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Alaska State Legislature

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While in Session
State Capitol
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Representative John Davies
District 29

Memorandum

Date: January 11, 1996
To: Representative Barnes
From: Representative Davies *JND*
Re: Hearing request for HJR 53

I respectfully request that you schedule a hearing for HJR 53, a constitutional amendment that requires voter approval of amendments to the Statehood Compact Act, in the World Trade and State and Federal Relations Committee, at your earliest convenience. Attached is a sponsor statement, a copy of the bill, a letter from an historian, and a court briefing that clearly explains the 90-10 mineral revenue split. Please contact Shannon in my office if you have any questions.



NO BARRIER - SCULPTURE - NO BARRIER



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Representative John Davies District 29

HJR 53

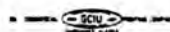
Voter Approval: Alaska's Statehood Act Amendments

Sponsor Statement

Like most Alaskans, I support maintaining the 90% share for Alaska of the oil royalty from ANWR, should it be opened for development. The 90-10 split of mineral revenues with the federal government is part of Alaska's Statehood Compact Act. However, the majority of ANWR negotiations at the federal level have included offers by our Congressional Delegation and various state officials to reduce that royalty share to 50-50.

Recall that on January 3, 1957, Alaska Territorial Delegate, Bob Bartlett introduced two amendments to the Statehood bill. These two provisions dealt with the Alaska Coal Leasing Act of 1914 and the Mineral Leasing Act of 1920. Together, they provided that Alaska would receive 90% of the revenues collected from the mining of coal, phosphate, sodium, oil shale, and gas on federal lands. Although they were originally introduced as separate legislation (passing the U.S. House of Representatives), they were included in the final version of the Statehood bill which Congress passed and President D.E. Eisenhower signed it into law in July 1958. Alaskans overwhelmingly voted to ratify the Statehood Compact Act the following month.

To make sure that Alaskans are allowed to ratify of any changes to the royalty share, I have introduced HJR 53, a constitutional amendment that requires voter approval of amendments to the Statehood Compact Act. In their enthusiasm to allow new development, our elected leaders should not forget about the people of the state. This resolution will allow us to vote on changes to our "contract with America."



Claus-M. Naske
P.O. Box 80721
College, AK 99708

John Davies
119 N Cushman St.
Suite 207
Fairbanks, Alaska 99701

Dear John:

The following remarks clarify why I think it essential that the proposal to lower the Statehood Act mandated split of mineral revenues from federal lands in Alaska to 50/50 in the ANWR case must be approved by a referendum.

The Congressional delegation and the Knowles administration have spent months advocating that Alaska bribe Congress with a 50/50 split on revenues in return for opening ANWR to oil development. By the way, Senators Stevens and Murkowski and Representative Don Young - the proper name for the area is the Arctic National Wildlife Refuge and not the Arctic Oil Reserve.

The origins of the 90/10 split in revenues on federal onshore lands in Alaska go back some years, probably too long to be remembered by Sen. Frank Murkowski and Representative Don Young. Senator Ted Stevens, an active player in the statehood battle, should remember. But perhaps it is inexpedient to remember those details today.

Yet I would like to recount these details to remind our political leaders what happened in those far off days. In 1957, Congress made the following important set of revisions to the Alaska Statehood Act. It added several benefits but removed others.

Some amendments, like the defense withdrawal, were made to satisfy the executive.

Some were made to reduce expected opposition on the floor of the House, while others were made to gain the support of certain Congressmen.

Also in 1957, Senator John Murray introduced separate statehood bills for Alaska and Hawaii at the request of the delegates to Congress from those territories, namely E.L. "Bob" Bartlett and John Burns, respectively. In the House, each delegate introduced a separate statehood measure for his own territory. Congressman Leo O'Brien, the chairman of the Subcommittee on Territorial and Insular Affairs, decided to give priority consideration to the Alaska measure after consultation with both Bartlett and Burns.

The new bills for Alaska differed from their predecessors in several respects. For example, they consolidated the 2,550,000 acres grant for internal improvement with the 100,000,000 acre unspecified grant of public lands. There were many other changes. On January 3, 1957, Delegate Bartlett introduced an amendment to the statehood bill, namely two provisions, which he had originally introduced as separate legislation and which already had passed the House. These provisions remained in the statehood bill, which Congress passed and President Dwight E. Eisenhower signed into law in July, 1958.

The first of the two provisions dealt with the Alaska Coal Leasing Act of 1914, under which the president was authorized to reserve 5,120 acres of the Bering River coal field, 7,680 acres of the Matanuska field, and up to one-half of the other coal lands in Alaska, prior to 1954, the Bureau of Land Management had reserved about 38,000 acres of land under the act.

All net profits derived from the operation of government -owned coal mines and all royalties and rentals from coal mining on these lands went to the United States treasury to reimburse the federal government for the expenses incurred in building the Alaska Railroad. In 1956, the income from these lands came to \$65,800. Under the delegate's proposal, the federal government would retain ownership of the land, but 90% of the proceeds would go to the territory, and later state and 10% to the federal government.

The second of the two provisions amended the Mineral Leasing Act of 1920 which provided for the allocation of revenues collected from the mining of coal, phosphate, sodium, oil shale, and gas on the public domain. Some 37.5% of these revenues the federal government paid to the states from which they came to be used for the construction and maintenance of public roads and educational institutions, while 10% went in the U.S. treasury, and the remaining 52.5%, except in the case of Alaska, was deposited in the reclamation fund. The federal government financed irrigation projects in seventeen western states, without regard to the origin of the money. Since Alaska was not included in the reclamation program, Bartlett argued that the 52.5% of the revenue collected be paid to the future state, making for a 90/10 split. The subcommittee agreed, and the two provisions, as previously mentioned, became part of the 1957 statehood act and stayed in the final version the House and Senate passed in May and June 1958, respectively.

In the meantime, the Senate also passed the amendments to the 1914 Alaska Coal Leasing Act of 1914 and the Mineral Leasing Act of 1920. The President signed the

measure into law on July 10, 1957. (P.L. 85-88, 71 Stat. 282). The 90/10 split now was embedded in P.L. 85-88, and it also became part of the Alaska Statehood Compact.

The argument can be made that if the 90/10 split had merely been an amendment to a couple of mineral leasing acts, Congress was entitled to change its mind and once again redistribute the leasing receipts according to some new formula.

The 90/10 formula, however, became part of the Alaska Statehood Compact. According to the suit the State of Alaska filed against the federal government in July 1993 for "breach of contract...." the "Alaska Statehood Act is a compact which constitutes a binding bilateral contract between Alaska...and the United States." In order to enable Alaska's citizens to finance statehood Congress granted the new state 103,000 acres of land and mineral rights, and "the grant of 90% of mineral revenues generated from federal land located in Alaska." Alaskans accepted the terms of the Statehood Act by voting to ratify it in a referendum election on August 26, 1958. The voters, by overwhelming margins, cast their ballots in favor of accepting the Statehood Act as it was written. The acceptance of the terms of the Statehood Act by Alaska's citizens made the legislation "a legally enforceable compact between the United States and the new State of Alaska," and Alaska's citizens, "in entering into the compact, relied upon the Compact provisions providing Alaska 90 percent of mineral revenues generated from federal land."

Under this compact, it appears, only the people of Alaska can modify it by a popular referendum. Neither the Congressional delegation, the Knowles administration nor the Alaskan legislature can modify the provisions the Statehood Compact without a

popular vote. Let us have such a vote and determine whether or not Alaska's citizens are ready to agree to a 50/50 split on ANWR revenues as a bribe to Congress to open it to development.

Best wishes,
blaus-M. Taske

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. 93-454 L

(BRUGGINK, J.)

MEMORANDUM IN SUPPORT OF STATE OF ALASKA'S MOTION
FOR PARTIAL SUMMARY JUDGMENT

11/19/95-11/17/97

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Dated: November 29, 1994

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I. INTRODUCTION

Alaska became the forty-ninth state of the United States on January 3, 1959. It was admitted when the citizens of Alaska voted to accept the statehood compact that established the terms of its admission to the Union.¹

Alaska's acceptance of the proposed compact culminated a lengthy, and often heated, debate between proponents and opponents of Alaska statehood. Efforts to secure statehood began in 1916 and were pursued intensely from 1946 to 1958 when the Alaska Statehood Act finally was enacted. Indeed, from 1946 until 1958, a new statehood bill was introduced in every session of Congress. Until 1958, each of those efforts foundered for the same fundamental reason: an abiding concern that Alaska lacked the resources to shoulder the financial burdens of statehood and self-government. Statehood was not achieved until that problem was satisfactorily resolved by granting the new state the right to select large tracts of land previously owned by the federal government and guaranteeing the state a 90 percent share of mineral revenues from lands retained by the United States.

