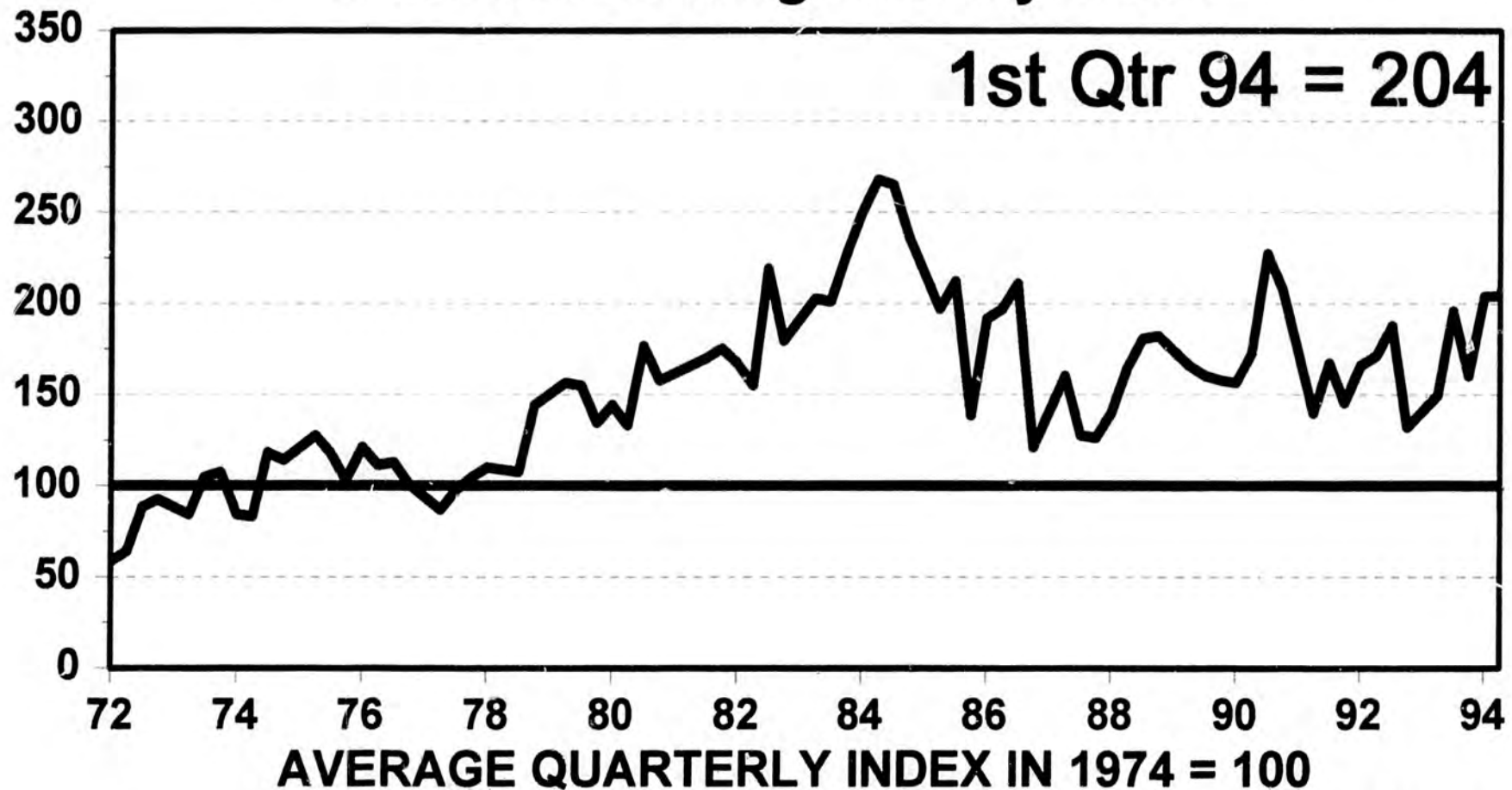


ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2270 SCOMM 93: HOUSE SPECIAL COMMITTEE ON OIL & GAS, 1993

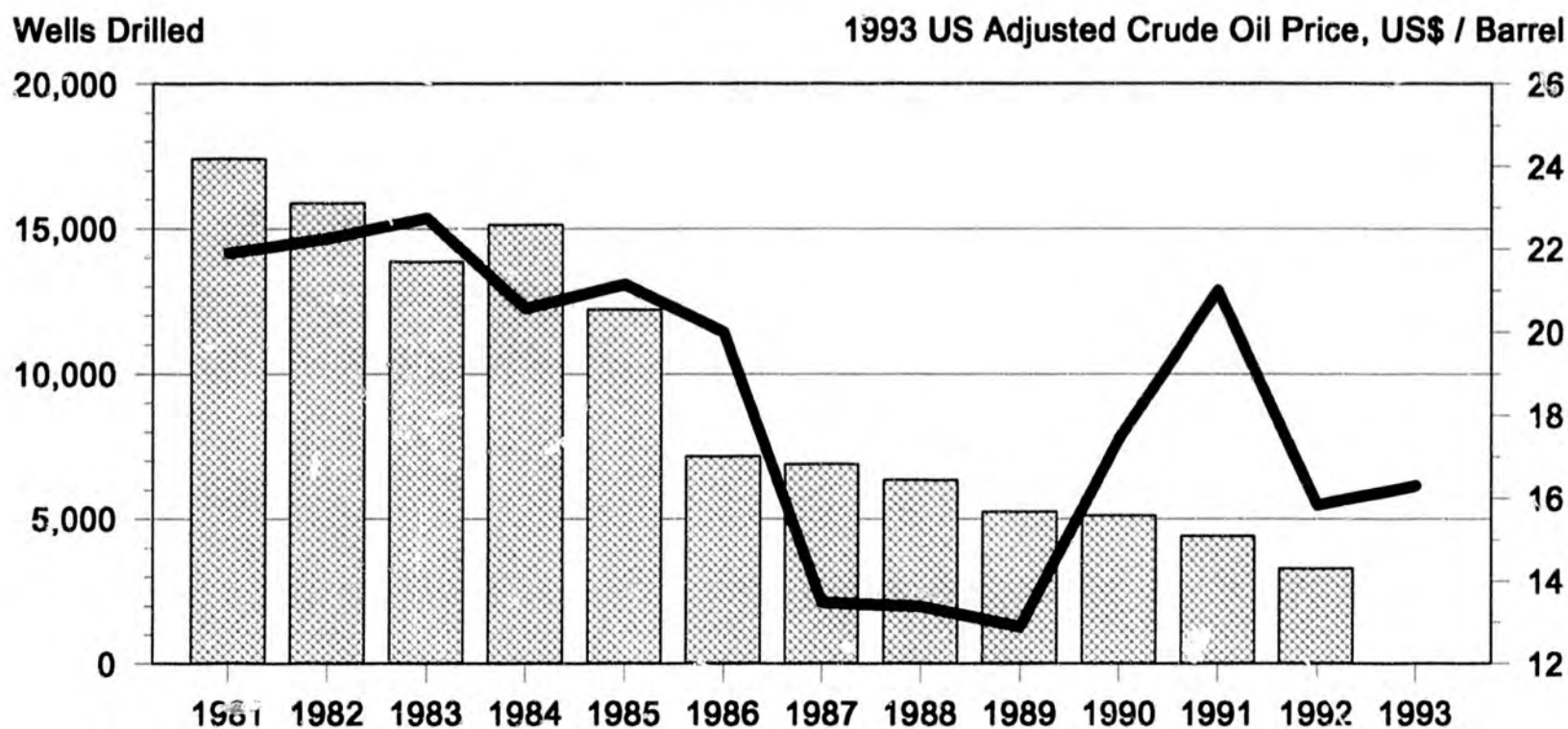
ASIA-PACIFIC

Offshore Drilling Activity Index



Gaffney, Cline & Associates

U.S. Lower 48 E and A Drilling & Weighted Average Crude Oil Price (1993 USD)

