February 6, 1976

M E M O R A N D U M

TO: The Honorable Jay S. Hammond
Governor

FROM: Avrum M. Gross
Attorney General

RE: Attached supplemental appropriation to
Department of Law

Attached is a supplemental appropriation bill, requested by this department and approved by the Budget Review Committee, to pay miscellaneous court awards. Also attached is Wil Condon's January 23 memo to Kent Dawson, explaining the request in more detail. Here is a draft transmittal letter:

D R A F T

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill making a supplemental appropriation to the Department of Law to pay miscellaneous court awards. Decisions in five cases have resulted in state obligations as follows:

United States v. Alaska	$10,426.00
State of Alaska v. Pankratz	5,872.67
Abrams, et al. v. State, et al.	5,082.00
Park v. Lowell Thomas	751.83
Douglas v. Williamson	1,000.00

Another case, Stevens et al. v. McGinnis et al., has been decided by the Alaska Supreme Court, but the final award of costs has not yet been made. We estimate that it will be $12,800.

Sincerely,

Jay S. Hammond
Governor

AMG:md:AHP

STATE of ALASKA

MEMORANDUM

4A

TO:

V. Kent Dawson
Director
Division of Budget
& Management
Department of Administration

DATE : January 23, 1976

FROM: Wilson L. Condon
Deputy Attorney General

SUBJECT: Supplemental Appropriation - Legal Fees and Court Costs

The following judgment for costs and attorney's fees have been entered against the State. The Department of Law does not have sufficient funds to pay these judgments and therefore we request that supplemental appropriations be sought to cover these amounts.

1.	United States v. Alaska	$10,426.00
2.	State of Alaska v. Pankratz	5,872.67
3.	Abrams, et al. v. State, et al.	5,082.00
4.	Park v. Lowell Thomas	751.83
5.	Douglas v. Williamson	1,000.00

1. In the case of the United States v. Alaska, the dispute centered on ownership of Lower Cook Inlet. The federal government prevailed and has been awarded the costs set forth above by the United States Supreme Court.

2. In the case of Pankratz, the dispute centered on who owned a gravel bar in the Chena River directly contiguous to an island owned by Pankratz. The State filed a lawsuit to support its contention that the gravel bar was state-owned. Pankratz prevailed in the Supreme Court and has been awarded costs and attorney's fees.

3. In Abrams, the dispute concerned the constitutionality of ch. 145, SLA 1974 which concerned the Eagle River-Chugiak Borough. Abrams prevailed in the case and was awarded court costs and attorney's fees.

4. The Park case was brought when Daiil Park was denied the issuance of a notary seal because he was an alien. Park prevailed and portions of AS 44.50.020 were found unconstitutional. He was awarded costs and attorney's fees of $751.83.

5. The Douglas case concerned the validity of certain emergency regulations reducing the kinds of drugs available under the General Relief Medical Program of the Department of Health and Social Services. The regulations were determined to be invalid due to the lack of any emergency and plaintiff was awarded $1,000 in costs and attorney's fees.

Another award of costs and attorney's fees for which we certainly will have to seek funds was granted in the case of Stevens, et al v. McGinnis, et al. This case, which dealt with procedures in correctional institutions and prisoners' rights, was recently decided by our Supreme Court. The final award of costs has not yet been made; we estimate it will be $12,800. To keep supplemental requests to a minimum, we suggest that you may want to request the $12,800 for this case at this time also.

If any further information is needed, please notify the Department of Law at 465-3600.

WLC:jeh

MEMORANDUM State of Alaska

TO: Art Peterson, Assistant A. G.
Dept of Law

Do not type
DATE

FROM: ASW, Chairman
BRC

SUBJECT: Supplemental appropriation/
Legal fees & court awards;
Dept of Law

The Governor's Budget Review Committee has approved the request by the Department of Law ~~to to~~ to request a supplemental appropriation in the amount of $35,900 to pay various court awards as itemized in the attached memorandum. Please draft ~~submitted~~ appropriate legislation to be $1 ~~[illegible]~~ by the Governor.

0.*†

0.*†

1,042,600.+
587,267.+
508,200.+
75,183.+
100,000.+
2,313,250.*†

2,313,250.+
1,280,000.+
359,250.*†

02-001

Kent -

5.0 was appropriated for FY 76 of which 4.0 remained on 12/31. Condon says he knows of another 1.0 which will have to be spent and wants to save the other 3.0 for other small awards which he thinks they will have to pay before year end; rather than applying it to the listed claims. You will need to call a BRC meeting

BUDGET AND MANAGEMENT ROUTE SLIP

IMMEDIATE ACTION

DATE: _____

TO:	FROM:	ACTION:
( ) Director	____	( ) Review & Advise
( ) Deputy Director	____	( ) Prepare Reply
( ) Fiscal Analyst	____	( ) Initial & Return
( ) Judy	____	( ) Approval
( ) _____	____	( ) Signature
( ) _____	____	( ) Sign & Process
( ) _____	____	( ) Per Your Request
( ) _____	____	( ) Necessary Action
( ) _____	____	( ) Your Information
( ) Secretary	____	( ) File
( ) Typist _____	____	( ) Contact Me
( ) _____	____	( ) Type Please

****

REMARKS: _____

arrange with Karl to get BRC approval of this then draft memo to Art Peterson requesting

02-306 (Rev. 1/72)

HB

775

"An Act relating to criminal escapes from custody or confinement."

COMMITTEE REPORT

HOUSE

2/13/79

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HB 775 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR HB 775 AND THAT CS FOR HB 775 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[illegible]	D. Voss	_____
_____	_____	_____
[illegible]	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Tom Hartnett Chairman

File 775

April 22, 1976

Rules Committee
House of Representatives
Alaska State Legislature
Ninth Legislature, Second Session
Pouch Y
Juneau, Alaska 99811

Dear Sirs:

The Legislative Affairs Committee of the Tanana Valley Bar Association at Fairbanks has reviewed the committee substitute for House Bill 775 and would like to compliment you for what appears to us to be a substantial and excellent revision of the old original House Bill 775. It appears that our original comments on 775 was remembered in the more recent revision of the bill.

Although our committee agrees in the definitions of escape and unlawful evasion and the breakdown to first, second, and third degree thereof, we do not agree completely with the penalty provisions.

Section 11.30.095F (2) provides for mandatory minimum imprisonment term without discretion by the court to suspend or grant probation or parole. Subsection (g) then provides that such sentence must be consecutive to existing sentences. Although our committee, by majority vote, agreed with the provision for consecutive sentences, as provided for in (g), we unanimously opposed subsection 2 requiring minimum imprisonment and depriving the court of discretion to suspend all or part of that term.

Our committee has uniformly gone on record as opposing legislation taking discretion in sentencing away from the judges. It is the feeling of all of our members that it is a bad precedent to deprive the court of any discretion within the area of sentencing. We feel that each individual case should be evaluated on its own merits.

Again we compliment you on your revision of House Bill 775 and would have only a single objection, above voiced, to the bill as it now appears in your committee substitute as offered on April 9, 1976.

Sincerely,

Stephen R. Cline
Member - T.V.B.A. Legislative Affairs Committee

SRC:mb

cc: Mike Bradner
Fred Brown
Steve Cowper
Terry Gardiner
Glenn Hackney
Charles Parr
Tim Wallis
John Butrovich
John Huber
Terry Miller
John Sackett
Edward Willis
Robert Ziegler
Brian Shortell

Dear Terry:

I notice that SB 479 is in Senate Rules and HB 775 is in House Rules. Commissioner Burton, when asked to comment on both, had some interesting suggestions which I'd like to share with you.

Fran

02-001B

STATE
of ALASKA

MEMORANDUM

TO: Fran Ulmer, Legislative Assistant
Office of the Governor

DATE : March 8, 1976

FROM: Richard L. Burton, Commissioner
Department of Public Safety

SUBJECT: HB-775 and SSSB 479

HB 775 and SB 479 each have merit. By combining the better parts of each, a stronger bill would be enacted.

SB 479 includes the desired "or from a corrections officer". However, to eliminate legal argument it should be inserted between "under lawful arrest" and "from a jail or institution". This would eliminate the argument that in order to escape "from a correctional officer" the escapee must be in a jail or institution.

While SB 479 proposes the same penalty for escape after "arrest" as escape after "conviction", HB 775 changes only the penalty for escape after conviction.

HB 775 eliminates a loophole by amending AS 33.30.150 with wording that is identical to that already in 33.30.250 and 33.30.260.

HB 775 also includes 33.30.150, 33.30.250 and 33.30.260 under the mandatory penalty clause.

SB 479 adds "escape from custody or confinement" to the crimes (murder and rape) when the court may not prescribe less than minimum penalty. This is AS 11.05.150. Although one method of correcting this statute is piecemeal, a preferable method would be to repeal it. It is now used to completely subvert the intent of the legislature after that body sets minimum penalties. The courts already have suspended sentences, probation, and deferred imposition on sentence when they want to turn someone loose. With 11.05.150 on the books, legislative intent to toughen penalties by fixing minimum sentences is completely meaningless, except that it remains an insult to the intelligence of the legislative body as a whole.

AS 11.05.150 says in effect that any time any judge disagrees with a statute enacted by sixty elected representatives, he may completely disregard it.

The personal opinion and philosophy of one person therefore replaces that of the legislature.

SB-579 and HB 775 combined are attached.

Form 01-006

STATE OF ALASKA
OFFICE OF THE GOVERNOR

TO: Department of

[ ] Administration
[ ] Commerce & Econ. Develop.
[ ] Community & Regional Aff.

[ ] Education
[ ] Env. Conservation
[ ] Fish and Game
[ ] Health & Social Svcs.
[ ] Highways
[ ] Labor
[ ] Law
[ ] Military Affairs
[ ] Natural Resources
[x] Public Safety
[ ] Public Works
[ ] Revenue

ATTN: Richard Burton

[ ] Return letter w/draft
[ ] Return letter w/comment
[ ] Reply direct
[ ] Your information
[ ] Call me
[ ] Appropriate action
[ ] As requested
[ ] _____

REMARKS:

Please comment on
HB 775 & SSSB 479

From: Fran Ulmer Date: 5/19

Introduced: 2/13/76
Referred: Judiciary

IN THE SENATE BY ORSINI

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 479 + HB 775 Combined

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for a mandatory penalty for escape from custody or confinement."

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

* Section 1. AS 11.30.090 is amended to read:

Sec. 11.30.090. ESCAPE FROM CUSTODY OR CONFINEMENT. A person who escapes or attempts to escape from the custody of a peace officer under a lawful arrest, or from a jail or institution in which he is detained by a peace officer or a corrections officer or confined by direction of a court in this state, or from custody under process issued by a court in this state is punishable,

(1) if the custody or confinement is by an arrest on a charge of a felony, or conviction of a felony, by imprisonment for not less than one year nor more than three years, to commence at the expiration of the terms limited by previous judgments on conviction for crime, if any; the imposition or execution of the minimum imprisonment provided in this section shall not be suspended and probation or parole shall not be granted until the minimum imprisonment provided in this section for the offense is served [BY A FINE OF NOT MORE THAN $5,000, OR BY IMPRISONMENT FOR NOT LESS THAN ONE YEAR NOR MORE THAN THREE YEARS, OR BY BOTH]; or

(2) if the custody or confinement is for extradition, or by an arrest, or charge of, or conviction of a misdemeanor, by a fine of not more than $1,000, or imprisonment for not more than one year, or by both.

* (3) if the escape is by a prisoner exercising privileges under AS 33.30.150, 33.30.250 or 33.30.260, by imprisonment for not less than one year nor more than three years. Imposition or execution of sentence shall not be suspended and probation or parole shall not be granted until the minimum imprisonment provided in this paragraph is served.

