

SCOMM

96:21

FISCAL NOTE

N 2

Bill Version: CSHJR 26(WTR)

(H) Publish Date: 2/16/95

**STATE OF ALASKA
1995 LEGISLATIVE SESSION**

Revision Date: 2/6/95 Dept. Affected: Revenue
 Title: A Resolution urging the U.S. Congress to uphold BRU: _____
Alaska's 90% share of Federal oil and mineral royalties in Alaska Component: _____
 Sponsor: Rokeberg, Ogan, & Navarre
 Requester: Rokeberg COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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						
-----------------------------	--	--	--	--	--	--

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 (FY95) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This resolution urges the U.S. Congress to uphold Alaska's right to 90 percent of the Federal royalties from the production of oil, gas and coal in Alaska. This issue is often mentioned in connection with the possible opening of the Arctic National Wildlife Refuge (ANWR) to oil and gas exploration and development. Given the long lead times for developing major resource extraction on Federal land in Alaska, this resolution will have no revenue impact on the state over the period of this fiscal note. However, the issue of the royalty split could be a major revenue issue in the fight to open ANWR to exploration and development. At current prices, discovery of a 1.0 billion oil field with a conventional 12.5% royalty and the 90% royalty share would mean something on the order of \$1.125 billion over the life of the field or as much as \$125 million a year at peak production. A 50% share would reduce this to approximately \$70 million a year. Regardless of royalty share, the state would continue to assess production taxes on any oil and gas produced within state sovereign territory.

Prepared by: _____
 Division: Oil and Gas Audit/Division
 Approved by Commissioner: [Signature]
 Agency: _____

Phone: 277-5627
 Date: 2/6/95
 Date: 2/16/95

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FISCAL NOTE

No. 1Bill Version: CSHJR 26(WTR)(H) Publish Date: 2/16/95

STATE OF ALASKA

1995 LEGISLATIVE SESSION

Revision Date: OriginalDept Affected: Natural ResourcesTitle: A Resolution Urging the United States CongressBRU: Resource Development

To uphold Alaska's right to 90 percent of the royalties from oil, gas...

Component: Oil & Gas DevelopmentSponsor: Representative Rokeberg, Ogan, Navarre

Requestor:

Component Serial No.

439

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
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)

002 Federal Receipts						
003 GF Match						
004 GF						
005 GF/Program Receipts						
006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) 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 fiscal impact associated with passage of this resolution.

Prepared by: Jim Eason, DirectorPhone: 762-2547Division: Oil & GasDate: 2-Feb-95

Approved by Commissioner:

Date: 2-5-95Agency: Natural Resources

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HOUSE COMMITTEE REPORT

2/16/95

(7)

Date Referred: February 1, 1995

FURTHER REFERRALS:

Oil and Gas

Date of Committee Action: 2/14/95

The HOUSE SPECIAL COMMITTEE ON WORLD TRADE & STATE/FEDERAL RELATIONS Committee considered: HJR 26

HOUSE JOINT RESOLUTION NO. 26

OIL & GAS ROYALTIES

Urging the United States Congress to uphold Alaska's right to 90 percent of the royalties from oil, gas, and coal leasing on state land as provided by the Statehood Compact adopted by a vote of the people of Alaska on April 24, 1956.

recommends it be replaced with the following committee substitute CS HJR 26 (WTR) ☒ the same title ☐ a new title

☐ additional referral to _____ Committee
☐ attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

☐ fiscal note(s) _____

☐ fiscal note(s) _____

3) ☒ zero fiscal note(s) DNR
REV

☐ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Phillips</i>	Phillips	☒			
<i>Kubina</i>	Kubina	☒			
<i>G. Davis</i>	G. Davis	☒			
<i>Williams</i>	Williams	☒			
<i>Mulder</i>	Mulder	☒			
<i>Barnes</i>	Barnes	☒			
		(6)			

CHAIR'S SIGNATURE

Phillips

COMMITTEE: House Special on OSG DATE: 2/28/18 TIME: 10:08

SUBJECT: HJR 26

MEMBERS: Representatives Rokeberg, Ogan, G. Davis, Williams, Brice,
B. Davis, Finkelshtein

Page 1 of 4

SPEAKER	TAPE#	SIGNIFICANT INFORMATION
Rokeberg	000	Meeting Called to order at 10:08am
		Members Present:
		A quorum is present: HJR26.
	020	Change of hats & sponsor statement.
		Are there any testifiers
	036	Referring to the bill package...
		the congress can't unilaterally amend the statehood act.
	054	PL 85-508 the statehood act.
	064	Operative Sections 28 A (b) sec 35.
	073	Share in Royalties on a 90-10 basis as in the statehood act.
	097	Further reflection shows the importance of this resolution.
		The statehood Compact provided---
	119	"Mineral Leasing Act"
		-The members have the mineral leasing code.
	132	Appendix A. The AG's opinion #6.
		in a letter to Congressman Aspinall.
	145	37.5% goes to states
		statehood enactment for AK = 52%.
	170	Appendix A shows the conditions, just after the statehood act.
	180	pg 10 of opinion #6.
		Read 2 paragraphs. (write verbatim in min)
		interject =
	213	The congress therefore can't change.
		unilaterally.

COMMITTEE: _____ DATE: _____ TIME: _____

SUBJECT: _____

MEMBERS: _____

2084

SPEAKER	TAPE#	SIGNIFICANT INFORMATION
Rokeberg	223	Reading from materials -
	234	Opinion #6 was lost. This opinion by Edwards disappeared during the ~~ANILCA~~ ANILCA.
	257	Referred the members to a letter from the AG to Hugh Malone. - Chairman Read from the letter. Footnote 1 of the letter raises a few questions. (Why was there no protest.)
	288	Governor Egan - - - - The 2% royalty went forward.
	300	If we don't enforce the 90-10 split there could be a lawsuit.
	311	Historical U.S. Code. - The latest amendments - - - - AK: has reserved 40% AK is the only state with this provision
	335	I offer this resolution for your consideration Fiscal Note / Oil Field Stand to ~~lose~~ lose
	357	Open the floor to testimony from public. Hearing None.
Roke	364	Amendment #1 - Relates to Pg 1 Line 3 - States Delete Statute Compact Pg 1 line 3. - inserts - - -
Brice	385	Mineral Leasing Act

COMMITTEE: _____ DATE: _____ TIME: _____

SUBJECT: _____

MEMBERS: _____

3084

SPEAKER	TAPE#	SIGNIFICANT INFORMATION
Rokeberg		There is another Amendment.
		Mark the other Amendment as #2.
	405	Is there any discussion
Ogan	407	Moved to Accept #1
Roke	411	Hearing No objection - so moved.
	413	Move to Amend #2.
Rokeberg	422	As
Brice	425	Offered a suggestion:
		As established in 30 U.S.C.
Rokeberg	440	Set forth rather than established
	448	In ~~the~~ - 30 U.S.C. 191
		Read the Amendment.
	460	Any other suggestions
Brice	461	We might want to talk about another
		~~the~~ Amendment.
		Discussion followed w/Rokeberg.
Rokeberg	480	Refer. to the Mineral Leasing Act
	485	on amend #2
Brice	490	
Roke	493	Any further discussion
Ogan	495	Mineral Leasing act?
Rokeber	502	Any other discussion
		the chair will entertain a motion.
		Hearing none Aye
Roke	500	Any further amendments
G. Davis	502	Pg 2 Line 17 / Nothing about coercion.
Brice	520	Line 16 Clarifies that.
Roke	524	Notes for the record that this was
		discussed.

COMMITTEE: _____ DATE: _____ TIME: _____

SUBJECT: _____

MEMBERS: _____

4084

SPEAKER	TAPE#	SIGNIFICANT INFORMATION
Davis	530	when was it considered.
Rohe	532	while drafting the Resolution.
Davis	534	IF there is trouble w/ the language being resolved.
Brice	545	I think the word Conversion has a specific meaning.
Rohe	560	To open AMWR
		Any further discussion, what is the will of the body
B. Davis	562	Can he read the statement again?
G. Davis	563	Read the statement.
Robeberg	577	the chair likes the word - ...
Finkelstein	580	It wouldn't be bad. ...
		Discussion followed.
G. Davis	594	Moved the Amend.
Brice	599	Objected for purposes of Clarity. Discussion followed.
Rohe	510	Restate the Amend.
G. Davis	511	Restated.
Rohe	515	any objection - Hearing none the Amend is adopted.
		Any Further Amendments.
	625	is there a motion to move HJR 26
Ogan	626	Seconded
Rohe	631	Any objections
		Any other business
		Adjourned at 10:53

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHJR 26(WTR)

- 1 Page 1, line 3:
- 2 Delete "Statehood Compact"
- 3 Insert "Alaska Statehood Act, approved by the United States Congress on July 7,
- 4 1958, in which the Congress accepted, ratified, and confirmed the Constitution of the State
- 5 of Alaska previously"

MEMORANDUM

State of Alaska

TO: To The File

DATE: April 13, 1982

FILE NO:

TELEPHONE NO:

FROM: Wilson L. Condon
Attorney General

SUBJECT: 1969 Opinions of the
Attorney General
No. 6

From time to time questions arise over whether 1969 Formal Opinion No. 6 was ever issued. This memorandum is written to answer those questions. Opinion No. 6 was a letter dated September 5, 1969, from G. Kent Edwards, the then Attorney General, to The Honorable Wayne N. Aspinall, Chairman of the Committee on Interior and Insular Affairs in the United States House of Representatives. That opinion was supplemented by a letter dated October 3, 1969, which is styled 1969 Opinions of the Attorney General No. 6 Supplemental. Together those documents opine that if the Congress enacted a settlement of the then pending Alaska Native land claims, it would be unconstitutional for such a settlement to require the State to pay a two per cent overriding royalty from mineral production on certain State lands to Alaskan Natives.

When the formal opinions for the period 1963 through 1969 were duplicated and bound sometime after December 1970, John Havelock was the Attorney General. Formal Opinion No. 6 from 1969 was withdrawn from the collection of opinions that were bound. In place of Opinion No. 6 a sheet was inserted which states "Note Opinion Number 6 of 1969 Was Never Issued."

