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SRES

COOK INLET LAND SWAP

This case is of great importance to all Natives of Alaska because of courts decision that the Department of Justice able attempt to establish a method of valuing the land according to the cost of subsistence for Indians on the land at the material time, but this approach has found favor neither with the Commission nor the courts.

FIDUCIARY AND STATUTORY DUTIES

From the Handbook of the Law of Trusts by G. Bogert, 97 at 257 (1963).

A trustee is under a duty to the beneficiary to take reasonable steps to realize on claim which he holds in trust. If he fails to take such steps as are reasonable for such loss as results from his failure to act, where the claim could have been collected in full if he had taken proper proceedings to collect it and because of his delay the claim has become uncollectable he is subject to a surcharge for the full amount of the claim and interest thereon.

He, the trustee, is subject to a surcharge if he does not take reasonable steps to enforce a claim against predecessor trustees--or to redress a breach of trust committed by them.

Federal official must discharge "moral obligation of the highest responsibility and trust," *Seminole Nation V. United States* 316 U. S. 286, 297 (1942) and are "bound by moral and equitable consideration to discharge (the United States) trust with good faith and fairness.

Further more the resigned President Richard M. Nixon once stated in his message to Congress declared this very trust as:

"The United States Government acts as a legal trustee for land and water rights of American Indians. These rights are often of critical economic importance to the Indian people, frequently they are also the subject of extensive legal dispute..."

Every trustee has a legal obligation to advance the interests of beneficiarias of the trust without reservation and with the highest degree of diligence and skill. This added emphasis comes from the Constitution of the United States as Article II, Section 3, so provides:

He shall, from time to time, give to the Congress information of the State of the Union and recommend to their consideration such measure as he shall judge necessary and expedient. Not only from the President of United America to Congress but the court has further stated this trust to Secretary of the Interior as Judge Gesell so ably stated in Pyramid Lake Parute Tribe of Indians V. Morton 358 F. Supp. 252 (D.D.C. 1973).

A judgement call was simply not legally permissible...

In order to fulfill his fiduciary duty the Secretary must insure to the extent of his power, that all water not obligated by court decree or contract with the District goes to Pyramid Lake. The United States, acting through the Secretary of the Interior, "has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with Indians should, therefore, be judged by the most exacting fiduciary standards."

He, Gesell, further disagrees with the Secretary of the Interior and so stated:

"Undertakings with Indians are to be liberally construed to the benefit of the Indians and the duty of the Secretary to do so is particularly apparent..."

The Secretary was obliged to formulate a closely developed regulation that would preserve water for the Tribe. He was further obliged to assert his statutory and contractual authority to the fullest extent possible to accomplish this result. Difficult as this process would be, and troublesome as the repercussions of his actions might be, the Secretary was required to resolve the conflicting claims in a precise manner that would indicate the weight given each interest before him. Possible difficulties ahead could not simply be blunted by a "judgement call" calculated to placate temporarily conflicting claims to precious water. The Secretary's action is, therefore, doubly

defective and irrational because it fails to demonstrate an adequate recognition of his fiduciary duty to the Tribe. This is also an abuse of discretion and not in accordance with law.

In accordance of this trust the court in *Edwardsen V. Morton*, April 19, 1973:

"The court cannot pretend that justice in a platonic sense can be rendered in this case. Perhaps in an ideal system of moral accounting plaintiffs would be entitled to all of the lands they have claimed regardless of the interests claimed by the State of Alaska and others in these lands. This court is, however, not free to allow plaintiffs to proceed on such a theory when decision of the Supreme Court and Acts of Congress foreclose it. The court can and it has here attempted to set forth framework within which plaintiffs can seek to establish the factual basis for the relief to which they are entitled under the Constitution and laws of the United States if thier claims are proven."

With this, the Native people of Alaska must execute what is constitutionally theirs.

to be conveyed away. Alaska citizens are denied any development plan for the lands to be given up, with which to properly assess values

(c) It is impossible to obtain a complete and unbiased geological report by state geologists. This results not only from inadequate time, but also from intimidation of professional staff by gubernatorial firing of a chief advisor for giving testimony before the Alaska legislature against the attempted land exchange. Present reports from the Alaska Division of Geological and Geophysical Survey are so incomplete as to be false. These present reports show evidence of having been instigated and hastily-prepared to support a predetermined conclusion by officials named earlier in this affidavit.