* Sec. 2. AS 33.30.150 is amended to read:

* Sec. 33.30.150. VISITATION PRIVILEGES. An honor prisoner with good behavior serving a sentence of one year or more may be permitted as a privilege and not as a right to visit with his family at a place other than his place of confinement and at his own expense for a period not exceeding one week nor more frequently than once each six months under rules and regulations adopted by the commissioner and in his sole discretion. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of a period during which he is authorized to be away from the place of confinement under this section, is an escape from the place of confinement and is punishable under the laws relating to escape.

* Sec. 3. AS 11.05.150 is amended to read:

Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in a case of murder, escape from custody or confinement, or rape, the court may, upon conviction, when in its opinion the facts and circumstances make the minimum penalty provided in this title manifestly too severe, impose a lesser penalty, either of a fine or imprisonment or both. When less than the minimum penalty is imposed, the court shall set out the reasons for its action on the record in the case.

JOHN E. HAVELOCK, Director

(907) 272-5522

File
HB775

UNIVERSITY OF ALASKA
CRIMINAL JUSTICE CENTER
3211 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99504

TO: House Judiciary Committee

FROM: Criminal Justice Center

SUBJECT: HB 775 and CS For HB 775.

DATE: March 19, 1976

PROBLEMS ASSOCIATED WITH EXISTING AS 11.30.090

1. It provides no legislative defintion of escape. Court decisions (Richards v. State, 451 P2d 359 (1969), and Alex v. State, 484 P2d 677 (1971).) have filled this gap, although not entirely in a satisfactory manner, for escapes from confinement but not for escapes from custody.

2. It deals with all forms of escape - from custody or confinement, by felons or misdemeanants, before conviction or after, attempted or successful - in the same section. While it distinguishes between felons and misdemeanants in so far as punishment is concerned, it makes no other distinctions as to the circumstances of the at empt or of the escape, nor does it effectively permit real distinctions to be made among individual defendants.

3. It does not deal with all instances where a person in confinement fails to return after exercising lawful leave privileges, e.g., 33.30.150.

4. It does not appear to apply to escapes or attempted escapes by juveniles.

5. It may be that a person who escapes from the custody of a corrections official (not from a jail, institution, etc.) does not, under a strict legal interpretation of the statute, commit a crime. Corrections officials are not peace officers - either under the definition provided in 11.30.100(1), or under the definition in AS 01.10.060, unless one could reasonably construe 11.30.100(1)(b) to cover them.

6. It is interesting to note that while any other crime committed in connection with an escape or attempted escape can be

prosecuted separately, Chapter 30 of Title 11 in two sections - 11.30.050 and 11.30.070 - creates distinct assault offenses involving those who aid in escapes. No similar distinctions are made for those who do escape, or attempt to escape. In fact, the punishment upon conviction of either 11.30.050 or 070 is greater than the punishment for escape. Obviously, it is good public policy to try to deter individuals from aiding in escapes by engaging in assaultive behavior, but should we not treat those who escape alone in a similar fashion?

PROBLEMS ASSOCIATED WITH CS FOR HB 775

1. It does not adequately deal with objections (1) (2) (4) (5) and (6) to the existing statute. Our revision answers these objections.

2. AS 11.30.090(a)(4), as proposed, may be unconstituional because it imposes the same penalties on misdemeanants as on felons, but, in any event, it is bad public policy because it does not distinguish between individual circumstances in any case. For example, the felon with 15 years left on a sentence and the misdemeanant with 15 days are treated identically. Moreover, because misdemeanants and felons are lumped together, the lowest denominator (misdemeanants) controls the upwards bounds of the punishment range. The (a)(4) may not present a deterent to a felon, unless he has two years of less to run on his original sentence. Our revision answers this objection.

3. If the proposed revision was enacted all escapes from leave would require a proof of "wilful"ness, but any other escape would just require proof of general intent (as defined in Alex, supra.). The "intent" element should be consistent throughout. Under our revision a future Alex would be vindicated if the jury believed his story - that he had no intent to escape, was an amnesia victim, fell off a truct, etc.. This would appear to be a more just result which is probably why the test of wilful is used everywhere else.

4. CS for HB775 does not deal with an offender who has been convicted but not sentenced on a felony (or misdemeanor) in terms of requiring consecutive sentences. (see AS 11.30.090(c) as proposed, which uses "then existing sentences".) Our revision so provides. (see 11.30.095 (g).)

CHANGES IN CS FOR HB 775 WHICH SHOULD BE NOTED

1. Escape has been separated from failure to return from leave.

2. Three degrees of escape have been established.

3. A new section, UNLAWFUL EVASION, deals with failure to return from leaves.

4. Possession of a deadly weapon while on escape or unlawful evasion is made a crime. This remedies a gap in the law whereby a person who had never been convicted, but escaped after arrest, could legally possess a deadly weapon.

5. Penalties are separted from the substantive definitions of

escape and unlawful evasion and are now provided for in a new section, 11.30.095.

6. Fines have been dropped from the penalties.

7. With the exception of extradition - which now carries a penalty of not less than one year nor more than five - escapes under 11.30.090(a)(2) of CS for HB 775, now carry a penalty of not less than three months nor more than one year. The three month provision is an addition.

8.As previously stated, penalties for failure to return from leaves (unlawful evasions) have been distinguished for felons and misdemeanants to overcome constitutional objections. (see 11.30.095 (d) and (e).)

9. The language concerning minimum sentence authority and limitations in 11.30.095(f) is based on AS 28.35.030. It has the same force and effect as section (b) of CS for HB 775, except that 11.30.095(h) provides an incentive to those who escape or commit unlawful evasions to <u>voluntarily</u> turn themselves in by eliminating the mandatory minimum sentence provisions. However, a judge may still impose a heavy sentence in such cases if the circumstances warrant the same.

10. Section 3 of our revision provides an amendment to AS 11.30.100 by eliminating the existing defintions and substituting a single definition of "official detention" which should solve all definitional problems. (see objections (1), (4) and (5) to exisiting AS 11.30.090.)

For an Act Entitled: "An Act relating to unlawful absence from custody or confinement"

* Section 1. AS 11.30.090 is repealed and reenacted to read:

Sec. 11.30.090 ESCAPE.

(a) A person commits an escape if without lawful authority he
(1) wilfully removes himself from official detention, or
(2) commits an unlawful evasion under 093 of this chapter and leaves or attempts to leave the state.

(b) An offense charged under (a) of this section is punishable as an escape in the first degree if
(1) the official detention is on a charge of a felony;
(2) the official detention is for extradition; or
(3) the person, during the escape or at any time prior to his being restored to official detention, has in his posession a deadly weapon.

(c) An attempt to escape under paragraph (a)(1) of this section which under paragraph (b)(1)(2,(3) of this section is an escape in the first degree is punishable as an escape in the second degree.

(d) Any other escape or attempted escape is punishable as an escape in the third degree.

* Sec 2. AS 11.30 is amended by adding new sections to read:

Sec. 11.30.093 UNLAWFUL EVASION.

(a) A person commits an unlawful evasion if he wilfully fails to return to official detention as defined in section 100 of this chapter following temporary leave granted for a specific purpose or limited period including, but not limited to privileges granted under AS 33.30.150, 33.30.250 or 33.30.260.

(b) An offense charged under (a) of this section is punishable as an unlawful evasion in the first degree if the official detention is on a charge of a felony.

(c) An offense charged under (a) of this section is punishable in the same manner as an escape in the first degree if the person during the time of unlawful evasion or at any time prior to his being restored to official detention has in his possession a deadly weapon.

(d) Any other offense under this seccion is punishable as an unlawful evasion in the second degree.

Sec. 11.30.095 PENALTIES FOR ESCAPE AND UNLAWFUL EVASION.

(a) A person convicted of escape in the first degree shall be sentenced to a specified term of not less than one year nor more than five years.

(b) A person who is convicted of escape in the second degree shall be sentenced to a specified term of not less than six months nor more than two years.

(c) A person who is convicted of escape in the third degree shall be sentenced to a specified term of not less than three months nor more than one year.

(d) A person who is convicted of unlawful evasion in the first degree shall be sentenced to a specified term of not less than three months nor more than one year.

(e) A person who is convicted of unlawful evasion in the second degree shall be sentenced to a specified term of not less than thirty days nor more than one year.

(f)(1) When satisfied that the ends of justice and the best interests of the public as well as the defendant will be served thereby, the court may suspend the imposition or execution of a portion of the sentence greater than the minimum sentence authorized under this section, and place the defendant on probation.

(2) However, the execution of sentence may not be suspended nor may probation or parole be granted until the minimum imprisonment provided in the applicable subsection of this section has been served, nor may imposition of sentence be suspended, except upon the condition that the defendant be imprisoned for no less than the minimum period provided under the applicable subsection of this section, nor may the minimum penalty provided for in this section be reduced under AS 11.05.150.

(g) Terms of imprisonment required under this section are to be consecutive to sentences then existing or which may be imposed pursuant to the official detention from which the person has escaped.

(h) When an offender has escaped or has committed an unlawful evasion and voluntarily surrenders himself to a peace officer or employee of the Division of Corrections, under circumstances when there is no imminent liklihood of his being apprehended, (f)(2) of this section is inapplicable.

* Sec 3. AS 11.30.100 is amended to read:

Sec. 11.30.100. Definitions relating to escape and Unlawful Evasion [FROM CUSTODY OR CONFINEMENT]. As used in §090-095 of this chapter, unless the context otherwise requires, "Official Detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or to be delinquent, detention for extradition or deportation or any other detention for law enforcement purposes; but "official detention" does not include supervision on probation or parole, or constraint incidental to release on bail.

[(1) "PEASE OFFICER" MEANS AN OFFICER OR EMPLOYEE OR AN AUTHORIZED REPRESENTATIVE OF AN OFFICER OR EMPLOYEE OF THE UNITED STATES, THE STATE OR A POLITICAL SUBDIVISION OF THE STATE WHO HAS AUTHORITY TO EITHER (A) ARREST A PERSON BY TAKING HIM INTO CUSTODY OR (B) DETAIN A PERSON UNDER A WARRANT, ORDER OR OTHER LEGAL PROCESS;]

[(2) "JAIL OR INSTITUTION" MEANS A PENITENTIARY, JAIL, HOUSE OF CORRECTIONS OR OTHER PLACE FOR THE CONFINEMENT OR DETENTION OF PERSONS UPON A WARRANT, ORDER, OR OTHER LEGAL PROCESS. (§ 1 ch 108 SLA 1957)]

* Sec 4. AS 33.30.150 is amended to read:

Sec. 33.30.150. VISITATION PRIVILEGES.

An honor prisoner with good behavior serving a sentence of one year or more may be permitted as a privilege and not as a right to visit with his family at a place other than his place of confinement and at his own expense for a period not exceeding one week nor more frequently than once each six months under rules and regulations adopted by the commissioner and in his sole discretion. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of a period during which he is authorized to be away from the place of confinement under this section, is an unlawful evasion under AS 11.30.093.

Sec 5. AS 33.30.250 (f) is amended to read:

(f) The wilful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this section is an unlawful evasion under AS 11.30.093. [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO EACAPE.]

Sec 6. AS 33.30.260 is amended to read:

Sec. 33.30.26. REHABILITATION FURLOUGHS.