I do not know precisely the date when this Opinion was "withdrawn". I only know that it was withdrawn sometime after John Havelock became the Attorney General. As everyone knows, the Alaska Native Claims Settlement Act which was finally enacted in December of 1971, in fact, imposed a two per cent overriding royalty on mineral production from State selected lands. The constitutionality of that provision was never challenged by the State of Alaska. Had the State of Alaska continued to follow the legal position taken in so-called 1969 Opinions of the Attorney General No. 6, it presumably would have challenged the constitutionality of the Alaska Native Claims Settlement Act.

cc: Case Management

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Opinion # 3

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 2, 1981

The Honorable Hugh Malone
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Legality of unilateral
changes to Statehood Act
by United States Congress.
Our file J-66-556-81

Dear Representative Malone:

On February 24, 1981, you requested that we review subsections 906(f)(3) and 906(p) of the Alaska National Interest Lands Conservation Act (hereafter "ANILCA"), Public Law 96-487, 94 Stat. 2371. Those two subsections, as well as subsection 906(a), amend certain provisions in Section 6 of the Alaska Statehood Act, 48 U.S.C. note preceding Section 21. Subsection 906(f)(3) of ANILCA amends Section 6(g) of the Statehood Act to give the Secretary of the Interior discretionary authority to waive the minimum tract selection size set out therein where such a waiver "would be in the national interest and would result in a better land ownership pattern." Subsection 906(p) removes the requirement of Presidential approval of selections north and west of the so-called "PYK line" described in Section 10 of the Statehood Act for lands conveyed to the state by the terms of subsections 906(c), (d) and (g) of ANILCA. Subsection 906(a) extends the time within which the state may

Hon. Hugh Malone
Re: J-66-556-81

April 2, 1981
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make selections under Sections 6(a) and 6(b) from 25 to 35 years.

Your inquiry is whether there are legal grounds for the United States unilaterally to amend the provisions of the Statehood Act. There is no clear legal answer where, as here, the amendments enacted by Congress do not defeat or materially diminish rights conferred on the state by the act of admission but, instead, actually benefit the state (see pp. 6-7, *infra*). What is clear is that the United States cannot unilaterally amend the Statehood Act to the state's detriment without the state's consent or acquiescence. 1/

The state's position has always been that the United States cannot unilaterally amend the Statehood Act. However, the state has avoided a confrontation over the issue by working with Congress to ensure that any post-statehood amendments to the Statehood Act are beneficial to the state and not inimical to its interests.

At the same time, there are indications in decisions of the United States Supreme Court that the United States may

1/ At least two provisions of the Alaska Native Claims Settlement Act -- the Section 9 2% override on royalties due the state and the Section 11(a) withdrawal of state-selected lands for Native village conveyance -- were unilateral amendments to the Statehood Act, albeit by implication, which were detrimental to the state's interest. To ensure prompt resolution of pending Native claims, Governor Egan, on behalf of the state, consented to those amendments and the state did not litigate the issue within the time specified by Section 10 of ANCSA.

Hon. Hugh Malone
Re: J-66-556-81

April 2, 1981
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unilaterally amend certain provisions in a statehood act. However, such amendments would be effective only if they did not defeat or materially diminish rights conferred on the state by the act of admission.

Summarizing, it is not clear as a matter of law whether the United States may unilaterally amend the Statehood Act or whether some parallel state action is also required. Under either approach, however, the practical effect is that the state's rights under the Statehood Act cannot be diminished without the state's consent.

There can be no question that an act of Congress admitting a new state to the Union constitutes a compact, a legally enforceable contract, between the citizens of the new state and the United States. See Stearns v. Minnesota ex rel. Marr, 179 U.S. 223, 244-245 (1900). Such compacts do not impose obligations only on one of the parties; rather, the obligations are imposed on both the new state and the United States. See the Public Land Law Review Commission's Report to Congress, One-Third of the Nations's Land (1971), at 244. The terms of such compacts constitute the conditions of admission of the new state, obligatory on both the state and the United States 2/, and subsequently

2/ This assumes, of course, that the conditions are constitutional. Provisions which purport to limit or qualify the political rights and obligations -- i.e., the sovereignty -- of a state are unconstitutional because enforcing them would result in the state being admitted on a less-than-equal footing than other states. Cf. Coyle v. Smith, 221 U.S. 559 (1911) (a provision in the act admitting Oklahoma to the Union providing that the capital of Oklahoma could not be moved held unenforceable because such decisions, after a state is admitted, are the exclusive province of the state).

Hon Hugh Malone
Re: J-66-556-81

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cannot be unilaterally amended by either party without the consent or acquiescence of the other. Beecher v. Wetherby, 95 U.S. (5 Otto) 517 (1877).

Provisions regarding grants of federal land generally are considered terms and conditions of a statehood compact and are enforceable both against the state and the United States. For example, in Stearns v. Minnesota ex rel. Marr, supra, the Court held that Congress can convey land to states in trust, and states accepting that land are bound by the terms of the trust, even where this may contravene the state constitution. In Cooper v. Roberts, 59 U.S. (18 How.) 173 (1856), the Court held that a statehood act grant of unspecified lands is binding on the United States and depends only on subsequent identification by survey of the lands granted. The Court also indicated that post-statehood acts of Congress should be construed as recognizing that a compact existed as of the date of statehood, and not as creating subsequent legal impediments to fulfillment of that prior agreement. In Beecher v. Wetherby, supra, the Court held that no post-statehood act of Congress could defeat an appropriation of land made earlier by Congress in a statehood act. The lands at issue in that case were subject to a reservation for the benefit of Indians at the time Wisconsin was admitted to the Union. The Court concluded that a statehood act conveyance from the United States to Wisconsin

Hon. Hugh Malone
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was effective as to the fee interest in those lands, although Wisconsin took the lands subject to the Indians' existing right of occupancy as long as that occupancy continued. However, the Court held that a post-statehood Congressional act authorizing the sale of lands occupied by Indians could not affect the title to the lands previously granted to the state. Accordingly, a subsequent United States patent to those lands conveyed no title because title already had vested in the state.

The general rule, then, is that provisions in statehood acts conferring rights on the state are valid and enforceable against the United States, and may not be unilaterally amended by post-statehood federal legislation.

However, this may not mean that no provision in a statehood act may ever be unilaterally amended by Congress. Where such amendments merely amend the procedures which must be followed to transfer title from the United States to the state, and do not materially diminish the rights granted to the state as conditions of its admission, it may be permissible for Congress to amend those provisions unilaterally. In Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 211 (1845), the Court stated that Congress can reserve power over federal public lands in an act admitting a new state, although it need not do so because it possesses that power even in the

absence of such a provision. 3/ Therefore, Congress' exercise of power over federal public lands in a state after admission, standing alone, may not violate the statehood compact unless it defeats or materially diminishes rights conferred on the new state by the act of admission.

The provisions of the Alaska Statehood Act amended by ANILCA all deal with the terms and conditions under which title to lands owned by the United States will pass to the state. Moreover, those amendments benefit the state rather than defeating or materially diminishing any rights the state possesses under the Statehood Act. Section 906(a) extends the time within which the state may make selections under Sections 6(a) and 6(b) of the Statehood Act from 25 years to 35 years. Section 906(f)(3) gives the Secretary of the Interior discretion to waive the minimum tract selection size previously imposed by the Statehood Act. Absent such authority, the state would be required to file selections no smaller than the minimum size specified; under the amendment, if the state decides it wishes to file

3/ The Pollard case is more generally cited for the proposition that Congress cannot reserve power over the lands underlying navigable waters within a new state because, under the equal footing doctrine, new states are vested with title to those lands to the same extent that the original 13 states possessed such a title, and the original 13 states never relinquished such title to the United States.

Hon. Hugh Malone
Re: J-66-556-81

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smaller selections, the Secretary of the Interior is given discretionary authority to accept those selections. Finally, Section 906(p) removes the proviso in Section 6(b) of the Statehood Act regarding presidential approval of state selections north and west of the so-called "PYK line" for prior state selections which now are confirmed to the state under subsections (c), (d) and (g) of Section 906; absent this provision, such approval would be required for all those prior selections.

Although these amendments, on their face, appear to be unilateral action by Congress since no state consent (either through the legislature or the executive) is required, they comprise one of the "seven consensus points" which the state desired in any Alaska lands legislation ultimately passed by Congress. They were initially suggested and drafted by the state, and were actively supported by the state throughout the Congressional deliberations on the bill. Accordingly, the state has maintained that they are bilateral amendments to the Statehood Act and have been concurred in by the state.

Alternatively, the Statehood Act amendments could be viewed as a permissible exercise of Congress' plenary power over the administration of federal lands. Had Congress attempted to diminish any of the State's rights under the Statehood Act, we believe it would have been acting outside

Hon. Hugh Malone
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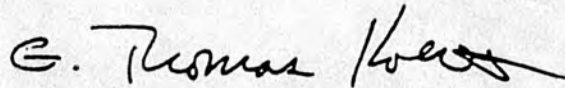
the scope of its authority. However, where, as here, Congress has made amendments to the Statehood Act which benefit the state and concern only the procedures for conveyance of land to the state rather than the quantity or availability of granted lands, Congress has not intruded on any state interest and is merely exercising its constitutional authority over federal lands within the binding framework of the existing statehood compact.