These critical provisions did not represent mere largesse from the federal government, revocable at will. Just as Alaska, by approving the statehood compact, irrevocably assumed the responsibilities of self-government, the federal government irrevocably committed the consideration it offered to Alaska as the inducement for taking on the burdens of statehood. Applicable legal precedent--well-known to Congress when it passed the Statehood Act--establishes the Alaska statehood compact as a binding, unalterable and enforceable agreement

¹ Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958) (Appendix ("App." 1)).

between Alaska and the United States. Neither sovereign may walk away from the agreement it made: each must perform as promised.

Alaska has kept its promises. The United States has not. Having agreed to provide Alaska with essential mineral revenues from the land it retained, the United States has breached its agreement by preventing mineral development through withdrawing from development or actually disposing of its (and, thus, Alaska's) rights to much of the state's most valuable mineral-bearing land. In addition, beginning in 1990 the United States has breached its promise to pay Alaska 90 percent of "all money received" from mineral leasing in Alaska by deducting administrative expenses from Alaska's 90-percent share of those revenues.

The result is that Alaska and its citizens have been deprived of substantial revenues to which they are entitled -- an entitlement indisputably granted by Congress and, equally clearly, relied upon by Alaskans in accepting the statehood compact. Attempts to resolve this issue within the political branches of government have proven unavailing. Thus, the state seeks damages resulting from the federal government's failure to live up to its agreement with the people of Alaska.

The present motion for summary judgment is the first step in the process of securing Alaska's rights, as a sovereign state, to receive what it was promised. Specifically, Alaska now asks the Court to resolve two issues which, we submit, present questions of law capable of immediate adjudication:

First, that the statehood compact--including the obligation to share 90 percent of all mineral revenues--is a binding and enforceable contract between Alaska and the United States; and

Second, that the United States has breached its obligation to Alaska by deducting administrative costs from Alaska's 90 percent share of those revenues (Count 5 of the Complaint).

Resolution of the first of these issues will frame the further, critical, questions concerning the nature of the United States' development duties under its revenue-sharing obligation and the damages to Alaska resulting from its breach of that obligation. Those issues will need to be resolved, following discovery, either by settlement, a further motion for summary judgment, or, if necessary, a trial. However, establishing the existence of a binding contract between the parties will be an important, and salutary, first step in the process. Resolution of the second issue will dispose of Count 5 of the Complaint in its entirety.

II. QUESTIONS PRESENTED

1. Is the statehood compact--including the obligation to pay to Alaska 90 percent of all mineral revenues--a binding and enforceable contract between Alaska and the United States?
2. Has the United States breached the statehood compact by failing to remit to Alaska 90 percent of all money the United States receives from oil and gas leases on federal land in Alaska, and, if so, to what damages is Alaska entitled?

III. STATEMENT OF THE CASE

A. Alaska as a Territory

The land that, today, is the sovereign state of Alaska was purchased from Russia in 1867 in what was derisively referred to at the time as "Seward's folly." Alaska became an incorporated territory of the United States in 1912.

The first efforts to admit Alaska to the United States began in 1916, when an Alaska statehood bill was introduced in the 64th Congress.² Those early efforts did not generate much support and a serious effort to secure Alaskan statehood did not begin until the end of the Second World War. However, beginning in 1946, an Alaska statehood bill was introduced and considered by every Congress until the final Statehood Act was passed in 1958.

B. The Debate Over Alaska Statehood

The debate over statehood for Alaska stirred a great deal of controversy, both in Congress and Alaska. Central to that controversy was doubt about the financial ability of the proposed new state to govern itself. Congress, as well as many Alaskans, questioned whether this vast and sparsely populated region could create and support the infrastructure necessary to sustain self-government.

Despite having an area more than double the size of Texas³, Alaska had only 206,000 residents and almost a quarter of those residents were military personnel temporarily stationed

² H.R. 13978, 64th Cong., 1st Sess. (1916).

³ App. 20, 104 Cong. Rec. 9360 (1958).

in Alaska.⁴ Many Alaska residents lived a subsistence existence far from any city or town, generally without the most rudimentary elements of post-war American civilization, such as paved roads, schools and telephones. Except for fishing and logging, the state lacked any meaningful commercial economy, let alone an industrial infrastructure or tax base sufficient to support an independent, stand-alone government.⁵ What is more, over 99 percent of the state's total land was owned by the federal government and, thus, was immune from state taxation.⁶

It was not surprising, therefore, that Congress vigorously debated Alaska's ability to undertake the obligations of statehood. Concern over that issue surfaced as early as 1947 in the House Subcommittee on Territorial and Insular Possessions:

⁴ App. 21, 104 Cong. Rec. 12207, 12336 (1958). See App. 21, 104 Cong. Rec. 12297 (1958) (Senator Talmadge: "The question has been raised as to whether Alaska has sufficient population to support statehood."); App 8, S. Rep. No. 1163, 85th Cong., 1st Sess. 11 (1957) (summarizing arguments against statehood, "The population of the Territory is too small to justify representation in Congress or to support State government.").

⁵ See, e.g., App. 8, S. Rep. No. 1163 at 11 (summarizing arguments against statehood. "The economic conditions in Alaska are unstable . . . the resources of the Territory are not sufficiently developed to allow private enterprise to take up the slack in employment and provide necessary revenues should Federal spending be abruptly curtailed."); App. 21, 104 Cong. Rec. 12314 (1958) (Senator Monroney: "I am deeply concerned about the very thin economy of Alaska Unless a more solid economic foundation is built under it, Alaska will not be able to carry on successfully its duties and obligations and to assume the full responsibilities of a State."); App. 22, 104 Cong. Rec. 12442 (1958) (Senator Johnston: "I do not believe the people of Alaska are able to sustain the financial burden involved These statistics point up the unreasonable tax and fiscal burdens that would be placed on the few who would have to sustain the heavy responsibilities of statehood.").

⁶ United States v. New Mexico, 455 U.S. 720, 733 (1982) (a state may not tax property owned by the United States). See App. 19, 98 Cong. Rec. 1501 (1952) (Senator Butler: "At the present time, all but three-tenths of one percent of Alaska's land is owned by the Federal Government"); App. 21, 104 Cong. Rec. 12020 (1958) (Senator Robertson: "[E]ven after [statehood], . . . the Federal Government would continue to control more than two-thirds of total acreage and an even larger percentage of the resources.").

Opponents [of statehood] argue that . . . the expense of statehood is too great for Alaska to bear, since the sources of revenue for Alaska as a State are so uncertain; that Federal reservations would deprive the State of revenue from, and jurisdiction over, vast areas Considerable evidence was presented to the subcommittee of the probable cost of statehood to Alaska.⁷

The House Committee on Public Lands reiterated that concern: "The chief argument of those opposed to statehood now was that Alaska could not support the cost of statehood."⁸ Shortly thereafter, the Library of Congress's Legislative Reference Service made the same point and noted the adverse effect of federal land ownership:

No doubt exists as to the ability of Hawaii to bear the cost of statehood, although this question has been raised with regard to Alaska. The potential revenue problem in Alaska is made more acute by the existence of federal land holdings totaling more than 98 percent of its area. Suggestions have been made that this situation must be resolved before Alaska is granted statehood The undeveloped state of Alaska's resources and its meager population have caused opponents of statehood to charge that the Territory would not be able to bear the costs of statehood.⁹

By the mid-1950s, Alaska statehood had become one of the most hotly-debated issues facing Congress, with concerns about Alaska's ability to meet the costs of self-government remaining paramount. One of the leading opponents of statehood, Senator Talmadge of Georgia, observed that "[i]t is obvious that Alaska's economy . . . would be unable to pay the

⁷ App. 17, Staff of House Subcomm. on Territorial and Insular Possessions of Public Lands Comm., 80th Cong., 1st Sess., "Report on H.R. 206, a Bill to Provide for the Admission of Alaska, the Forty-Ninth State" 8, 10 (Comm. Print 1947).

⁸ App. 16, H.R. Rep. No. 1731, 80th Cong., 2d Sess. 5 (1948). That concern existed even though the then pending bill included land grants "patterned after the procedure followed in admitting western Territories to the Union." *Id.* at 15 (granting numbered sections in each township for school and university purposes, selection of "in lieu" lands if those lands were unavailable, and certain revenue from national forests and the sale of public lands).