The commissioner may authorize a prisoner to participate in educational, training, medical, psychiatric, or other rehabilitation programs approved by the commissioner. When the prisoner is not participating in a rehabilitation program, he shall be confined in the jail unless the commissioner directs otherwise. If the prisoner violates the conditions established for his conduct or custody, the commissioner may order the balance of the prisoner's sentence to be spent in actual confinement. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this section, is an unlawful evasion under AS 11.30.093. [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO ESCAPE.] (§ 1 ch 67 SLA 1970)

AS 11.050.150 is replaced with a new section reading:

(a)Upon conviction of a crime the court, subject to the described limitations, may impose a lesser penalty than the minimum penaxky provided in this title when in its opinion the facts and circumstances make the minimum penalty manifestly too severe. When less than the minimum penalty is imposed, the court shall set out the reasons and supporting facts for its action on the record in the case. As provided in 1,2,3,4 below—

(1)In the case of murder or rape the court shall not impose a penalty less than the minimum provided.

(2)In the case of a violent felony other than murder or rape for which sentencing is imposed in accordance with AS 12.55.035(a)(2) or (3) the court may find that the minimum provided is manifestly too severe and impose a penalty of imprisonment less than the minimum xfx only if:

a)the person being sentenced is a promising candidate for rehabilitation, and

b)at the time of sentencing a specific proven rehabilitation program is available for the person being sentenced,and

c)the court provides for a reasonable method of monitoring the rehabilitation program of the person being sentenced.

(3)In the case of escape or unlawful evaision the court may find that the minimum provided is manifestly too severe and impose a penalty of imprisonment less than the minimum if:a preponderance of the evidence shows that:

a)the person baing convicted ax escaped or evaded detention to avoid a clear and present danger of physical abuse, or

b)the person convicted escaped or evaded detention because of inhumane conditions caused either wilfully or by neglect. "cruel + unusual punishment"

(4)For all other crimes the court may find that the minimum provided is manifestly too severe and impose a lesser penalty either of a fine or imprisonment or both.

(b)Nothing in this section prohibits either the defendant or the state from appealing the sentence pursuant to the provisions of AS 12.55.120.

Amend the Havelock proposal by :

striking on page 2 paragraph (f)(2) the following language:

nor may the minimum penalty provided for in this section be reduced under AS 11.05.150.

adding the following language AFTER after "escaped" on page 2 paragraph (g)

,unless the court has determined that the minimum sentence provided by this section would be manifestly too severe pursuant to the provisions of AS 11.05.150.(c)3

adding the following language after "family"on page 3 on Visitation Privileges

or any person

Original Sponsors: Cotten & Gardiner

Offered: 4/9/76
For Today's Calendar

IN THE HOUSE

BY THE RULES COMMITTEE

CS FOR HOUSE BILL NO. 775 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to unlawful absence from custody or confinement."

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

* Section 1. AS 11.30.090 is repealed and re-enacted to read:

Sec. 11.30.090. ESCAPE. (a) A person commits an escape if without lawful authority he

(1) wilfully removes himself from official detention; or

(2) commits an unlawful evasion under sec. 93 of this chapter and leaves or attempts to leave the state.

(b) An offense charged under (a) of this section is punishable as an escape in the first degree if

(1) the official detention is on a charge of a felony;

(2) the official detention is for extradition; or

(3) the person, during the escape or at any time before his being restored to official detention, has in his possession a deadly weapon.

(c) An attempt to escape under (a)(1) of this section which under (b)(1), (2) or (3) of this section is an escape in the first degree is punishable as an escape in the second degree.

(d) Any other escape or attempted escape is punishable as an escape in the third degree.

* Sec. 2. AS 11.30 is amended by adding new sections to read:

Sec. 11.30.093. UNLAWFUL EVASION. (a) A person commits an unlawful evasion if he wilfully fails to return to official detention, as

defined in sec. 100 of this chapter, following temporary leave granted for a specific purpose or limited period including but not limited to privileges granted under AS 33.30.150, 33.30.250 or 33.30.260.

(b) An offense charged under (a) of this section is punishable as an unlawful evasion in the first degree if the official detention is on a charge of a felony.

(c) An offense charged under (a) of this section is punishable in the same manner as an escape in the first degree if the person during the time of unlawful evasion or at any time before his being restored to official detention has in his possession a deadly weapon.

(d) Any other offense under this section is punishable as an unlawful evasion in the second degree.

Sec. 11.30.095. PENALTIES FOR ESCAPE AND UNLAWFUL EVASION. (a) A person convicted of escape in the first degree is punishable by imprisonment for not less than one year nor more than five years.

(b) A person who is convicted of escape in the second degree is punishable by imprisonment for not less than six months nor more than two years.

(c) A person who is convicted of escape in the third degree is punishable by imprisonment for not less than three months nor more than one year.

(d) A person who is convicted of unlawful evasion in the first degree is punishable by imprisonment for not less than three months nor more than one year.

(e) A person who is convicted of unlawful evasion in the second degree is punishable by imprisonment for not less than 30 days nor more than one year.

(f) Suspensions of imposition or execution of sentence or granting of parole shall be governed by the following considerations:

(1) when satisfied that the ends of justice and the best interests of the public as well as the defendant will be served, the court may suspend the imposition or execution of a portion of the sentence greater than the minimum sentence authorized under this section, and place the defendant on probation.

(2) execution of sentence may not be suspended nor may probation or parole be granted until the minimum imprisonment provided under this section has been served, nor may imposition of sentence be suspended, except upon the condition that the defendant be imprisoned for no less than the minimum period provided under this section, nor may the minimum penalty provided for in this section be reduced under AS 11.05.150, except upon a finding by the court that the escape or evasion was for the purpose of avoiding a clear and present danger of physical abuse or cruel and unusual conditions caused either wilfully or by neglect.

(g) Terms of imprisonment required under this section are consecutive to sentences then existing or which may be imposed pursuant to the official detention from which the person has escaped.

(h) When an offender has escaped or has committed an unlawful evasion and voluntarily surrenders himself to a peace officer or employee of the division of corrections, under circumstances when there is no imminent liklihood of his being apprehended, (f)(2) of this section is inapplicable.

* Sec. 3. AS 11.30.100 is repealed and re-enacted to read:

Sec. 11.30.100. DEFINITIONS RELATING TO ESCAPE AND UNLAWFUL DETENTION. As used in secs. 90 - 95 of this chapter, unless the context otherwise requires,

(1) "cruel and unusual conditions" mean those conditions evidencing a shocking deviation from the conditions commonly acceptable

for official detention;

(2) "official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or to be delinquent, detention for extradition or deportation or any other detention for law enforcement purposes; but "official detention" does not include supervision on probation or parole, or constraint incidental to release on bail.

* Sec. 4. AS 33.30.150 is amended to read:

Sec. 33.30.150. VISITATION PRIVILEGES. An honor prisoner with good behavior serving a sentence of one year or more may be permitted as a privilege and not as a right to visit with his family at a place other than his place of confinement and at his own expense for a period not exceeding one week nor more frequently than once each six months under rules and regulations adopted by the commissioner and in his sole discretion. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of a period during which he is authorized to be away from the place of confinement under this section is an unlawful evasion under AS 11.30.093.

* Sec. 5. AS 33.30.250(f) is amended to read:

(f) The wilful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this section, is an unlawful evasion under AS 11.30.093 [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO ESCAPE].

* Sec. 6. AS 33.30.260 is amended to read:

Sec. 33.30.260. REHABILITATION FURLOUGHS. The commissioner may authorize a prisoner to participate in educational, training, medical, physicatric, or other rehabilitation programs approved by the commis-

sioner. Whe.. the prisoner is not participating in a rehabilitation program, he shall be confined in the jail unless the commissioner directs otherwise. If the prisoner violates the conditions established for his conduct or custody, the commissioner may order the balance of the prisoner's sentence to be spent in actual confinement. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this section, is an unlawful evasion under AS 11.30.093 [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO ESCAPE].

Division of Corrections

Prosecution of Escapes referred to the District Attorney for the period 7-1-73 thru 10-19-75 (16 months).

Anchorage area (N=63)

Prosecute	25
No prosecute	16
Unknown	10
D.O.C. Internal	5
Pending	3
Detainer - Warrant	3
Refuse to Extradite	1

Fairbanks area (N=7)

Prosecute	1
No Prosecute	5
Not found	1

Southeast (N=7)

Prosecute	6
No Prosecute	1

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

Division of Corrections

Pouch H-03, Juneau 99811

March 19, 1976

Document# Legislature, General 14

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

RE: H.B. 775

Attached you will find a summary by area of the disposition of escape cases which the Division of Corrections referred to the District Attorney's Office for the period 7-1-73 through 10-19-75. The data sources were not validated with District Attorney files so caution is advised in drawing more than the most general conclusions from the data.

Concerning the "No prosecution" cases, please be aware that the Division of Corrections will frequently recommend to the District Attorney that the matter be handled within Corrections. This phenomena is not reflected properly in the data presented as we do not make a point in our system of analyzing reasons prosecution was declined.

I hope this information is useful to your deliberations.

Yours truly,

William H. Huston
Acting Director

WHH/mmw

ATTACHMENT

3/9 Milton

Introduced: 2/13/76
Referred: Judiciary

IN THE HOUSE BY COTTEN AND GARDINER

HOUSE BILL NO. 775

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to criminal escapes from custody or confinement."

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

* Section 1. AS 11.30.090 is amended to read:

Sec. 11.30.090. ESCAPE FROM CUSTODY OR CONFINEMENT. A person who escapes or attempts to escape from the custody of a peace officer under a lawful arrest or from a jail or institution in which he is detained by a peace officer or confined by direction of a court in this state or from custody under prccess issued by a court in this state is punishable,

(1) if the custody or confinement is by an arrest on a charge of a felony, [OR CONVICTION OF A FELONY,] by a fine of not more than $5,000, or by imprisonment for not less than one year nor more than three years, or by both; [OR]

(2) if the custody or confinement is for extradition, or by an arrest, or charge of, or conviction of a misdemeanor, by a fine of not more than $1,000, or imprisonment for not more than one year, or by both;

(3) if the custody or confinement is by a conviction of a felony, by imprisonment for not less than one year nor more than ~~three~~ 5 years. Imposition ~~of execution~~ of sentence under AS 12.55.080 shall not be suspended and probation or parole shall not be granted until the minimum imprisonment provided in this paragraph is served; or

(4) if the escape is by a prisoner exercising privileges

Make CS

under AS 33.30.150, 33.30.250 or 33.30.260, by imprisonment for not less than ~~one year~~ 6 MOS. nor more than ~~three~~ 2 years. Imposition or execution of sentence shall not be suspended and probation or parole shall not be granted until the minimum imprisonment provided in this paragraph is served.

* Sec. 2. AS 33.30.150 is amended to read:

Sec. 33.30.150. VISITATION PRIVILEGES. An honor prisoner with good behavior serving a sentence of one year or more may be permitted as a privilege and not as a right to visit with his family at a place other than his place of confinement and at his own expense for a period not exceeding one week nor more frequently than once each six months under rules and regulations adopted by the commissioner and in his sole discretion. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of a period during which he is authorized to be away from the place of confinement under this section, is an escape from the place of confinement and is punishable under the laws relating to escape.

DIVISION OF CORRECTIONS/ESCAPE REPORT

Escapes and Walkaways - July 1, 1973 - October 19, 1975

The Alaska Statutes (Article 3, Sec. 33.30.250 and 33.30.260) require that when an offender fails to return from a work or rehabilitation furlough, he shall be reported and prosecuted as an escape. Alaska, therefore, counts as "escapes" many incidents which would not be so reported in other jurisdictions. This report thus includes, for example, walkaways from alcoholism and drug treatment programs, where the Division of Corrections is not necessarily advised that an "escape" has taken place. To the best of our knowledge, this is a complete accounting of all failures to return, as well as all bona fide escapes from Alaskan institutions during fiscal years 1974, 1975 and the first three and a half months of 1976.