Under either approach, we believe the result is that the amendments to the Statehood Act which are part of ANILCA are effective and enforceable by the state. If you have further questions, please contact us at your convenience. We will be happy to meet with you or any member of your staff to discuss this opinion in greater detail.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By:



G. Thomas Koester
Assistant Attorney General

GTK:dlm

§ 191. Disposition of moneys received

(a) All money received from sales, bonuses, royalties, including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970 [30 USCS §§ 1001 et seq.], shall be paid into the Treasury of the United States; and, subject to the provisions of subsection (b), 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof. Provided, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 [30 USCS §§ 1001 et seq.] from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 [30 USCS §§ 1001 et seq.] not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

- (b)(1) In calculating the amount to be paid to States during any fiscal year under this section or under any other provision of law requiring payment to a State of any revenues derived from the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this Act or of geothermal steam, 50 percent of the portion of the enacted appropriation of the Department of the Interior and any other agency during the preceding fiscal year allocable to the administration of all laws providing for the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this Act or of geothermal steam, and to enforcement of such laws, shall be deducted from the receipts derived under those laws in approximately equal amounts each month (subject to paragraph (4)) prior to the division and distribution of such receipts between the States and the United States.
- (2) The proportion of the deduction provided in paragraph (1) allocable to each State shall be determined by dividing the monies disbursed to the State during the preceding fiscal year derived from onshore mineral leasing referred to in paragraph (1) in that State by the total money disbursed to States during the preceding fiscal year from such onshore mineral leasing in all States.
- (3) In the event the deduction apportioned to any State under this subsection exceeds 50 percent of the Secretary of the Interior's estimate of the amounts attributable to onshore mineral leasing referred to in paragraph (1) within that State during the preceding fiscal year, the deduction from receipts received from leases in that State shall be limited to such estimated amounts and the total amount to be deducted from such onshore mineral leasing receipts shall be reduced accordingly.
- (4) If the amount otherwise deductible under this subsection in any month from the portion of receipts to be distributed to a State exceeds the amount payable to the State during that month, any amount exceeding the amount payable shall be carried forward and deducted from amounts payable to the State in subsequent months. If any amount remains to be carried forward at the end of the fiscal year, such amount shall not be deducted from any disbursements in any subsequent fiscal year.
- (5) All deductions to be made pursuant to this subsection shall be made in full during the fiscal year in which such deductions were incurred.

(As amended Jan. 12, 1983, P.L. 97-451, Title I, §§ 104(a), 111(g), 96 Stat. 2452, 2456; Dec. 22, 1987, P. L. 100-203, Title V, Subtitle B, § 5109, 101 Stat. 1330-261; Sept. 22, 1988, P. L. 100-443, § 5(b), 102 Stat. 1768; Aug. 10, 1993, P. L. 103-66, Title X, Subtitle C, § 10201, 107 Stat. 407.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

¹ "The Federal Oil and Gas Royalty, Management Act of 1982", referred to in this section, is Act Jan. 12, 1983, P. L. 97-451, 96 Stat. 2447, which appears generally as 30 USCS §§ 1701 et seq. For full classification of such Act, consult USCS Tables volumes.

Amendments:

1983. Act Jan. 12, 1983 inserted "including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982"

Such Act further deleted "as soon as practical after March 31 and September 30 of each year" following "Secretary of the Treasury", and added "Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined

to be payable to a State shall be made until the dispute is resolved. Any such amount until the dispute is resolved." For the which appears as 30 USCS § 1714 note, 1987, Act Dec. 22, 1987 added the "1988, Act Sept. 22, 1988 deleted "not Stream Act of 1970," the first place in 1993, Act Aug. 10, 1993, deleted "the amount of such payments shall be United States." following "until the (a), and in such subsection, inserted (b).

Other provisions:

Application of Jan., 1983 amendme
amendments of this section are cor
2461, which appears as 30 USCS §

INTEF

Revenue generated by oil and gas lease wildlife refuges consisting of reserved public lands distributed according to formula provided in USCS § 191 rather than formula provided in the Revenue Sharing Act (16 USCS § 715s); 1 applies only to minerals on acquired refuges; USCS § 191 remains controlling legislation on reserved public lands since there is no congressional intention to repeal § 191 by the legislative history of § 715s. Watt v Alaska, 259 F.3d 1101, 1105, 2008 WL 1673, 11 El.

State's action alleging improper calculation of share of mineral royalties received from within state due state under 30 USCS § 1715. *Money judgment against United States brought in Court of Claims rather than court.* *New Mexico v. Reagan* (1984, CA1 1318, cert den 471 US 1065, 85 L Ed 2 2138 and trans to 11 Cl Ct 429, 59 AF2d (CA FC) 831 F2d 265, 96 OGR 676.

National wildlife federation has standing to sue for alleged violation of antitrust laws by supposed acceptance of coal lease bids below fair market value. National Wildlife Federation v. United States, 889 F.2d 1172 (9th Cir. 1990), cert. denied, 110 S.Ct. 1121 (1990). (1989, CA9 Mont) 871 F.2d 849.

Under 30 USCS §§ 191, 226, New Mexico royalties resulting from oil and gas leased owned land located in New Mexico is to be paid post-tax royalties remaining after payment of a windfall profit tax under 26 USCS §§ 494-498. The state argued that the royalties were more than on gross pre-tax royalties, where the state wanted states to obtain windfall through that would accrue from de-regulation of the oil and gas industry. *Id.* (1987, CA FC) 676.

State has standing to challenge govern-
and gas leases on military base and statu-
in alleging government irrationally classi-
as non-KGS, since state stands to lose
money received from grant. Arkla Explo-
(1982, WD Ark) 548 F Supp 466, 76 OLR
Ark) 562 F Supp 1214, 78 OGR 235, a
F2d 347, 81 OGR 486, cert den 469 US
920, 105 S Ct 905

Exploration company has standing to
ment's non-competitive granting of oil
military bases and states cause of action
denied right to bid competitively on

§ 191a. Late payment charges un

(a) Distribution of late payment of the late payment of any royalty issued by the United States for the steam, shall be deposited in the same as such royalty, rent, bonus, or of

(b) **Effective date.** Subsection (a) subsection (a), which is paid to the

(c) Prohibition against recoupment paid to the United States before deemed to be authorized and approved payment or distribution shall be required.

MINERAL LANDS AND MINING

[illegible]

ing any fiscal year under this section or under any of any revenues derived from the leasing of any of any States for the production of the same types of team, 50 per cent of the portion of the enacted any other agency during the preceding fiscal year or the leasing of any onshore lands or interest in of the same types of minerals leaseable under this such laws, shall be deducted from the receipts ants each month (subject to paragraph (4)) prior in the States and the United States.

paragraph (1) allocable to each State shall be ate during the preceding fiscal year derived from that State by the total money disbursed to States eral leasing in all States.

under this subsection exceeds 50 percent of the amount attributable to onshore mineral leasing referred to in this subsection for the fiscal year, the deduction from receipts received by the State for that fiscal year shall be reduced by the amount and the total amount to be deducted shall be reduced accordingly.

tion in any month from the portion of receipts due to the State during that month, any amount not deducted from amounts payable to the State shall be carried forward at the end of the fiscal year, such amount to be paid in any subsequent fiscal year.

111(g), 96 Stat. 2452, 2456; Dec. 22, 1987, P. Sept. 22, 1988, P. L. 100-443, § 5(b), 102 Stat. 201, 107 Stat. 407.)

AND DIRECTIVES

2", referred to in this section, is Act Jan. 12, 1948, 60 Stat. 1031, 38 USC § 1701 et seq. For full

is collected under the Federal Oil and Gas

and September 30 of each year" following under this section with respect to any moneys the last business day of the month in which the Secretary has having been received, except and placed in a suspense account pending United States Treasury not later than 10 days in a suspense account which are determined

LEASES AND PERMITS

to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved." For the application of these amendments, see § 104(c) of Act Jan. 12, 1983, which appears as 30 USCS § 1714 note.

1987. Act Dec. 22, 1987 added the sentence beginning "In determining the amount of payments . . .",

1993, Act Aug. 10, 1993, deleted "In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States." following "until the dispute is resolved.", designated the remaining provisions as subsection (a), and in such subsection, inserted "and, subject to the provisions of subsection (b)."; and added subsec. (b).

Other provisions:

Application of Jan., 1983 amendments of this section. Provisions as to the application of the Jan., 1983 amendments of this section are contained in Act Jan. 12, 1983, P. L. 97-451, Title III, § 305, 96 Stat. 2461, which appears as 30 USCS § 1701 note.

INTERPRETIVE NOTES AND DECISIONS

Revenue generated by oil and gas leases on federal wildlife refuges consisting of reserved public lands must be distributed according to formula provided in 30 USCS § 191 rather than formula provided in Wildlife Refuge Revenue Sharing Act (16 USCS § 715s); 16 USCS § 715s applies only to minerals on acquired refuge lands and 30 USCS § 191 remains controlling legislation with respect to reserved public lands since there is no clearly expressed congressional intention to repeal § 191 by implication in legislative history of § 715s. *Watt v Alaska* (1981) 451 US 259, 68 L Ed 2d 80, 101 S Ct 1673, 11 ELR 20378.

State's action alleging improper calculation of 50 percent share of mineral royalties received from federal lands within state due state under 30 USCS § 191 is suit for money judgment against United States and must be brought in Court of Claims rather than federal district court. *New Mexico v Regan* (1984, CA10 NM) 745 F2d 1318, cert den 471 US 1065, 85 L Ed 2d 496, 105 S Ct 2138 and transfer to 11 Cl Ct 429, 59 AFTR 2d 87-1283, affd (CA FC) 831 F2d 265, 96 OGR 676.

National Wildlife Federation has standing to attack coal leasing transactions as alleged violation of 30 USCS § 201 by supposed acceptance of coal lease bids that fell below fair market value. *National Wildlife Federation v Burford* (1989, CA9 Mont) 871 F2d 849.

Under 30 USCS §§ 191, 226, New Mexico's share of royalties resulting from oil and gas leases on federally owned land located in New Mexico is to be calculated from post-tax royalties remaining after payment of crude oil windfall profit tax under 26 USCS §§ 4986 et seq., rather than on gross pre-tax royalties, where Congress did not want states to obtain windfall through inflated royalties that would accrue from de-regulation of price of oil. *New Mexico v United States* (1987, CA FC) 831 F2d 265, 96 OGR 676.