⁹ App. 23, Library of Congress, Public Affairs Abstracts, "Statehood for Alaska and Hawaii," Vol. 1, No. 20 (Dec. 1950) at 2.

cost of State government without substantial Federal help."¹⁰ Commenting on the Senate committee report concerning the Alaska statehood bill, Senator Robertson observed that "[a]nother problem recognized by this committee report, as in some respects the most serious of all is that of financing the basic functions of State government"¹¹ Many Alaskans shared Congress' concern that Alaska's economy might be unable to support the heavy financial burden of statehood.¹²

In response to that concern, proposals in the early 1950s sought to make statehood financially viable through a solution, unique to Alaska, of granting the new state the right to select and obtain title to federal land that the state could then develop and/or tax.¹³ A Senate committee in 1951 proposed a bill permitting the new state to select more than 21 million acres of federal land, stating: "The committee is of the opinion that such a grant, with its power of selection, will be of great benefit to the State in meeting the financial obligations of

¹⁰ App. 21, 104 Cong. Rec. 12296 (1958).

¹¹ App. 21, 104 Cong. Rec. 12019 (1958).

¹² Alaskans' cost-based objections to statehood were reflected in letters to Congress and editorials from Alaska newspapers that were reprinted in the Congressional Record. *See, e.g.*, App. 21, 104 Cong. Rec. 12149 (1958) ("The increased costs of statehood would make further development impossible."); *id.* at 12315 ("The majority of us bona fide Alaskans . . . have always felt the Representatives and Senators in Washington, D.C., knew that Alaska cannot support statehood, at this time"); *id.* at 12316 ("Statehood now for Alaska will bankrupt us and set our industrial growth back a generation."); *id.* at 12340 ("Alaska needs a 10-year moratorium on the statehood issue During this moratorium we can put our house in order to develop industry so that we can afford statehood at the end of 10 years."); *id.* at 12341 ("To finance the added costs of statehood we would have to increase our present punitive taxes to a prohibitive one.").

¹³ The proposal was unique in that prior land grants to new states were of specific numbered sections of each township, rather than of land to be selected by the state.

statehood."¹⁴ Senator Butler pointed out, however, that the value of such a land grant was undermined by the fact that Alaska's most valuable lands previously had been withdrawn or reserved by the United States and would be unavailable for state selection.¹⁵

The first proposed solution to this problem was simply to increase the size of the land grant. Thus, a House committee in 1953 stated:

Of the 375 million acres of land in Alaska, 98 percent is federally owned. This disproportionate percentage has resulted in problems peculiar to Alaska and it is obvious that the new State must have more land in its ownership if it is to prosper. H.R. 2982 as amended is the most liberal in this respect ever to be presented to the Congress -- 100 million acres would be given Alaska. The committee considers this grant desirable.¹⁶

The proposed land grant remained relatively fixed at 100 million acres in succeeding statehood bills. However, many people still believed that the problem of federal withdrawals and reservations continued to undermine the sufficiency of a land grant alone as a means of

¹⁴ App. 15, S. Rep. No. 1929, 81st Cong., 2d Sess. 11 (1950).

¹⁵ Senator Butler stated:

Much of the best land and most valuable resources of the Territory have been reserved or withdrawn from use by private industries or corporations.

* * *

There are so many land reserves and withdrawals that there has never been any complete, accurate tabulation of them all. One tabulation, which may be reasonably complete, shows a total of 98,500,000 acres in withdrawals out of the 365,481,600 acres in Alaska (p. 421, Senate hearings). This area is about the size of the State of California and represents about 27 percent of Alaska's total area. More important, it comprises almost all of the best and most valuable resources known to exist in the Territory.

Id. at 34-35 (emphasis in original).

¹⁶ App. 14, H.R. Rep. No. 675, 83d Cong., 1st Sess. 9 (1953).

providing the state with an adequate revenue base. Senator Barrett, a proponent of statehood, noted that federal officials "have reserved all the lands that are worth anything up here, and they are not giving you [Alaska] any of those reserved lands."¹⁷ Walter J. Hickel, later Secretary of the Interior and Governor of Alaska, summed up the problem as follows during 1953 Senate hearings:

We wish to state that some of the best lands are in the reserved areas, and the argument against statehood from the standpoint that we could not economically support it would fall completely flat if we had the right to choose the acreage granted us from these reserved lands which have not been reserved for any specific purpose, such as parks [or] national defense.¹⁸

In 1954, after extensive hearings in Alaska and consultation with federal agencies, a Senate committee concluded that "Alaska is entitled to statehood by every reasonable test, but [the] transition from Territorial status to statehood for Alaska involves problems of financial stability and land resource development, not previously encountered in connection with the admission of any of the existing States."¹⁹ The committee emphasized the uniqueness of Alaska's situation in a section titled "Alaska's Peculiar Problems," noting that the federal government owned 99 percent of the land in Alaska ("unprecedented at the time of the admission of any of the existing States"), that the potential benefits of the public land laws in Alaska had been "vitiating" by withdrawals and reservations, and that, as a result, financing state government was a "serious problem."²⁰ Discussing "The Problem of Federal

¹⁷ App. 13, Alaska Statehood and Elective Governance: Hearings on S. 50 and S. 224, Senate Comm. on Interior and Insular Affairs, 83d Cong., 1st Sess. 267 (1953).

¹⁸ Id. at 395.

¹⁹ App. 12, S. Rep. No. 1028, 83d Cong., 2d Sess. 2 (1954).

²⁰ Id. at 2-3.

Reservations." the committee suggested that Congress could begin solving the problem through various revenue-sharing measures, although mineral leasing revenue was not among them.²¹

When Congress again took up the debate over Alaska statehood in 1957, the proposed statehood act, like earlier versions, granted Alaska the right to select approximately 103,000,000 acres of available federal land over a 25-year period.²² However, because of the withdrawal and reservation problem, an additional assured source of revenue was still needed. The answer to that problem became apparent following the first oil strike in Alaska on the Kenai Peninsula in 1957 and the resulting speculation that Alaska might contain vast, exploitable petroleum deposits.²³ The solution was to supplement the basic land grant with a commitment to share a large portion of the mineral revenues from land that remained in federal ownership.²⁴

Prior to 1957, the 48 then-existing states received the benefit of 90 percent of all mineral leasing revenues from federal land within their borders pursuant to the Mineral Leasing Act of 1920:²⁵ 37½ percent paid to them directly, and 52½ percent through the "reclamation fund" created by the Reclamation Act of 1902, 43 U.S.C. § 391. Unlike the states, however, Alaska received only the 37½ percent direct payment. Alaska was not

²¹ Id. at 5.

²² App. 8, S. Rep. No. 1163 at 2.

²³ App. 21, 104 Cong. Rec. 12208 (1958) (Sen. Jackson); App. 26, Address by Secretary of the Interior Fred A. Seaton at the Dedication of the Wickersham Monument, Fairbanks, Alaska (Aug. 23, 1958) at 3.

²⁴ App. 10, Alaska Statehood: Hearings on S.49 Before the Senate Comm. on Interior and Insular Affairs, 85th Cong., 1st Sess. 66-67 (1957).

²⁵ See App. 2, 30 U.S.C. § 191 (1940).

covered by the Reclamation Act and received no benefit from the additional 52½ percent of those revenues paid into the reclamation fund.

To rectify that disparity, Congress amended the Mineral Leasing Act in 1957 to require the direct payment to Alaska of the full 90 percent (37½ percent plus 52½ percent) of all revenues received by the United States from mineral leases on federal land in Alaska.²⁶

In commenting on that amendment to the Mineral Leasing Act, the Department of the Interior expressed its view that the proposed change was desirable, but that it "would be more appropriately covered in statehood legislation."²⁷ In accordance with that suggestion, Senator Barrett proposed an amendment (now Section 28(b) of the Statehood Act) to the 1957 Alaska statehood bill then pending before Congress to ensure that the new state would be paid 90 percent of all mineral leasing revenues, by providing for direct payment to Alaska of a 52½ percent share in addition to the 37½ percent share that all states receive.²⁸ Senator Barrett explained that the measure had been introduced in the House as a stand-alone amendment to the Mineral Leasing Act, but that the Secretary of the Interior suggested that the statehood bill was the proper place to enact the 90 percent grant:

I am offering an amendment here for the consideration of the committee. . . . I propose to insert a new section . . . and provide in here that 90 percent of the income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska.

²⁶ App. 3, Pub. L. No. 85-88, 71 Stat. 282 (1957), amending 30 U.S.C. § 191. See App. 11, "Relating to Moneys Received from Mineral Lands in Alaska," H.R. Rep. No. 156, 85th Cong., 1st Sess. 1-2 (1957).

²⁷ Id. at 2.

²⁸ See App. 10, Hearings on S.49 at 66-68.