During the period covered in the report, a number of changes have taken place in the structure of correctional services in the Anchorage area, which have undoubtedly contributed to the number of escapes.

On January 1, 1973, the Division of Corrections took over operation of what had formerly been the city jail. With this event, the Division began, in effect, operating a city/county/state jail system in Anchorage, as it was already doing in other parts of the state. Facilities were ill-equipped to provide these services, and staff extremely limited. The opening of the Eagle River Correctional Center, scheduled for the winter of 1973-74, was delayed by inability to obtain furniture shipments, and the facility was opened in May of 1974. On July 1, 1974, the Division's separate Halfway House in Anchorage was closed for budgetary reasons, and limited funding was provided for remodeling of the first floor of the Third Avenue facility to be used as a halfway house. One dormitory was maintained as a medium-security area. Pipeline impact funding, made available in August, provided full coverage of one security post at Third Avenue, which meant that it was often operated with one staff member on duty, although the institution

was filling two functions. These changes thrust the task of housing maximum-security prisoners onto the newly opened Eagle River facility, which was unprepared for this task, since its staff had been trained for a minimum-to-medium security operation.

From July of 1974 on, the following procedure has been utilized for housing of Anchorage area offenders: they are housed at the Correctional Center Annex prior to sentencing; those who receive sentences of six months or less are housed either in the medium-security section of the Third Avenue facility or, if they are not considered to be escape risks, sent to the minimum-security institution at Palmer which provides an almost completely open atmosphere, with no fences or security mechanisms. Those receiving sentences of more than six months are sent to the maximum-security section of the Eagle River facility, where they are held for classification. At classification, they may be accepted into the Eagle River program, or may be sent to Palmer, Juneau, Fairbanks, Ketchikan, Nome, or to the Federal Bureau of Prisons. The latter choice is made under four possible conditions: (1) the offender presents a security or management problem which is not met by Alaskan facilities; (2) he needs special treatment programs which are not available in Alaskan facilities; (3) he is a federal prisoner (in which case he may be, but is not necessarily sent to a federal prison); or (4) he requests placement in a federal prison because of his parole plans.

The 1974 legislature passed a statute requiring that offenders serve one-third of sentence before being eligible for parole. The Division of Corrections administratively applied this ruling to eligibility for work release or furlough programs. However, the Superior Court of the First Judicial District overturned this ruling as it applies to educational and vocational training passes, striking down the one-third requirement.

It is within the context of the events which took place during this period that the following information must be evaluated.

Escapes and walkaways are, of course, in part determined by the size and security level of a facility, as well as its function. To aid the reader, Table 1 shows the state institutions, rank ordered from most secure (Juneau) to least secure (Community Programs), the average daily occupancy rate of each in FY 75, and mandays boarded in FY 75.

Table 1

Average Daily Population,

and Mandays Boarded, FY 1975

Institution	Average Population	Mandays Boarded
Juneau	63	22,995
Fairbanks	99	36,135
Annex	109	39,785
Ketchikan	21	7,665
Eagle River	61	22,265
Third Avenue	46	16,790
Palmer	49	17,885
Community Programs	13	4,745

Escapes:

Table 2 shows escapes from institutional supervision, presented, for convenience, by calendar year. The term "institutional supervision" includes escapes from inside the institutions, as well as escapes from supervised exercise yards or outside work crews, and other escapes from escorts. The institutions are, again, rank ordered from most to least secure in terms of their structure and programs.

Table 2

Escapes From

Institutional Supervision

Institution	6 months CY 1973	CY 1974	10 1/2 months CY 1975	Total
Juneau	2	0	0	2
Fairbanks	1	0	0	1
Annex	0	0	2	2
Ketchikan	4	0	0	4
Eagle River	N/A	5*	3	8
Third Avenue	0	5	1	6
Palmer	2	1	7	10
	9	11	13	33

* includes 3 charged with attempted escape

Eighteen of the escapes (including three prosecuted as attempted escape) were from minimum-security facilities. Eleven were from medium-security conditions (including three from exercise yards), three were from escorts, and one was from the maximum-security unit at Eagle River, which has since adopted operational policies consistent with a maximum-security unit.

Thirty individuals accounted for the 33 escapes, with one individual escaping twice and another three times.

There were three incidents of triple escapes. In 1973, three inmates in Ketchikan overpowered a guard, locked him in a cell and escaped. In 1974, three inmates at Eagle River became involved with smuggled alcohol, and were charged with Attempted Escape. In 1975, three inmates at the Montana Creek Spike Camp smuggled alcohol into the Camp, overpowered a guard and escaped.

There were three double escapes; in 1973, two inmates escaped from Juneau by climbing the fence of the exercise yard. In a 1974 incident, two inmates of the Third Avenue facility escaped by sawing bars from a window, and lowering themselves to the ground by a rope made of sheets. In 1975 two inmates left the Eagle River facility and were apprehended within hours, outside an Anchorage Massage Parlor.

Of the 33 escapes, 21 were committed by felons, 6 by unsentenced individuals, 3 by misdemeanants, 2 by individuals whose sentence was described as "one year" (the cut-off point between felons and misdemeanants), and one by a man awaiting extradition to another state.

Of the 33 escapes, 21 involved no known new offenses while on escape status. Known offenses on escape status were: one robbery; one rape (accompanying charges of burglary and car theft were dropped); one burglary, one joyriding, one traffic offense, and one stolen boat. Pending charges are a probable first-degree murder, and two possible burglaries.

Sixteen escapees were apprehended within 24 hours, five by turning themselves in to authorities. Fifteen individuals were at large for periods ranging from one day to 60 days, an average of 11 days. Another left the state, and Alaskan officials were advised of his arrest 5 months later; one remains at large.

Walkaways:

Pre-release programs provide an incalculably important part of overall correctional programming. Among their major functions are:

1) They permit specialized treatment not available within the Alaskan correctional system, particularly for alcohol and drug problems;
2) They permit offenders to restore or maintain family ties;
3) Work programs enable offenders to support their families and themselves, and make them contributing members of society.
4) They permit vocational training not available in the institutions;
5) They provide a situation where offenders, correctional authorities and the Parole Board can observe the offender's readiness to return to society.

The major pre-release programs are:

1) Work release: When an offender is eligible for parole he may be classified for a work release program, which involves leaving an institution during working hours only.
2) Furlough programs: When eligible for parole, an offender may be furloughed to live outside the institution, for example, while participating in a training program such as the Seward Skill Center, or to work at a remote site. Supervision of furloughed offenders is provided jointly by the institution and the probation/parole office closest to the offender. Short furloughs may also be used for such purposes as seeking employment or family visitation.
3) Residential Treatment Programs: Residential treatment programs, most of which are community-operated, may be used at any appropriate time during an offender's sentence, but generally are utilized on a pre-release basis.

An offender may participate in any of these programs either on the recommendation of the Court, or through classification by correctional authorities.

Table 3 shows walkaways from unsupervised status on the various types of pre-release programs.

Table 3

Walkaways From

Pre-Release Programs

Walkaways From Unsupervised Status	6 months CY 1973	CY 1974	10 1/2 months CY 1975	Total
Work Release	0	7	8	15
Pass	0	0	2	2
Furlough	0	5	2	7
Community-operated Residential Programs	1	7	3	11
State-operated Residential - API	3	2	4	9
	4	21	19	44

Among the 44 walkaways, 16 were participating in court-recommended programs, and two were on recommendation of the Parole Board. Nine of the court recommendations and both the Parole Board recommendations were for residential treatment programs.

Table 4 shows type of pre-release program from which the walkaways occurred:

Table 4

Type of Pre-Release Program

	Number
Work Release	15
A.P.I.	9
Furlough	7
Family House	6
Church Pass	2
Future House	1
Social Development Center	1
Fairbanks Alcohol Program	1
Fairbanks Halfway House	1
Ketchikan Halfway House	1

The 44 walkaways were accounted for by 38 individuals; three individuals each walked away twice, and one left alcoholism programs four times (once after classification by Corrections, once after recommendation by the Parole Board, and twice after being recommended to the program by the Court).

Thirty walkaways were made by felons, four by unsentenced individuals, five by misdemeanants, and the remainder were "one year" or "unknown". Nine turned themselves in. The remainder were apprehended, four of them out of state.

The following new crimes were committed: one Burglary; one OMVI; one Felon in Possession of Firearm. The individual who had multiple walkaways accrued two counts of Hit and Run, two counts of Joyriding and three counts of Forgery while on walkaway status.

In two walkaways (both from API), Corrections was not notified of the event until after apprehension had taken place.

START
NEW
FICHE

"An Act relating to the Cook Inlet Land Exchange; e.d."

COMMITTEE REPORT

2/18/76

HOUSE

Mr. Speaker: Date March 5, 1976

The Committee on JUDICIARY has had HB 784

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR HB 784 AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT con urring in the Majority report:

_____ recommends:

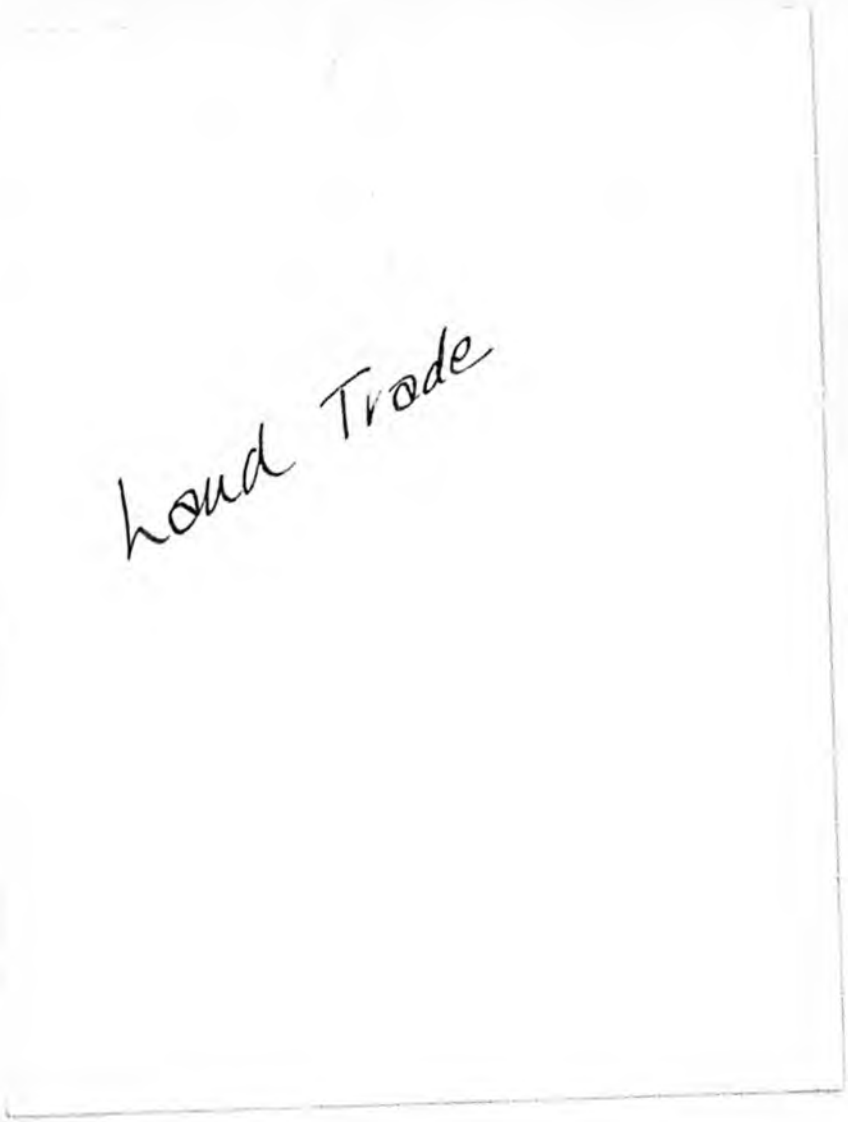
_____ recommends:

_____ recommends:

Ford Brown recommends: No Rec.