State has standing to challenge government's grant of oil and gas leases on military base and states cause of action in alleging government irrationally classified military tracts as non-KGS, since state stands to lose 50 percent of all money received from grant. *Arkla Exploration Co. v. Watt* (1982, WD Ark) 548 F Supp 466, 76 OGR 1, later op (WD Ark) 562 F Supp 1214, 78 OGR 235, affd (CA8 Ark) 734 F2d 347, 81 OGR 486, cert den 469 US 1158, 83 L Ed 2d 920, 105 S Ct 905

Exploration company has standing to challenge government's non-competitive granting of oil and gas leases on military bases and states cause of action by alleging it was denied right to bid competitively on lands offered by

government. *Arkla Exploration Co. v Watt* (1982, WD Ark) 548 F Supp 466, 76 OGR 1, later op (WD Ark) 562 F Supp 1214, 78 OGR 235, affd (CA8 Ark) 734 F2d 347, 81 OGR 486, cert den 469 US 1158, 83 L Ed 2d 920, 105 S Ct 905.

Environmental groups have standing to challenge federal coal land leases on basis that high bids for lease tracts do not constitute fair market value, where 30 USC § 191 designates 50 percent of all money received from coal sale is to be used by state for benefit of areas impacted by mining and 30 USC § 201 indicates Congress's desire that Secretary of Interior seriously consider precise interests of groups' members who live on, work on and regularly use lands and allege harm here, because plaintiffs clearly allege, as prerequisite to 5 USC § 702 review, that (1) receipt of less than fair market value could cause them "injury in fact," and (2) social, economic and environmental interests that they seek to protect are within zone of interests Congress sought to protect. *National Wildlife Federation v. Burford* (1985, DC Mont) 677 F Supp 1445, later proceeding (CA9 Mont) 871 F2d 849, 19 ELR 20656.

Although, under specific 1982 amendment, late payment interest is part of revenues distributed to state according to prescribed 30 USCS § 191 formula, amendment applies only to § 191 distributions, which govern revenues received under Mineral Lands Leasing Act; revenue distribution provisions of Act do not create beneficial or equitable interest in lease on part of state. *Late Payment Interest & Civil Penalties Related to Offshore Oil & Gas Leases* (1988) 95 ID 203

30 USCS § 191 mandates that portion of Mineral Leasing Act funds be paid into reclamation fund as general credit to Reclamation fund statute, where revenues from lands unrelated to Reclamation program are placed into fund to help it grow. Proper Disbursement & Crediting of Mineral Leasing Revenues from Reclamation Acquired Lands (1989) 97 ID 54.

Multi-county associations of local government, created in accordance with state law, can receive state distributions of federal mineral lease funds. (1986) 65 Op Comp (Gen p 849.

Revenue from Crude Oil Windfall Profit Tax Act, P.L. 96-223, 94 Stat. 229, cannot be treated as royalty revenue and distributed to states under § 35 of Mineral Leasing Act (42 USCS § 191). Effect of the Crude Oil Windfall Profit Tax Act of 1980 on States' Share of Federal Oil Royalties (1980) 87 ID 661.

~~§ 191a. Late payment charges under Federal mineral leases~~

~~(a) Distribution of late payment charges. Any interest or other charges paid to the United States by reason of the late payment of any royalty, rent, bonus, or other amount due to the United States under any lease issued by the United States for the extraction of oil, gas, coal, or any other mineral, or for geothermal steam, shall be deposited in the same account and distributed to the same recipients, in the same manner, as such royalty, rent, bonus, or other amount.~~

(b) **Effective date.** Subsection (a) shall apply with respect to any interest, or other charge referred to in subsection (a), which is paid to the United States on or after July 1, 1988.

(c) **Prohibition against recoupment.** Any interest, or other charge referred to in subsection (a), which was paid to the United States before July 1, 1988, and distributed to any State or other recipient is hereby deemed to be authorized and approved as of the date of payment or distribution, and no part of any such payment or distribution shall be recouped from the State or other recipient. This subsection shall not apply

USCS §§ 181 et seq.]
to affect rights of state
to exercise rights also
by Secretary to do
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t. Texas Oil & Gas
Co. (1967, DC Okla)
A10 Okla) 406 F2d
24 L Ed 2d 80, 90 S

1920, as amended,
sufficient authority to
rules under terms of
August 14, 1976, since
conditions which
in each lease, 30
proscribe any mining
of Act, 30 USCS
to "prescribe neces-
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ID 244.

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Secretary may impose
American Sodium
44, 276 P 11.

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La) 51 F2d 450,
7, 52 S Ct 604.

requiring plugging
n public lands by
after giving notice
may plug well at
surety conferred
supervisor. Forbes
ont) 125 F2d 404.

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leased. Sheridan-
949) 84 App DC
r grounds 338 US

force of statutes,
are final unless
onal irregularities,
Mountain & Gulf
F 269, affd (CA8

Wyo) 20 F2d 1022; Hodgson v Midwest Oil Co.
(1924, DC Wyo) 297 F 273, affd (CA8 Wyo) 17
F2d 71.

30 USCS § 189 authorizes Secretary of Interior
to proscribe necessary and proper rules and
regulations and to do anything necessary to
carry out purposes of Mineral Leasing Act, and
this is clear authority to Secretary to adopt
regulations governing assignments of oil and gas
leases, provided that any such regulation does
not contravene provision of Act. Robert L.
Smart et al (1963) 30 ID 383.

Rules not inconsistent with statutes have force
of law and will be judicially noticed; assignment
prior to reception of permit is invalid where such
assignment is prohibited by rule. Alford v Hesse
(1929) 100 Cal App 66, 279 P 831.

3. State taxation and regulation

Lessee is subject to annual license tax imposed
under state statute; states could levy license taxes
after enactment of predecessor to 30 USCS § 189
on business of producing petroleum on land

leased from United States although states had
not attempted to do so before; words "which
they may have" were not limited to rights of
states existing when section was enacted. Mid-
Northern Oil Co. v Walker (1925) 268 US 45, 69
L Ed 841, 45 S Ct 440.

Forced pooling order of state court was valid
exercise of state power within scope of 30 USCS
§ 189 and was not violation of Art. 4, § 3, cl. 2
of USCS Constitution. Texas Oil & Gas Corp. v
Phillips Petroleum Co. (1967, DC Okla) 277 F
Supp 366, affd (CA10 Okla) 406 F2d 1303, cert
den 396 US 829, 24 L Ed 2d 80, 90 S Ct 80.

Under 30 USCS § 189 power of state to tax
income generated from federal land under juris-
diction of Mineral Leasing Act (30 USCS § 181
et seq.) is recognized; state was free to define
interest of taxpayer in oil and gas leases covering
federal lands which taxpayer had assigned, as
interest in real property for purposes of income
tax. Hagood v Heckers (1973) 182 Colo 337, 513
P2d 208.

§ 190. Oaths; requirement; form; blanks

All statements, representations, or reports required by the Secretary of the
Interior under this Act [30 USCS §§ 181 et seq.] shall be upon oath, unless
otherwise specified by him, and in such form and upon such blanks as the
Secretary of the Interior may require.
(Feb. 25, 1920, ch 85, § 33, 41 Stat. 450.)

CROSS REFERENCES

Extension of provisions, 30 USCS §§ 275, 285.

This section is referred to in 10 USCS §§ 7421, 7435, 30 USCS §§ 275, 285.

INTERPRETIVE NOTES AND DECISIONS

Unsworn application of one having preference
was invalid, and applicant lost his right to pref-
erence where proper application was not filed

within time limited therefor. Witbeck v Harde-
man (1931, CA5 La) 51 F2d 450, affd 286 US
444, 76 L Ed 1217, 52 S Ct 604.

§ 191. Disposition of moneys received

All money received from sales, bonuses, royalties, and rentals of the public
lands under the provisions of this Act and the Geothermal Steam Act of
1970 [30 USCS §§ 1001 et seq.], notwithstanding the provisions of section
20 thereof [30 USCS § 1019], shall be paid into the Treasury of the United
States; 50 per centum thereof shall be paid by the Secretary of the
Treasury as soon as practicable after March 31 and September 30 of each
year to the State other than Alaska within the boundaries of which the
leased lands or deposits are or were located; said moneys paid to any of
such States on or after January 1, 1976, to be used by such State and its

subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 [30 USCS §§ 1001 et seq.] from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geotherman Steam Act of 1970 [30 USCS §§ 1001 et seq.] not otherwise disposed of by this section shall be credited to miscellaneous receipts.

(Feb. 25, 1920, ch 85, § 35, 41 Stat. 450; May 27, 1947, ch 83, 61 Stat. 119; Aug. 3, 1950, ch 527, 64 Stat. 402; July 10, 1957, P. L. 85-88, § 2, 71 Stat. 282; July 7, 1958, P. L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351; Apr. 21, 1976, P. L. 94-273, § 6(2), 90 Stat. 377; Aug 4, 1976, P. L. 94-377, § 9, 90 Stat. 1089; Sept 28, 1976, P. L. 94-422, Title III, § 301, 90 Stat. 1323; Oct. 21, 1976, P. L. 94-579, § 317(a), 90 Stat. 2770.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act Feb. 25, 1920, ch 85, 41 Stat. 437, popularly known as the Mineral Leasing Act of 1920, and appears generally as 30 USCS §§ 181 et seq. For full classification of this Act, consult USCS Tables volumes.

"The Reclamation Act, approved June 17, 1902", referred to in this section, comprises 43 USCS §§ 372 et seq. That part of § 5 of such Act which formerly appeared as 43 USCS § 476 was repealed by Act Dec. 16, 1930, ch 14, § 1, 46 Stat. 1029. That part of § 5 of such Act which formerly appeared as 43 USCS § 381 was repealed by Act Sept. 6, 1966, P. L. 89-554, § 8, 80 Stat. 1029. Section 9 of such Act was repealed by Act June 25, 1910, ch 407, § 6, 36 Stat. 836. For full classification of such Act, consult USCS Tables volumes.

"Act June 4, 1920, as amended June 30, 1938", referred to in this section, is Act June 4, 1920, ch 228, § 1, 41 Stat. 813; June 30, 1938, ch 851, 52 Stat. 1252, which enacted former 34 USCS § 524 and was repealed by Act Aug. 10, 1956, ch 1041, § 53, 70A Stat. 641. See now 10 USCS § 7433(b).