When I mentioned that this morning, [Alaska] Delegate Bartlett told me that the House committee had considered a bill doing precisely that and had reported it out favorably. Since then I have looked up the record and I find that the Secretary of the Interior has filed a favorable report on the bill and agreed that it should be enacted into law but suggested that the statehood bill was the proper place to insert such a provision.²⁹

Both Congress and the Department of the Interior recognized that the grant to Alaska of a 90-percent share of all mineral leasing revenues needed to be made a part of the Statehood Act because the grant was not simply an act of legislative grace. Rather, it was one of the essential guarantees of statehood, necessary to assure the proposed state's ability to fund the cost of statehood. The 1957 Senate Report on S.49, the 1957 version of the statehood bill that included Senator Barrett's amendment to the Mineral Leasing Act, enumerated and commented on the key terms of the statehood bill, S.49. In a section titled "Financial Provisions," it states:

Some of the additional costs connected with statehood will be met by granting the State a reasonable return from Federal exploitation of resources within the new State. In the past the United States has controlled the lion's share of such resources and, in some instances, retained the lion's share of the proceeds. This situation . . . may have been proper at times when the United States paid a large part of the expense of governing the Territory. However, the committee deems it only fair that when the State relieves the United States of most of its expense burden, the State should receive a realistic portion of the proceeds from resources within its borders.

* * *

Section 22 of the bill [*i.e.*, *Senator Barrett's amendment to Section 35 of the Mineral Leasing Act to specify that the 52½ share be paid directly to the State of Alaska*] extends to the State the provisions of Public Law 88, 85th Congress, which was approved July 10 of this year. Under this new law the Territory

²⁹ *Id.* at 66-67.

receives a total of 90 percent of the profits from government coal mines and 90 percent of the profits from operations under the Mineral Leasing Act.³⁰

The 1957 Alaska statehood bill was not enacted. Rather, Congress enacted the stand-alone amendment to the Mineral Leasing Act granting the Territory of Alaska 90 percent of mineral-leasing revenues.³¹ Thus, as of 1957 Alaska began to receive a full 90 percent share. Notwithstanding that fact, however, the amendment to the 1957 statehood bill guaranteeing such revenues to Alaska was again made part of the statehood bill when it was reintroduced in 1958.

Taken together, the land grant plus the agreement to share mineral revenues were central to the final passage of an Alaska statehood bill in 1958. Representative Dawson described the revenue-sharing provisions in the final statehood bill as the very "foundation" of Alaska's admission:

These provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States. We cannot make Alaska a "full and equal" State in name and then deny her the wherewithal to realize that status in fact.³²

Senator Jackson, similarly, emphasized the significance of the 90-percent entitlement in the bill. He predicted that in light of the then-recent discovery of oil in Alaska, those revenues would "have a tremendous impact on the ability of the new State to provide the essential

³⁰ App. 8, S. Rep. No. 1163 at 3 (emphasis added).

³¹ App. 3, Pub. L. No. 85-88, 71 Stat. 282 (1957), amending 30 U.S.C. § 191.

³² App. 20, 104 Cong. Rec. 9361 (1958).

resources to support itself."³³ On May 12, 1958, the Territory's non-voting delegate to Congress, E.L. Bartlett, wrote to Rep. Dingell, stating:

In the earlier days of the statehood movement we were licked more than once because it was contended that the bill before the Congress offered so little by way of its own resources that the state would not be financially solvent.³⁴

By contrast, the Alaska Statehood Act was successful in 1958 because unlike the "earlier days," the Act finally granted Alaska a sufficient share of its own resources.

C. The Ratification Debate

Before Alaska could actually be admitted to the Union, the people of Alaska had to approve the terms of its admission in a referendum. Specifically, Section 8 of the Statehood Act conditioned statehood on an affirmative response to three propositions to be put to Alaska voters in a general election.³⁵ The Act directed the President to proclaim Alaska a state if the Territorial Governor certified that the propositions "have been duly adopted by the people

³³ App. 21, 104 Cong. Rec. 12208 (1958).

³⁴ App. 25, Letter from E. L. Bartlett to Hon. John. D. Dingell (May 12, 1958) at 1.

³⁵ The propositions were:

- (1) Shall Alaska immediately be admitted into the Union as a State?
- (2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved July 7, 1958 and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.
- (3) All provisions of the Act of Congress approved July 7, 1958, reserving rights or powers to the United States, as well as those prescribing the terms and conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people.

App. 1, Alaska Statehood Act, § 8(b), 72 Stat. 344 (emphasis added).

of Alaska."³⁶ In fact, the Act states that its provisions would "cease to be effective" unless Alaskans approved those propositions.³⁷

Congress unquestionably understood that the purpose of the referendum was to give Alaskans the opportunity to accept or reject the offer of statehood on the terms and conditions contained in the Alaska Statehood Act.³⁸ Thus, Senator Jackson, Chairman of the Subcommittee on Territories, said that under the terms of the pending statehood bill "the people of Alaska, as a condition precedent to ultimate statehood, must approve immediate statehood by a plebiscite."³⁹ Similarly, Senator Church said:

The [statehood] bill contains a referendum provision under which the people of Alaska will be asked to vote upon the propositions contained in the enabling act, to vote them up or vote them down. If they vote them up, I submit that in doing so they will have acquiesced in all the provisions ⁴⁰

The Department of the Interior, the agency responsible for administering the territory, also explained the Statehood Act to Alaskans as an offer that they could accept or reject. In a speech to the Anchorage Chamber of Commerce the day before the referendum, Secretary of Interior Fred A. Seaton said of the third proposition on the ballot:

A "yes" on this one means principally two things. It means the voter approves of granting the President power to create special withdrawals . . . in the interest of national defense A "yes" on proposition three also means,

³⁶ Id., §§ 8(b), 8(c).

³⁷ Id., § 8(b).

³⁸ App. 20, 104 Cong. Rec. 9486-88 (1958).

³⁹ App. 22, 104 Cong. Rec. 12453 (1958) (emphasis added).

⁴⁰ App. 22, 104 Cong. Rec. 12458 (1958).

that the voter approves of the State's selecting from federally owned public lands ⁴¹

Not surprisingly, the new state's entitlements to land and to 90 percent of future mineral leasing revenues were referenced frequently during the ratification campaign. For example, in his speech in Anchorage urging Alaskans to vote in favor of statehood, Secretary Seaton emphasized that the grant of a 90 percent interest in mineral leasing revenue would more than offset the additional costs of statehood:

A second fact: the [Statehood] Act reaffirms Alaska's preferential treatment in receiving 90 percent of all revenues from oil, gas and coal leasing on the public domain. During the first six months after the allocation to Alaska went into effect, Alaska's share of oil and gas lease revenues exceeded \$1,800,000--approximately \$10,000 per day.

A third fact: according to an analysis prepared in the Department of the Interior, the additional costs of State Government will be more than offset by the additional revenues made available to Alaska.⁴²

Two days earlier, in a speech in Fairbanks, the Secretary said:

For one thing, the Statehood Act over a 25-year period will grant the new State control over approximately 103 million acres of land now under Federal ownership; outside these 103 million acres, the State gets 90 percent of all bonuses, royalties and rentals from mineral leasing on Federal lands. The big news right now concerning Alaska's natural resources, of course, is oil Twenty-five oil companies have already invested about \$30 million in exploration and development. The Geological Survey estimates that in the years immediately ahead, this figure will be multiplied 10 times.

Since July of 1957, when oil was discovered on the Kenai Peninsula, the Territory's share of oil lease revenues has exceeded \$10 thousand per day. Since early this year the Territory has received 90 percent of all oil lease revenues; the State of Alaska will continue to do so. These revenues, which by

⁴¹ App. 27, Address by Secretary of the Interior Fred A. Seaton to the Chamber of Commerce, Anchorage, Alaska (Aug. 25, 1958) at 2 (emphasis added).

⁴² Id. at 4-5 (emphasis added).

all odds should increase, should easily offset the additional costs of State government.⁴³

Secretary Seaton's representations were made to induce the people of Alaska to approve the proposed terms of statehood, which they did. Alaskans overwhelmingly approved the referendum on August 26, 1958, and the Acting Territorial Governor certified that result to the President by letter dated December 23, 1958.⁴⁴ The offer of statehood having been accepted, President Eisenhower proclaimed Alaska to be a state on January 3, 1959.⁴⁵

D. Broken Promises.

The United States has breached its compact with Alaska through a series of reservations, withdrawals and disposals of mineral bearing lands. Those actions have deprived Alaska of the benefit of the bargain it struck with the United States by greatly diminishing the mineral revenues from land that remained in federal hands. However, as noted previously, final resolution of the liability and damages issues concerning those actions must await further development of complex facts through discovery.

However, one further issue can be resolved now as a matter of law. Under Section 28(b) of the statehood compact, Alaska is entitled to 90 percent of "all money received" by the United States from oil, gas and mineral leases on federal lands in Alaska.⁴⁶ The legislative history of that provision demonstrates that Congress intended the words "all money received"

⁴³ App. 26, Address by Secretary Seaton at Fairbanks, at 3 (emphasis added).