Eliason recommends: No Rec.

_____ Chairman


Loud Trade

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Michael C.T. Smith, Director
Division of Lands

DATE: January 2, 1976

FILE NO:

THRU: Guy R. Martin, Commissioner
Department of Natural Resources

TELEPHONE NO:

FROM: Cleland N. Conwell CNC
Mining Engineer

SUBJECT: Mineral Analysis of Proposed Cook Inlet Land Trade

On or about the 8th of October, Ross Schaff, Don McGee, and I met with you in your office to advise you of the value of coal land the State was proposing to give away. It is my recollection that we advised you at that time of the value of coal on these lands and of work in progress by the private sector in exploring the Beluga coal field. As I recall, all three of us, expecially Ross and I, expressed personal disproval of the trade. It was and is our opinion that some of the most valuable land in the State is being traded for land that has little or no economic potential.

In direct comment on the articles by Mr. Galliett:

Don McGee and K. O'Connor in AOF 51, page 7, estimate 7.8 billion tons of coal in the Beluga field. Therefore, Mr. Galliett has a reference from a report of the Alaska Geological Survey. My only comment on the first article is that recovery of 50% of the coal is low by todays standards.

In reference to the second article, it is my understanding that Fish and Game have control of fishing and the streams. I believe that this is covered in Section 16 of the State Statuates, so there is no need to control the Lake Clark or Iliamna areas for the fishing potential.

In the 3rd article, Galliett appears to be accurate. I am sure we could check on the number of natives and the allocation, but the figures are approximately those that I have read.

With regard to the specific "Lands to be given by the State to CIRI":

Ft. MacKenzie (Appendix C - 1.B)and This is within the Anchorage area and is a valuable section for port facilities.

Knik-Willow (Appendix C - 1.B and 3) — This is an excellent recreation area near Anchorage. It contains the Nancy Lake State Recreation area, Meadow Creek Campground, and many lakes. There is both a coal potential and oil and gas potential in the area. Coal at one time was mined at Huston.

Kashwitna (Appendix C - 1.B) — This is prime agricultural land - Ref: Alaskas Agricultural Potential, Alaska Rural Development Council, Publication No. 1, 1974. It also contains a site selected for the future capitol of Alaska. It is accessable by road and railroad, and has many home sites. The land has potential for fossil fuels and uranium.

Chickaloon (Appendix C - 1.D and 3) — This is excellent coal land and part is under coal lease. Coals in this area have a higher calorific value than the Beluga area, i.e., 7,200 Btu Beluga vs. 12,000+ Btu Matanuska. Some of the Matanuska coals have coking qualities. Therefore, Matanuska coals have a higher market value than Beluga coals. The railroad right-of-way to the area is retained by the Alaska Railroads. There are excellent home sites in this area.

Alexander Creek (Appendix C - 1.D and 3) — Coal, oil, gas, and uranium potential.

Salamatof (Appendix C - 3) and Kenai Peninsula (Appendix C - 1.E and 3) — These are excellent coal lands. The coals are nearly horizontal, therefore, favorable for mining. Several beds at least 5 feet thick underlie the area. Undoubtedly there are at least 11.7 billion tons of coal in these areas. In addition to the loss of coal there would be a loss of recreation along the beaches of the peninsula. This includes both clam digging and fishing. I have been informed by native groups that they intend to protect these rights, and prohibit non-natives from trespassing. A law suit on this matter is presently in court (Edwardsen vs. Morton). These lands also have a high agricultural potential. In the case of strip mining the agricultural potential could be utilized the year following cessation of mining.

Beluga (Appendix C - 2(a)) — This area contains the outcrops of the Capps and Waterfall coal beds which can have respective thicknesses of 27 and 50 feet. Some sections could contain 70 million tons of coal with a stripping ratio of less than 3 to 1. One township could contain 2.5 billion tons of coal. This is also an area of high agricultural potential, and experimental work has proven that reclamation can be done after strip mining.

In regard to the lands to be given to the State by the Federal Government:

In general, these lands are underlain by Jurassic intrusives that have a low mineral potential for hard minerals, lack equivalent agricultural potential, lack the recreational value, because of inaccessability, and, if not selected by the natives might still be open to selection by the State.

In regard to the report by Dobey, Welch, and O'Connor:

There are many misleading statements in the report. I find errors in the calculations regarding the discounted cash flow. The Stanford Research Institute has a report issued in 1975 that gives figures that conflict with those of Robert Bottge. Nevertheless, assuming the inaccurate figures do have meaning, should the State give away such valuable revenue producing land?

By a separate memorandum I am requesting the report by Dobey et. all, be kept for in house use and not issued as an open-file report by the Division of Geological and Geophysical Surveys.

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Guy Martin, Commissioner of Natural Resources

DATE: January 2, 1976

FROM: Gil Eakings, Acting State Geologist

FILE NO:

TELEPHONE NO:

FROM: Cleland N. Conwell
Mining Engineer

SUBJECT: Economic Resource Analysis of Measured and Indicated Coals
November 28, 1975
P.L. Dobey, J. Welch, K.M. O'Connor

At the request of Gil Eakins, Acting State Geologist, I have reviewed the subject report. I find that the report is misleading, contradicts Alaska Geological Survey open file report #51, is inaccurate and biased. I respectfully request that the report not be published as an open file report under your name and that of Ross G. Schaff. It may be of some use to Mike Smith within the department, but I feel that the quality is too low to justify publications as a Division Report. If published, the report certainly should be reviewed by Ross Schaff beforehand.

02-001B (REV. 66-73)

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Michael C.T. Smith, Director
Division of Lands

DATE: January 2, 1976

FILE NO:

THRU: Guy R. Martin, Commissioner
Department of Natural Resources

TELEPHONE NO:

FROM: Gilbert R. Eakins GRE
Acting State Geologist

SUBJECT: Mineral Analysis of Proposed Cook Inlet Land Trade

In response to your letter of December 29, 1975 to Ross Schaff, I requested Cleland Conwell, State Mining Engineer, to review the three newspaper articles by Harold Galliett and again to assess the tracts of lands involved in the proposed land trade.

I concur with Mr. Conwell's assessment that it is not in the best interests of the State to make the proposed land trade. A purely economic view indicates a high potential dollar value of the tracts to be traded to the Cook Inlet Native Association. Large reserves of quality coal are known, agricultural lands are present, and a reasonably good potential exists for petroleum and uranium. In addition, the lands to be given to CINA have wisely been selected near populated areas and where industrial and population growth may be expected. We believe the potential revenues are very significant and that an attempt to put a discounted cash value on the resources today is not a fair evaluation.

In contrast, the lands to be received by the State in the trade do not appear to have an important mineral potential, are relatively inaccessable, and are not suitable for development.

cc: Ross Schaff, State Geologist

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

J. R. LEWIS and HAROLD H. GALLIETT, JR., Citizens and Taxpayers of the State of Alaska,	)
Plaintiffs,	)
vs.	)
STATE OF ALASKA; GOVERNOR JAY HAMMOND; GUY R. MARTIN, Commissioner of Natural Resources; MICHAEL C. T. SMITH, Director, Division of Lands,	)
Defendants.	)

No. 76-1608

MEMORANDUM IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs, pursuant to Alaska Civil Rule 23, have commenced this action for permanent injunction not only on their own behalf but on behalf of all citizens and taxpayers of the State of Alaska. Plaintiffs are alleging and intend to prove that the Beluga land exchange contemplated by the Hammond Administration as alleged herein violates the provisions of the United States Constitution, the Alaska Statehood Act, and the Alaska Constitution.

Plaintiffs allege that if the actions of the governor and his administration in approving the land exchange are not restrained and enjoined, the citizens of the State of Alaska will be the victims of an even greater governmental give-away through the loss of valuable mineral resources than occurred during the Teapot Dome scandal of President Harding's administration years ago.

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3477

Plaintiffs wish to emphasize that this is not a political lawsuit nor a lawsuit to harass or embarrass the Hammond Administration. The issues presented herein are very real and substantial issues involving questions concerning the State's mineral resources which will affect the citizens and taxpayers of the State of Alaska for generations to come.

Although the facts are summarized in detail in the complaint filed in this case, the chronological sequence of events is set forth again, and the basis of plaintiffs' legal claims are further set forth below..

A. FACTS

1. The chronological sequence of events leading to the present dispute can be summarized as follows:

In 1955 the then Territory of Alaska, through its legislature, provided for a constitutional convention. Elected delegates adopted a constitution on February 5, 1956 which was ratified by the people of Alaska on April 24, 1956. This constitution adopted by the people of Alaska served as a basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with the terms of said constitution.

2. Article VIII, Section 9 of the Constitution of the State of Alaska provided in part as follows:

> Section 9. Sales and Grants. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources.

3. Two years after the people of Alaska adopted the above constitutional provisions, Congress passed the Alaska

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Statehood Act, approved on July 7, 1958. Sec. 6(i) of the Statehood Act is a direct response by Congress to the provisions contained in Article VIII, Sec. 9 of the Alaska Constitution set forth above. The Alaska Statehood Act stated in this section as follows:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, ...

Sec. 6(i) of the Act further provided that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

Sec. 8(b) of the Statehood Act provided, in addition, that:

> In the event each of the foregoing propositions (grants of land restrictions approval by majority vote in statehood election) is adopted at said election by a majority of the legal votes cast on 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. (Emphasis supplied)

4. By Public Law 92-203, 85 Stat. 688, approved December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act. This Act provided for the fair and just settlement of all claims by native groups in Alaska based upon their aboriginal land claims. All prior conveyances of public land pursuant to federal law and all tentative approvals pursuant to Sec. 6(g) of the Alaska Statehood Act were declared to be an extinguishment of the aboriginal title of Alaska natives.

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The Act further provided for 12 geographic regions within the State and for appropriate regional native corporations which were given the right to select land and share in the revenues from the sale of minerals. Sec. 12 of the Alaska Native Claims Settlement Act provided for the selection of land by each village corporation within the township in which the village is located, plus an area that would make the total selection equal to the acreage to which the village was entitled under Sec. 14 of the Act.

5. Because of existing federal withdrawals, state land selection and other non-native settlement patterns within the Cook Inlet region, Cook Inlet Region, Inc., a native corporation, was not able to select lands which it considered of like and similar character under the formula established by the Alaska Native Claims Settlement Act. For approximately three years following the enactment of this Act, Cook Inlet Region, Inc. negotiated with the Secretary of the Interior in an attempt to insure its land selection of a similar and like character.

6. Cook Inlet Region, Inc. was dissatisfied with these negotiations with the United States Department of the Interior, and it filed suit in a District Court. Negotiations continued, however, and the solicitor for the Department of Interior made an offer to convey to Cook Inlet Region, Inc. ten surface and fifteen subsurface townships within the Kenai National Moose Range, including the Swanson River oilfield, as well as additional federal lands in the then Greater Anchorage Area Borough. These lands included land at Point Woronzof, Point Campbell, and a sizable portion of the Campbell air strip tract. Cook Inlet Region, Inc. declined this offer andit was later withdrawn

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by the Department of the Interior.