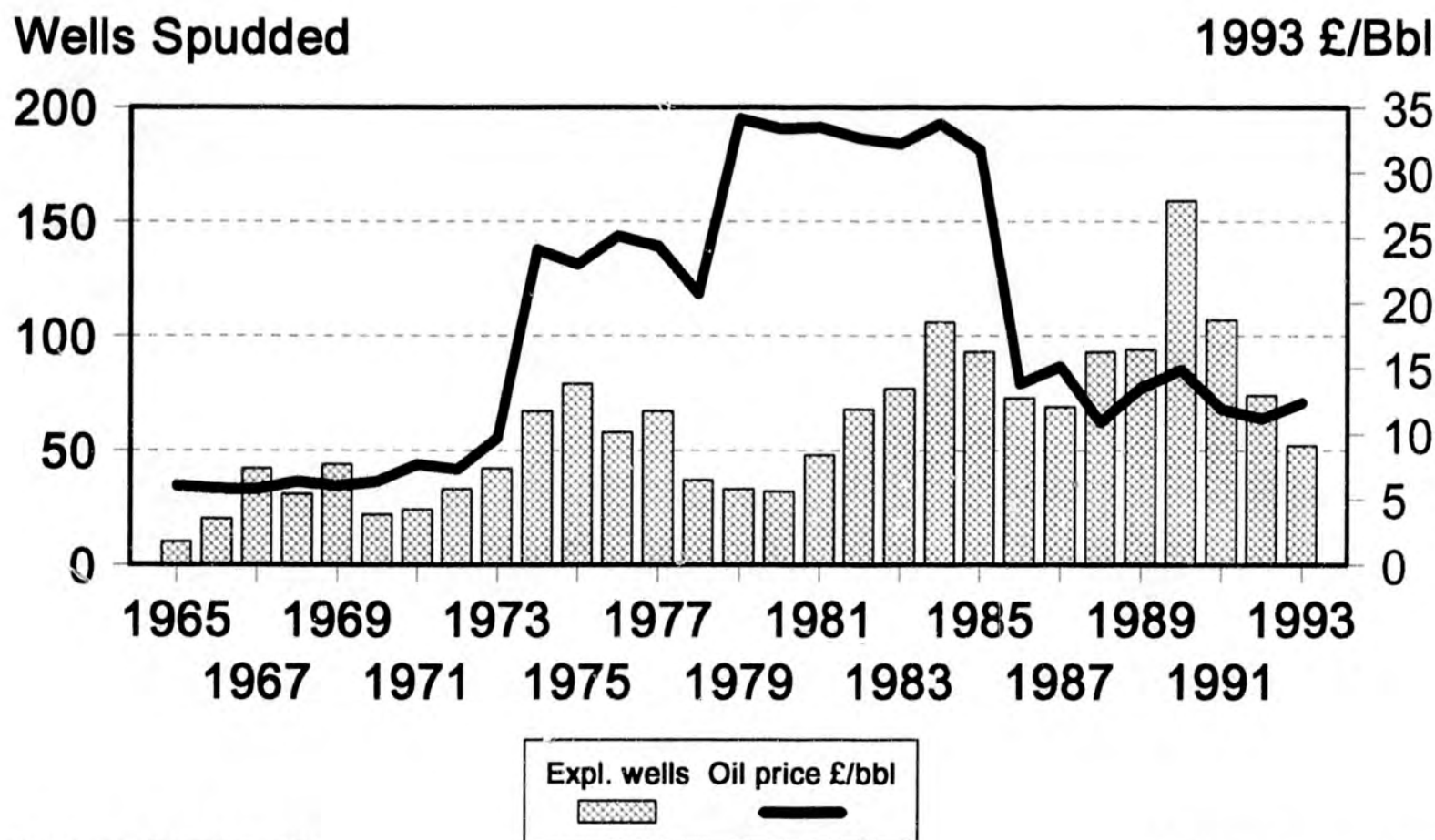


Wells Drilled Wtd. Avg Price
U.S. Lwr 48 1993 US\$/Bbl



Gaffney, Cline & Associates

Exploration Drilling Activity UKCS

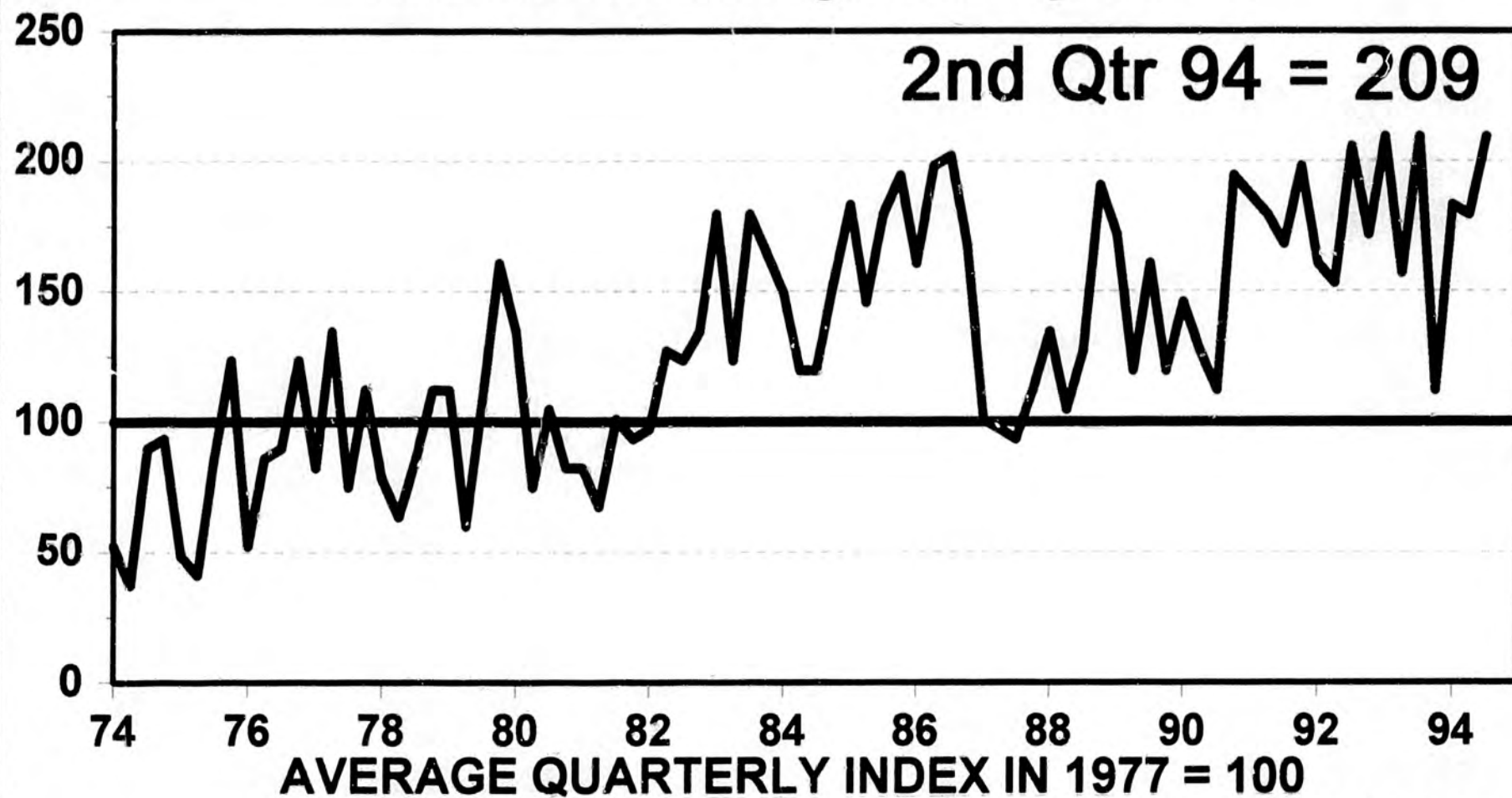


Sources : DOE/BP/RPI

Gaffney, Cline & Associates

EUROPE

Offshore Drilling Activity Index

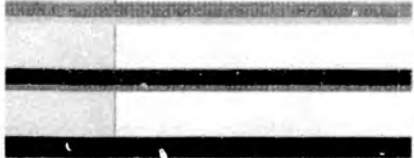


Gaffney, Cline & Associates

Perceptions of Alaska

- ▶ Majors only need apply
- ▶ **Big oil but ultra-high cost environment**
- ▶ Fiscal conditions tough under low price conditions
- ▶ **Significant environmental hurdles**
- ▶ Geology good but not spectacular
- ▶ **More competition getting more competitive**

Gaffney, Cline & Associates



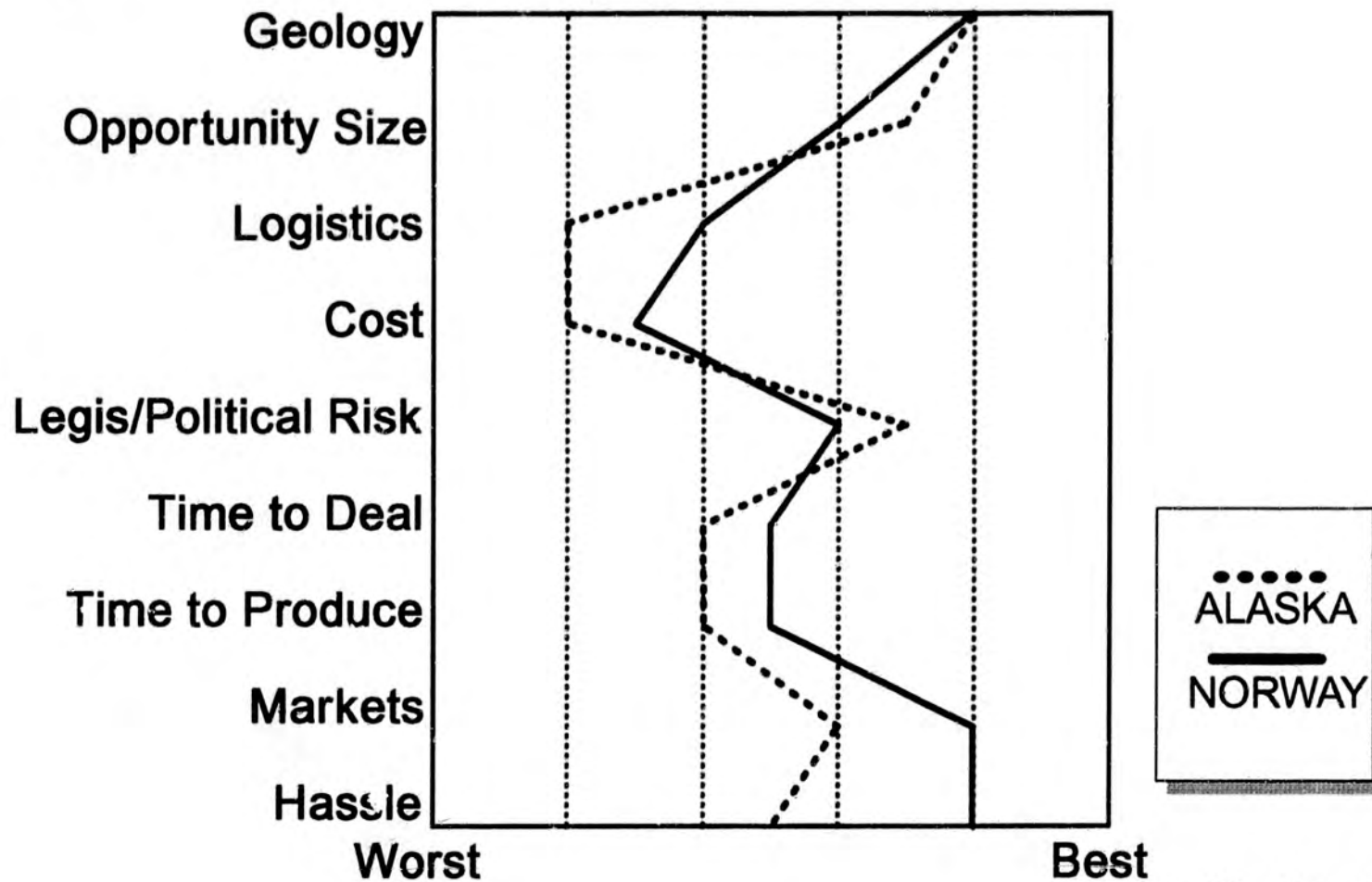
E&P Decision Criteria

- ▶ **Geology**
- ▶ **Opportunity Size**
- ▶ **Logistics**
- ▶ **Costs**
- ▶ **Legislative/Political Risk**
- ▶ **Time to a Deal**
- ▶ **Time to First Production**
- ▶ **Markets**
- ▶ **The Hassle Factor**

