaska needs a diversified economy. AWRTA supports laws and regulations that promote mutually compatible development of all of Alaska's industries, not the exclusive development of a few at the expense of others. We support laws that seek informed public input from all affected businesses and seek to balance the needs of competing industries without jeopardizing either one's existence. ~~SB 308~~^{HB 474} does not accomplish this. It limits the scope so narrowly that legitimate economic concerns of the tourism industry will not be considered. Actual and potential adverse economic impacts on tourism within the site and adjacent to it must be considered as it is under existing law.

AWRTA supports oil development where there are adequate safeguards to protect other industries. Good government provides those protections. The State's current Coastal Zone Management Program is working. The courts have not stopped lease sales. They have only asked the Department of Natural Resources to look at the indirect impacts and to seek ways of minimizing or mitigating adverse effects on the State's other natural resources and businesses dependent upon those resources.

AWRTA strongly opposes this bill. It is not a fair bill. It is not a just bill. It seeks to advance the profits of one segment of the state's economy at the expense of other parts of the business community. It is not a bill that is good for Alaska. Alaska needs both a strong, responsible oil industry and strong, locally owned and operated tourism, including guided sport fishing, businesses. We ask that you not support this bill.



UNITED FISHERMEN OF ALASKA

2/16/94

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

POSITION PAPER ON HB 474 & SB 308

UFA opposes this legislation. We are not anti-development. However, this legislation attempts to ignore consideration of problems at the initial stage of projects.

The Alaska Coastal Management Program isn't broken: DNR is.

In April 1993, the Alaska Supreme Court ruled that DNR failed to adequately consider salient issues in making its best-interest finding to allow Lease Sale 50 (Camden Bay) to proceed. Sale 50 was remanded because DNR did not do its homework.

In December 1993, the Alaska Supreme Court ruled that DNR again failed to adequately consider identical issues in making its best-interest finding to allow Lease Sale 55 (Demarcation Point, ANWR) to proceed. Sale 55 was remanded because DNR did not do its homework. In fact, the Supreme Court was so astonished by DNR's sloppiness in preparing its Findings, that the court specifically pointed out in its ruling that DNR appears to have copied--without alteration--the previously rejected Sale 50 Finding in Camden Bay and tried to apply this same flawed Finding to Sale 55.

In January 1994, the State Superior Court ruled preliminarily that DNR failed to adequately consider salient issues in making its best-interest finding to allow Lease Sale 78 (Cook Inlet) to proceed. Although DNR has appealed, it is obvious, this time even at the state court level, that DNR has, once again, not done its homework.

Legislative "fixes" won't substitute for professionalism at DNR.

DNR has already asked the Legislature to change the law when the Alaska Supreme Court found that DNR made the initial consistency determination in Sale 50, rather than the Office of Management and Budget as required by law. The Legislature amended the law (AS 44.19.145(11)) to permit DNR to make consistency determinations--retroactive to Sale 50. Once again DNR is requesting legislative "fixes" for departmental incompetency. The law is not the problem.

This legislation increases federal authority on federal lands and decreases local authority on state lands.

This legislation tries to give DNR resource agency directors authority to limit the scope and number of issues that are raised during administrative review. However, because federal and state findings need to be consistent under the Coastal Zone Management

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fisherman's Association • Alaska Trollers Association • Area K Seiners Association
Bering Sea Fishermen's Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Seafood Producers Cooperative
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • Western Alaska Cooperative Marketing Association

Act, when this legislation delegates broad authority to state directors, it also delegates this same broad authority to federal directors. For example, if this legislation were enacted, the state would have far less opportunity to comment on federal findings on federal lands, such as outer continental shelf oil lease sales or Tongass timber harvests.

Similarly, by empowering DNR resource agency directors to narrow the focus of administrative reviews, this legislation also takes power away from local governments and the concerned public. This is undemocratic. The idea of concentrating control in the hands of state bureaucrats is as repulsive to local governments and people as the idea of concentrating control in the hands of federal bureaucrats is to state governments. Yet this legislation does both.

This legislation affects future timber, mining and oil projects.

This legislation gives all resource agency directors--timber, mining, oil-- power to limit the range of issues presented during administrative reviews. This concentrates power in the hands of state bureaucrats who have demonstrated their inability to make "reasoned determinations" in areas other than oil and gas lease sales. For example, the area forester determined that the visual impact from the 215,000 acre harvest in the Susitna Valley would be a "pleasing" mosaic of colors for viewers.