7. The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

8. The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

9. The State, Cook Inlet Region, Inc., and the Department of the Interior entered into the negotiations concerning the exchange of lands pursuant to Sec. 22(f) of the Alaska Native Claims Settlement Act which provided as follows:

> The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

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10. Pursuant to the exchange provisions cited above, the State volunteered the trade of various patented lands to the Department of the Interior for exchange and grant to the Cook Inlet Region, Inc. The terms of the settlement were, in summary, that the State of Alaska obligated itself to convey lands to the United States for exchange with Cook Inlet Region, Inc. in accordance with "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area" made a part of the report from the Committee on Interior and Insular Affairs accompanying HR 6644, the amendment to the Alaska Native Claims Settlement Act. Further, Cook Inlet Region, Inc. was to dismiss its lawsuit in the case of Cook Inlet v. Kleppe, 75-2232, Ninth Circuit Court of Appeals; and other native village selections under Sec. 12 of the Settlement Act concerning lands within Lake Clark, and other areas outside the Cook Inlet Region, Inc., would be withdrawn to enable the exchange to take place by substituting land outside Cook Inlet region. These terms are summarized in Sec. 12(a) of Public Law 94-204, known as Alaska Native Claims Settlement Act Amendments, approved January 2, 1976. Sec. 12(f) of the Amendments states that all conveyances of lands made or to be made by the State of Alaska in satisfaction of the Terms and Conditions "shall pass all of the State's right, title, and interest in such lands, including the minerals therein, as if those conveyances were made pursuant to Sec. 22(f) of the Settlement Act."

11. Sec. 17 of the Amendment purports to amend Sec. 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Sec. 22(f), the State may convey its lands, "free of the restrictions of Sec. 6(i) of the Alaska Statehood Act."

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12. In the "Terms and Conditions" contained within the report accompanying HR 6644, Sec. II at P. 42, the State of Alaska was asked to give its consent to the exchange and settlement agreement within sixty days of the commencement of the 1976 session of the Alaska State Legislature. Upon such consent being given, the State of Alaska is bound to convey to the United States for reconveyance to Cook Inlet Region, Inc. the lands set forth within the "Terms and Conditions." Plaintiffs allege on information and belief that said consent must be given, if at all, prior to March 12, 1976.

13. In an attempt to implement Sec. 22(f) of the Alaska Native Claims Settlement Act, the Alaska legislature, in 1972, enacted what is now Sec. 38.95.060 Alaska Statutes which authorizes the exchange of state land with a native corporation "with the consent of the governor," when the purpose is to effect land consolidations or to facilitate the management or development of the land. Similar to ANCSA, Sec. 22(f), the Alaska Statute provided that exchanges shall be on the basis of equal value, with either party being allowed to accept or pay cash in order to equalize the value of the properties exchanged.

14. The governor and the State, through its Commissioner of Natural Resources and Director of the Division of Lands, is proposing to give away large parcels of land andis also proposing to convey the subsurface mineral rights in such a manner as would convey all the coal, oil and gas resources of the lands. The State is proposing to give away the following estimated resources (see pages 4-13, Affidavit of Harold Gallowe):

Present value of coal	$4,732,000,00
Minimum probable present value of oil and gas	62,500,00
Present value of surface estate	451,605,00
TOTAL	$5,246,105,00

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The State proposes to receive the following estimated value as a result of the exchange:

Present value of surface estate	165,917,440

From the above summary of the exchange values, the net result to the State of Alaska is as follows:

Net loss	$5,080,187,560

15. In an attempt to rush this matter through the legislature, in complete disregard of the constitutional and statutory impairments to the execution of the exchange, the Hammond Administration, on February 17, 1976, introduced Senate Bill No. 674 which purports to give the Commissioner of Natural Resources authority to execute the exchange of land "notwithstanding any other provision of law." This bill provides in part as follows:

> While the land exchange is authorized by existing law, the vagueness and ambiguity of the provisions of the applicable law create a situation which may well involve protracted and devisive litigation and continuing uncertainty and disruption with respect to public and private land management. The law on the subject will be amended to remove any vagueness or ambiguity, but the timing for the land exchange requires action now, before amendment for clarification of the general law on land exchanges. (Emphasis supplied)

Senate Bill No. 674 is now the subject of legislative hearings and possible future action before March 12, 1976.

B. THE PROPOSED EXCHANGE VIOLATES ARTICLE VIII, SECTION 9, CONSTITUTION OF THE STATE OF ALASKA AND SECTION 6(i) OF THE ALASKA STATEHOOD ACT

Any rational consideration of the merits of plaintiffs' claims must keep in mind the distinction between laws and acts of the legislature, or of Congress, and the fundamental or basic law as set forth in the Alaska Constitution and its cor-

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pact with Congress as accepted in the Alaska Statehood Act.

The general rule is that a "constitution" in the American sense of the term is the fundamental or basic law to which all others must conform; it serves to protect the people against arbitrary power; and a state constitution, like that of the nation, is the supreme law within the realm and sphere of its authority and is a limitation on the power of the legislature, binding on the several departments of state government, and the people themselves. 16 C.J.S. Constitutional Law, §3 at p. 23-26.

When a state constitution makes definite provisions covering a particular subject, that provision is exclusive and final, and must be accepted unequivocally. Hence, constitutional provisions may not be abrogated by the legislature or in any way other than by changing the constitution itself, and a right granted by the constitution, when unconditional, cannot be defeated, even in part, by statute. 16 C.J.S. Constitutional Law, §3 at p. 26.

In addition to the above general propositions, and as a corollary to these fundamental and basic rules, is the rule of law that the provisions of a state constitution, when accepted by Congress as a basis for admittance of the State into the Union, create a compact which cannot unilaterally be changed by an act of Congress or by an act of the state legislature without proper amendment to the State Constitution approved and ratified by a vote of the people. Metlakatla Indian Community v. Egan, 362 P.2d 901, 911 (Alaska 1961); State v Commissioners, 301 P.2d 655 (Okla. 1956); Opinion of the Attorney General, No. 6 (Alaska 1969).

As set forth in the Statement of Facts, supra, Article VIII, Sec. 9, Constitution of the State of Alaska, states

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that "all sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State . . . ."

The above provision of the Alaska Constitution constituted an offer to the federal government that, upon admittance to the Union as a state on equal footing, the State would abide by all restriction upon the conveyance of state lands as required by the State or Congress. This offer was accepted in Sections 6(i) of the Alaska Statehood Act, which states that "the grants of mineral lands to the State of Alaska under subsections (a) and (b) of the section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral rights so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented . . . ."

Section 6(i) of the Alaska Statehood Act further stated that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

The offer of the State as contained in Article VIII, Section 9 of the Constitution, and acceptance of that offer through the restrictions contained in Section 6(i) of the Alaska Statehood Act, constituted a compact between two sovereign states, the purpose of which was obviously to protect the people of the State of Alaska against the arbitrary, capricious or fraudulent conveyance of the mineral rights of the State which were reserved exclusively for the citizens of the State of Alaska forever. Neither an act of Congress nor an act of Alaska legislature can unilaterally amend or change the provision of

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this compact without a proper vote of the people of Alaska.

Section 17 of the Amendments purports to amend Section 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Section 22(f), the State may convey its lands "free of the restrictions of Section 6(i) of the Alaska Statehood Act." As set forth above, Section 6(i) of the Alaska Statehood Act is a part of the compact with the people of the State of Alaska through Article VIII, Section 9 of the Alaska Constitution. Pursuant to Sec. 8(b) of the Statehood Act, the Alaska Constitution was "deemed amended accordingly, "and Sec. 6(i) is therefore a part of Article VIII, Section 9 of the Alaska Constitution.

For the sole purpose of obtaining state land and its mineral rights to satisfy a federal obligation to the natives of Alaska, the federal government has attempted illegally to change the provisions of the Statehood Act, and indirectly, the Constitution of the State of Alaska.

The Supremacy Clause of the United States Constitution does not allow an act of Congress to waive or change provisions of a state constitution without an appropriate vote of the people through constitutional amendment, initiative, or referendum. Boeing Aircraft Company v. R. F. C., 171 P.2d, 838 (Wash. 1946). In this case, the Supreme Court of Washington sitting en Banc was asked to hold that an act of Congress allowing property to be taxed within the State of Washington changed, through the Supremacy Clause, the provisions of the Washington Constitution prohibiting the tax. The court replied:

> We cannot so hold, for to do so would effectively do away with the provisions of our state constitution by subjecting those provisions to be continually changed by acts of Congress. The Constitution of

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> the United States has not given that power to Congress, and Congress has only the powers expressly given it by the constitution of the United States. The American system of government is dual in nature, containing Federal and state sovereignties, each supreme within its appropriate sphere. The states do not get their power from the Federal government, but from the constitution of the United States. They exercise those powers independently of the Congress of the United States. The Federal government has no power to control the power or authority of the State except as such power may have been expressly granted, or as may be necessary to maintain the acknowledged powers of the Federal government. 171 P.2d at 842.

The Supreme Court of Washington further discussed the provisions of the enabling act admitting Washington into the Union and the extent of subsequent permissible federal control over state matters:

> True, Congress may determine the circumstances under which a state may be admitted into the Union, but that does not give it any powers to change or modify either directly or indirectly, the provisions of the state constitution. 171 P.2d at 842.

The Supreme Court of Alaska has also spoken on the issues now before this court in the case of Metlakatla Indian Community v. Egan, 362 P.2d 901 (Alaska 1961). Plaintiffs submit that this case is dispositive as to whether or not Section 17 of the Amendments to the Alaska Native Claims Settlement Act, in waiving Section 6(i) of the Alaska Statehood Act, is invalid and in violation of the state and federal compact.

In the Metlakatla case there was a dispute about the legality of the state prohibition of the use of fish traps for the taking of salmon in all of the coastal waters of the State. The Metlakatla Indian community claimed that their fish traps were exceptions to the prohibitions contained in

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the Constitution and laws of the State of Alaska because they were authorized by the Secretary of the Interior pursuant to federal law.

In determining whether the State or federal government exercised authority over fish traps of the Metlakatla Indians, the Supreme Court of Alaska carefully compared the appropriate provisions of Section 4 of the Alaska Statehood Act with Section 12, Article XII, of the Alaska Constitution. Section 12, Article XII, of the Alaska Constitution specifically agreed on behalf of the State that "unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States." As quoted out by the Supreme Court of Alaska, the corresponding acceptance contained in Section 4, Alaska Statehood Act, stated 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 . . . ."

Section 4 of the Alaska Statehood Act did not specifically reserve to the exclusive jurisdiction and control of the United States the fishing rights earlier mentioned in Section 12, Article XII, Constitution of the State of Alaska. Therefore, three days after the fishing trap controversy arose, Congress enacted a law which stated as follows:

> Section 4 of the act of July 7, 1958, (72 Stat. 339), providing for the admission of the State of Alaska into the Union, is amended by striking out the words 'all such lands or other property, belonging to the United States or which may belong to said natives', and inserting in lieu thereof the words 'all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held

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> by the United States in trust for said natives.'

In determining the effectiveness and validity of the federal attempt to amend the Alaska Statehood Act, the Supreme Court of Alaska pointed out that, as required by the Alaska Statehood Act, the following proposition was submitted to the qualified voters of Alaska on August 26, 1958:

> (3) All provisions of the Act of Congress approved (date of approval of the Statehood Act) reserving rights or powers to the United States, as well as those prescribing the terms or 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.