Gaffney, Cline & Associates

PERCEPTIONS

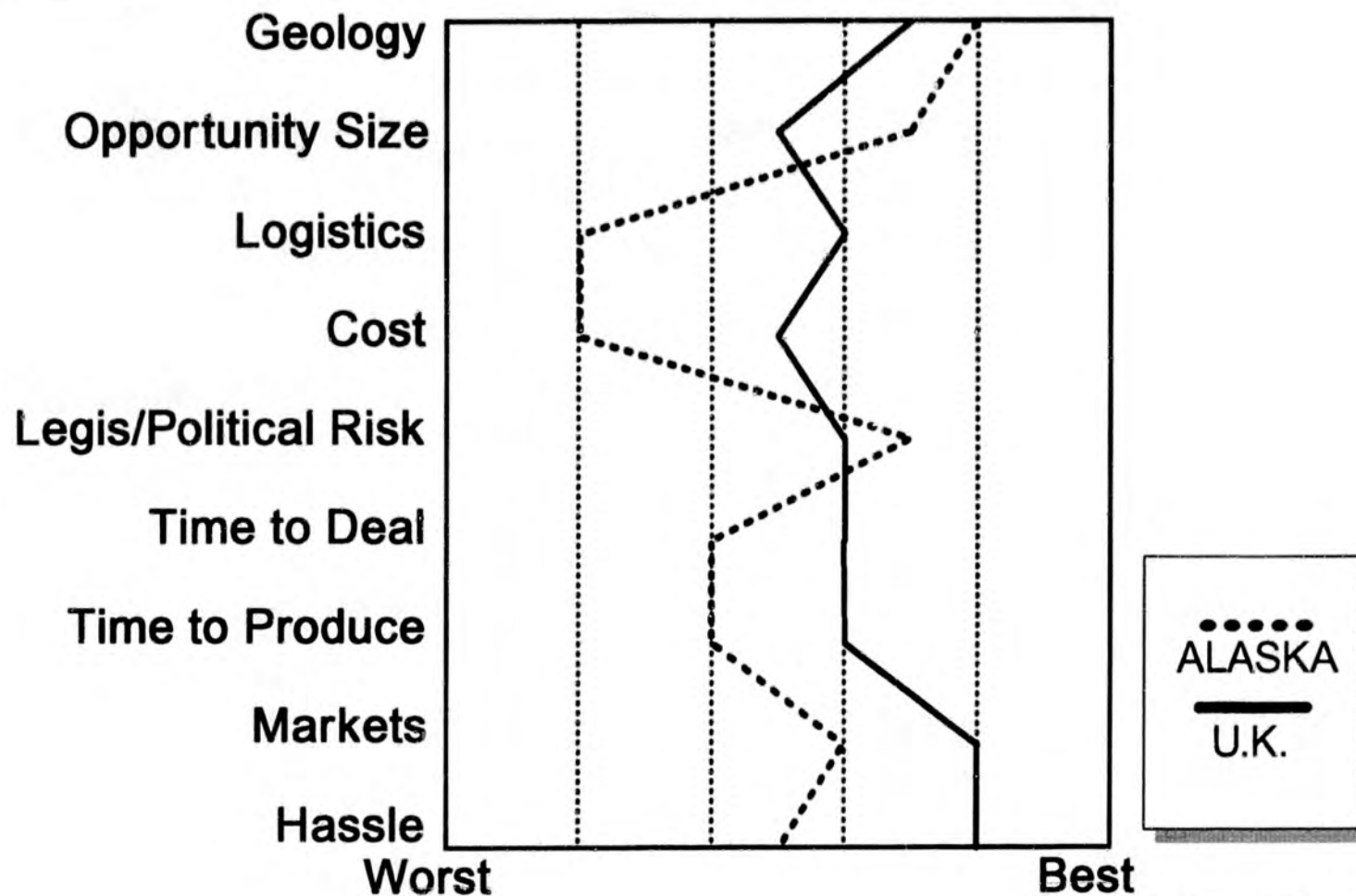
Norway vs. Alaska



Gaffney, Cline & Associates

PERCEPTIONS

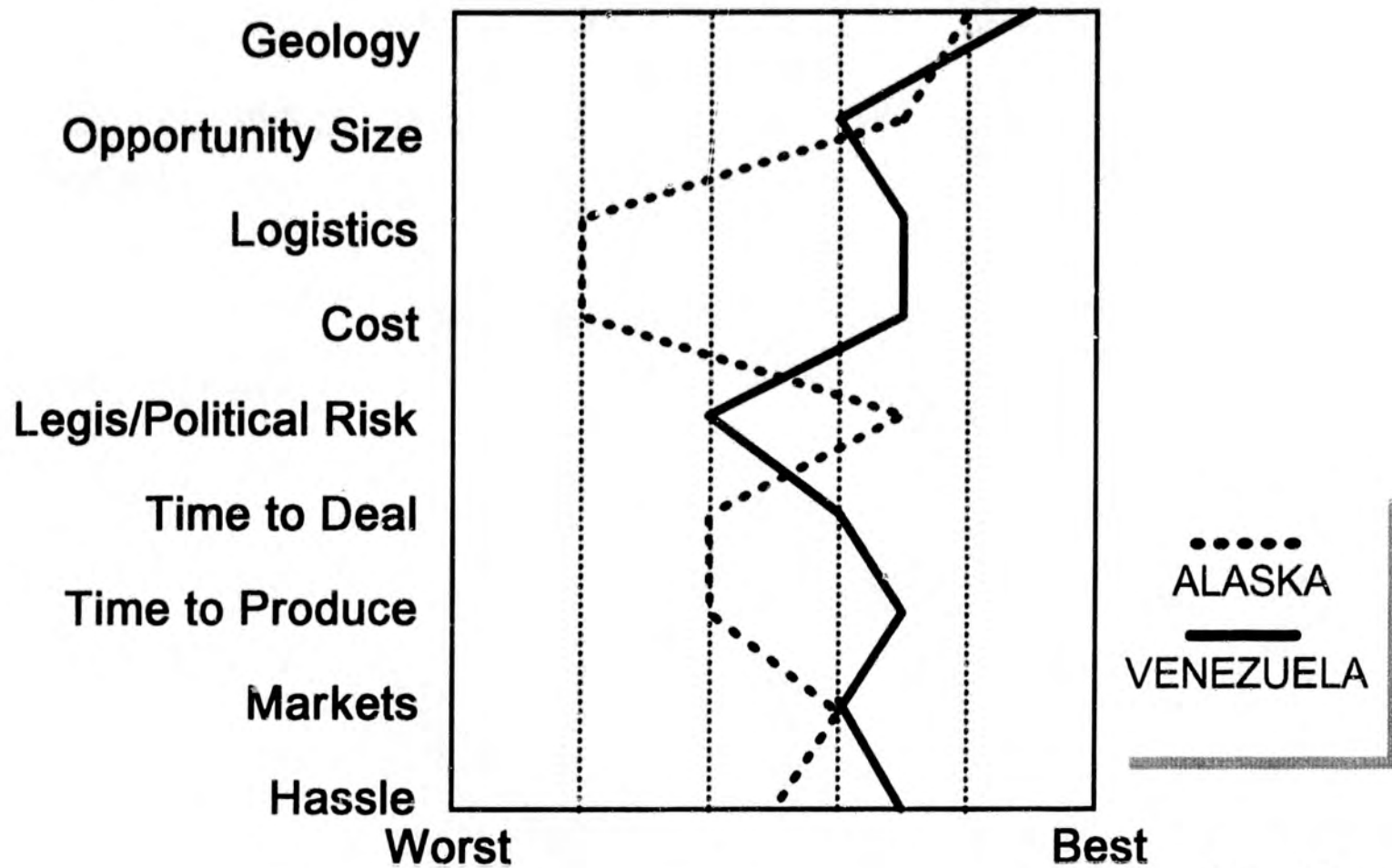
U.K. vs Alaska



Gaffney, Cline & Associates

PERCEPTIONS

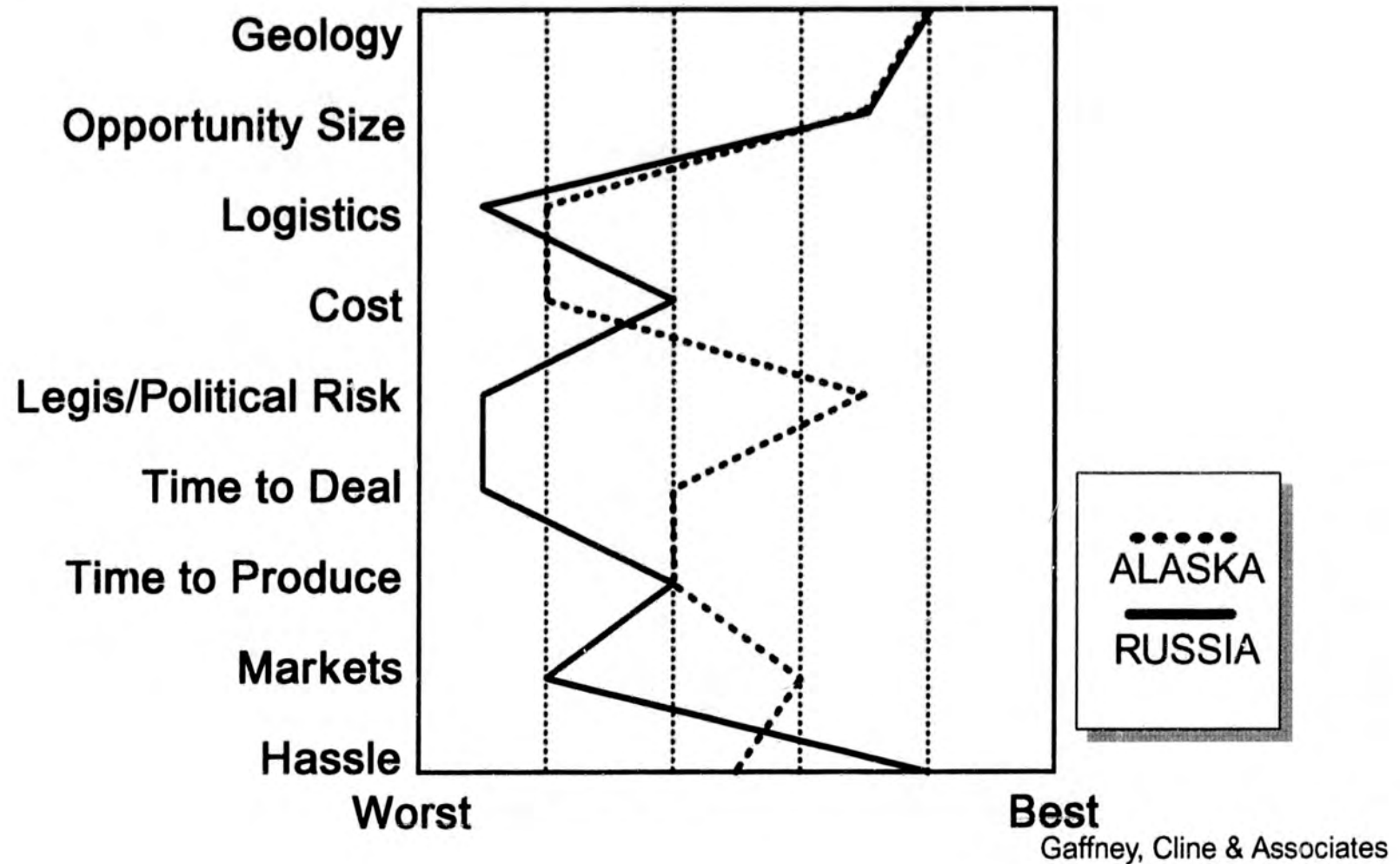
Venezuela vs. Alaska



Gaffney, Cline & Associates

PERCEPTIONS

Russia vs Alaska

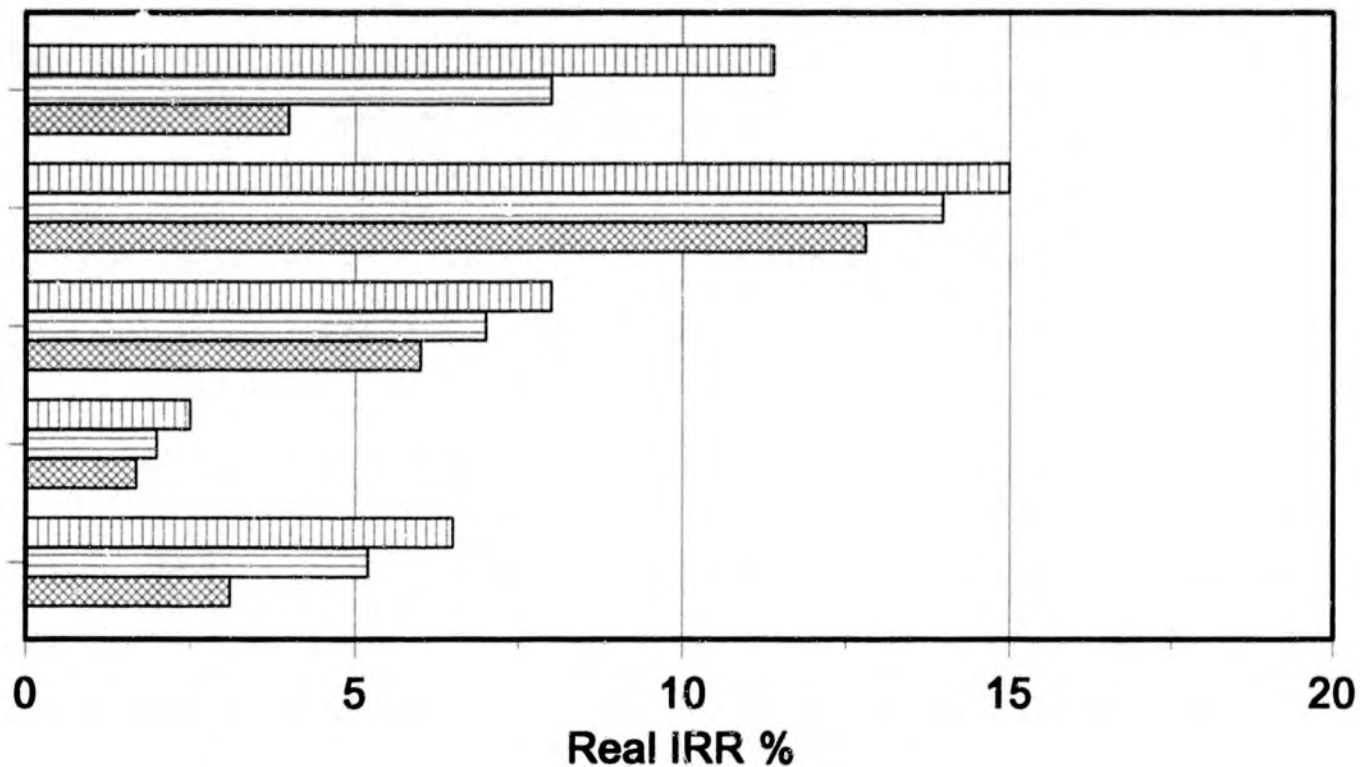


Fiscal Barriers and Incentives

- ▶ **Alaska economics highly leveraged**
 - ▶ **Higher Costs**
 - ▶ **Lower Prices**
- ▶ **Other Areas' terms improving**
 - ▶ **UK North Sea**
 - ▶ **Norway...**
 - ▶ **Venezuela**