⁴⁴ App. 28, Letter from Acting Territorial Governor W. E. Hendrickson to President Eisenhower (Dec. 23, 1958).

⁴⁵ App. 29, Proc. No. 3269, 73 Stat. c16 (Jan. 3, 1959).

⁴⁶ Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, as amended and incorporated in the statehood compact by Section 28(b) of the Alaska Statehood Act. See n.57 infra.

to mean the United States' gross receipts from mineral leasing, not its net revenues after expenses. See Section IV.C.1, pp. 30-33, infra.

Beginning in 1990, however, Congress has deducted a portion of its administrative costs from Alaska's 90-percent share. On November 5, 1990, Congress passed Pub. L. No. 101-512, an act making appropriations for the Department of the Interior for the fiscal year ending September 30, 1991. One section of that act directed that \$68,200,000 be deducted from federal on-shore mineral leasing receipts prior to distribution of the states' shares; no exception was made for Alaska.⁴⁷ Virtually identical appropriations acts were passed on November 13, 1991, and October 5, 1992, for fiscal years ending September 30, 1992, and September 30, 1993, respectively.⁴⁸ In 1993, Congress took a different approach. Rather than using Department of the Interior appropriations acts to direct deductions from amounts due to the states, Congress amended the Mineral Leasing Act itself to provide for the deduction of fifty percent of the Department of the Interior's expenses attributable to administering on-shore mineral leases prior to distribution of the states' shares.⁴⁹ Again, no exception was made for Alaska.

As directed by Congress, the Minerals Management Service, an agency of the Department of the Interior, began deducting administrative expenses from Alaska's 90 percent share in November, 1990. Strickland Aff., ¶ 4. From November, 1990, through October,

⁴⁷ App. 4, Pub. L. No. 101-512, 104 Stat. 1915 (1990).

⁴⁸ See App. 5, Pub. L. No. 102-154, 105 Stat. 990 (1991) (\$68,200,000 deduction); App. 6, Pub. L. No. 102-381, 106 Stat. 1374 (1992) (\$76,850,000 deduction).

⁴⁹ App. 7, Pub. L. No. 103-66, § 10201(2), 107 Stat. 407 (1993), amending 30 U.S.C. §191.

1994, those deductions total \$2,330,456.15. *Id.*, ¶ 10. Alaska has been damaged in that amount. Count 5 of the Complaint in this action seeks recovery of those damages.

IV. ARGUMENT

A. The Alaska Statehood Act Resulted in a Binding Statehood Compact Between the United States and the State of Alaska.

There can be no serious dispute that the statehood compact represents a binding contract between the United States and the people of Alaska. The Supreme Court has consistently held that a statehood act, when ratified, creates an enforceable agreement between the state and the United States.⁵⁰ In *Stearns v. Minnesota*, 179 U.S. 223, 244-45 (1900), for example, the Court stated:

That these provisions of the enabling act and the constitution [of Minnesota], in form at least, made a compact between the United States and the State, is evident. . . . That a State and the nation are competent to enter into an

⁵⁰ In considering Alaska statehood, Congress fully appreciated the binding and irrevocable nature of statehood compacts. The following statements are representative:

Senator Butler: "We are asked to make a grant which may not be revoked. We cannot, therefore, consider these bills as we would ordinary legislation in the sense that ordinary legislation may be amended or changed in subsequent years as experience dictates." App. 21, 104 Cong. Rec. 12316-17 (1958) (emphasis added).

Senator Thurmond: "Statehood once granted is irrevocable. The time to consider all aspects of the question is now, for once the statehood bill becomes law, it will be too late for this body to reconsider its action and to correct the situation by repealing its previously enacted bill, as it can do in most other cases." *Id.* at 12047.

Senator Robertson: "[W]e know when we vote [on the Statehood Act] . . . that we cannot later change it." *Id.* at 12015-16.

Representative Fisher: "The importance of this issue lies in the fact that the decision will be final. The grant of statehood becomes an irrevocable act. We are playing for keeps, and if a mistake is made it can never be corrected." App. 20, 104 Cong. Rec. at 9501.

agreement of such a nature with one another has been affirmed in past decisions of this court, and that they have been frequently made in the admission of new States, as well as subsequently thereto, is a matter of history.

See also Andrus v. Utah, 446 U.S. 500, 507 (1980) (statehood grant was a "solemn agreement" with the state); *id.* at 523 (statehood acts create "solemn bilateral compacts between each State and the Federal Government") (Powell, J., dissenting on other grounds); United States v. Morrison, 240 U.S. 192, 201 (1916) (describing land grants in statehood acts as "compacts with the States"); Beecher v. Wetherby, 95 U.S. 517, 522-23 (1877) (Wisconsin statehood act was the "compact" upon which Wisconsin was admitted into the Union); Cooper v. Roberts, 59 U.S. 173, 178 (1855) (same--Michigan; "Proposals were made to the inhabitants of the incipient State to become a sovereign community, and to accept certain articles as the conditions of union, which, being accepted, were to become obligatory upon the United States.").⁵¹

Following this historical precedent, Congress structured the Alaska Statehood Act as an offer of statehood on specified terms, to be accepted or rejected by the citizens of Alaska through a referendum. Indeed, the Act provides the United States' offer would lapse unless it were accepted by Alaskans in the statehood referendum.⁵² Senator Jackson observed that

⁵¹ The terms "compact" and "contract" are used largely interchangeably in the statehood context without any difference in meaning or effect. See generally Andrus v. Utah, 446 U.S. at 507 (land grants in statehood compact may be "analogized to a contract between private parties"). See also Oklahoma v. New Mexico, 501 U.S. 221, 235 n.5 (1991) ("a congressionally approved compact is both a contract and a statute"); Virginia v. Tennessee, 148 U.S. 503, 520 (1893) ("we do not perceive any difference in the meaning, except that the word 'compact' is generally used with reference to more formal and serious engagements than is usually implied in the term 'agreement'"); Green v. Biddle, 21 U.S. 1, 93 (1821) ("the terms compact and contract are synonymous").

⁵² App. 1, Alaska Statehood Act, § 8(b).

passage of the referendum fulfilled the "condition precedent" to formation of a statehood compact. The United States itself has stipulated to the contractual nature of the Alaska Statehood Act.⁵³

B. The Provisions of the Statehood Compact Granting Land and Mineral Revenues to Alaska Are Binding and Unalterable.

The land grant and revenue-sharing provisions of the statehood compact were critical preconditions to Alaskan statehood. Accordingly, these provisions of the compact are binding and unalterable. Nor could it be otherwise. The obligations Alaska assumed are permanent and ongoing; the quid pro quo for their assumption must be similarly irrevocable.⁵⁴

1. The Resource and Revenue-Sharing Provisions of the Statehood Compact Were Intended to Provide Alaska with the Means to Finance State Government.

Congress intended the grants of land and mineral leasing revenues in the statehood compact to provide Alaska with the means of financing self-government. It is impossible to draw any other conclusion from the pertinent legislative history. Not only was there repeated concern about Alaska's ability to fund the obligations of self-rule, but the solution to that problem indisputably was found by supplementing the grant of land with the federal government's undertaking to share its mineral revenue with the state in perpetuity.

⁵³ App. 30, State of Alaska v. Reagan, No. A78-291 CIV (D. Alaska 1981), Stipulation of Settlement and Order of Judgment of Dismissal, August 15, 1981, at 2.

⁵⁴ The new state's assumption of those burdens was explicitly acknowledged as part of the exchange embodied in the statehood compact: "[T]he grant of statehood will mean some saving to the Federal Government as the people of Alaska take over part of the burden of supporting certain governmental functions now borne by the United States Treasury." App. 9, H.R. Rep. No. 624, 85th Cong., 1st Sess. 9 (1957).

Nowhere is that made clearer than in the facts surrounding the adoption of amendments to the Mineral Leasing Act. As noted previously, in 1957 Congress introduced legislation to increase Alaska's share of mineral leasing revenues from 37½ to 90 percent by amending Section 35 of the Mineral Leasing Act. That legislation was passed by the Congress and became law in July, 1957. As a result, in 1957, a year prior to statehood, the Territory of Alaska already was statutorily entitled to 90 percent of all revenue from federal mineral leases in Alaska. However, while that legislation was pending, the Secretary of the Interior recommended to Congress that the change would be accomplished more appropriately by inclusion in the Alaska Statehood Act.