This legislation will increase the risk of environmentally unsound projects.

This legislation allows DNR to conduct multi-phase administrative reviews and permitting without requiring all the relevant information at the initial phase of the proposed project. This is counter to the best interests of the state, because DNR will find it difficult to slow or stop momentum once projects are initiated and developers have property interest. The lease sale buy-back situation in Bristol Bay is a perfect example. To be fair to the state, developers and the public, it is imperative that all social and environmental risks are brought to the table at the initial stage of the project.

The Alaska Supreme Court noted that "a finding... that development is economically feasible is not the same as a finding that the sale is in the State's best interests. DNR must consider the "social, cultural and environmental impacts on the state from oil production." However, the Supreme Court warned that "the more segmented an assessment of environmental hazards, the greater the risk that prior permits will compel DNR to approve later, environmentally unsound permits." Surely this is not in the state's best interests.

This bill legislates DNR's Incompetence and irresponsibility.

The Alaska Supreme Court found that "DNR is required [by law] to take a 'hard look' at the salient problems involved with a lease sale, and [it] must engage in reasoned decision making." Further, the Supreme Court ruled that DNR must "consider the probable cumulative impact of all anticipated activities which will be a part of [the project]. Instead DNR is appealing to the legislature to remove these requirements.

The problem lies with DNR's ability to meet the requirements of the Coastal Management Program, not with the program itself. The public, industry and the state deserve to discuss and resolve issues up front to ensure projects proceed responsibly and with minimal impact on other resource users and the environment.



Alaska State Legislature

Please enter into the record my testimony to the House Oil and Gas
committee name

committee on HB 474, dated February 28, 1994.
bill/subject

Mr. Chairman and Committee Members,

I strongly oppose HB 474. This bill is completely unnecessary and will only lead to future legal problems and controversy. The Alaska Coastal Management Program should not be tampered with or altered. I have several concerns.

Limiting the best interest findings to consideration of impacts on fish and wildlife only within a lease area is absurd. Air and water currents do not respect lease boundaries. Areas downstream from a hazardous spill at a mine site or poor logging practices, can definitely be adversely affected. Similarly, air emissions or an oil spill can be carried by the ocean and prevailing wind patterns to vast areas outside of a lease.

The vague terms "nonspeculative" and "direct effects" are invitations to lawsuits as the public and agencies struggle to determine their meanings and legal interpretations.

Best interest findings should not be limited to specific phases of a project. Long term and cumulative effects must be considered for any resource planning to be responsible.

Please do not pass this bill out of this committee.

Signed: Mary Forbes
Testifier

Representing (Optional)

418 Mill Bay Rd Kodiak

Address

486-2685

Phone No.

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB474

1994 LEGISLATIVE SESSION

Revision Date: Original

Dept Affected: Natural Resources

Title: "An Act modifying administrative procedures

BRU: Resource Development

and decisions by state agencies that relate to uses and dispositions..."

Component: All

Sponsor: House Resources Committee

Requestor: House Oil & Gas Committee

Component Serial No.

All

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

There is no anticipated fiscal impact associated with this bill in the Department of Natural Resources.

Prepared by: Jerry Gallagher, Legislative Liaison

Phone: 465-2400

Division: Commissioner's Office

Date: 15-Feb-94

Approved by Commissioner:

Harry A. Noah

Date: 15-Feb-94

Agency:

Natural Resources

PREPARER TO PROVIDE INFORMATION TO GOVERNOR'S LEGISLATIVE OFFICE

(HB474.XLS Rev 2/15/94)

For fu

Office

Page 1 of 1

FISCAL NOTE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 474

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: Modifying administrative procedures and decisions BRG: Office of Management and Budget
 by State agencies that relate to uses of State land Component: Governmental Coordination
 Sponsor: House Resources Committee
 Requestor: _____ COMPONENT SERIAL NO. 0018

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY94) cost: \$ 0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Paul C. Rusanowski, Director
 Division: Governmental Coordination
 Approved by Commissioner: Patrick J. Bryan
 Agency: _____

Phone: 465-3562
 Date: 2/15/94
 Date: 2-16-94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

COOK INLET REGION, INC.

February 28, 1994

Representative Joe Green
Chairman, House Special Oil & Gas Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Via Faxcom to 465-4316

Dear Representative Green:

Due to a scheduling conflict I am unable to testify in person at today's Committee hearing on House Bill 474.