Gaffney, Cline & Associates

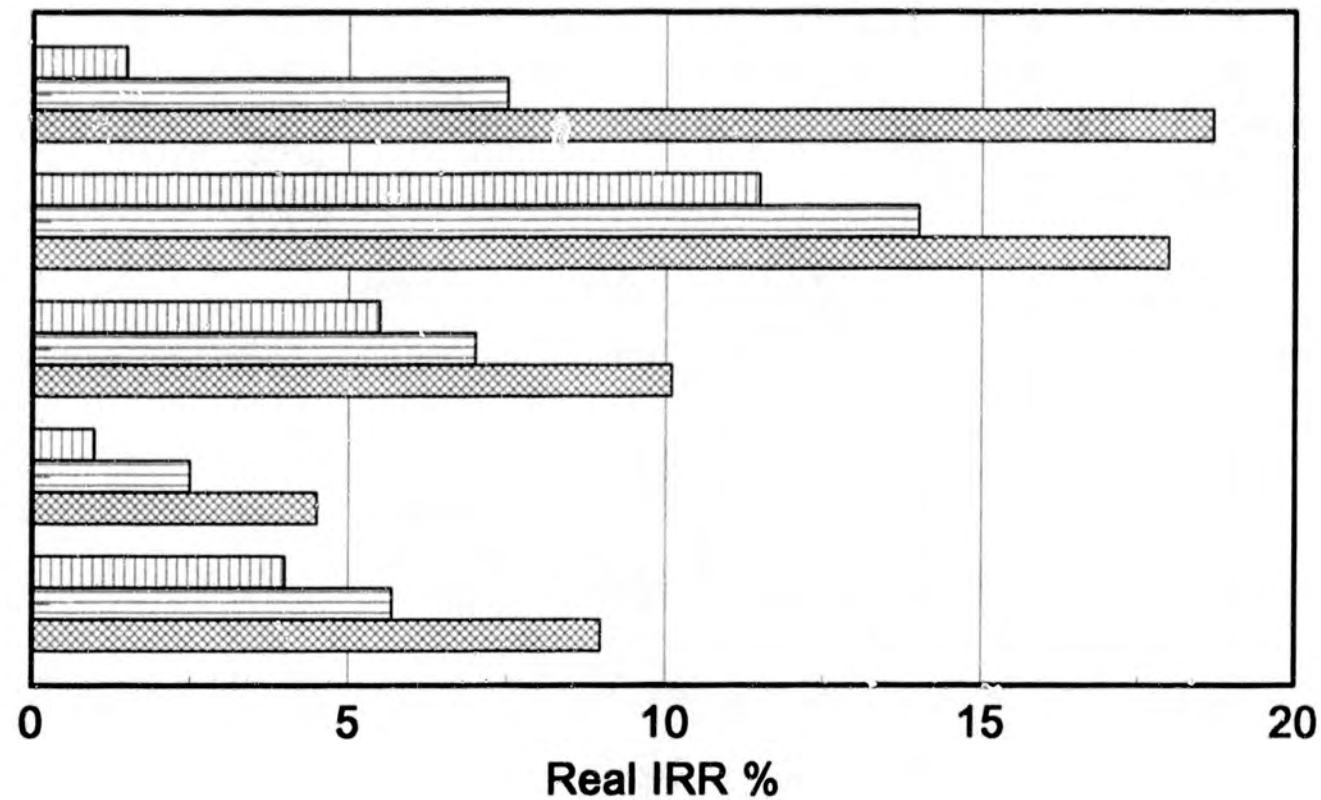
Company IRR % Real Niakuk Sensitivity to Costs



Lower Costs Base Hi Costs

Gaffney, Cline & Associates

Company IRR % Real Niakuk Sensitivity to Oil Price



Lower Price Base Hi Price

Gaffney, Cline & Associates

Alaska Economics

- Alaska Costs

200 MMbbl Field (Price Sensitivity Cases)

- \$5.00/bbl Capex
 - \$3.25/bbl Opex
 - \$5.00 Transportation
-) \$8.25/bbl

- Alaska Reduced Costs

200 MMbbl Field (ROR only Comparison)

- \$4.10/bbl Capex
 - \$3.25/bbl Opex
 - \$3.00 Transportation
-) \$6.25/bbl

Gaffney, Cline & Associates

Alaska Economics

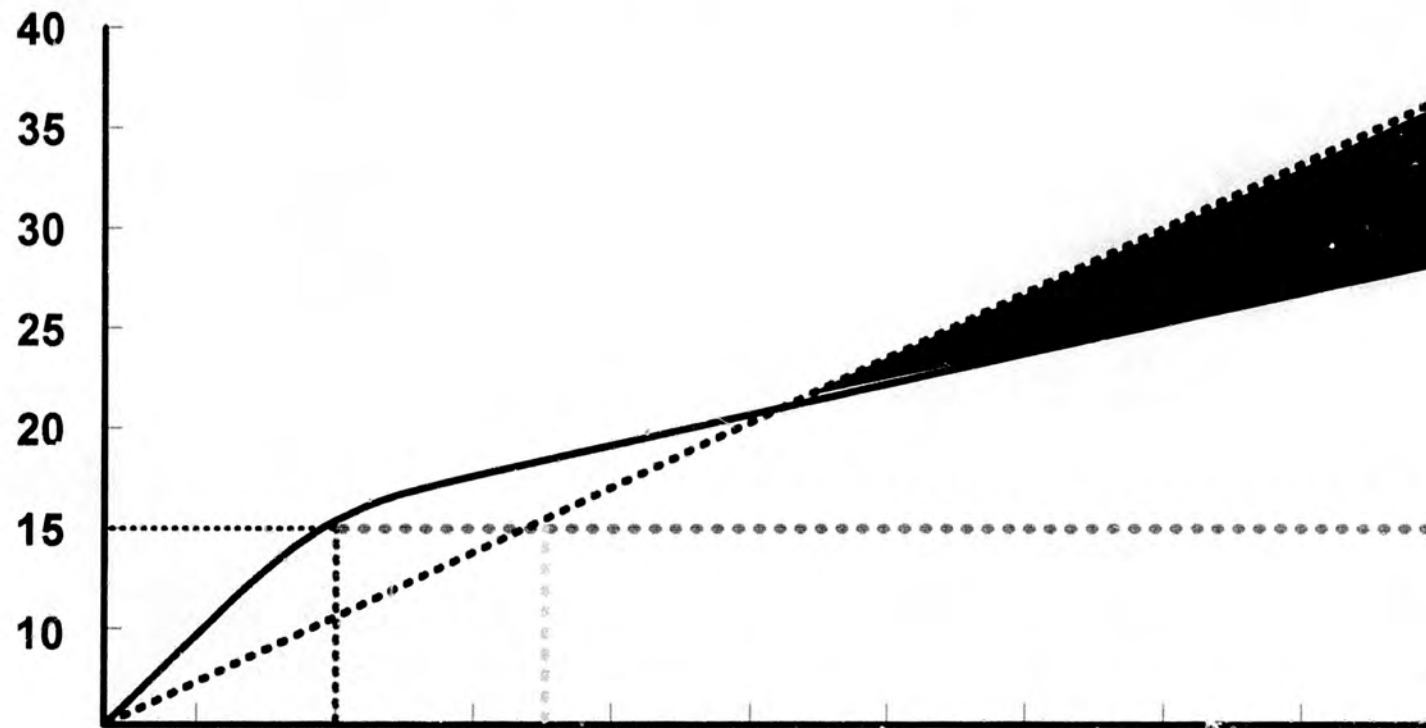
- \$18/bbl Oil
- 4% Price, Cost Inflation
- Tested Against Legislation
 - U.K.
 - Norway
 - Australia
 - Venezuela
- Full Corporate Tax (In All Cases)

Gaffney, Cline & Associates

Contractor Economics

Retaining Economic Rent vs. Lowering Economic Threshold

Rate of
Return



Field Size

Gaffney, Cline & Associates

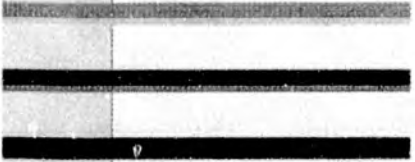


Regulatory Barriers and Incentives



- ▶ **Labyrinth of Regulatory Agencies/Bodies**
- ▶ **Federal and State oversight**
- ▶ **Powerful Environmental Groups**
- ▶ **Judiciary Involvement**
- ▶ **ANS Export Bans**
- ▶ **Lease Bonus System**

Gaffney, Cline & Associates

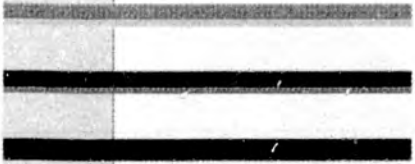


Alaska's Advantages



- ▶ **Political/Legislative Stability**
 - **Too much stability = inflexibility**
- ▶ **Currency Stability/Liquidity**
 - **Precluded from highest value market**
- ▶ **Prospectivity**
 - **At a price**
- ▶ **Transparency of Process**
 - **But multiple variables and control points**

Gaffney, Cline & Associates



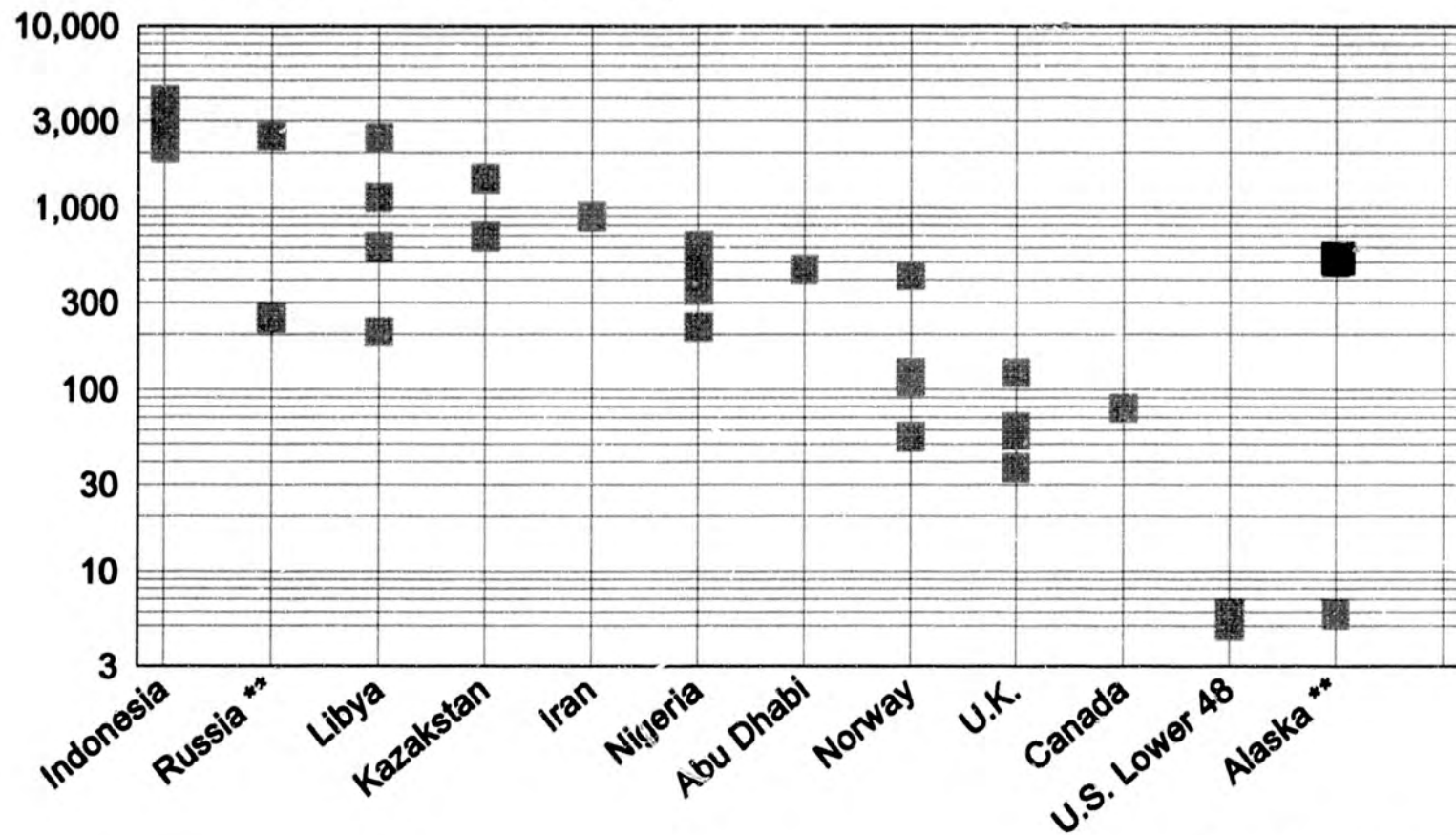
Current Initiatives

- ▶ **Large Block Concession proposal**
 - **Work Commitment**
 - **Block Size**
 - **Relinquishment**
- ▶ **Exploration Incentive Credits**

Gaffney, Cline & Associates

License Area By Country

Block Size (Thousands of Acres)



Gaffney, Cline & Associates

Conclusions

- ▶ Other areas aggressively competing for industry's investment and risk capital
 - UK
 - Venezuela
 - Indonesia

Gaffney, Cline & Associates

Conclusions

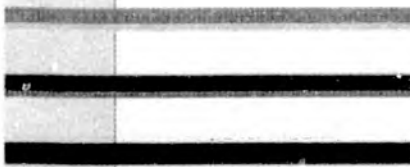
- ▶ High geologic promise offset by:
 - High costs
 - Low value production
 - Powerful Environmental groups
 - Closed industry structure
 - Regressive tax system
 - Litigious State government
- ▶ Large natural gas resource

Gaffney, Cline & Associates

Conclusions

- ▶ Recent positive steps:
 - Large block leasing
 - Exploration incentives
 - Much improved relationship and cooperation between state and industry
 - Growing awareness of the competition problem

Gaffney, Cline & Associates



Observation

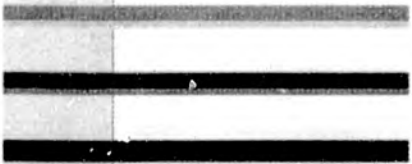
Regardless of oil price future ***now*** is the time to initiate changes that will lower economic threshold and retain higher levels of economic rent from a larger number of projects and developments

Gaffney, Cline & Associates

Recommendations

- ▶ Industry Administrator
- ▶ Wider industry contact and participation
- ▶ Re-assess fiscal and licensing terms and regulatory processes
 - Undeveloped discoveries
 - More fiscally progressive
- ▶ Get/keep the Federal ear

Gaffney, Cline & Associates



Recommendations



- ▶ Industry should re-assess its public policy handling in the state
- ▶ Seek common ground between industry and state

Gaffney, Cline & Associates

State-Industry Relationship

Some of the difficulty is the natural product of the era in which the industry grew...