Acting on that recommendation, Senator Barrett proposed an amendment to the 1957 version of the Act, noting the Secretary's recommendation. He did so notwithstanding the fact that a statutory version of virtually the exact same language already had been introduced in a separate bill.⁵⁵ The Senator further emphasized that his purpose in offering the amendment was to make clear that the new State of Alaska would receive a full 90 percent of mineral royalties:

I am offering an amendment here for the consideration of the committee. . . . I propose to insert a new section . . . and provide in here that 90 percent of the income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska.⁵⁶

⁵⁵ The only difference between the language of the Barrett amendment and the previously passed statute was that the former referred to Alaska as a "State" and the latter referred to it as a "Territory." Compare App. 3, Pub. L. No. 85-88, with App. 10, Hearings on S.49 at 67.

⁵⁶ App. 10, Hearings on S.49 at 66-67.

The 1957 version of the statehood bill failed to gain Congressional approval. However, when the statehood bill was reintroduced in 1958 (after enactment of the stand-alone amendment to the Mineral Leasing Act in 1957), it again contained Senator Barrett's amendment. In fact, the language of Section 28 of the Statehood Act is identical to the language of the amendment proposed in 1957 by Senator Barrett to the then-pending statehood bill. This time, of course, the statehood legislation passed (including Senator Barrett's language) thus guaranteeing Alaska a 90 percent share of federal mineral leasing revenues.⁵⁷

Other portions of the legislative history similarly underscore Congress' intention to safeguard Alaska's ability to fund its statehood obligations with mineral leasing revenues. A 1957 House committee report, after describing "The Problem of Federal Reservations," noted

⁵⁷ As amended and incorporated by Section 28(b) of the Alaska statehood compact, Section 35 of the Mineral Leasing Act in 1958 read as follows:

All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this chapter 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 within the boundaries of which the leased lands or deposits are or were located [i.e. including Alaska]; 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; and, excepting those from Alaska, 52 1/2 per centum thereof shall be paid into, reserved and 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 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof (Emphasis added.)

that a partial solution to Alaska's loss of federal funding would be to specify that the act of admission would grant Alaska a total of 90 percent of Mineral Leasing Act revenues.⁵⁸

As noted above, the 1957 Senate Report on S.49, the 1957 version of the statehood bill that included Senator Barrett's amendment, emphasized that the grant of 90 percent of mineral leasing revenues to Alaska was "only fair" because "when the State relieves the United States of most of its expense burden, the State should receive a realistic portion [*i.e.*, 'the lion's share'] of the proceeds from resources within its borders."⁵⁹ Moreover, the concluding sentences of the "Financial Provisions" section of the Senate report emphasize the contractual *quid pro quo* for the financial grants included in the Statehood Act:

The financial sections of this bill certainly provide no more than a fair measure of Federal cooperation in Alaska's new venture . . . It is not expected that the bill will solve all of Alaska's problems or meet all of the state financial obligations, but the committee does intend to provide the state its fair share of the means by which it, like all other states, must solve its own problems.⁶⁰

The relationship between the state's interest in mineral revenues and the increased costs of government was made explicit, once again, in the Senate debate that led to final passage of the Statehood Act in 1958. Responding to arguments that Alaska would not be able finance the costs of statehood, Senator Church introduced a Department of the Interior memorandum outlining the new sources of revenue that would be available to Alaska under the bill, one of which was "[o]il and gas leases (90 percent to the State)." Senator Church stated:

⁵⁸ App. 9, H.R. Rep. No. 624, 85th Cong., 1st Sess. 7-8 (1957). As noted above, the 52½ percent would be in addition to the 37½ percent that all other public land states receive, making a total of 90 percent.

⁵⁹ App. 8, S. Rep. No. 1163 at 3.

⁶⁰ *Id.* at 4 (emphasis added).

Mr. President. I wonder if the Senator from Florida will permit me to offer at this point in his address a memorandum which I have received from the Department of Interior, which is directed to the very subject on which the Senator is now elaborating, namely, the capacity of Alaska to support statehood.

* * *

I think that this memorandum effectively gives a rebuttal to that argument [that Alaska could not fund the additional costs], in that it shows precisely what the additional costs for statehood would be, and what the additional income to the newly formed State government would be by virtue of the provisions contained in the pending bill.

* * *

The PRESIDING OFFICER. Without objection, the memorandum referred to by the Senator from Idaho will be printed in the record.

The memorandum is as follows:

* * *

New Revenues available to Alaska

Oil and gas leases (90 percent to the State).....\$3,000,000⁶¹

Immediately following Senator Church's introduction of the Department of the Interior memorandum, Senator Jackson of Washington, another statehood advocate, observed that oil had just been discovered in Alaska, and that the resulting increase in federal oil leases "will have a tremendous impact on the ability of the new State to provide the essential resources to support itself."⁶²

⁶¹ App. 21, 104 Cong. Rec. 12208 (1958). In fact, the Interior Department memorandum estimated that the 90 percent share of revenue from oil and gas leases would comprise three-fifths of the new revenue available to Alaska under the Statehood Act. *Id.* By the Interior Department's estimate, the revenue attributable to Section 28(b) would fund nearly fifty percent of the additional cost of statehood. *Id.*

⁶² App. 21, 104 Cong. Rec. 12208 (1958). *See also* App. 20, 104 Cong. Rec. at 9219 (Representative O'Brien); *id.* at 9360-61 (Representative Dawson: "But if Alaska is to be

The same understanding is reflected in the ratification campaign in Alaska following final passage of the 1958 Statehood Act. During that debate, Alaskans were assured that, upon ratification of the Statehood Act, Alaska not only would become a state, but would receive the rights in property embodied in the act. Indeed, one of the three specific propositions put to the citizens of Alaska in the statehood referendum, was their agreement to accept "all provisions of the [Statehood Act]" including those "prescribing the terms and conditions of the grants of lands or other property therein made to the State of Alaska"⁶³

There is no reasonable doubt as to what "grants" were contemplated by that provision. In a speech to Anchorage voters on the day preceding the election, Secretary of the Interior Seaton told Alaskans that approval of statehood would confirm "Alaska's preferential treatment in receiving 90% of all [mineral leasing] revenues."⁶⁴ In another pre-referendum speech in Fairbanks, Secretary Seaton told Alaskans that the Statehood Act granted the new state 103 million acres of land, plus "90% of all bonuses, royalties and rentals from mineral leasing on Federal lands"⁶⁵ In fact, he went on to note that "the big news" in Alaska was the then-recent discovery of oil on the Kenai peninsula. Revenues from that discovery alone, said

given the duties and responsibilities of statehood, she must also be given a visible means of support. . . . Additionally, Alaska would receive 90 percent of the proceeds from the operation of Government coal mines and from the production of coal, phosphates, oil, oil shale, and sodium from the public domain."); *id.* at 9498 (Representative Smith); *id.* at 9510-11 (Representative Pfof); *id.* at 12020 (Senator Robertson); App. 21, 104 Cong. Rec. at 12032 (Senator Kuchel).

⁶³ App. 1, Alaska Statehood Act, § 8(b) (emphasis added).

⁶⁴ App. 27, Address by Secretary Seaton at Anchorage, at 4 (emphasis added).

⁶⁵ App. 26, Address by Secretary Seaton at Fairbanks, at 3 (emphasis added).

Secretary Seaton. "should easily offset the additional costs of State government." *Id.*⁶⁶

Secretary Seaton's statements echo the same sentiments expressed in the legislative debate: that the 90-percent share of mineral leasing revenue was an essential part of an agreement intended to ensure the future financial viability of Alaska.

Based in part on these representations, the citizens of Alaska ratified the Alaska Statehood Act. In doing so, they created a valid, enforceable compact between Alaska and the United States which neither party, acting unilaterally, is free to modify, much less ignore.

2. Applicable Supreme Court Precedent Confirms That the Land and Revenue Grants in the Alaska Statehood Compact are Binding And Unalterable.

The Supreme Court has consistently held that where a statehood compact grants a new state the means to finance the functions of state government, that grant is a binding, unalterable term of the resulting contract. As early as 1855, in *Cooper v. Roberts*, the Supreme Court held that the "proposals to the inhabitants of the incipient State [of Michigan] to become a sovereign community, . . . being accepted, were to become obligatory upon the United States." 59 U.S. at 178 (emphasis added). Thus:

The State of Michigan was admitted to the Union with the unalterable condition "that every section No. 16, in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools."

⁶⁶ Secretary Seaton's statements concerning the meaning and effect of the revenue-sharing agreement are entitled to great weight. Those statements represent the contemporaneous construction of that provision, before it became the subject of dispute, by the executive department official charged with its implementation. He was, as well, the official who recommended that the grant be incorporated into the Statehood Act. See pp. 12-13, *supra*; *Zuber v. Allen*, 396 U.S. 168, 192 (1969) (administrative interpretation carries most weight when it is contemporaneous and when administrators participated in drafting and made their views known to Congress).