Amendments:

1947. Act May 27, 1947, substituted this section for one which read: "10 per centum of all money received from sales, bonuses, royalties,

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and rentals under the provisions of this Act, excepting those from Alaska, shall be paid into the Treasury of the United States and credited to miscellaneous receipts; for past production 70 per centum, and for future production 52½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress, known as the Reclamation Act, approved June 17, 1902, and for past production 20 per centum, and for future production 37½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act from lands within the naval petroleum reserves shall be deposited in the Treasury as 'Miscellaneous receipts.' "

1950. Act Aug. 3, 1950, in the sentence beginning "All money received . . ." substituted "as soon as practicable after December 31 and June 30 of each year" for "after the expiration of each fiscal year".

1957. Act July 10, 1957, in the sentence beginning "All money received . . ." inserted ", and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" immediately before the colon preceding the first proviso thereof.

1958. Act July 7, 1958, in the sentence beginning "All money received . . ." inserted ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof" preceding the first proviso; and repealed the last sentence of this section which read: "Nothing herein contained shall be construed to affect the disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska as provided for in the Act of March 4, 1915 (38 Stat. 1214, 1215; 48 U.S.C., sec. 353), as amended." This amendment became effective upon the admission of Alaska into the Union under §§ 6(k) and 8(b) of Act July 7, 1958. Admission was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269 Jan. 3, 1959, 24 Fed. Reg. 81, 73 Stat. cl6, as required by §§ 1 and 8(c) of Act July 7, 1958. See notes preceding 43 USCS 21.

1976. Act Apr. 26, 1976, in the sentence beginning "All money received . . .", substituted "March" and "September" for "December" and "June", respectively.

Act Aug. 4, 1976, in the sentence beginning "All money received . . .", substituted "40 per centum thereof shall be paid into, reserved", for "52½ per centum thereof shall be paid into, reserved"; inserted ": *Provided further*, That an additional 12½ per centum of all moneys received from sales, bonuses, royalties, and rentals of public lands

under the provisions of this Act and the Geothermal Steam Act of 1970 shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said additional 12½ per centum of all moneys paid to any State on or after January 1, 1976, shall be used by such State and its subdivisions as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services: *Provided further*, That such funds now held or to be received, by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as 'C-A'; 'C-B'; 'U-A' and 'U-B' shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services."; inserted "and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof,"; before the words "from lands within the naval petroleum reserves" inserted "and the Geothermal Steam Act of 1970"; and, in the sentence beginning "All moneys received . . ." inserted "and the Geothermal Steam Act of 1970".

Act Sept. 28, 1976, in the sentence beginning "All money received . . .", inserted ": *And provided further*, That all moneys paid to any State from sales, bonuses, royalties, and rentals of oil shale in public lands may be used by such State and its subdivisions for planning, construction, and maintenance of public facilities, and provision of public services, as the legislature of the State may direct, giving priority to those subdivisions of the State socially or economically impacted by the development of the resource".

Act Oct. 21, 1976, substituted this section for one which then read: "All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this Act and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such States or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 40 per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval

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petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252, 34 U.S.C., sec. 524): *Provided further*, That an additional 12½ per centum of all moneys received from sales, bonuses, royalties, and rentals of public lands under the provisions of this Act and the Geothermal Steam Act of 1970 shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said additional 12½ per centum of all moneys paid to any State on or after January 1, 1976, shall be used by such State and its subdivisions as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services: *Provided further*, That such funds now held or to be received, by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as 'C-A'; 'C-B'; 'U-A' and 'U-B' shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services: *And provided further*, That all moneys paid to any State from sales, bonuses, royalties, and rentals of oil shale in public lands may be used by such State and its subdivisions for planning, construction, and maintenance of public facilities, and provision of public services, as the legislature of the State may direct, giving priority to those subdivisions of the State socially or economically impacted by the development of the resource. All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts."

Other provisions:

Savings provisions. The amendment by Act Oct. 21, 1976, is not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976; see Act. Oct. 21, 1976, P. L. 94-579 § 701, set out as a Savings Provisions note under 43 USCS 1701.

Shale Test lease funds. Act Oct. 21, 1976, P. L. 94-579, § 317(b), 90 Stat. 2771, provided: "Funds now held pursuant to said section 35 [30 USCS § 191] by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C-A; C-B; U-A and U-B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services."

Outer Continental Shelf: revenues from leases. For the disposition of revenues from leases on submerged lands of outer Continental Shelf, see 43 USCS §§ 1337 and 1338.

CROSS REFERENCES

Naval petroleum reserves, 10 USCS §§ 7421 et seq.

Extension of provisions, 30 USCS § 275, 285.

Disposition of royalties and rentals, 30 USCS § 286.

Disposition of lands and deposits, 30 USCS § 292.

This section is referred to in 10 USCS §§ 7421, 7435; 16 USCS § 470h; 30 USCS §§ 275, 285, 292, 541f; 31 USCS § 1604; 43 USCS § 1717.

INTERPRETIVE NOTES AND DECISIONS

In action seeking to enjoin Secretary of Interior to approve or disapprove Utah's school land grant "indemnity selections" of public lands, District Court did not err by impounding monies realized representing oil-shale leasing receipts which Congress had appropriated pursuant to 30 USCS § 191 for distribution in way contrary to trial court's orders. *Utah by Division of State Lands v Kleppe* (1978, CA10 Utah) 586 F2d 756.

Series of monthly protests by company paying royalties under provisions of 30 USCS § 191 beclouds validity of payments which federal government made to state under Mineral Leasing Act [30 USCS §§ 181 et seq.], and these threats or clouds on federal government's right to retain sums so collected from lessee justify court in rendering declaratory judgment respecting lessee. *United States v General Petroleum Corp.* (1946, DC Cal) 73 F Supp 225, *affd* (CA9 Cal) 184 F2d 802.

Word "minerals" as used in 1964 amendment of 16 USCS § 715s(a) must be read restrictively rather than literally, and therefore, 1964 amendment of § 715s(a) was not intended to amend 30 USCS § 191 to require distribution of mineral leasing receipts from reserve land in accordance with 16 USCS § 715s(c); this interpretation does not make "minerals" superfluous as 16 USCS § 715s does continue to govern distribution of mineral lease receipts from acquired land. *Kenai Peninsula Borough v Andrus* (1977, DC Alaska) 436 F Supp 288.

There is nothing in provisions of legislative history of revenue sharing sections of Mineral Leasing Act, 30 USCS § 191, or Bankhead-Jones Farm Tenant Act, 7 USCS § 1012, indicating that local revenues may be apportioned between local agencies at Federal level. *Re Cameron Parish, Louisiana, Cameron Parish Police Jury & Cameron Parish School Board* (1968) 75 ID 289.

§ 192. Payment of royalties in oil or gas; sale of such oil or gas

All royalty accruing to the United States under any oil or gas lease or permit under this Act on demand of the Secretary of the Interior shall be paid in oil or gas.

Upon granting any oil or gas lease under this Act, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil and gas accruing or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee: Provided, That inasmuch as the public

Admission of the State of Alaska Into the Union

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION

WHEREAS the Congress of the United States by the act approved on July 7, 1958 (72 Stat. 339), accepted, ratified, and confirmed the constitution adopted by a vote of the people of Alaska in an election held on April 24, 1956, and provided for the admission of the State of Alaska into the Union on an equal footing with the other States of the Union upon compliance with certain procedural requirements specified in that act; and

WHEREAS it appears from information before me that a majority of the legal votes cast at an election held on August 26, 1958, were in favor of each of the propositions required to be submitted to the people of Alaska by section 8 (b) of the act of July 7, 1958; and

WHEREAS it further appears from information before me that a general election was held on November 25, 1958, and that the returns of the general election were made and certified as provided in the act of July 7, 1958; and

WHEREAS the Acting Governor of Alaska has certified to me the results of the submission to the people of Alaska of the three propositions set forth in section 8 (b) of the act of July 7, 1958, and the results of the general election; and

WHEREAS I find and announce that the people of Alaska have duly adopted the propositions required to be submitted to them by the act of July 7, 1958, and have duly elected the officers required to be elected by that act;

NOW, THEREFORE, I DWIGHT D. EISENHOWER, President of the United States of America, do hereby declare and proclaim that the procedural requirements imposed by the Congress on the State of Alaska to entitle that State to admission into the Union have been complied with in all respects and that admission of the State of Alaska into the Union on an equal footing with the other States of the Union is now accomplished.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington at one minute past noon on this third day of January in the year of our Lord nineteen hundred and fifty-nine,

ALASKA STATUTES

and of the Independence of the United States of America the one hundred and eighty-third.

/s/ DWIGHT D. EISENHOWER
3 January, 1959
Washington, D. C.

By the President:

/s/ CHRISTIAN A. HERTER
Acting Secretary of State



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Representative Norman Rokeberg

State Capitol
Juneau, AK 99801-1182

TO: Members House Oil & Gas Committee

FROM: Representative Norman Rokeberg *NMR*

DATE: February 27, 1995

SUBJECT: CSHJR 26(WTR) - A Resolution supporting Alaska's right to 90 percent of the royalties from oil, gas and coal leasing

Attached is a packet of materials for your committee hearing on CSHJR 26 (WTR). I want to thank the committee for scheduling a hearing on this resolution.

Attachment



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Representative Norman Rokeberg

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT

CSHJR 26(WTR) - A Resolution supporting Alaska's right to 90 percent of the royalties from oil, gas and coal leasing

HJR 26 is a statement by the Alaska Legislature that the United States cannot unilaterally amend the Statehood Act. Alaska has tried since statehood to avoid a confrontation over issues by working with Congress to ensure that any post-statehood amendments to the Statehood Act did not materially diminish the rights conferred to the State of Alaska by the act of admission into the United States.

There is no question that an act of Congress admitting a new state to the Union constitutes a compact, a legally enforceable contract, between the citizens of the new state and the United States. The first line of Section 4 of PL 85-508, the Alaska Statehood Act, states in part, "As a compact with the United States said State and its people do agree...." Provisions contained in this act that conferred rights to the State of Alaska are valid and can be enforced against the United States.

Section 28, (a) Mines and Mining, of the Alaska Statehood Act states clearly the formula for sharing bonuses, royalties and rentals under leases shall be distributed 90 percent to the State of Alaska and 10 percent to the Treasury of the United States. 48 U.S.C. 439 dated October 20, 1914, was amended to include the above formula.