The Supreme Court of Alaska further noted that this proposition was approved by a vote of 40,739 to 7,500 on August 26, 1958. The Supreme Court of Alaska stated:

> Section 4 of the Alaska Statehood Act is a direct response by Congress to the provisions contained in the five sentences of Section 12 of Article XII of the Alaska Constitution. The two sections constitute a compact between sovereigns . . . . The compact or contract between Alaska and the United States became effective upon approval of the terms of the Alaska Statehood Act by the voters of Alaska. 362 P.2d at 909, 910.

The Metlakatla Indian community argued that the congressional amendment to the Statehood Act was a part of the compact and merely "clarified" the original intent of Congress. The Supreme Court of Alaska held as follows:

> We cannot accept this reasoning. It is our view that the amendment forms no part of the compact between Alaska and the United States. It was not enacted until ten months after the voters of Alaska had ratified the compact, six months after Alaska had attained Statehood, and three days after these controversies had arisen. This portion of Section 4 reserves absolute jurisdiction and control in the United States. As originally enacted, it applied only to "lands or other property".

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> As amended, it purports to include fishing rights . . . . The conciseness of and correlation between the pertinent sentences of the Alaska Constitution and the responding portions of Section 4 leave no room for the construction appellants urge. 362 P.2d at 911.

The Metlakatla Indians further argued that the Congressional amendment to Section 4 of the Alaska Statehood Act transcended the police power of the State under the Supremacy Clause of the United States Constitution. This argument also was rejected by the Supreme Court of Alaska, which stated that the power of a state to control and regulate the taking of fish and game within its borders has always been recognized by the Supreme Court of the United States as a purely state concern. Also, to withhold sovereignty over the State's inland waters from the State would be a violation of the equal footing doctrine by which the State of Alaska was declared admitted to the Union upon an equal footing with all other states. 362 P.2d at 913, 925, 927.

(*) In the same manner that the federal government attempted to amend the Statehood Act concerning the fish trap controversy, Congress in Section 17 of the Amendments to the Alaska Native Claims Settlement Act attempts to waive Section 6(i) of the Alaska Statehood Act which expressly prohibit the conveyance of the mineral rights belonging to all the citizens of Alaska. Also, Section 17 attempts to induce (perhaps seduce is the better word) the State to convey away its mineral rights in violation of Article VIII, Section 9, of the Constitution of the State of Alaska.

Neither the Alaska Constitution nor the Alaska Statehood Act stand alone in defining the nature of the compact between the two sovereigns; both must be read together in the nature of an offer and an acceptance concerning the grant of lands to

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the State with the reservation of all mineral rights being required as a condition of such grants. Section 8(h) of the Statehood Act expressly amends Article VIII, Section 9 to conform to Section 6(i) of said Act.

Article XIII, Constitution of Alaska, provides for amendment and revision. Amendments to the Constitution may be proposed by a two-thirds vote of each house of the legislature, and if approved by a majority of the votes cast at the next statewide election, the amendment is adopted. Section 3 of Article XIII provides for a constitutional convention by referendum. Again, a majority of the votes cast determines the issue. Article XI of the Constitution provides for initiative and referendum. Again, if a majority of the votes cast on the proposition favor its adoption or rejection, the issue is determined. In any case, there is more than adequate provision contained in the Alaska Constitution for the enactment of a law which would amend or change Article VIII, Section 9 should the people of Alaska desire to convey away their mineral rights.

In the absence of a proper demonstration of intent of the citizens of Alaska to waive or change the provisions of Article VIII, Section 9, of the Constitution, any attempt to convey away the mineral rights belonging to the people should be held to be in violation of this section and in violation of the compact provisions between the State of Alaska and the United States pursuant to the State Constitution and the Alaska Statehood Act. The opinion of the Supreme Court of Alaska in the Metlakatla case and the express terms of Article VIII, Section 9, Constitution of Alaska, compel such a conclusion.

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C. THE ALASKA ATTORNEY GENERAL OPINIONS DECLARE THE PROPOSED EXCHANGE IN VIOLATION OF STATE AND FEDERAL LAW

The State of Alaska through its Attorney General's office in 1969 was previously concerned with the same issues discussed above. In conjunction with negotiations and congressional hearings prior to the enactment of the Alaska Native Claims Settlement Act, the question arose as to whether or not it would be legal to grant to the natives of Alaska an overriding royalty of 2% on all proceeds from any state and federal land.

In the 1969 Opinion of Attorney General, No. 6, the Attorney General presented his opinion to the Honorable Wayne N. Aspinall, Chairman of the Committee on Interior and Insular Affairs for the U. S. House of Representatives. The State of Alaska in this lengthy opinion took the clear position that the State could not convey away a 2% overriding royalty from the income from State lands. The opinion of attorney General stated in part as follows:

> 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. Opinion No. 6, 1969, at p. 8.

Concerning the conflict between the royalty provisions and the Alaska Statehood Act, the opinion of the Attorney General asks the following question: "May the United States unilaterally enact legislation in direct conflict with the Statehood Act?" The Attorney general answered this opinion

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as follows:

> The answer to this is that the United States may not constitutionally enact effective legislation in direct conflict with the compact provisions of the Statehood Act unless there's an amendment to the Constitution of the State of Alaska because a Statehood Act constitutes a compact in a nature of a contract between two sovereign governments. Opinion No. 6, 1969, at p. 10.

The opinion of the Attorney General further states that the only constitutional method by which there can be an act of legislation which is in direct conflict with the Alaska Statehood Act is with the approval of the people of the State of Alaska of such federal legislation. Opinion, p. 11.

The opinion of Attorney General at page 11 further pointed out that proposition 3 submitted to the voters at the time of their approval of the Alaska Statehood Act, which proposition is quoted at p. 14, supra, had the effect of amending the state constitution to comply with all of the restrictions and conditions concerning the grant of land made to the State by the federal government in accordance with the Alaska Statehood Act. This is so because Section 8(b) of the Alaska Statehood Act provided in part as follows:

> 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.

In other words, Article VIII, Section 9, Constitution of the State of Alaska, in addition to committing an offer to the federal government to abide by all restrictions ... may be imposed by Congress in the Alaska Statehood Act concerning the grant of lands, also has been "deemed amended" by Section 8(b) of the Alaska Statehood Act to comply in all

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respects with the restrictions as set forth in Section 6(i).

It is somewhat incredulous that the opinion of the Attorney General would not now be that Article VIII, Section 9, Constitution of the State of Alaska, must be properly amended in accordance with the initiative, referendum, or amendment provisions of the State Constitution prior to the effective and valid disposition of state lands and their mineral rights.

C. THE PROPOSED EXCHANGE DOES NOT GIVE THE STATE OF ALASKA FAIR AND EQUAL VALUE FOR ITS LAND AND RESOURCES

As described in detail in the affidavit of Harold Galliett, submitted herewith, the State of Alaska in accordance with the proposed exchange terms would be conveying away over 5 billion dollars representing the minimum present values of State coal, oil, gas, and surface rights. In exchange, the State would be receiving approximately 165 million dollars representing the present value of the surface estate in land.

The content of Galliett's statements and evaluations contained within the affidavit are not outlandish and speculative; to the contrary, experts employed by the State of Alaska within the Department of Natural Resources have concurred in Mr. Galliett's opinion that the proposed exchange does not result in fair or equal value to the State.

For example, the Hammond Administration on or about November 28, 1975, solicited an "economic resource analysis" from one P. O. Dobey to justify the exchange. This report, however, was received by the staff members of the Department of Natural Resources, Division of Geological and Geophysical Surveys, with pointed criticism.

On January 2, 1976, Cleland E. Conwell, Mining Engineer, Department of Natural Resources, wrote a memorandum to Guy

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Martin, Commissioner of Natural Resources, and stated in part as follows concerning the "economic resource analysis" prepared for the Administration by Mr. Dobey:

> At the request of Gil Eakins, Acting State Geologist, I have reviewed the subject report. I find that the report is misleading, contradicts Alaska Geological Survey open file report No. 51, is inaccurate and biased. I respectfully request that the report not be published as an open file report under your name and that of Ross G. Schaff. It may be of some use to Mike Smith within the department, but I feel that the quality is too low to justify publications as a Division Report.

On or about January 2, 1976, Mr. Conwell also wrote a memorandum to Michael C. T. Smith, Director of the Division of Lands, and stated in this memorandum in part as follows:

> On or about the 8th of October, Ross Schaff, Don McGee, and I met with you in your office to advise you of the value of coal land the State was proposing to give away. It is my recollection that we advised you at that time of the value of coal on these lands and of work in progress by the private sector in exploring the Beluga coal field. As I recall, all three of us, especially Ross and I, expressed personal disapproval of a trade. It was and is our opinion that some of the most valuable land in the State is being traded for land that has little or no economic potential. (Emphasis supplied)

Further, in this memorandum to Michael C. T. Smith, Conwell states that the newspaper articles published by Mr. Galliett concerning the disadvantages of the proposed trade were accurate, and even conservative. The memo specifically refers to Mr. Galliett's estimated coal recoveries of 50%, and states: "I only comment on the first article is that recovery of 50% of the coal is low by today's standards."

Concerning the claim by the Hammond Administration that the exchange will give the State control over the salmon runs,

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the Conwell report states:

> In reference to the second article, it is my understanding that Fish and Game have control of fishing and the streams. I believe that this is covered in Section 16 of the State Statutes, so there is no need to control the Lake Clark or Iliamna areas for the fishing potential.

The Conwell report further summarizes the valuable land to be given to the natives and themineral and agricultural potential of each tract. Concerning the lands to be given to the State by the federal government in exchange, the report states:

> In general, these lands are underlain by Jurassic intrusives that have a low mineral potential for hard minerals, lack equivalent agricultural potential, lack the recreational value, because of inaccessibility, and, if not selected by the natives might still be open to selection by the State.

The Conwell memorandum concludes:

> There are many misleading statements in the report. I find errors in the calculations regarding the discounted cash flow. The Stanford Research Institute has a report issued in 1975 that gives figures that conflict with those of Robert Bottge.

On January 2, 1976, Mr. Gilbert R. Eakins, Acting State Geologist, issued a memorandum on behalf of the Department of Natural Resources, Division of Geological and Geophysical Surveys, to Mr. Michael C. T. Smith, Director of the Division of Lands. In this report, Mr. Eakins refers to three of Mr. Galliett's newspaper articles assessing the valuation of the tracts of land involved in the proposed land exchange. Mr. Eakins' opinion concerning Mr. Galliett's and Conwell's assessments is set forth in full as follows:

> I concur with Mr. Conwell's assessment that it is not in the best interests of the State to make the proposed land trade. A purely economic view indicates

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> a high potential dollar value of the tracts to be traded to the Cook Inlet Native Association. Large reserves of quality coal are known, agricultural lands are present, and a reasonably good potential exists for petroleum and uranium. In addition, the lands to be given to CINA have wisely been selected near populated areas and where industrial and population growth may be expected. We believe the potential revenues are very significant and that an attempt to put a discounted cash value on the resources today is not a fair evaluation.
>
> In contrast, the lands to be received by the State in the trade do not appear to have an important mineral potential, are relatively inaccessible, and are not suitable for development.

Copies of the three memoranda referred to above are attached hereto as exhibits.

Section 38.95.060 represents existing law concerning authority for the exchange. As set forth in detail in the complaint, Section (c) of this Statute requires that exchanges shall be on a basis of equal value. While the court cannot be expected to take Mr. Galliett's calculations as an ultimate conclusion of the exact valuation of the lands proposed to be exchanged, the great disparity in the equality of the figures should at least be accepted as placing grave doubt about whether or not the exchange complies with existing Alaska Statutes.