Id. at 179 (emphasis added). To similar effect, in Beecher v. Wetherby (1877), the Supreme Court stated:

It was, therefore, an unalterable condition of the admission, obligatory upon the United States, that section sixteen (16) in every township of the public lands in the State, which had not been sold or otherwise disposed of, should be granted to the State for the use of schools . . . so that no subsequent law authorizing a sale of [lands in Wisconsin] could be construed to embrace them

95 U.S. at 523-24 (emphasis added). The Supreme Court has continued to adhere to that principle in subsequent cases. See, e.g., United States v. Morrison, 240 U.S. at 210 (1915) (requiring Congress "properly to compensate the State for whatever deficiencies resulted" after Congress disposed of school lands granted in Oregon's statehood compact); Andrus v. Utah, 446 U.S. at 507 (1980) (school lands grant in statehood compact is "solemn agreement" analogous to private contract).

Just as Congress intended the Section 16 "school lands" grants to provide states with the "revenues . . . to educate the citizenry," Andrus, 446 U.S. at 507, so here Congress intended the grants of land and mineral leasing revenues in the statehood compact to provide Alaska with the means of financing the necessary functions of state government. It did so with full recognition of the principle that such undertakings in a statehood compact are binding on the federal government.⁶⁷

⁶⁷ In light of that case law Congress may be presumed to have acted with the understanding that its grant of financial resources in the Statehood Act, including § 28, were permanent and inviolate. See, e.g., Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 813 (1989) (Congress is presumed to be aware of prior judicial decisions when it enacts legislation in an area affected by those decisions); Massachusetts Mutual Life Ins. Co. v. United States, 5 Cl. Ct. 581, 589 (1984), aff'd, 761 F.2d 666 (Fed. Cir. 1985) (same).

Indeed, during a 1958 debate Representative Rogers urged that the land grant be reduced to a more conservative 21 million acres in view of its irrevocable nature:

"The gentleman wants to be conservative and I do too. Let us turn 21 million acres over to them [Alaska] . . . and then if they need more land they can come back and get it later on. There is nothing to keep this Congress from giving them more land at the next session of Congress. But, if we give them all of the land now, we cannot take any of it back. We cannot take any of it back and the chances are Alaska is not going to give it back to us."⁶⁸

Congress further recognized that just as its grant of land would be irrevocable, so too were the Act's other commitments to provide financial support to the new state:

Senator Robertson: "We are asked to vote on something which is irrevocable. It is as irrevocable as the laws of the Moes and the Persians. Whatever we do now for about 100,000 Americans in Alaska, who are fine citizens, is going to stand permanently. Whatever advantages we give them over the public domain, which now belongs to all the people of the United States, will stand as long as the Union endures."⁶⁹

C. Section 28(b) Requires the United States to Pay Alaska 90 Percent of Its Gross Mineral Leasing Receipts from Federal Lands in Alaska, Not Merely 90 Percent of Net Revenues After Expenses.

Under Section 28(b) of the statehood compact, Alaska is entitled to 90 percent of "all money received" from mineral leases on federal land in Alaska.⁷⁰ In other words, Alaska is contractually entitled to 90 percent of the gross receipts from such leases, not 90 percent of the amount received net of expenses or administrative costs. That mandate is demonstrated not only by the language of the compact, but by the legislative history, the United States' representations to Alaska prior to the statehood referendum, and a 30-year history of

⁶⁸ App. 20, 104 Cong. Rec. 9608 (1958) (emphasis added).

⁶⁹ App. 21, 104 Cong. Rec. 12015 (1958) (emphasis added).

⁷⁰ Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, as amended and incorporated by Section 28(b) of the Alaska Statehood Act. See n.57 infra.

performance by the United States under the compact. When the United States changed its practice in 1990, it breached the Alaska statehood compact.

1. The Legislative History Confirms the United States' Agreement to Pay Alaska 90 Percent of Gross, Not Net, Receipts.

The legislative history pertaining to the passage of the Mineral Leasing Act in 1920 demonstrates that from inception Congress contemplated that the United States would fund the expenses of administering the mineral leases from its ten percent share. Congressman Taylor, for example, said:

From this time on, 37½ percent of all of the royalties derived by the Government that come from all the oil, and coal, and gas goes to the State in which they are produced and 52½ percent of all such proceeds goes direct into the irrigation and reclamation fund, and the remaining 10 percent goes to the Government for administration.⁷¹

As noted above, the then Territory of Alaska first received a 90 percent interest from oil and gas leases on federal land through a 1957 amendment to the Mineral Leasing Act (H.R.3477). The amendment was introduced by E.L. Bartlett, Alaska's Congressional delegate. In a March 22, 1957, letter to Congressman Byrnes commenting on H.R. 3477, Delegate Bartlett wrote:

Oil and gas leases in Alaska are under the Mineral Leasing Act. However, Alaska gets only 37½ percent of the proceeds. No benefits whatsoever accrue to it from the 52½ percent which in the public domain states goes for reclamation projects. In this section of the bill, it is proposed that Alaska receive 90 percent instead of 37½ percent and that here also the federal government keep 10 percent for administration as it does in the [other] states.⁷²

⁷¹ App. 18, 59 Cong. Rec. 2712 (1920) (emphasis added).

⁷² App. 24, Letter from E. L. Bartlett to Hon. John W. Byrnes (March 22, 1957) at 2 (emphasis added).

In addition, Congress drew a distinction between its grant of a share of "net profits" in Section 28(a) and its grant of a share of "all money received" in Section 28(b). As discussed above, the language of those two sections was patterned on H.R. 3477, the stand-alone amendment to the Mineral Leasing Act enacted in 1957. Section 1 of H.R. 3477 amended a 1914 act (38 Stat. 741, 48 U.S.C. § 439) concerning proceeds from the operation of government coal mines in Alaska (in language that became Section 28(a) of the Statehood Act), and Section 2 amended the Mineral Leasing Act (in language that became Section 28(b)). The House Committee on Interior and Insular Affairs Report on H.R. 3477 states:

The purpose of H.R. 3477, introduced by Delegate Bartlett, is twofold. First, it amends the act of October 20, 1914 (38 Stat. 741; 48 U.S.C., sec. 439) to provide that net profits realized from the operation of Government coal mines in Alaska, plus bonuses, royalties and rentals under lease shall be distributed semiannually in the following manner: 90 percent to the Territory of Alaska Second, the bill amends section 35 of the Mineral Leasing Act of February 20, 1920, as amended (30 U.S.C. 191) so that an additional 52½ percent of the sales, royalties, bonuses and rentals received from coal, phosphate, oil, oil shales, gas, and sodium would be paid to the Territory of Alaska for disposition of the Territorial legislature. . . .⁷³

The distinction between the grant of a percentage of net profits from federal coal mine operations and a percentage of all money received from federal mineral leases is further recognized in the markup of the two acts as amended that is attached to the committee report. The markup of the 1914 act begins, "All net profits from operation of Government coal mines

⁷³ App. 11, H.R. Rep. No. 156 at 1 (emphasis added).

...⁷⁴ The markup of the Mineral Leasing Act begins. "All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this Act ..."⁷⁵

In the 1958 Senate debates on Alaska statehood, Senator Robertson, addressing the revenue sources available to Alaska to fund the costs of state government, said, "Last year, Congress, in anticipation of statehood, and in lieu of participation in the Federal reclamation program, awarded Alaska 90 percent of gross receipts from the oil, gas, and coal leases on the public domain."⁷⁶

In addition, Secretary Seaton's representations to Alaskans on the eve of the statehood referendum confirmed that Alaskans were being offered 90 percent of all Mineral Leasing Act revenues. On August 25, 1958, he stated:

⁷⁴ *Id.* at 4 (emphasis added).

⁷⁵ *Id.* (emphasis added). The absence of the term "net" in Section 28(b) to describe Alaska's 90 percent share of mineral leasing receipts from federal lands in Alaska--juxtaposed with Congress' specific use of the term "net" in Section 28(a) to describe Alaska's share of revenues from Government coal mines--is a telling omission. Congress plainly knew how to limit Alaska's mineral leasing royalties to a percentage of "net" proceeds when it desired to do so. The fact that Congress could have, but did not, limit Alaska's share to 90 percent of "net" revenues--and instead provided that Alaska was entitled to 90 percent of "all money received"--is yet another indication of its commitment to pay Alaska 90 percent of all mineral leasing receipts from federal lands in Alaska without deduction for administrative costs. As the Supreme Court has recognized:

Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.

Russello v. United States, 464 U.S. 16, 23 (1983) (citation omitted). In addition, the

⁷⁶ App. 21, 104 Cong. Rec. 12032 (1958) (emphasis added).