HJR 26 seeks to reinforce the people of Alaska's resolve to protect our right to the 90-10 sharing formula granted by the United States Congress on July 7, 1958.

[MINES AND MINING]

SEC. 28. (a) The last sentence of section 9 of the Act entitled "An Act to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes", approved October 20, 1914 (48 U. S. C. 439), is hereby amended to read as follows: "All net profits from operation of Government mines, and all bonuses, royalties, and rentals under leases as herein provided and all other payments received under this Act shall be distributed as follows as soon as practicable after December 31 and June 30 of each year: (1) 90 per centum thereof shall be paid by the Secretary of the Treasury to the State of Alaska for disposition by the legislature thereof; and (2) 10 per centum shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts."

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U. S. C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

Opinions of attorney general. — Neither the state nor federal government may unilaterally amend the Statehood Act. 1969 Op. Att'y Gen., No. 6.

The United States may not constitutionally enact effective legislation in direct conflict with compact provisions of the Statehood Act unless there is an amendment to the Constitution of the State of Alaska, because a Statehood Act constitutes a compact in the nature of a contract between two sovereign governments. 1969 Op. Att'y Gen., No. 6.

Royalty legislation on state oil and gas leases is a matter within the paramount jurisdiction of the state. The conservation of oil and gas is a matter within the authority of the states. 1969 Op. Att'y Gen., No. 6.

The royalty provisions of a mineral leasing act are related to conservation of natural resources. 1969 Op. Att'y Gen., No. 6.

The United States, under the 10th amendment to the federal constitution, has no authority to legislate on state royalty provisions and state oil and gas leases. 1969 Op. Att'y Gen., No. 6.

An overriding gross royalty of 2% of all proceeds from any state and federal lands conflicts with the Statehood Act and the province of the Alaska state legislature. 1969 Op. Att'y Gen., No. 6.

The United States cannot unilaterally amend the Statehood Act to the state's detriment without the state's consent or acquiescence. April 2, 1981, Op. Att'y Gen.

NOTES TO DECISIONS

Legislative intent. — It was the intent of Congress in the Statehood Act to provide the new state with a solid economic foundation. *Rowe v. United States*, 464 F. Supp. 1060 (D. Alas. 1979), *aff'd in part*, 633 F.2d 799 (9th Cir. 1980), *cert. denied*, 451 U.S. 970, 101 S. Ct. 2047, 68 L. Ed. 2d 349 (1981).

Applied in *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUGH K, STATE CAPITOL - JUNEAU 99801

1969 Opinions of the
Attorney General No. 6

September 5, 1969

The Honorable Wayne N. Aspinall, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington, D. C. 20510

Dear Mr. Aspinall:

This opinion is in response to the request of the Committee during the recent hearings on Alaska Native Land claims for a legal memorandum of the Department of Law of the State of Alaska on certain issues which were raised by the Position Paper of the Alaska Federation of Natives ("A.F.N.").

The A.F.N. proposed "an overriding gross royalty of 2% of all proceeds from any state and federal lands. . .". See A.F.N. Position Paper, p. 10.

Governor Miller stated during his testimony that "the 2 per cent proposal conflicts with the Statehood Act and the province of the Alaska State Legislature. . .". The purpose of this memorandum is to explain the legal basis of the statement of Governor Miller.

The questions to be answered in this memorandum are several. First, does the 2% overriding gross royalty provision conflict with the provisions of the Alaska Statehood Act? Second, if there is such a conflict, would incorporation of such a royalty provision into a settlement enacted into law by Congress conflict with the United States Constitution?

The overriding gross royalty of 2% will be looked at both from the perspective of 2% of the current 12 1/2% ~~of oil royalty and as 2% on top of the current 12 1/2%.~~ The A.F.N. has stated that the memorandum should be presented in that light.

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Washington, D. C.

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I. STATUTORY CITATIONS

The citations to pertinent provisions of the Alaska Statehood Act and other legislation are the following (the statutes are quoted in Appendix A).

1. The grant to the State of 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska. The Alaska Statehood Act, 72 Stat. 339, Sec. 28(b).

2. The federal legislation which was confirmed and amended by the Statehood Act, Sec. 28(b). It provides that the State receives 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska, 37 1/2% thereof for the construction of public roads or schools and 52 1/2% for the disposition of the State Legislature. 30 U.S.C. 191.

3. The federal legislation applicable to oil and gas leases of the United States provides for a minimum 12 1/2% royalty. 30 U.S.C. 226.

4. The state legislation applicable to oil and gas leases of the State of Alaska provides for a basic minimum 12 1/2% royalty, although, in the case of first discovery, there is a royalty of 5%. AS 38.05.180.

5. The disclaimer clause of the Alaska Statehood Act. 72 Stat. 339, Sec. 4.

II. DEFINITIONS

The logical point to begin the discussion of the question is with a definition of the term "overriding gross royalty." A leading text in the field describes the term in the following way.

"Perhaps the only safe way to define the term 'overriding royalty' is to say that it is a fractional interest in the gross production of oil and gas, in addition to the usual royalties paid to the lessor. The term *may* (sic) be used in referring to a nonparticipating royalty interest in perpetuity or for a term of years created by the land or mineral owner

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prior to a lease for oil and gas. Grants by a lessee of a share of per cent of the production from a lease are sometimes called overriding royalties. A prospective lessee may agree to pay an overriding royalty, a certain share of the production, to another person as consideration for his services in procuring a lease on certain lands. Perhaps the most common use of the term is to indicate a share of the oil or gas produced reserved in an assignment, part assignment or sublease of an oil and gas lease, and payable to the assignor by the assignee, over and above the royalty reserved in the lease payable to the lessor." Summers Oil and Gas, Vol. 3, Sec. 554, pp. 624-626.

It is also necessary to note the following distinction between a "royalty" and an "overriding royalty."

"The question presented here is not who is entitled to a 'royalty' but who is entitled to an 'overriding royalty'. There is a difference. 'Royalty' generally means that fractional interest in the production of oil or gas which was created by the owner of the land either by reservation when the mineral lease was entered into or by direct grant to a third person. An 'overriding royalty' is a given percentage of the gross production payable to some person other than the lessor or persons claiming under him. Such interest develops where an owner of the working interest (as Texaco is here) contracts to deliver a part of the gross production to another, usually his assignor (the Trustee here)." Texaco v. Pigott, 235 F.Supp. 458, 464 (D.C. Miss. 1964).

III. STATE LEASES

The 2% overriding gross royalty cannot apply to a State of Alaska oil and gas lease issued pursuant to AS 38.05.180. This is true whether or not the 2% is a diversion of State revenues from the present 12 1/2% royalty or if the 2% is added to the present 12 1/2% royalty to make it a 14 1/2% royalty.

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The real conflict between the 2% overriding gross royalty and the 12 1/2% royalty stated in AS 38.05.180 and included as a provision of state oil and gas leases is readily apparent. This is the case regardless of whether the 2% overriding royalty is retrospective so as to affect leases in existence at the time of the effective date of the settlement legislation or if it is prospective so as to affect only leases issued subsequent to the effective date of the legislation.

It is clear that Congress has no authority under the United States Constitution to amend State legislation and State contracts on matters within the province of State law. It is a fundamental principle of American jurisprudence that the supremacy clause of the United States Constitution is applicable only if the particular act of Congress is within the jurisdiction of Congress.

"In discussing these questions, the conflicting powers of the general and state governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

If any one proposition could command the universal assent of mankind, we might expect it would be this--that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the state legislatures, and the officers of the executive and judicial departments of the states shall take the oath of fidelity to it.

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The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, 'anything in the constitution or laws of any state to the contrary notwithstanding.'" *McCulloch v. The State of Maryland*, 4 Wheat. 316, 405-406 (1819). (Emphasis added.)

Conversely, it is equally clear that a State has the authority under the Tenth Amendment to the United States Constitution to regulate those activities which occur within the State if Congress has not been granted such authority by the Constitution.

"We choose rather to plant ourselves on what we consider impregnable positions. They are these: that a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of that, it is not only the right, but the bounden and solemn duty of a State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that consequently, in relation to these, the authority of a State is complete, unqualified and exclusive.

We are aware that it is at all times difficult to define any subject with proper precision and accuracy; if this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one

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which we are now considering." *New York v. Miln*, 11 Pet. 102, 138 (1937). (Emphasis added.)

The State of Alaska is entitled to the same rights as other states under the United States Constitution by virtue of the Statehood Act, Section 1, which provides that the State is on an "equal footing with the other states in all respects whatever. . ."

The Alaska State Legislature has properly determined what oil royalty rate should be charged lessees of State lands. The rates specified by the Legislature have been embodied in the respective leases entered into by the State and are a necessary condition of the State's contractual commitment. Neither Congress nor the Alaska State Legislature has the power to interfere with or ignore that commitment. Naturally, the Alaska Legislature can increase the royalty rates to be charged in future oil and gas leases, but it does not follow that Congress may do likewise. Congress may only supercede State legislation if it does not violate the Tenth Amendment to the United States Constitution.

There is no question that royalty legislation on State oil and gas leases is a matter within the paramount jurisdiction of the State. The conservation of oil and gas is a matter within the authority of the States.

"The paramount public interest of the state in the conservation of these natural resources, the right of the Legislature to enact reasonable laws having reasonable relation to that end, and of the Commission under the authority of those laws to make regulations to carry them into effect, have been uniformly recognized and sustained in the numerous litigations that have arisen in state and federal courts, in connection with state enforcement." *Griswold v. The President of the United States*, 82 F.2d 922, 925 (C.A. 5, 1936).

The royalty provisions of a mineral leasing act are related to conservation of natural resources.