Combined with the memoranda of the Department of Natural Resource's own experts, Mr. Galliett's representations as set forth in the affidavit should satisfy the plaintiffs' burden of proof that the proposed exchange is, more probable than not, invalid.

D. OTHER ISSUES

1. Count Two of plaintiffs' complaint sets forth, in detail, the statutory provisions relating to the sale of public lands.

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Section 38.05.045, Alaska Statutes, provides that state land may be sold as provided in Sections 45-69 of this chapter. Section 38.05.055, Alaska Statutes, provides for public auction to the highest qualified bidder as determined by the director.

Section 38.05.125, Alaska Statutes, states that each contract for the sale, lease, or grant of state land, and each deed to state land, properties or interest in state land, made under Section 315-325 of this chapter or Section 45-120 of this chapter, . . . is subject to the reservation that the State of Alaska "expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind, or description, ..."

Section 38.05.310, Alaska Statutes states that no land may be sold or leased for less than the approved, appraised market value. The proposed exchange violates the intent and purposes of the foregoing Alaska Statutes which provide for the sale of all lands by public auction to the highest bidder. In any event, land cannot be sold for less than the appraised market value.

The proposed exchange lacks any proper appraised market value by the State concerning the lands to be exchanged, and the Alaska Statutes cited above, in addition, prohibit any conveyance without reserving to the State of Alaska all the mineral rights contained within the lands so conveyed.

2. Article VIII, Section 10, Constitution of the State of Alaska, also prohibits the sale or lease of state lands without prior public notice and other safeguards of the public interest as may be prescribed by law. This requirement is also

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cussed in Count Three of the complaint in detail.

It seems fairly obvious that "prior public notice" must include effective notice. As set forth in the complaint, the actual lands to be made the subject of the trade with the native corporation have not yet been determined. How much of the Beluga coal land and other lands now belonging and patented to the State will be selected from various "pools" and the exact location and value of such lands, still has yet to be determined, and probably will not be determined until long after the governor or the Commissioner of Natural Resources gives his consent to the proposed exchange.

Because the public will have been denied effective prior notice of the exact nature of the land exchange, even if the subsurface minerals could be conveyed the proposed exchange violates Article VIII, Section 10 of the Constitution of the State of Alaska.

3. Article VIII, Section 17, Constitution of the State of Alaska, provides as follows:

> Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

It seems fairly obvious that the proposed land exchange violates the above constitutional provision and that the trade or exchange will result in valuable state resources being conveyed to a private corporation for less than fair value and for the use and benefit of less than all citizens of the State of Alaska.

4. The proposed exchange attempts, through federal legislation, to unilaterally waive or amend the Alaska Statehood Act; disposes of state lands and minerals without ade-

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blished and appropriate sale procedures; and denies the citizens of the State of Alaska the protection of Article VIII, Section 9 of their Constitution and its compact with the federal government pursuant to Section 6(i) of the Statehood Act.

For the above reasons the proposed exchange and its implementing legislation deprive plaintiffs and the citizens of the State of Alaska of their property and resources without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 7 of the Constitution of the State of Alaska.

Further, the proposed exchange denies the citizens of Alaska of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 1, Alaska Constitution.

There can be no enactment of the Alaska legislature which effectively and with validity conveys away the State's mineral resources without an appropriate amendment of the Constitution of the State of Alaska and is compact with the federal government. This must be done in accordance with the procedures outlined above concerning constitutional amendments.

5. In A. J. Industries, Inc. v. Alaska Public Service Commission, 470 P.2d 537 (Alaska 1970), the standard is set forth governing the issuance of preliminary injunctive relief. In accordance with the rulings of this case, plaintiffs submit that a more than sufficient showing has been made for the granting of a temporary restraining order and preliminary injunction.

Plaintiffs have, in the opinion of the undersigned, demonstrated real and important constitutional issues surrounding the proposed land exchange, which issues will, more probable than

not, be resolved in plaintiffs' favor. Also, in weighing the equities of both parties, the loss to the taxpayers in failing to obtain injunctive relief at this time would be astronomical. The value of the State mineral resources about to be conveyed away to the native corporation can never be replaced and the proposed exchange would result in an economic loss to the citizens of Alaska for generations to come.

On the other hand, as far as the State of Alaska is concerned, if the injunction is granted, little or no harm will be done because even though an extension of time will have to be granted by Congress in order to effect the exchange, if the merits of the exchange are just as valid tomorrow as the State claims today, there should be no problem for Congress and the Alaska legislature to effect the exchange during the coming months.

In accordance with all applicable criteria, plaintiffs have presented more than sufficient justification for immediate injunctive relief. A preliminary injunction should issue restraining Governor Jay Hammond, the Commissioner of Natural Resources and the Director of the Division of Lands, their agents and employees, from conveying or attempting to convey in any manner any state land with mineral resources in violation of State and Federal law.

DATED this 3rd day of March, 1976.

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02-001B

STATE
of ALASKA
DEPARTMENT OF NATURAL RESOURCES

MEMORANDUM

TO: Guy R. Martin
Commissioner

DATE : December 6, 1975

FROM: Michael C. T. Smith, Director
Division of Lands

SUBJECT: Proposed Cook Inlet Land Trade

PROPOSED COOK INLET LAND TRADE

Brief History

Because of existing federal withdrawals, state land selections and non-Native settlement patterns within Cook Inlet Region, Cook Inlet Region, Inc., unlike the other regional corporations created under ANCSA, has not been able to select lands which it considered of like and similar character under the formulae established by the Act. For approximately three years following enactment of ANCSA, Cook Inlet Region, Inc. ("CIRI") carried on a long series of discussions with the Secretary of the Interior in an attempt to insure its ability to select lands considered of like and similar character. While the Secretary made a number of withdrawal adjustments, he was not able to satisfy the Region and CIRI went to court seeking redress. Discussions continued between the two parties while litigation ensued and in approximately September of 1974, Interior solicitor Kent Frizzel made an offer to Cook Inlet which specified certain lands which the Secretary would convey to Cook Inlet in settlement of the suit. The "Frizzel offer" proposed, in part, to convey to CIRI ten surface and 15 subsurface townships within the Kenai National Moose Range, including the Swanson River oil field, as well as additional federal lands in the then Greater Anchorage Area Borough. These latter lands included certain parcels which had been eyed by the Greater Anchorage Area Borough for public open space and recreation purposes, more specifically Point Woronzof, Point Campbell, and at least a sizeable portion of the Campbell Airstrip tract. The State did not participate in these discussions and thus was not aware of all contents of the

"Frizzel offer" and the tremendous impact that it would have had upon State interests, particularly financially. CIRI declined the initial offer although it apparently later changed its mind. However, the offer had been withdrawn by that time.

The U.S. District Court ruled in favor of the Secretary in February of 1975, by which point CIRI had gone to Congress to gain support for its problem. Congressional support for some form of amelioration of Cook Inlet's troubles was found with Senator Jackson and Congressman Meedis. These Members of Congress, both Chairmen and both strongest and most effective advocates for Natives and Indians in their respective House, have each publically pledged to see that Congress protects Cook Inlet Region's ANCSA rights. This guarantee must be taken very seriously. Proposals were introduced which were essentially identical to the "Frizzel offer" and hearings were scheduled on these bills for May. At the same time, CIRI had indicated that they were going to appeal the District Court decision in the 9th Circuit. At this time, the Alaska Delegation and others in Congress suggested to the State that it explore the possibility of entering the discussions between CIRI and the Secretary to see if some mutually agreeable solution to Cook Inlet's land selection problem could be agreed upon which involved State land. This was suggested for the reason that inadequate Federal land was available in the Region, and this was at the heart of the problem.

The State was thus faced with the following factors:

1. Some seven months previous an offer, largely unacceptable to the State, had been offered by the Secretary without significant notice to the State. Such an out-of-court or pre-legislative action offer might be again proposed by the Secretary without

State participation. This is a risk of not taking any State action.

2. Although CIRI had lost in District Court, its appeal to the 9th Circuit included a request that the court nullify the September 1972 agreement between the Secretary and the State of Alaska which gave Alaska selection rights to lands south and southwest of Mount McKinley National Park which CIRI claimed it should have been entitled to select. Should the court find in favor of Cook Inlet, the Secretary would be directed to make available to CIRI for its selection a more acceptable array of lands. The Secretary might then have to reject the State's approximately 484,000 acre selection in this area in favor of making these lands available to CIRI for selection. Additionally, if this should happen and the Secretary can respond to a reversal by the Ninth Circuit by seeking to recover from the State the 484,000 acres sought by CIRI, he might also be forced to recover, on behalf of other Regions, conservation groups and other parties aggrieved by the September 1972 settlement, the other of the remaining forty-three and one-half million acres covered by the September 1972 State-Federal settlement. Although the State would oppose any such legal result it remains a distinct possibility to this day. It is a risk of taking no action.

3. Assurances had been given by members of Congress (Congressman Meeds and Senator Jackson) that Cook Inlet would receive favorable legislation if their problem could not be settled by other means. The bills before the Congress at that time were essentially identical to the largely unacceptable "Frizzel offer." A similar bill is before Congress today as an alternative to the proposal below, and is a risk of taking no

State action.

4. The Congressional Delegation had asked that the State take a more active role in discussions to seek an equitable solution to the problem.

5. By entering the discussions, the State could seek to effect other land trades within the region which would guarantee certain favorable land ownership patterns as well as bring under state control specified areas which the State wished to select itself, but would be unable to select if a CIRI settlement were finalized without State participation.

On the basis of the above the State began discussions with CIRI and the Department of Interior in approximately April of 1975. The discussions continued, becoming particularly intense preceding the Congressional hearings in the middle of May. Because of the complicated nature of the discussions, and with additional time available following the May hearings, the discussions progressed throughout the summer and early autumn. At each hearing, the State responded to Congressional requests, and testified regarding progress on a negotiated settlement. Each time, the State and the other parties were requested and encouraged to continue the discussions, and were advised of Congressional time restraints. Following Congressional hearings in the latter part of September, the land trade proposal was almost complete and the State publicly presented the proposal on October 2, concomitantly holding numerous briefings of smaller, more specialized groups interested in the trade (borough governments, conservation groups, Chamber of Commerce, Legislators, etc.). A thorough press briefing was also held. Following public input, addtional discussions were held with Cook Inlet Region and the Department of Interior to reflect public sentiment of the

proposal. Details of the public input and subsequent changes in the proposal based upon that input are documented in greater detail below.

Implications

If the State endorses the proposal and it is passed by Congress and implemented, the benefits outlined later will accrue to the State and other parties involved. If the State does not support the proposal, or if the proposal is not implemented for other reasons, a significant number of possible permutations exist with respect to the final outcome of Cook Inlet's selection problem. The four most likely are listed here, but others which would have profound effects are possible.

1. Cook Inlet loses its suit--The CIRI appeal is now in the 9th Circuit. Should the suit ultimately be lost, and no other remedy found, the Region would select according to the withdrawals presently in existence which precipitated the litigation. Selections would be in conflict with over 20 townships the State had previously selected and between 10 to 20 townships that the State would now like to select (including Kamishak Bay which is the prime lower west side harbor site in Cook Inlet). The pattern of Cook Inlet Region selections would be dispersed and would create difficult management patterns throughout the Region. Substantial land would be selected which is deemed more appropriate for public ownership and use (such as the harbor site and lands in the Lake Clark area).

   It should be pointed out that this result is somewhat unlikely, even if the suit is lost, because its loss would very likely precipatate unilateral Congressional action for the reason that these selections are generally regarded as inequitable to the Region.