- Oil Shocks
- Nationalism
- Producer vs Consumer

... and is maintained by the normal term-rotation of state governments and oil companies...

Gaffney, Cline & Associates

Industry Awareness

▶ UK DTI

- 6 years minimum industry experience
- 12-18 months secondment with operating companies after 10 years
- Policy stresses involvement and relationships

Gaffney, Cline & Associates

Other Considerations

- ▶ **Costs are the single biggest barrier**
- ▶ **Broadening the Appeal of Alaska**
 - **Road Show**
 - **New Entrant vs. Existing Player**
- ▶ **North Slope Inc.**
 - **"Stringing Pearls"**
 - **TAPS throughput thresholds**
- ▶ **The Natural Gas Resource**

Gaffney, Cline & Associates

Perceptions of Alaska

Alaska Oil and Gas Market Research Project



Gaffney, Cline & Associates

SCOMM

93:2

JAN-24-94 MON 18:45

DIV OF OIL AND GAS

FAX NO. 9075623852

P. 02/14

JAN-24-94 MON 17:54

ANCH AGO OGM

FAX NO. 9072798644

P. 01

JAN 24/94 17:26

ANCH AGO OGM 907 253 4121

ANCH COURT SYS-KEN

002

IN THE SUPERIOR COURT OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

NINILCHIK TRADITIONAL COUNCIL,
ALASKA CENTER FOR THE ENVIRONMENT,
GREENPEACE, TRUSTEES FOR ALASKA,
KENAI PENINSULA FISHERMEN'S ASSOCIATION,
UNITED COOK INLET DRIFT ASSOCIATION,

Appellants.

v.

HARRY NOAH, Commissioner,
State of Alaska Department of Natural
Resources, JAMES EASON, Director,
Division of Oil and Gas, State of Alaska
Department of Natural Resources and STATE
OF ALASKA, DEPARTMENT OF NATURAL RESOURCES,

Appellees.

Case No. 3KN-93-1174 CI

ORDER ON MOTION TO STAY

Appellants, Ninilchik Traditional Council, Alaska Center For the Environment, Greenpeace, Trustees For Alaska, Kenai Peninsula Fishermen's Association, and United Cook Inlet Drift Association (hereinafter "NTC") are appealing the Department of Natural Resources' (DNR) finding that lease sale 78 is in the State's "best interests" and the finding that the lease sale is "consistent" with the Alaska Coastal Management Plan (ACMP). NTC argues that the appellee's (hereinafter "Noah") have not met the legal requirements of the "best interests" finding or the ACMP. Specifically, NTC asserts that Noah has impermissibly deferred consideration of important issues such as: 1) conflicts between the oil and gas industry and commercial fishing, 2) subsistence use, and 3)

Order on Motion to Stay
Case No. 3KN-93-1174 CI
Page 1

Post-it - brand fax transmittal memo 7671		# of pages - 13	
To	Jim Eason	From	Mary Lindgren
Co.		Co.	
Dept.		Phone #	
Fax #		Fax #	

JAN-24-94 MON 18:46

JAN-24-94 MON 17:55

01/24/94

17:28

DIV OF OIL AND GAS

ANCH AGO OGM

IT907 283 4121

FAX NO. 9075623852

FAX NO. 9072798644

AK COURT SYS-NEW

P. 03/14

P. 02

2003

environmental degradation, until after the lease sale. Further, sale 78 is not consistent with the ACMP which gives preference to water dependant and water related uses, such as fishing.

As background, in order for the state to dispose of State lands, under AS 38.05.035(e), there must be a finding that the lease sale is in the "best interests" of the State. Further, under the ACMP, the lease sale must be consistent with the ACMP. NTC has moved this Court to stay oil and gas lease sale 78 until the merits of this appeal are decided. The sale is planned to go forward on January 25, 1994.

In reviewing Noah's "best interest determination the Court is reviewing a policy decision involving complex issues beyond this Court's ability to decide." Hammond v. North Slope Borough, 645 P.2d 750, 758 (AK 1952). Accordingly, this Court must decide whether Noah had a reasonable basis for his decision on each issue. Trustees for Alaska et al. v. State of Alaska, Department of Natural Resources, et al., Alaska Supreme Court, Slip Op. 4039. (December 23, 1993) the Court said:

"... this Court must ensure that DNR has taken a "hard look" at the salient problems and has genuinely engaged in reasoned decision making . . . A decision will be regarded as arbitrary "where an agency fails to consider an important factor in making its decision." (Citing Trustees for Alaska v. State, DNR, 795 P.2d 805 (Alaska 1990), Slip op. at 5).

NTC has moved this Court for a stay of lease sale 78 until the merits of this appeal are decided. The two alternate tests for determining whether a stay should be granted are: 1) "a clear

JAN-24-94 MON 18:46
JAN-24-94 MON 17:55

DIV OF OIL AND GAS
ANCH AGO OGM
72907 283 4121

FAX NO. 9075623852
FAX NO. 9072790644
AK COURT SYS-ARM

P.04/14
P.03

0004

showing of probable success" on the merits, State v. Kluti Kiah Native Village, 831 P.2d 1270, 1272 (Alaska 1992), or 2) a "balance of the hardships." Id. The Court must limit its scope of review under either theory by the reasonable basis test. The first test, probable success on the merits, is invoked "where the party asking for relief does not stand to suffer irreparable harm, or where the party against whom the injunction is sought will suffer injury if the injunction is issued." Id. at 1272. If, on the other hand, the non-moving party can be protected from injury, and "the party seeking the injunction stands to suffer irreparable harm," the "balance of the hardships" test is appropriate. Id. The "balance of the hardships" test is divided into three parts: "(1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise 'serious' and substantial questions going to the merits of the case; that is, the issues raised cannot be 'frivolous or obviously without merit.'" Messeri v. Department of Natural Resources, 768 P.2d 1112, 1122 (Alaska 1989) (citing and quoting Alaska Public Utilities Comm'n v. Greater Anchorage Area Borough, 534 P.2d 549, 554 (Alaska 1975)).

In determining which test to apply, this court must consider the harm to each of the parties. The delay of the lease sale, according to Noah, will result in the loss of potential lessees as well as having to put the lease sale back in the five year

schedule.¹ Thus, the State will lose money by not being able to go forward with the lease sale as planned. NTC contends that irreparable harm will result if the lease sale is allowed to go forward because the proposed sale will directly conflict with and harm fishing activities in the region and will harm subsistence use in the area. If plaintiffs will not suffer irreparable harm, the balance of hardship test is inappropriate.

The United States Supreme Court has noted that "the actual opening of the bids does not involve a commitment of any kind" since all bids can be rejected and "even after the bids are accepted . . . [the court could have the] power to declare the leases invalid if the court determined that the Government entered into a lease without compliance with the requirements of the [law]." New York Natural Resources Defense Council, Inc. v. Kleppe, 429 U.S. 1307 (1976), Hammond v. North Slope Borough, supra. Under the lease terms, the State has the authority to cancel a lease at any time, if for example, information came to light which compelled it to withdraw a tract from exploration or drilling. On the other hand, the State cannot deprive a lessee of the reasonable use of the leasehold interest. See Finding at 126, Appendix D, Sample Lease at para. 9(f); 11 AAC 83.158. The revocation of a lease or the deprivation of the reasonable use of a lessee's property, would result in the State having to pay just

¹ The court should also note that under AS 38.05.180(c), a lease sale can be held up to ninety days "after the last day of the calendar quarter for which it was scheduled . . ." Id.

JAN-24-94 MON 18:47
JAN-24-94 MON 17:55

DIV OF OIL AND GAS
ANCH AGO OGM
27307 283 4121

FAX NO. 9075623852
FAX NO. 9072798644
AK COURT STS-AEM

P.06/14
P.05
000

compensation to the lessee. Therefore, once it issues the lease, the State is under tremendous pressure to let the lessee go forward with its exploration and extraction.

Nevertheless, this analysis of the lease sale process does not mask the fact that precedent compels this court to find that NTC has not shown it will suffer irreparable harm, since the State may buy back an offending lease. However, under the "probable success on the merits" test, a showing of irreparable harm is not necessary. The court will apply the "probable success" test.

NTC alleges that Noah has deferred consideration of environmental concerns and has put off imposing environmental protection on oil and gas exploration and development activities until the oil industry lessee has presented a specific plan of operations to DNR. According to NTC, this consideration must take place after the lease sale. NTC cites evidence of direct conflicts between oil and gas activities and existing uses of the sale area. Further, under the ACPF, Noah has failed to evaluate the impacts by oil and gas exploration and development in relation to the standards imposed by the ACPF which are listed in 6 AAC 80.130(b) and (c).

Lease sale tracts between Kasilof and Anchor Point are particularly contested by NTC because of the heavy commercial, sport and subsistence fishing in that area. Hundreds of setnetters and driftnet fishers fish in this corridor from June through August. See Appellant's Exhs. 5, 24. In his findings, Noah

JAN-24-94 MON 18:48
JAN-24-94 MON 17:56

DIV OF OIL AND GAS
ANCH AGO OGM
07907 283 4121

FAX NO. 9075623852
FAX NO. 9072798644
AK COURT SYS-ERN

P.07/14
P.06
0007

identifies the extent of the fisheries within the lease sale area and even recognizes that "exploration and development of the sale area could adversely affect human uses of the area and its resources if access to hunting, fishing, or trapping areas is restricted or if industry operations occur at the same place and time as harvest activities." See Findings at 36. Further, Noah states that "[i]nterference with subsistence and commercial fishing could present a conflict of interest in the sale area." However, Noah believes its mitigation measures will "assure that potential conflicts are avoided to the fullest extent possible." *Id.*

NTC points out that the problem with considering problems or conflicts at the plan of operations stage, is that it "mask[s] appreciation [of] cumulative environmental threat[s]." Trustees for Alaska v. State, DNR, 851 P.2d 1340 (Alaska 1993).

This court finds that based on the limited amount of briefing and after reading the final Findings by Noah, as to the "best interest" issue, NTC has failed to show probability of success on the merits. Noah has identified the potential for conflicts between fishing interests and the oil and gas industry in some of tracts located in the lease sale and has detailed either how the lease sale terms apply to the conflicts (findings page 32) or relies on mitigating measures. At this time, in terms of the reasonable basis test, the Court cannot find that it is probable that Noah failed to consider an important fact in making the "best interest" determination or that he failed to take a hard look at

JAN-24-94 MON 18:49
JAN-24-94 MON 17:56

DIV OF OIL AND GAS
ANCH AGO OGM
7397 283 4121

FAX NO. 9075623852
FAX NO. 9072798644
AK COURT SYS-KEY

P. 08/14
P. 07
0008

the salient problems. While plaintiffs may disagree with Noah's conclusion that some problems must await further study as to individual tracts, that conclusion does not imply that Noah's best interest finding is arbitrary. Accordingly the Court denies the motion to stay lease sale 78 on the basis of Noah's non-compliance with AS 35.05.035(e).

AS 46.40.010 - 210 provides for the establishment of an Alaska Coastal Management Program,

"... which is partly designed to ensure that the development of industrial and commercial enterprise is consistent with environmental and cultural interests in the State. AS 46.40.020."

Hammond v. North Slope Borough, 545 P.2d 750, 761 (Alaska 1982).

Pursuant to statutory authority, the Alaska Coastal Policy Council has established regulations for the administration and enforcement of the Alaska Coastal Management Program, 6 AAC 80.010 - 900.

6 AAC 80.010(b) provides in part:

"Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority each state agency shall grant authorization if in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the applicable district program and the standard contained in this chapter."

Among the standards of the chapter are those contained at 6 AAC 80.040(a):

"In planning for and approving development in coastal areas, districts and state agencies shall give in the following order; priority to:

Order on Motion to Stay
Case No. JKE-93-1174 CI
Page 7

- (1) water-dependent uses and activities;
- (2) water-related uses and activities; and
- (3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.