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"The purpose of the Mineral Leasing Act was not to obtain sales for the gas from these reserves on Government land at any price. The Act was intended to promote wise development of these natural resources and to obtain for the public a reasonable financial return on assets that "belong" to the public. The Secretary of the Interior is the statutory guardian of this public interest. He has a responsibility to insure that these resources are not physically wasted and that their extraction accords with prudent principles of conservation. To protect the public's royalty interest he may determine that minerals are being sold at less than reasonable value. Under existing regulations he can restrict a lessee's production to an amount commensurate with market demand, and thus protect the public's royalty interest by preventing depression of the market. He may also establish "reasonable values" for royalty purposes. Of course his duties have another aspect. The public does not benefit from resources that remain undeveloped, and the Secretary must administer the Act so as to provide some incentive for development. He has statutory power to prescribe regulations to effectuate the purposes of the Act." California Company v. Udall, 296 F.2d 384, 388 (C.A.D.C., 1961). (Emphasis added.)

The conservation rationale behind royalty provisions has also been recognized by the State courts.

"That the operation may be conducted by a lessee required to pay royalties to the State does not destroy its public use character or render it a private enterprise. The end to be served is the conversion of public resources and the avoidance of waste thereof and the leasehold method must be viewed as no more than a means to that end." Opinion of the Justices, 216 A.2d 656, 660 (Me. 1966).

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Furthermore, assuming for the purpose of argument that the royalty provision is a tax measure and not a conservation measure, the same principle of state sovereignty is applicable. "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests." Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526 (1959).

A diversion of revenues which may be due to the State by virtue of State law and State leases is a flagrant violation of the United States Constitution. It not only goes beyond the scope of the supremacy clause of the Constitution, but it also takes the property of the people of the State of Alaska in violation of the due process clause of the Fifth Amendment to the Constitution. A provision of that nature constitutes a serious threat to any state government because it apparently recognizes a right of the federal government to control the finances and treasury of state government.

In accordance with the principle that the paramount interest in conservation or local taxation is with the states, the United States, under the Tenth Amendment to the Constitution of the United States, has no authority to legislate on state royalty provisions and state oil and gas leases.

IV. FEDERAL LEASES

The 2% overriding gross royalty cannot apply to a federal lease on public lands within the State of Alaska. This is true whether or not the royalty is retrospective or prospective from the effective date of the legislation.

The first case to examine is that of a 2% overriding gross royalty which would be supplementary to the current 12 1/2% federal royalty. This would result in a 14 1/2% royalty on federal oil and gas leases in Alaska, although 30 U.S.C. 226 provides for a minimum 12 1/2% royalty throughout the United States. It is apparent that such legislation would violate not only the "equal footing"

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doctrine, but that it would also violate the equal protection and due process clauses of the U. S. Constitution to the extent that a lessee would not be accorded uniform treatment under federal legislation. It is true that federal legislation need not be uniform in its application throughout the United States, but it is equally true that the principle embodied within the legislation should be uniform.

"So far as uniformity is concerned, there is no question that the act uniformly applies to the conditions which call its provisions into play,--that its provisions apply to all the states,--so that the question really is a complaint as to the want of uniform existence of things to which the act applies, and not to an absence of uniformity in the act itself. But, aside from this, it is obvious that the argument seeks to engraft upon the Constitution a restriction not found in it; that is, that the power to regulate conferred upon Congress obtains subject to the requirement that regulations enacted shall be uniform throughout the United States."

James Clark Distilling Co. v. Western Maryland R. Co., 242 U.S. 311, 327, 37 S.Ct. 180, 185, 61 L.Ed. 326 (1917).

Also see St. Mary's Sewer P. Co. v. Director of U. S. Bureau of Mines (C.A.3, 1959), 262 F.2d 378. If there were no requisite that federal legislation be uniform throughout the United States, the result would be a gerrymandering of special legislation on not only minerals but also labor, banking, civil rights, and so forth.

The second case to examine is that of a 2% gross overriding royalty which would constitute a diversion of the current 12 1/2% federal royalty. Pursuant to the Alaska Statehood Act, Sec. 28(b), and 30 U.S.C. 191, the State of Alaska receives 37 1/2% and 52 1/2%, or a total of 90%, of "All money received from . . . royalties . . . of public lands under the provisions of sections . . . 226 . . . of this title . . ." If there were a diversion of 2% of the 12 1/2% royalty before the apportionment of the share of the State, the State would in effect be deprived of its 90% share of the 2% which had been diverted to the Alaska Natives. This is in conflict with the Alaska Statehood Act, and is discussed in the next section of this opinion.

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V. THE ALASKA STATEHOOD ACT

The question which is raised by the conflict of the 2% royalty with the Alaska Statehood Act is the following. May the United States unilaterally enact legislation in direct conflict with the Statehood Act?

The answer to this is that the United States may not constitutionally enact effective legislation in direct conflict with compact provisions of the Statehood Act unless there is an amendment to the Constitution of the State of Alaska because a Statehood Act constitutes a compact in the nature of a contract between two sovereign governments.

First, the federal government may not unilaterally amend the Statehood Act. Beecher v. Wetherby (1877), 95 U.S. 440, held that the State of Wisconsin acquired title to lands formerly occupied by Indians by virtue of the grant of these lands to the State in the Statehood Act and that this title could not subsequently be divested by the federal government on the basis of other legislation. The court, at 441, with reference to the provision of the Statehood Act which granted the land to the State, said: "It was, therefore, an unalterable condition of the admission, obligatory upon the United States. . . ." Metlakatla Indian Com., Annette Island Res. v. Egan (Alaska 1961), 362 P.2d 901, reversed by 369 U.S. 45 on other grounds, held the Omnibus Act invalid to the extent it amended the Statehood Act. The court, at 911, stated: "Appellants argue that the amendment is part of the compact and merely clarified the original intent of Congress. We cannot accept this reasoning. It is our view that the amendment forms no part of the compact between Alaska and the United States."

Second, the state government may not unilaterally amend the Statehood Act. State v. Commissioners of the Land Office, (Okla. 1956), 301 P.2d 655, held that Oklahoma could not change by an amendment to its constitution and by statute a provision of the Statehood Act which provided for a trust fund of the proceeds of the sale of lands granted to the State for school purposes. The court, at 659, stated: "We hold the regulations in the Oklahoma ~~Enabling Act~~ may not be modified, restricted or changed by an Act of the Oklahoma legislature or the people of Oklahoma in amendment of the Oklahoma Constitution."

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Merrill v. Bishop (Wyoming 1955), 287 P.2d 620, held that the Wyoming Statehood Act legally abridged Indian water rights, and, at 625, said: ". . . the compact between the United States and Wyoming is unalterable and obligatory." Also see Boeing Aircraft Co. v. Reconstruction Finance Corp. (Wash. 1946) 181 P.2d 838, 842 (" . . . each government was bound by the provisions of the Enabling Act."), State v. Reynolds, (N.M. 1963) 378 P.2d 622, 627. ("Section 10 of the Statehood Act became a part of our fundamental law to the same extent as if it had been directly incorporated into the Constitution when thus expressly consented to by the State and its people in Article XXI, Section 9 of the Constitution.") Opinion of the Judges (S.D. 1966) 140 N.W.2d 34, 36 ("It cannot be revoked without the consent of the United States.") United States v. 111.2 Acres of Land in Ferry County, Wash., 293 F.Supp. 1042 (1968). ("The consent of the United States has not been manifested by amendment of the Enabling Act or by legislation inconsistent with Section 11 of that Act.")

Third, the only constitutional method by which there can be enacted legislation which is in direct conflict with the Statehood Act is the approval by the people of the State of Alaska of such federal legislation. The Alaska Statehood Act, Sec. 8(b) provided that the people of the State approve the Statehood Act at an election, and stated that an affirmative vote on the question would constitute an amendment to the State Constitution:

"In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed Constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly."

The Constitution of the State of Alaska, Art. XIII, provides that amendments to the Constitution must be ratified by the people. State v. Paul, 337 P.2d 33 (Wash. 1959), which held that the Washington Enabling Act could be amended by the State Legislature is distinguishable because the court explicitly noted that the Constitution of the State of Washington at the time of the Enabling Act provided for no initiative or referendum.

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Fourth, the argument that Congress has the authority to enact Indian legislation in Alaska which will override the Statehood Act because of the "supremacy clause" principle is without merit. An inference of this argument is that the United States may be about to enter into a treaty with the Alaska Natives. The inference is unwarranted. "The use of the treaty lawmaking power to deal with Indians as dependent alien nationalities, and to adjust their problems, as proper matters of international concern, was halted by Congress in 1871." Federal Indian Law, U. S. Department of the Interior, 1958, p. 25. Another inference may be that the "plenary" federal power over Indian affairs places federal Indian law apart from the United States Constitution. Again, the inference is unwarranted.

"Thus in United States v. Kagama the Supreme Court found that the protection of the Indians constituted a national problem and referred to the practical necessity of protecting the Indians and the withholding of such a power from the States. This is the basis for the so-called "plenary" power of Congress over the Indians, or, more qualifiedly, over "Indian tribes" or "tribal Indians," so frequently used in recent cases. It may seem captious to point out that there is authority for the view that Congress has no constitutional power over Indians except what is specifically conferred by the commerce clause and implied in other clauses of the Constitution. The most famous defender of Federal power over Indians, Chief Justice Marshall, declared:

. . . That instrument [the Constitution] confers on congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several states, and with the Indian tribes. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions; the shackles imposed on this power, in the confederation, are discarded (p. 559).

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Whatever view is taken of the possibility or danger of "emergency" powers arising from "necessity," it is clear that the powers mentioned by Chief Justice Marshall proved to be so extensive that the Federal powers exercised over Indian affairs are as wide as State powers over non-Indians, and therefore are "plenary" in characterizing such Federal power. "This does not mean, however, that Congressional power over Indians is so broad as to express constitutional authority, such as the Bill of Rights, Indian Law, infra, p. 24. (Emphasis added.)"

The "plenary" power over Indians means that the United States has extensive power over Indians in certain circumstances, and it does not mean that the United States has an authority in Indian affairs that is so absolute that it may disregard the United States Constitution. The Congress, pursuant to the United States Constitution, Article IV, Sec. 3, enacted the Alaska Statehood Act, and the State of Alaska is now on an "equal footing" with the other states. The "plenary" Indian power of the United States does not recognize in Congress the authority to abrogate the Statehood Act.