Attached is a copy of Cook Inlet Region, Inc.'s (CIRI) position on HB 474. I respectfully request that a copy of my testimony be provided to Committee members prior to this afternoons meeting.

In advance, I appreciate your consideration of this matter.

Thank you.

Sincerely,

COOK INLET REGION, INC.



Gerald G. Booth
Vice President
Energy and Minerals

Attachment

TESTIMONY
by: GERALD G. BOOTH
VICE PRESIDENT, ENERGY AND MINERALS
COOK INLET REGION, INC.
on HB 474
ADMINISTRATIVE ACTION RELATING TO LAND AND RESOURCES
FEBRUARY 28, 1994

Cook Inlet Region, Inc. is a Native Corporation established pursuant to the Alaska Native Claims Settlement Act (ANCSA). CIRI is one of the largest private land holders in Alaska with a land base of 924,000 acres of surface estate and over 1.6 million acres of subsurface estate.

The Company's principal line of business is natural resource development. Our strategy for growth is continued responsible development of our natural resource holdings. The development of CIRI's land and resources will play a significant role in the future economic growth and development of south-central Alaska. CIRI's success in this area will, through the 7(i) sharing provisions of ANCSA, contribute substantially to the statewide economy.

CIRI supports HB 474 in that CIRI believes that the intent of this bill is rightfully focused on providing certainty to the scope of review in the best interest finding process.

CIRI believes that current statutes and regulations are intended to provide for a full analysis of all issues and concerns through the best interest findings, however, recent rulings generated by court interpretations of the law have created uncertainty in the process.

CIRI believes that the State should establish resource development policy, not the courts. It is CIRI's position that all public comments should be a part of the scope of review and, thorough analysis of all valid, reasonably foreseeable, non-speculative information and data should be foremost in the process to determine best interest findings, thus lending certainty to the process.

CIRI further believes that there are ample opportunities for public and legislative input into issues and concerns surrounding a state lease sale. Thus, the Commissioner, should have ample discretion in the process to assure that projects are in the State's best interest and consistent with the Alaska Coastal Management Program. Because of the extreme economic interest of State oil and gas lease sales to Alaska's future, it is critical that the process maintain certainty which equates to timeliness relative to lease activities.

CIRI supports HB 474.

February 16, 1994

COOK INLET REGION, INC.

FEB 21 1994

Representative Joe Green, Chairman
House Oil and Gas Special Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Chairman Green:

This letter serves to convey Cook Inlet Region, Inc.'s (CIRI) support for House Bill 474.

It is my understanding that HB 474 is scheduled for its first hearing before the House Oil and Gas Special Committee at 5:00 p.m. today.

HB 474, as currently drafted, makes explicit the Commissioner of Natural Resources authority to limit the scope of "Best Interest Findings" to an analysis of the reasonably foreseeable non-speculative, direct efforts of leasing. I believe this tightening of the scope of such findings and ACMP determinations for leasing will enhance the state's ability to successfully conduct oil and gas lease sales.

My evaluation of HB 474 indicates that it in no way diminishes the public review process but rather enhances it by requiring that best interest and ACMP consistency be determined by valid, relevant facts rather than speculation on possible occurrences and impacts.

I respectfully request your support for HB 474 and that your committee pass the bill out with a favorable response.

Thank you.

Sincerely,

COOK INLET REGION, INC.



Gerald G. Booth
Vice President, Energy and Minerals

2/4017

LETTER OF SUPPORT

February 28, 1994
House Oil & Gas Cmte.

CONCEPTUAL AMENDMENTS TO HB 474
by Olberg by Request

Add language that puts the financial burden on the developer. Under the proposed multi-phase development, if the developer is under self imposed time restraints as far as start up is concerned and the state chooses not to address concerns and resolve conflicts during the initial administrative review, then the **developer** should proceed **at his own risk**. If the State decides later that the project must be stopped, then the State can do so without any pressure from buy back costs. The developer waives his right to recoup these costs and other investment costs when he starts a multi-phase development project.

OR

Add language that requires the lessee and state to share the financial risk in multi-phase development. Similar to the above only monies from the land disposal could be put in escrow until the last phase of the multi-phase review process. If the project is stopped, the State is under no pressure from buy-back costs; it returns the lessees monies except however for other costs incurred as a resul. of the land disposal (administrative, project development, lost potential, etc.) when he starts a multi-phase development.