In addition 6 AAC 80.130(d) provides:

"Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

- (1) there is a significant public need for the proposed use or activity;
- (2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and
- (3) all feasible and prudent steps to maximize conformance with the standard contained in (b) and (c) of this section will be taken."

On September 9, 1993 the Division of Oil and Gas issued a conclusive consistency determination for proposed Sale 78. The determination stated that "as the coordinating agency for this review process, the Division of Oil and Gas now conclusively determines that proposed Sale 78 is consistent with the ACMP". The memorandum constituted final agency action under AS 44.19.145(a)(11). Apparently because the September 9, 1993 memorandum was final agency action the Director does not address the consistency represented in his final finding dated October 19, 1993.

In Hammond v. North Slope Borough, supra, plaintiffs challenged the decision of the Department of Natural Resources to issue oil and gas leases in the Beaufort Sea. Among other things

JAN-24-94 MON 18:50

DIV OF OIL AND GAS

FAX NO. 9075623852

P.10/14

JAN 24-94 MON 17:57

ANCH AGO OGM

FAX NO. 9072798644

P.09

DATE TIME

ANCH AGO OGM

AK COURT SYS-KEN

0010

plaintiffs contested the AOMP consistency determination. The Supreme Court found the consistency determination insufficient. It said:

The Commissioner concluded the lease sale is consistent with both the State standards in the AOMP and the proposed North Slope Borough coastal management program. However, since the Commissioner's consistency determination with regard to the State standards is stated in a conclusory manner, it is unclear which of the methods stated in the preceding paragraph the Commissioner used in making the consistency determination.

Id., 645 P.2d at 762.

The two methods by which the commissioner may find consistency are either finding that all specific environmental protections have been met, or if there will be conflicting uses, finding that the provisions of 6 AAC 80.30(d) have been satisfied. In this case, since there are conflicting uses, the commissioner must find and explain compliance with that regulation. The Department has failed to do this.

Footnote 7 to the opinion in Hammond, *supra*, at 762 discusses the scope of the required findings. The Court notes the hesitancy to require findings in informal agency decisions absent an express statutory requirement. But the Supreme Court states:

"If the reviewing Court cannot divine the basis for the decision from a bulky record, this language clearly leaves the door open for the requiring of findings under common law or a basis for reviewability."

Id. (Citing Mobile Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 97 n.11 (Alaska 1974)).

Order on Motion to Stay
Case No. 3KN-93-1174 CI
Page 9

In this case 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 dependant and activities? Or, is oil and gas a water related activity? The Court cannot determine whether the sale is consistent with either standard absent a finding.

There is no discussion of a significant public need for the lease sale, 6 AAC 80.140(d), except that at page 35 of the findings Noah states that:

"Sale 78 is likely to make out modest additions to State revenues given the low to moderate potential for oil and gas discoveries in the sale area".

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 the standards will be taken.

Satisfaction of the latter two requirements of 6 AAC 80.130(d) may raise an issue as to the Commissioner's reliance on possible mitigating factors. In short, while the reliance upon mitigating factors devised after formation of the plan of operations may not imperil the "best interest" finding, the failure to address and resolve specific conflicts as to the proposed use may imperil the consistency finding. For example, in Kuitsarak Corporation, et al. v. Red Swope, et al., Slip Op. 4042 Alaska Supreme Court, (January 14, 1994) footnote 10, the Court said:

The primary danger associated with lease determinations made on a case-by-case basis is that the cumulative environmental threat posed by mining is not adequately considered.

Slip Op. at 21:

The reasoning of the Court in Kuitsarak applies by analogy with equal logic to an oil and gas lease sale.

Since the plaintiffs have demonstrated a probability of success on the merits of its claim that Noah's ACMP consistency finding is deficient, the Court may appropriately order a stay of oil and gas lease sale number 78.²

The last issue to be considered is whether NTC qualifies as a public interest litigant thereby waiving any bond requirement which might be imposed to cover the State's estimated losses.³ NTC cites to the Ninth Circuit which has repeatedly held that when requiring a bond would "effectively deny access to judicial review"

² Noah argues that NTC has waived its right to appeal the consistency determination because the determination was a final agency action and an appeal was not filed by NTC within the allotted thirty days. NTC argues that the consistency determination is part and parcel of the "best interests" finding and thus, it was only appropriate that the two be appealed together. Noah responds that the two determinations are separate and distinct statutory requirements and separate final agency decisions.

Since, as the Court found in Trustees for Alaska v. State, 851 P.2d 1340 (Alaska 1993), the "consistency determination is one section of its finding," this court finds it was proper to appeal the consistency determination along with the "best interests" finding. *Id.* at 1342 n.2.

³ This decision also impacts another pending motion. NTC is asking this court to waive the cost of preparing the record. Noah maintains that filing the record in this case will cost \$10,000. NTC, as a public interest litigant, believes it is entitled to have the costs waived. The ruling on this issue is dispositive of the Motion to Waive Costs and will be considered as such.

JAN-24-94 MON 18:52
JAN-24-94 MON 17:58

DIV OF OIL AND GAS
ANCH AGO OGM
2007 283 4121

FAX NO. 9075623852
FAX NO. 9072798644
AK COURT SYS-RHN

P.13/14

P.12

@013

no bond, or only a nominal bond will be imposed. People ex rel. Van de Kamo v. Tahoe Regional Planning Agency, 766 F.2d 1319 (9th Cir. 1985). There are four factors used in identifying a public interest litigant:

- (1) Is the case designed to effectuate strong public policies?
- (2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit?
- (3) Can only a private party have been expected to bring suit?
- (4) Would the purported public interest litigant have sufficient economic interest to file suit even if the action involved only narrow issues lacking general importance?

Anchorage Daily News v. Anchorage School District, 803 P.2d 402, 404 (Alaska 1990). NTC asserts it satisfies all these requirements. First, this appeal has been filed to effectuate public policies embodied in the Alaska Constitution, Art. VII, sec. 1 which encourages settlement of state land and development of resources "consistent with the public interest." Moreover, this appeal is to ensure the compliance with AS 38.05.035(e) which requires that disposal of state land be within the State's best interests. Second, the beneficiaries of this appeal are those who use the resources of Cook Inlet such as traditional subsistence users, environmental and recreational users, and commercial and sport fishers. Third, since the appellees include DNR, a state agency, only a private party could be expected to bring this action. See Southeast Alaska Conservation Council v. State, 665 P.2d at 544, 554 (Alaska 1983). Lastly, no claim for monetary damages has been made in this appeal and no monetary gain will

Order on Motion to Stay
Case No. 1KN-93-1174 CI
Page 12

result from a successful appeal. While it is true that the appellant's include fishing organizations, which the State alleges have an obvious economic interest in bringing this appeal, NTC argues that it is public rights that are at stake here.

The fact that an organization may have an economic interest in whether or not tracts of land are sold to oil companies, does not obscure the fact that it is a public right being litigated.

IT IS HEREBY ORDERED that Appellants Motion to Stay is GRANTED.

Dated at Kenai, Alaska this 24th day of January, 1994.

14th day of January, 1994.


CHARLES R. CRANSTON
SUPER. COURT JUDGE

Order on Motion to Stay
Case No. 320W-93-1174 CI
Page 13

Don Trump Lundquist

SCOMM

93:3

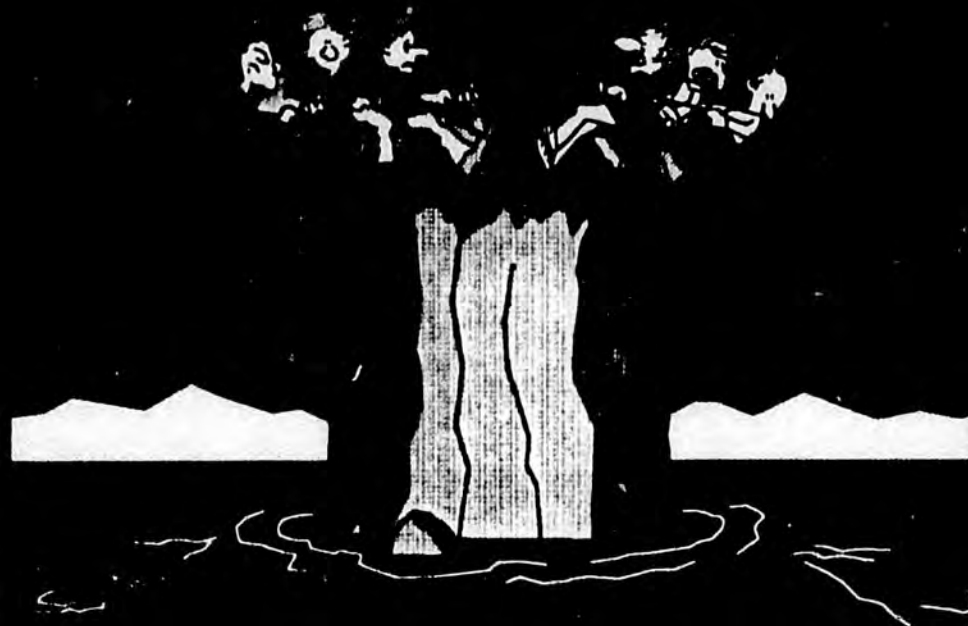
**OVERVIEW BRIEFING
OF JPO AUDIT FINDINGS
FOR THE STATE
OIL AND GAS
LEGISLATIVE COMMITTEE**

**FEBRUARY 14, 1994
JUNEAU, ALASKA**

STATE/FEDERAL PIPELINE OFFICE OBJECTIVES

- **ESTABLISH A JOINT STATE/FEDERAL OFFICE**
- **PROVIDE A ONE STOP SHOP FOR GOVERNMENT AUTHORIZATIONS FOR PIPELINES**
- **ASSURE BALANCED ENGINEERING REVIEWS, PERMITS, LEASE STIPULATIONS**
- **PROVIDE A MATRIX MANAGEMENT OFFICE ENVIRONMENT TO PROVIDE AGENCIES GREATER INPUT INTO DECISIONS**
- **REDUCE DUPLICATION OF EFFORTS AND ADDRESS ALL CONCERNS**
- **SUPPORT BRINGING NEW HYDROCARBONS ON LINE IF THIS CAN BE ACCOMPLISHED IN A MANNER THAT IS IN THE BEST INTEREST OF THE PEOPLE AND ENVIRONMENT OF ALASKA**

NORMAL OPERATIONS GOVERNMENT AGENCIES



JPO TEAMWORK

• STATE

- DNR
- DEC
- ADF&G
- DGC
- DOLabor

FEDERAL

- BLM
- DOT/OPS
- USFWS
- EPA



OTHER JPO AUDITS

- **WELD RECORD CHECK 1977**
- **WELDS ON ATIGUN REROUTE 1991**
- **CERTIFICATION OF CORROSION INSPECTORS 1991**
- **THORPE ALLEGATIONS 1991**
- **ANNUAL OIL SPILL CONTINGENCY PLAN**
- **OIL SPILL CONTINGENCY PLAN TRAINING 1992**
- **AIR QUALITY AT VALDEZ 1993**
- **ELECTRICAL LINE WIDE 1993**
- **VALDEZ MARINE TERMINAL GENERAL AUDIT 1993**

WHY DID JPO CONDUCT THE QTC AUDIT

- **TO INVESTIGATE ALLEGATIONS**
- **TO IDENTIFY PROBLEMS THAT ENDANGER
PUBLIC & WORKERS SAFETY, THE
ENVIRONMENT AND THE OVERALL
INTEGRITY OF TAPS**
- **ESTABLISH CORRECTIVE ACTIONS**
- **IMPLEMENT CHANGE**