Fifth, the clause of the Alaska Statehood Act, Section 4, does not constitute authority in Congress to legislate in derogation of the Statehood Act. That clause simply provides that the State disclaims all right and title to any lands or other property which "may" be held by Alaska Natives. The legal question which arises from that involves the selection by the State of lands claimed by Alaska Natives, and not the question of revenue sharing proposals which properly relate to monetary compensation alone. The legal question of the selection rights of the State of land claimed by Alaska Natives is discussed in Kake Village v. U.S. 369 U.S. 60, at 65-66 (1962).

"Section 4 must be construed in light of the circumstances of its formulation and enactment. See Alaska Pacific Fisheries v. United States, 248 U.S. 76, 37. Congress was aware that few such rights existed in Alaska. Its concern was to preserve the status quo with

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respect to aboriginal and possessory Indian claims, so that statehood would neither extinguish them nor recognize them as compensable. See, e.g., House Hearings, supra, 130, 384 (1955) (Delegate Bartlett); Hearings Before Senate Committee on Interior and Insular Affairs on S. 50, 83rd Cong., 2d Sess. 227 (Senator Jackson), 260-261 (1954). 1/

Discussion during hearings on the 1955 House bill affords further evidence that claims not based on federal law are included. Section 205 of that bill (like sec. 6 of the bill as enacted) authorized Alaska to select large tracts of United States land for transfer to state ownership. It was understood that the disclaimer provision left the State free to choose Indian "property" if it desired, but that such a taking would leave unimpaired the Indians' right to sue the United States for any compensation that might later be established to be due. See House Hearings, supra, 135 (1955) (Delegate Bartlett). Feeling that experience had shown this procedure too slow to give prompt relief to the Indians, Oklahoma's Representative Edmondson proposed to exempt Indian property from the State's selection. Id. at 381. This was rejected as virtually destroying Alaska's right to select lands. For, although Representative Edmondson pointed

1/ In 1948 a statehood bill requiring disclaimer of "all lands . . . owned or held by any . . . natives, the right or title to which shall have been acquired through or from the United States or any prior sovereignty," was favorably reported with this explanation: "As proposed to be amended, this paragraph would preserve all existing valid native property rights in Alaska, including those derived from use or occupancy, together with all existing authority of the Congress to provide for the determination, perfection or relinquishment of native property rights in Alaska. It would neither add to nor subtract from such rights and such authority, but would simply maintain the status quo." H.R. Rep. No. 1731, 80th Cong., 2d Sess. 15 (1948).

To the same effect, see H.R. Rep. No. 255, 81st Cong., 1st Sess. 13 (1949).

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out that the disclaimer extended only to property owned by Indians or held in trust for them, four representatives clearly stated their belief that the disclaimer included not just the new Alaska reservations, but also the aboriginal or other unproved claims in dispute, which covered most if not all of Alaska. Id., at 383 (Representative Engle Dawson, Alaska, dissenting). (Emphasis added.)

There is, therefore, no merit to the argument that Congress may re-write the Statehood Act because of the Section 4 disclaimer clause. The inclusion of that clause in the Statehood Act did not make that Act an open-ended document which may be unilaterally amended by Congress. A contrary assertion ignores the basic significance of a statehood act. The precise question of the effect of the disclaimer clause has been considered by the U. S. Supreme Court, and that Court has said that the Congress only intended the disclaimer clause to leave unimpaired possible future rights of the Alaskan Natives to compensation from the United States. The method of the compensation, of course, must be within the principles of the United States Constitution.

VI. CONCLUSION.

The State of Alaska, pursuant to the Alaska Statehood Act, does have rights under the United States Constitution. The argument that the supremacy clause of the United States Constitution places rights in Congress over Indians of such an extent that Congress may enact legislation which abrogates the constitutional rights of a State or of any person is clearly erroneous. The ultimate criterion of legitimacy in the American system is not the supremacy clause in itself, but the supremacy clause in the context of the United States Constitution. The clearest and most forceful statement of the applicability of the supremacy clause in the present case is not that Congress may violate the Constitutional rights of a State, but that it might extinguish Indian title without compensation.

"In 1941 a unanimous Court wrote,
concerning Indian title, the following:

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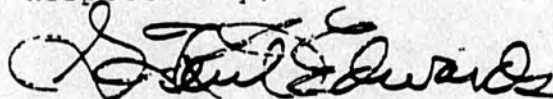
'Extinguishment of Indian title based on aboriginal possession is of course a different matter. The power of Congress in that regard is supreme. The manner, method and time of such extinguishment raise political, not justiciable, issues.' United States v. Santa Fe Pacific R. Co., 314 U.S. 339, 347, 86 L.ed. 260, 270, 62 S.Ct. 248.

No case in this Court has ever held that taking of Indian title or use by Congress required compensation. The American people have compassion for the descendants of those Indians who were deprived of their homes and hunting grounds by the drive of civilization. They seek to have the Indians share the benefits of our society as citizens of this Nation. Generous provision has been willingly made to allow tribes to recover for wrongs, as a matter of grace, not because of legal liability. 60 Stat. 1050." Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 281 (1955). (Emphasis added.)

The real effect of the Section 4 disclaimer clause was to insure that Congress in no way affected whatever claims Alaska Natives might have against the United States for monetary compensation.

The State of Alaska supports the principle of compensation to Alaskan Natives, but only to the extent that there is no interference with the rights of the State under the Statehood Act. The 2% overriding gross royalty is in conflict with the Statehood Act and principles of constitutional law, and Congress has no authority under the United States Constitution to enact such legislation.

Respectfully,



G. Kent Edwards
Attorney General

APPENDIX A

1. The grant to the State of 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska. The Alaska Statehood Act. 72 Stat. 339, Sec. 28(b).

"(b) Section 35 of the Act entitled 'An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain', approved February 25, 1920, as amended (41 Stat. 450), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof". 72 Stat. 339, Sec. 28(b).

2. The federal legislation which was confirmed and amended by the Statehood Act, Sec. 28(b). It provides that the State receives 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska, 37 1/2% thereof for the construction of public roads or schools and 52 1/2% for the disposition of the State Legislature. 30 U.S.C. 191.

"All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, and 261-263 of this title shall be paid into the Treasury of the United States; 37 1/2 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State or the Territory of Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State, Territory, or subdivision thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State or Territory may direct; and, excepting those from Alaska, 52 1/2 per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, and of those from Alaska 52 1/2 per centum thereof

shall be paid to the State of Alaska for disposition by the legislature thereof:
Provided, That all moneys which may accrue to the United States under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, and 261-263 of this title not otherwise disposed of by this section shall be credited to miscellaneous receipts. As amended May 27, 1947, c. 33, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub.L. 85-508, Secs. 6(k), 28(b), 72 Stat. 343, 351." 30 U.S.C. 191. (Emphasis added.)

3. The federal legislation applicable to oil and gas leases of the United States provides for a minimum 12 1/2% royalty. 30 U.S.C. 226.

"(a) All lands subject to disposition under sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, 261-263 of this title which are known or believed to contain oil or gas deposits may be leased by the Secretary.

Lands within known geologic structure
of a producing oil or gas field; com-
petitive bidding

(b) If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall not be less than 12 1/2 per centum in amount or value of the production removed or sold from the lease.

Lands not within geologic structure
of a producing oil or gas field;
first qualified applicant

(c) If the lands to be leased are not within any known geological structure of a

producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, 261-263 of this title shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12 1/2 per centum in amount or value of the production removed or sold from the lease." 30 U.S.C. 226. (Emphasis added.)

4. The state legislation applicable to oil and gas leases of the State of Alaska provides for a basic minimum 12 1/2% royalty, although, in the case of first discovery, there is a royalty of 5%. AS 38.05.180.

"AS 38.05.180. OIL AND GAS. (a) All tide and submerged lands, mental health lands, school lands, and university lands shall be leased by competitive bidding, and whenever oil or gas is discovered in commercial quantities, the commissioner shall determine the extent of the area of lands in addition to tide, submerged, mental health lands, school, or university lands in the same general area of the discovery well which, by reason of the discovery, the commissioner reasonably believes to be capable of producing oil or gas and the additional lands shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not exceeding 2,560 acres (except that tide and submerged lands shall be leased in units of not exceeding 5,760 acres), which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the commissioner and of such royalty as may be fixed in the lease which shall not be less than 12 1/2 per cent in amount or value of the production removed or sold from the lease. However, the holder of a lease who drills and makes the first discovery of oil or gas in commercial quantities in a geologic structure shall pay a royalty on all production under the lease of five per cent for 10 years following the date of discovery and thereafter the royalty rate shall be not less

than 12 1/2 per cent unless the commissioner specifically provides that such royalty shall be less at the time such lands are offered for lease and in no event shall such royalty be less than five per cent. All lands other than those above provided to be leased by competitive bidding may be leased competitively or noncompetitively as determined by the commissioner to be in the best interests of the state. Noncompetitive leases shall be issued in units of not exceeding 2,500 acres in any one lease. Noncompetitive leases shall be conditioned upon the payment by the lessee of a royalty of 12 1/2 per cent in amount or value of the production removed or sold from the lease. However, the holder of a lease who drills and makes the first discovery of oil or gas in commercial quantities in a geologic structure shall pay a royalty on all production under the lease of five per cent for 10 years following the date of discovery and thereafter the royalty rate is 12 1/2 per cent. Competitive leases issued under this subsection shall be for a primary term of five years and shall continue so long thereafter as oil or gas is produced in paying quantities. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, such operations to include redrilling, sidetracking or other means necessary to reach the originally proposed bottom hole location, the lease shall continue in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities. If all or part of the lands covered by the lease are lands that have been selected by the state under laws of the United States granting lands to the state and a conditional lease was issued thereon, the term of the lease shall be extended for a period equal to the period during which the lease was conditional."

5. The disclaimer clause of the Alaska Statehood Act. 72 Stat. 339, Sec. 4.

"Sec. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State

or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law, applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: And provided further, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation." Alaska Statehood Act, 72 Stat. 339, Sec. 4.

NOTE

OPINION NUMBER 6 OF 1969 WAS NEVER ISSUED.