A second fact: the [Statehood] Act reaffirms Alaska's preferential treatment in receiving 90 percent of all revenues from oil, gas, and coal leasing on the public domain.⁷⁷

Two days earlier, he made the same point ("[T]he State gets 90 percent of all bonuses, royalties and rentals from mineral leasing on Federal lands")⁷⁸; and, commenting on the benefits that Alaska was receiving under the 1957 amendment to the Mineral Leasing Act that would be cemented in the Statehood Act, observed:

Since July of 1957, when oil was discovered on the Kenai Peninsula, the Territory's share of oil lease revenue has exceeded \$10 thousand per day. Since early this year the Territory has received 90 percent of all oil lease revenues; the State of Alaska will continue to do so.⁷⁹

2. The United States' Performance Under Section 28 Until 1990 Confirms Alaska's Entitlement to 90 Percent of the United States' Gross Receipts.

Consistent with the legislative history and Secretary Seaton's representations, the United States until 1990 made no deductions from Alaska's mineral leasing revenue entitlement for administrative costs or other expenses. Strickland Affidavit, ¶ 3.⁸⁰ It is hornbook law, equally applicable to contracts by the United States as to those of private parties, that "[t]he parties' contemporaneous construction of an agreement, before it has

⁷⁷ App. 27, Address by Secretary Seaton at Anchorage, at 4 (emphasis added).

⁷⁸ App. 26, Address by Secretary Seaton at Fairbanks, at 3.

⁷⁹ Id. (emphasis added).

⁸⁰ The Alaska Native Claims Settlement Act ("ANCSA") did grant Alaska natives a temporary two-percent overriding royalty that was deducted from mineral leasing revenues prior to calculation of Alaska's 90-percent share until a fund for the benefit of Alaska natives reached \$500 million. ANCSA, § 8(a), (d), 43 U.S.C. § 1608(a), (d). Alaska consented to the temporary two-percent override (by electing not to challenge that provision) as the necessary price of ANCSA's resolution and settlement of native land claims. In addition, the overriding royalty was for the direct benefit of Alaskans and did not effectively reduce Alaskans' total share of revenues.

become the subject of dispute, is of course entitled to great weight in its interpretation."

Arizona v. United States, 575 F.2d 855, 863 (Ct. Cl. 1978). Accord, Big Chief Drilling Co. v. United States, 15 Cl. Ct. 295, 301 (1988) ("The conduct of the parties before the advent of controversy, thus, may be relied upon to discover the parties' underlying intention").⁸¹

D. Alaska is Entitled to an Award of Damages and Prejudgment Interest.

As shown in Section III.D, pp. 17-19, supra, Alaska has incurred damages in the amount of \$2,330,456.15 through October 31, 1994,⁸² as a result of the United States' improper deduction of administrative costs from Alaska's share of mineral leasing revenues guaranteed by Section 28(b) of the Alaska statehood compact. The United States' breach of its contractual grant in the Alaska Statehood Act of 90 percent of "all money received" from federal mineral leasing is properly enforced by an award of damages in this Court. In addition, Alaska is entitled to an award of prejudgment interest.

1. The United States' Breach of Section 28(b) of the Statehood Compact is Properly Enforced By An Award of Damages in This Court.

On at least three prior occasions, the Court of Claims has found the United States liable for damages for breaching revenue-sharing obligations to a state under a statehood compact. In Louisiana v. United States, 22 Ct. Cl. 284 (1887) (App. 31), aff'd, 123 U.S. 32 (1887),

⁸¹ As with contracts between private parties, the United States' contracts contain no implied condition that permit it to rewrite the contract or refuse to perform when it comes to the conclusion that the contract terms should be amended. Louisiana-Pacific Corp. v. United States, 656 F.2d 650, 654-55, 228 Ct. Cl. 363 (1981).

⁸² Damages are continuing to mount as the United States takes improper deductions from monies due Alaska each month. Alaska reserves the right to file a supplemental affidavit updating the amount of damages at a later date.

Louisiana sued the United States for damages for breaching a similar revenue-sharing provision in its statehood compact. That provision stated:

That 5 per cent. of the net proceeds of the sales of the lands of the United States, after the 1st day of January shall be applied to laying out and constructing public roads and levees in the said State as the legislature thereof may designate.

22 Ct. Cl. at 287 (quoting 2 Stat. 641 (1811)). Louisiana sought \$47,530 in unpaid royalties that it claimed the United States owed based on its sales of federal land within Louisiana. *Id.* at 285. The Court of Claims held that Louisiana was entitled to recover damages in the full amount sought, commenting that Louisiana's affirmative right to recover was "not seriously disputed." *Id.* at 289. The Supreme Court affirmed, agreeing with the Court of Claims that there was not "any serious contest . . . either as to the validity or the amount" of Louisiana's claim. United States v. Louisiana, 123 U.S. 32, 34 (1887) (App. 33).

The Court of Claims has also awarded damages to the States of Alabama and Mississippi under similar statehood compact revenue-sharing provisions in Alabama v. United States, No. 15459 (Ct. Cl. May 16, 1887) (App. 32), aff'd, 123 U.S. 39 (1887) (App. 33); and Mississippi v. United States, No. 15460 (Ct. Cl. May 16, 1887) (App. 34), aff'd, 123 U.S. 39 (1887) (App. 33). In each of those cases as well, the basis for the judgments entered by the Court of Claims was the United States' failure to pay the five percent revenue share that it had promised to pay the states in their statehood compacts.

2. Alaska is Entitled to Prejudgment Interest.

Alaska is entitled to prejudgment interest pursuant to 30 U.S.C. § 1721, which provides in pertinent part:

(b) Any payment made by the Secretary [of the Interior] to a State under Section 35 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 191) and any other payment made by the Secretary to a State from any oil or gas royalty received by the Secretary which is not paid on the date required under Section 35 shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954.

30 U.S.C. § 1721(b) (emphasis added). This prejudgment interest is calculated from the date on which each monthly mineral leasing payment was due, in the amount of the monthly shortfall, at the statutory interest rate.⁸³ The prejudgment interest should be compounded to ensure that Alaska is fully compensated. See Dynamics Corp. of America v. United States, 766 F.2d 518, 520 (Fed. Cir. 1985).

V. CONCLUSION

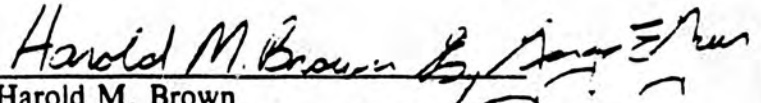
For the foregoing reasons Alaska respectfully requests that the Court enter an order of partial summary judgment holding (1) that Section 28(b) of the Alaska Statehood Act is an unalterable contractual term of the statehood compact between Alaska and the United States. (2) that Section 28(b) obligates the United States to pay to Alaska 90 percent of the United States' gross receipts from mineral leasing on federal lands in Alaska, without deduction for administrative expenses; (3) that the United States has breached its contractual obligation under

⁸³ See 28 U.S.C. § 2516(a) (allowing prejudgment interest on a judgment in the Court of Federal Claims when authorized by statute); 28 U.S.C. § 1961 (same). The applicable prejudgment interest rate under Section 6621 of the Internal Revenue Code of 1954 is the federal short-term rate (or rates), determined pursuant to 26 U.S.C. § 1274(d)(1)(C)(i), covering the time during which the payment was owing, plus 3 percentage points. 26 U.S.C. § 6621(a)(2).

Section 28(b); and (4) that the United States is liable to Alaska for damages resulting from its breach (\$2,330,456.15 as of October 31, 1994), plus interest compounded annually.

DATED this 29th day of November, 1994.

Respectfully submitted,


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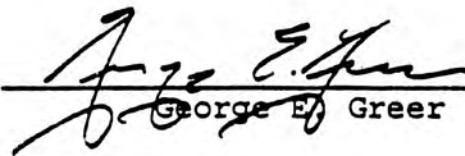
Attorneys for Plaintiff
State of Alaska

CERTIFICATE OF SERVICE

I am an attorney with the law firm of HELLER, EHRMAN, WHITE & McAULIFFE, 701 Fifth Avenue, Suite 6100, Seattle, Washington 98104. On November 29, 1994, I served by overnight delivery via Federal Express courier a copy of Memorandum In Support of State of Alaska's Motion For Partial Summary Judgment on counsel for defendant United States of America:

Margaret M. Sweeney
DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
General Litigation Section
601 Pennsylvania Ave. N.W., Room 5606
Washington, D.C. 20004.

EXECUTED at Seattle, Washington on NOVEMBER 29, 1994.


George E. Greer

[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. 886, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).