WHAT IS QUALITY ASSURANCE

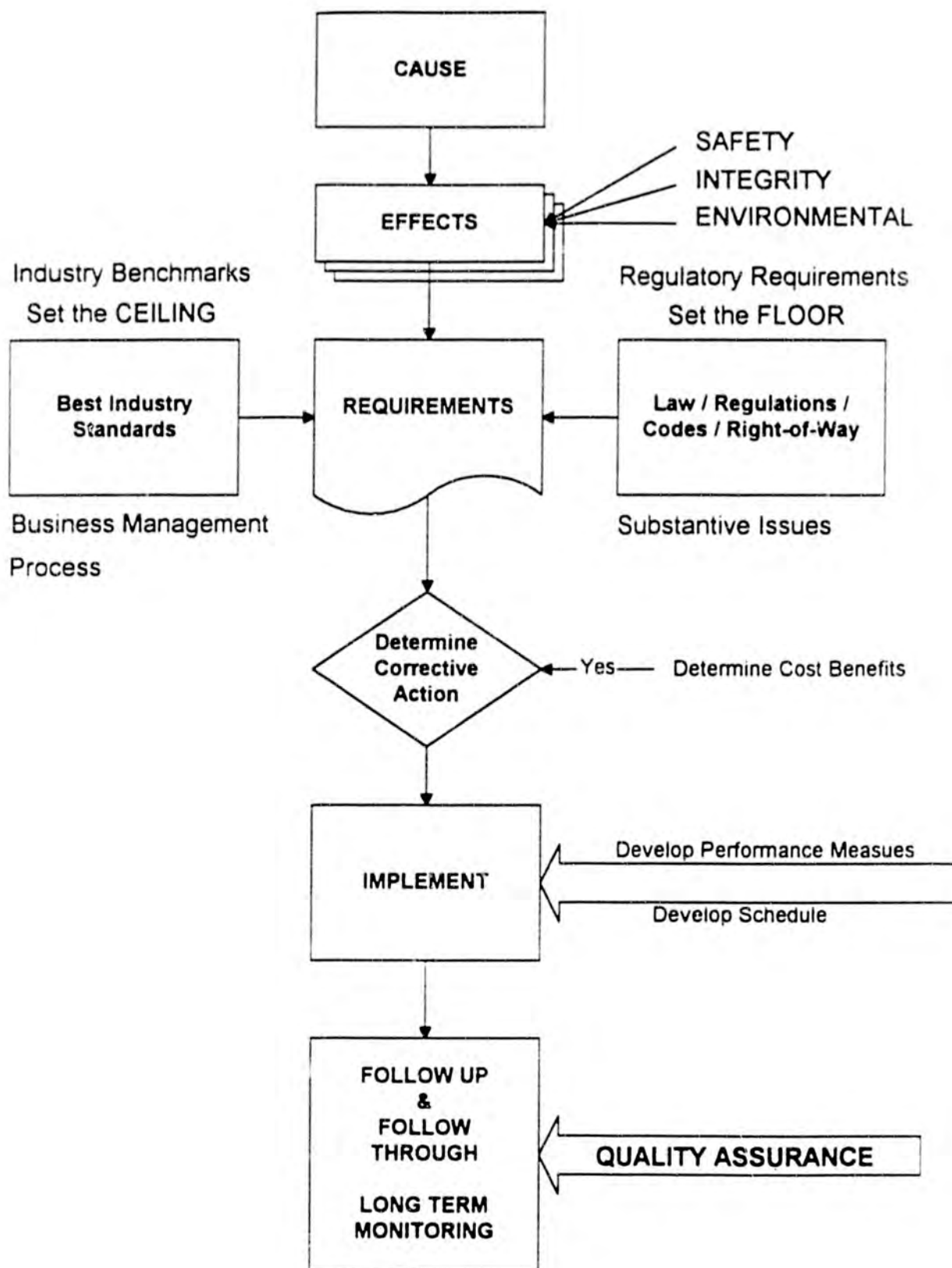
- **PLANNED AND SYSTEMATIC ACTIONS NECESSARY TO ASSURES THAT ALL ASPECTS OF THE CORPORATION MEET THE REQUIREMENTS AND STANDARDS FOR QUALITY RELATING TO**
 - **BUSINESS MANAGEMENT PRACTICES**
 - **ENGINEERING DESIGN**
 - **ENVIRONMENTAL COMPLIANCE**
 - **PUBLIC SAFETY**
 - **WORKER SAFETY**
 - **SYSTEM INTEGRITY**
 - **REGULATORY COMPLIANCE**
 - **PRODUCT PERFORMANCE**

JPO/QTC AUDIT FINDINGS BASIS

- **FIELD INSPECTION OF PS'S 1,6,10 AND VMT**
- **247 INTERVIEWS OF APSC EMPLOYEES**
- **STATE AND FEDERAL DOCUMENTS**
- **APSC DOCUMENTS**

JPO ACCOMPLISHMENTS SINCE JULY 1993

- **ADDITIONAL MONITORS HIRED**
- **MONITORING MOU BETWEEN DOI/STATE**
- **GREATER FIELD PRESENCE**
- **3 JPO AUDITS IN ADDITION TO THERO**
- **GEOLOGIC HAZARDS MONITORING**
- **CURVATURE PIG ASSESSMENT**
- **CONTINUED CONTRACT WITH CORTEST COLUMBUS FOR CORROSION ASSESSMENT**
- **6 OIL SPILL DRILLS**
- **5 SPILL RESPONSES**
- **INSTALLED CONFIDENTIAL "HOT LINE"**
- **TRACKING 2 NEW SAFETY INCIDENTS**
- **REACHED CONCEPTUAL AGREEMENT ON VAPOR RECOVERY SYSTEM FOR VMT**



CONCEPTUAL FINDINGS AND APPROACH TO DOI AUDIT OF APSC

JPO/QTC AUDIT FINDINGS

CLASS 1

- **BUSINESS MANAGEMENT PRACTICES(MINDSET)**
 - REACTION TO PROBLEMS INSTEAD OF PREDICTING THEM
 - LACK OF PREVENTION PHILOSOPHY
 - LACK OF CHANGING CORPORATE REGULATORY MATRIX
 - LACK OF SYSTEM CHANGE MANAGEMENT REVIEW
 - DYSFUNCTIONAL QUALITY ASSURANCE PROGRAM
- **SUBSTANTIVE PHYSICAL ISSUES**
 - ELECTRICAL SYSTEM INTEGRITY NOT TO PRESENT CODE
 - VERTICAL SUPPORT MEMBER DESIGN FREE SPACE NOT MAINTAINED

JPO/QTC AUDIT FINDINGS

CLASS 2

- **MONITORING GIRTH WELDS**
- **AS-BUILT DRAWING CONTROL**
- **QC NON-DESTRUCTIVE EXAM INSPECTIONS**
- **DYSFUNCTIONAL QUALITY CONTROL (INSPECTIONS) OF OPERATIONS & MAINTENANCE**
- **FIRE AND SAFETY CONTROL AT VMT**
- **EQUIPMENT CALIBRATION CONTROL**
- **EMISSION MONITORING**
- **LACK OF CENTRALIZED DOCUMENT CONTROL**

JPO/QTC AUDIT FINDINGS

CLASS 3

- **LACK OF ASSURED MANDATORY TRAINING**
- **DEFICIENT PREDICTIVE MAINTENANCE PROGRAM**
- **LACK OF APPROVED CONSUMABLE LIST**
- **UNAUTHORIZED MODIFICATIONS TO THE SYSTEM WITHOUT CONTROL**
- **LACK OF PROCUREMENT TRACKING PROCESS**
- **UNACCEPTABLE ACCURACY OF LEAK DETECTION SYSTEM**
- **LACK OF QUALITY ASSURANCE FOR PIG DATA**

PROCESS TO RESOLVE CONGRESSIONAL AUDIT ISSUES

	1993				1994				
	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1
1 PROBLEM IDENTIFICATION									
2 SOLUTION DEVELOPMENT									
3 IMPLEMENTATION									

JPO SHORT TERM ACTIVITIES AND SCHEDULE ... ACTIVITY / ACTION FLOW CHART

[illegible]

SCOMM

93:4

MEMORANDUM

State of Alaska

Department of Law

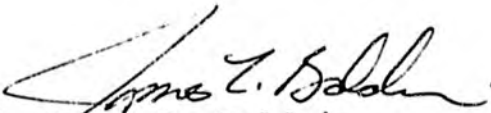
TO: House Special Committee
on Oil and Gas

DATE: February 11, 1993

FILE NO:

TEL. NO: 465-3600

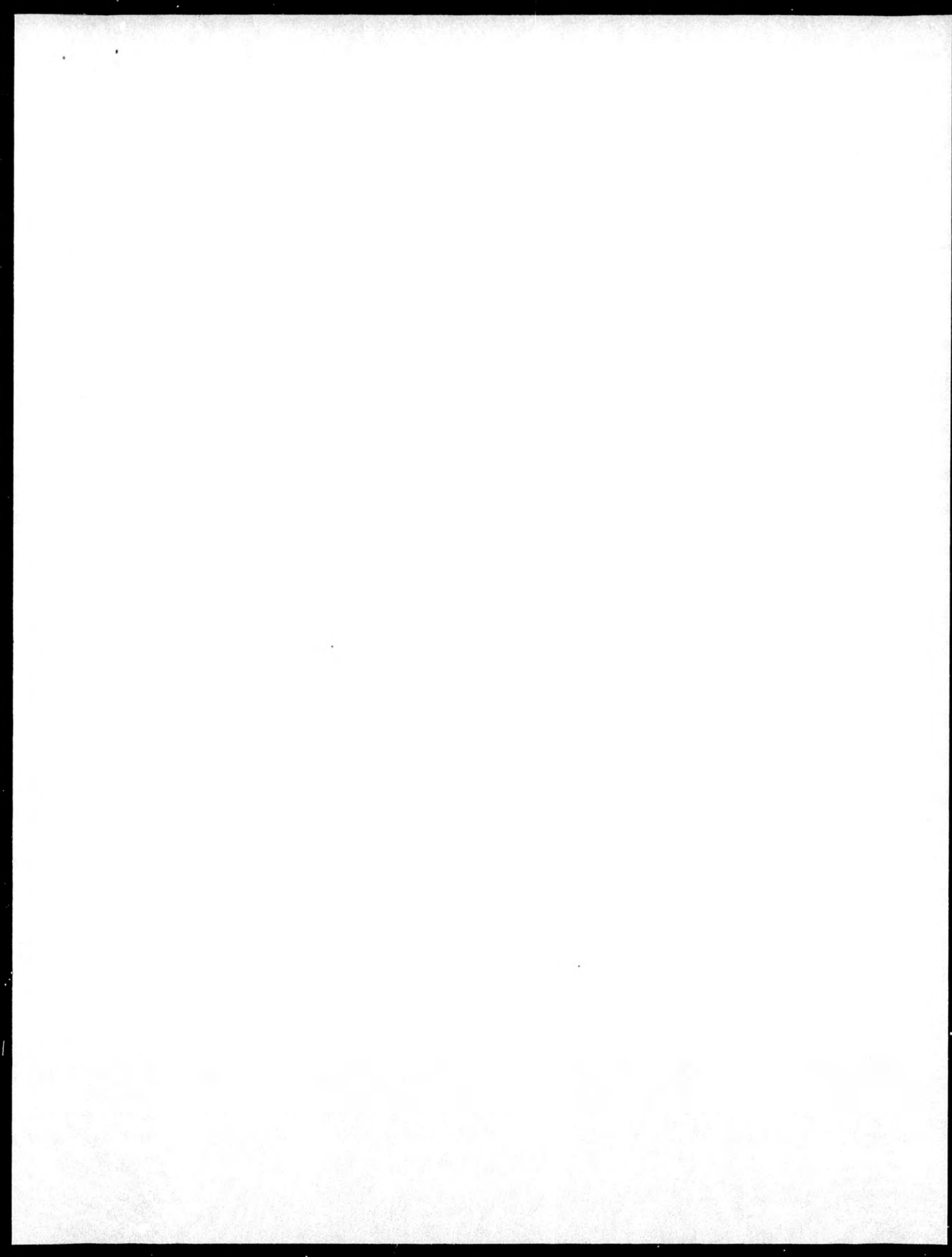
SUBJECT: Department of Law
oil and gas litigation


FROM: James L. Baldwin
Assistant Attorney General
Oil & Gas Section - Juneau

The attached documents are to provide information concerning the status of oil and gas litigation, settlements, and budget requirements. The following exhibits are:

1. Memo re: FY 94 oil and gas special projects
2. Table "Summary of Major Oil and Gas Disputes Involving the State of Alaska"
3. Memo re: oil and gas settlements
4. Memo re: oil and gas litigation funding history
5. Chart showing oil and gas litigation costs vs. revenues

JLB:tg



MEMORANDUM

State of Alaska Department of Law

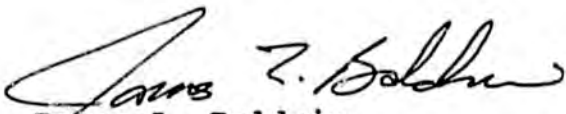
TO: Hon. Joe Green
Chairman
House Special Committee
on Oil and Gas,

DATE: February 11, 1993

FILE NO:

TEL. NO: 465-3600

SUBJECT: FY 94 oil and gas special
projects

FROM: 
James L. Baldwin
Assistant Attorney General

This memorandum describes the Department of Law's proposed FY 94 oil and gas special projects request. Based on current projections, the Department of Law will require an oil and gas appropriation level of \$25 million in FY 94. In conformance with budget directives the department required \$10.3584 million in the FY 94 operating budget.