DRAFT

8-LS1692J

CS HOUSE BILL NO. 474 (046)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Introduced: 2/14/94

Referred: House Special Committee on Oil and Gas, Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act modifying administrative procedures and decisions by state agencies that
2 relate to uses and dispositions of state land, property, and resources, and to the
3 interests within them, and that relate to land, property, and resources, and to
4 the interests within them, that are subject to the coastal management program;
5 and providing for an effective date."

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

7 * Section 1. AS 38.05.035(e) is amended to read:

8 (e) Upon a written finding that the interests of the state will be best served,
9 the director may, with the consent of the commissioner, approve contracts for the sale,
10 lease, or other disposal of available land, resources, property, or interests in them, and,
11 in addition to the conditions and limitations imposed by law, may impose additional
12 conditions or limitations in the contracts as the director determines, with the consent
13 of the commissioner, will best serve the interests of the state. A written finding of

1 the director is subject to the following:

2 (1) with the consent of the commissioner and subject to the
3 director's discretion, for a specific proposed disposal of available land, resources,
4 or property, or of an interest in them, the director

5 (A) shall establish^{in the written finding} the scope of the administrative review on
6 which the director's determination is based, and the scope of the written
7 finding supporting that determination; the scope of the review and finding
8 may address only reasonably foreseeable, ^{significant} [nonspeculative] direct effects of
9 the uses proposed to be authorized by the disposal;

10 (B) may limit^{in the written finding} the scope of an administrative review and
11 finding for a proposed disposal

12 (i) to the applicable^{statutes & regulations} [law] and the facts pertaining to
13 the land, resources, or property, or interest in them, that the
14 director finds are material to the determination and that are known
15 to the director or knowledge of which is made available to the
16 director during the administrative review; and

17 (ii) to issues that, based on the^{statutes & regulations} [law] and facts as
18 described in (i) of this subparagraph and on the nature of the uses
19 sought to be authorized, the director finds are ^{material} [relevant] to the
20 determination of whether the proposed disposal will best serve the
21 interests of the state; and

22 (C) may, if the project for which the proposed disposal is
23 sought is a multiphased development, limit^{in the written finding} the scope of an administrative
24 review and finding for the proposed disposal to the applicable^{statutes & regulations} [law], facts,
25 and issues identified in (B)(i) and (ii) of this paragraph that pertain solely
26 to a discrete phase of the project when the only uses to be authorized by
27 the proposed disposal are part of that discrete phase, the department's
28 approval is required before the next phase of the disposal may proceed,
29 and the department conditions its approval to ensure that any additional
30 uses or activities proposed for that or any later phase of the disposal will
31 serve the best interests of the state;

1 (2) a [A] written finding for an oil and gas lease sale under
2 AS 38.05.180 is subject to (g) of this section;

3 (3) a [. A] contract for the sale, lease, or other disposal of available
4 land or an interest in land is not legally binding on the state until the commissioner
5 approves the contract but if the appraised value is not greater than \$50,000 in the case
6 of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of
7 land or interest in land, the director may execute the contract without the approval of
8 the commissioner;

9 (4) before [. BEFORE] a public hearing, if held, or in any case no less
10 than 21 days before the sale, lease, or other disposal of available land, property,
11 resources, or interests in them, the director shall make available to the public a written
12 finding that, in accordance with (1) of this subsection, sets out the material facts and
13 applicable law upon which the determination that the sale, lease, or other disposal will
14 best serve the interests of the state was based; however, a [. A] written finding is not
15 required before the approval of

16 (A) [(1)] a contract for a negotiated sale authorized under
17 AS 38.05.115;

18 (B) [(2)] a lease of land for a shore fishery site under
19 AS 38.05.082;

20 (C) [(3)] a permit or other authorization revocable by the
21 commissioner;

22 (D) [(4)] a mineral claim located under AS 38.05.195;

23 (E) [(5)] a mineral lease issued under AS 38.05.205;

24 (F) [(6)] a production license issued under AS 38.05.207;

25 (G) [(7)] an exempt oil and gas sale under AS 38.05.180(d) of
26 acreage offered in a sale that was held within the previous five years if the sale
27 was subject to a written best interest finding, unless the commissioner
28 determines that new information has become available that justifies a revision
29 of the best interest finding; or

30 (H) [(8)] a lease sale under AS 38.05.180(w) of acreage offered
31 in a sale that was held within the previous five years if the sale was subject to

1 a best interest finding, unless the commissioner determines that new
2 information has become available that justifies a revision of the best interest
3 finding.

4 * Sec. 2. AS 38.05.035(g) is amended to read:

5 (g) When the director prepares a written finding required under (e) of this
6 section for an oil and gas lease sale scheduled under AS 38.05.180, the director shall
7 consider and discuss in the finding

8 (1) facts that are known to the director at the time of preparation of the
9 finding and that are material to the following matters or to the issues that are within
10 the scope of the administrative review that was established by the director under
11 (e)(1) of this section and that were raised during the period allowed for receipt of
12 public comment;

13 (i) (A) property descriptions and locations;

14 (ii) (B) the petroleum potential of the sale area, in general terms;

15 (iii) (C) fish and wildlife species and their habitats within [IN] the
16 lease sale area;

17 (iv) (D) the current and nonspeculative projected uses in the area,
18 including uses and value of fish and wildlife;

19 (v) (E) the governmental powers to regulate oil and gas exploration,
20 development, production, and transportation;

21 (vi) (F) the reasonably foreseeable cumulative effects of oil and gas
22 exploration, development, production, and transportation on the sale area,
23 including effects on subsistence uses, fish and wildlife habitat and populations
24 and their uses, and historic and cultural resources;

25 (vii) (G) lease stipulations and mitigation measures, including any
26 measures to prevent and mitigate releases of oil and hazardous substances, to
27 be included in the leases, and a discussion of the protections offered by these
28 measures;

29 (viii) (H) the method or methods most likely to be used to transport
30 oil or gas from the lease sale area, and the advantages, disadvantages, and
31 relative risks of each;

1 ~~(ix)~~ [(I)] the reasonably foreseeable nonspeculative fiscal effects of
2 the lease sale and the subsequent activity on the state and affected
3 municipalities and communities, including the explicit and implicit subsidies
4 associated with the lease sale, if any;

5 ~~(x)~~ [(J)] the reasonably foreseeable nonspeculative effects of oil and
6 gas exploration, development, production, and transportation on municipalities
7 and communities within or adjacent to the lease sale area; and

8 ~~(xi)~~ [(K)] the bidding method or methods adopted by the
9 commissioner under AS 38.05.180;

10 ~~(3)~~ [(2)] a summary of agency and public comments received and the
11 department's responses to those comments; and

12 ~~(4)~~ [(3)] the basis for the director's determination that, on balance, leasing
13 the area would be in the state's best interest.

14 * Sec. 3. AS 46.40 is amended by adding a new section to read:

15 Sec. 46.40.094. CONSISTENCY DETERMINATIONS. [(a) When a
16 consistency determination is required for a project, the party responsible for the
17 consistency determination shall conduct the consistency review of the project and make
18 a consistency determination based only on

19 (1) applicable law;

20 (2) the facts pertaining to the project that are

21 (A) known to the party responsible or made a part of the record
22 during the project's consistency review; and

23 (B) material to the project's consistency determination; and

24 (3) the reasonably foreseeable, nonspeculative, direct effects of the
25 project.

26 (b) If a consistency determination is required for a project that is a discrete
27 phase of a multiphased development project, in addition to the requirements of (a) of
28 this section, the party responsible for the consistency determination may, in its
29 discretion,

30 (1) limit the consistency determination for the proposed project to that
31 discrete phase if each later phase of the project requires the party responsible to review]

1 [and make a consistency determination before that later phase of the project may
2 proceed; and

3 (2) condition the consistency determination for that phase of the project
4 on a requirement that an additional use or activity proposed for that or any later phase
5 of the project be consistent with the Alaska coastal management program.]

6 (b) ~~(c)~~ In this section,

7 (1) ^{office or state agency} ~~party~~ responsible for the consistency determination" [or "party
8 responsible"] means

9 (A) the office of management and budget, for a consistency
10 determination required to be made under AS 44.19.145(a)(11); and

11 (B) the commissioner of the resource agency that coordinates
12 a consistency review for a proposed project ^{or phase of a project} when required by this chapter for
13 which a permit, lease, or authorization is required to be approved or issued
14 only by that resource agency;

15 (2) "resource agency" has the meaning given in AS 44.19.152.

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