The amount required reflects the cost of preparing for and engaging in complex litigation. The amount requested for FY 94 will represent a slight increase over the amount requested for FY 93 (if our supplemental request is approved). For your information, set out below is a recap of the appropriations for this BRU over the past few fiscal years:

Fiscal Year	Appropriation Requested by DOL	Appropriation Received	Supplemental Requested	Supplemental Received	Total
FY 91	14,000,000	14,000,000	12,000,000	12,000,000	26,000,000
FY 92	21,000,000	11,000,000	16,200,000	15,500,000	26,500,000
FY 93	14,000,000	10,358,400	8,800,000		

The amounts requested are large but have the potential for returning substantial revenues to the state treasury. Our request is driven by the commitment to resolve major oil and gas tax claims in a timely manner. If it is any consolation, we understand that the expenditures of our opponents for this litigation, far exceed our own.

A brief explanation and status report on the cases requiring these expenditures is set out below:

The North Slope Royalty Case. This case, formerly known as the *Amerada Hess* case, completed its first phase with settlement of the dispute involving the value of royalty oil.

The case now progresses into the second phase involving whether the state was overcharged for the processing of natural gas liquids. All parties will be engaged in the expensive and time consuming task of discovering evidence necessary to prosecute and defend the various claims asserted. Trial is presently set for 1994. Concurrently, the parties are in settlement discussions. A related part of the case involves the amount owed to the state by purchasers of royalty oil taken in kind. This dispute involves whether the purchasers owe additional amounts based on the values determined for the state's royalty oil determined in phase I of the case. This dispute is being actively litigated in the superior court and depending upon procedural rulings may be remanded for arbitration. In which case, substantial amounts will be needed to present the state's case.

United States v. Alaska. This case involves the Beaufort Sea title dispute with the United States in which approximately \$1.2 billion is presently in escrow awaiting the outcome of this dispute. If we are successful in this case, the state will receive a monetary benefit of far more than is currently in escrow. The state will lay claim to taxes and royalty for production taken from submerged lands. Our best estimate is that the master will deliver a report to the United States Supreme Court early in the fiscal year. We are preparing our case even before the report is submitted so that we can respond without undue time pressure.

F.E.R.C. Proceedings. We monitor and actively participate in several proceedings before the Federal Energy Regulatory Commission. These proceedings can substantially affect the well head value oil which directly affects royalty and tax revenues. Presently, these proceedings include quality bank proceedings, negotiation of corrosion issues, pumpability factors, and feeder pipeline tariffs.

Tax Proceedings. The department is actively preparing major oil and gas and income tax cases for litigation in FY 94. Because information pertaining to these cases is confidential by law, the amounts in issue and the taxpayers involved may not be disclosed.

Oil Export Ban. This case tests the validity of federal law preventing the export of oil produced on the North Slope. To prevail in this case, we must combat the virtually unlimited resources of the United States in federal court. If we are successful, it is expected that producers could obtain a higher price for oil and gas and thereby directly benefit the state through a higher royalty and taxes.

In-House operations and Litigation Support. In-house operation expenses provide funds to pay for staff attorneys, paralegals, and other staff to support the cases detailed above. The litigation support effort is intended to create detailed data bases to support and defend the state in the cases mentioned above. These data bases require constant maintenance and development for them to be of use. These costs increase slightly for FY 94 from approximately \$2.9 million to \$3.5 million. This increase reflects our efforts to devote significant resources to the management of outside counsel in an effort to contain their costs.

CEC:tg

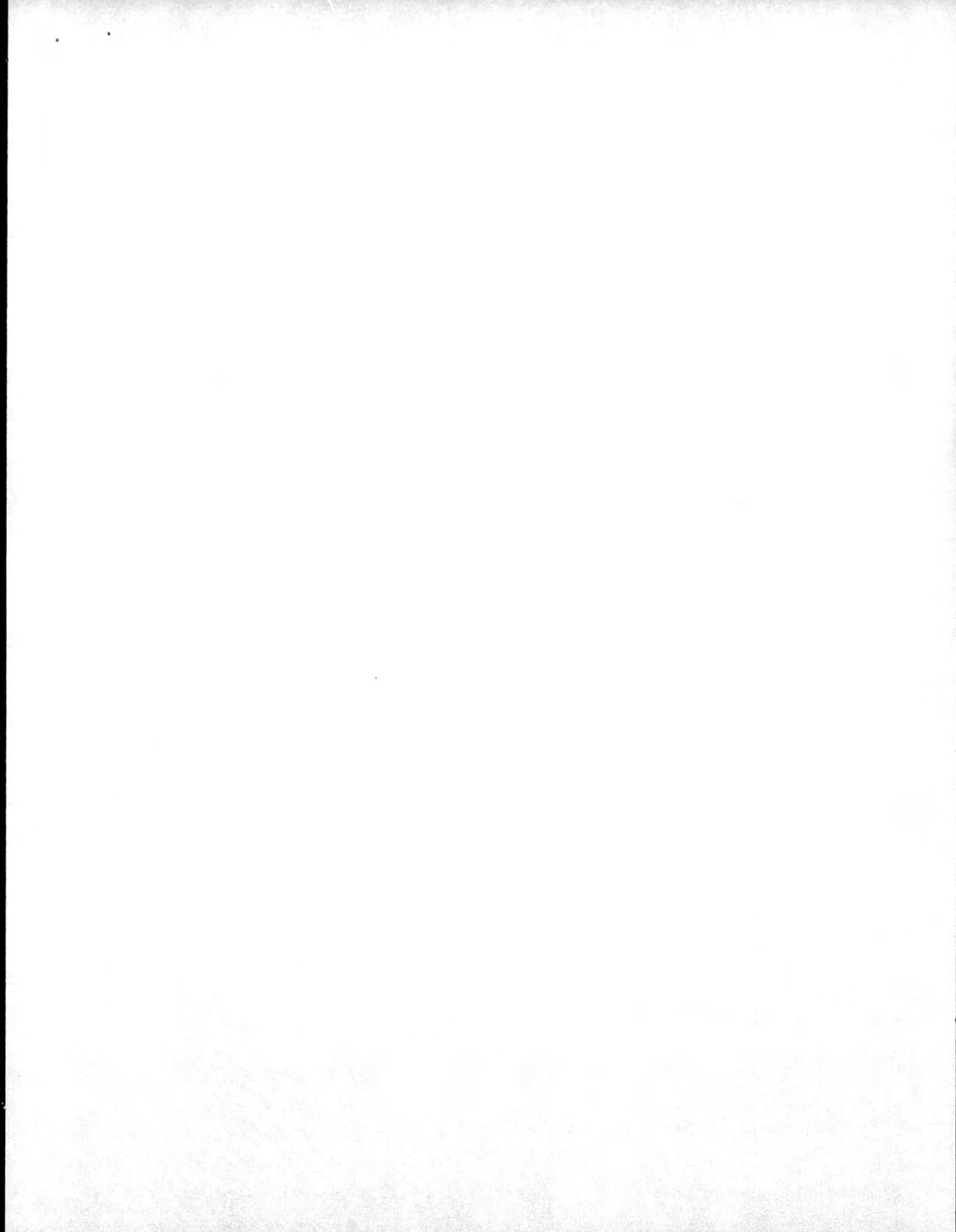
SUMMARY OF MAJOR OIL AND GAS DISPUTES INVOLVING THE STATE OF ALASKA

Subject of Dispute	Major Issues	Estimated Revenue At Stake ¹ (Including Interest)	Major Settlements	Status
Land ownership (Dinkum Sands)	Ownership of submerged lands in Beaufort Sea	\$1.2 billion	None	Awaiting report by U.S. Supreme Court master
Pipeline Tariffs	Inclusion of corrosion costs in TAPS tariff	Unknown	1985 TAPS tariff settlement resulted in payments of \$240 million and a lower tariff	Administrative proceeding at FERC Case is stayed; parties are pursuing alternative dispute resolution proceedings
	Kuparuk pipeline tariff	Approximately \$25 million (1984-86)	Endicott pipeline tariff \$14.2 million (1987-2005)	Kuparuk case was settled without cash payment to state Settlement similar to that of Kuparuk possible
	Quality bank adjustment	Unspecified		

Royalties (Amerada Hess litigation)	Underpayment of royalties by producers		1992 \$633 million total with Amerada Hess, ARCO, FMC, Marathon, BP, Phillips, LL&E, Mobil, and Texaco	
	Retroactive adjustment of price from "In-kind" royalty oil purchasers	\$181 million in dispute	1993 RIK Settlements: Petro Star \$2.5 million	In court
	Recovery of excessive charges for processing natural gas liquids	\$155 million	Tesoro \$94 million	Trial set for 1994
	Lost royalty caused by Field gas services option	\$50 million		Trial set for 1994
	Amounts owed for gas sold to utilities	\$45 million		Trial set for 1994
Taxes	Severance tax liabilities and income tax liabilities under "separate accounting" law	\$3.5 billion ²	\$1,259,700,000 in tax settlements	Pending Department of Revenue action
	State alleges under valuing of oil, violation of federal price controls, excessive interest deductions and excessive marine shipping deductions from netback price			

¹ These amounts are claimed by the state and would be received only if the state ultimately prevailed on all issues and did not negotiate settlements.

² This number was supplied by Department of Revenue.



MEMORANDUM

State of Alaska

Department of Law

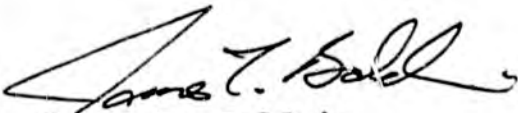
TO: Hon. Joe Green, Chairman
House Special Committee on
Oil and Gas

DATE: February 11, 1993

FILE NO:

TEL NO: 465-3600

SUBJECT: Oil and Gas Settlements


FROM: James L. Baldwin
Assistant Attorney General

The following are estimates of savings or payments to the state as a result of litigation efforts under the oil and gas BRU:

<u>Year</u>	<u>Payment Description</u>	<u>Immediate Payment</u> <u>(nearest thou.)</u>	<u>Future Benefit</u> <u>(nearest thou.)</u>
Gas royalty settlements			
1982	Union Cook Inlet royalty settlement	\$ 848,000	\$
1984	Phillips LNG royalty settlement	36,300,000	
1985	Marathon LNG royalty settlement	4,300,000	
1985	Union and Marathon royalty settlement	4,200,000	
1986	ARCO, Chevron & Shell Cook Inlet gas royalty settlement	1,568,000	
1988	Union royalty settlement	300,000	
Sub Total		\$47,516,000	

Oil royalty settlements

1992	North Slope royalty case (Amerada hess, ARCO Alaska, FMC, Marathon, British Petroleum, Phillips, LL&E, Mobil, Texaco-Getty, Chevron, Exxon)	632,490,938 ¹	
1993	Petro Star	2,500,000	
1993	Tesoro	10,200,000	86,800,000
Sub Total		645,190,938	86,800,000

Tax settlements²

1986-93	Taxpayers	1,259,700,000 ³	
---------	-----------	----------------------------	--

Federal government revenue sharing

1986	Congressional settlement of	51,000,000	135,000,000
1987	Congressional authorization state to receive its minimum "8(g)" share of Dinkum Sands escrow account	323,000,000	
Sub Total		374,000,000	135,000,000

¹ This amount only includes settlements for the past. It does not include estimate of future revenues to the state that will occur - without litigation - under a future formula agreed to by each of the parties who have settled.

² These cases do not include the state's victory in *Atlantic Richfield Co. v. State*, 705 P.2d 418 (Alaska 1985), in which the state's separate accounting methodology was upheld, thus voiding oil company claims of \$2 billion in tax refunds.

³ Because some of these settlements are confidential by law, the taxpayers and settlement amounts are not separately identified.

Federal Energy Regulatory Commission Proceedings (through 1992)

1984	Kuparuk I settlement		6,000,000
1985	TAPS settlement ⁴	250,460,000	2,649,650,000
1990	Milne Point settlement		2,500,000
1991	Kuparuk II settlement		82,600,000
1993	Endicott Pipeline settlement	10,200,000	3,800,000
Sub Total		<u>260,660,000</u>	<u>2,744,550,000</u>
TOTAL		\$2,587,066,938	\$2,966,350,000
GRAND TOTAL		<u>\$5,553,416,938</u>	

JLB:tg

cc: Charles E. Cole
Attorney General

⁴ In addition, the state received approximately \$33.28 million in costs and attorney's fees paid into the general fund.