(d) Advice from the Joint Federal-State Land Use Planning Commission has been compromised by the firing of the state co-chairman, David Jackman, as noted above. The pressure on other state-appointed members of the Commission tends to bias, not rational consideration and impartial advice. A new appointee, mindful of the fate of his predecessor, may vote accordingly.

(e) Increase in the value of Governor and Master Guide Jay S. Hammond's Lake Clark lodge, resulting from creation of nearby federal and state hunting lands protected from Native hunting restrictions, creates another conflict of interest which further taints any determination of equal value by the present administration.

To: Senator Kay Poland
From: George C. Silides, P.E.
Subject: Cook Inlet Land Trade

Transmitted herewith is the final Committee Report on HR 6644. I can find no substantive changes from the preliminary report you received earlier, except that this edition is much more complete.

Pages 1 - 10 represent the final language of the Bill itself as passed. The earlier edition of HR 6644 that we sent you shows, also, the original language that was deleted. Sections 12 and 17 of HR 6644 deal with the land trade between the State of Alaska and the Cook Inlet Native Regional Corporation. Section 12 describes the trade, and Section 17 sets aside the restrictions of the Alaska Statehood Act to permit accomplishment of this and any other and future trade. (Emphasis added).

Pages 10 - 14 constitute a letter of intent. It is noted that the State-Cook Inlet trade was not included in the Purpose description of the original Bill.

Pages 14 - 54 are a Section - By - Section Analysis. Section 12, which describes the trade in general terms begins on page 30. A detailed description of terms and conditions of the trade begins on page 35 and extends through page 52. The present prohibitions of the Statehood Act and the consequences of its being amended are recited at the bottom of page 34 and the top of page 35.

Pages 54 - 58 describe changes in existing law that were caused by HR 6644. Section 17 on page 56 is germane.

Pages 58 - 85 include reports by the various federal departments concerning their feelings on the measure. Not all are favorable. The Department of Agriculture specifically objects to the inclusion of Section 12 on the basis that the section reopens conflicts that ANCSA was intended to resolve.

The Congress had taken due note of the existing debate as to the propriety of the State's involvement and of the nature and extent thereof. The Governor has promised that he will not implement the terms of Section 12 of HR 6644 unless the Legislature concurs. Section 12 (c) (3) (i) (center of page 8), calls for a report by the Secretary of the Interior to Congress by April 15, 1976. The Legislature's decision must reach him in time to prepare that report. He reserves until December 18, 1976 to make other

amends to Cook Inlet if you decide to reject the Administration's proposal as set out in HR 6644.

We are unaware of the form in which the Governor will submit his request for your approval of his administration's actions. It may be in the form of a Resolution. We suspect, however, that since the prohibition against the transference of mineral rights and the equal value provision still remain as part of the Alaska Statutes, he will submit a Bill amending Title 38.

I suggest that the Congressional Committee Report and this letter of transmittal letter be forwarded to the Legislature's head of legal section for his examination and comments, especially concerning any extinguishment of the State's rights by this arbitrary and unpublicized action of the Congress at the request of our Administration.

MAR 6, 1976 ANCH D N

'No going back' on land trade

By ROSEMARY SHINOHARA
Daily News Staff Writer

The chief federal negotiator for the Cook Inlet land trade warned Friday that if the proposed agreement now before the legislature is not ratified "there will be no going back to a three-way agreement."

E.U. Curtis Bohlen, deputy assistant secretary for the Interior Department, told the Joint Federal State Land Use Planning Commission that Congress was disturbed because his department did not give Cook Inlet Region, Inc. (CIRI) Native Corporation good land from which to choose.

U.S. SEN. HENRY JACKSON, of the Interior and Insular Affairs Committee let the Department know he would be "quite willing" to legislate a solution, which might be the offer made earlier by an Interior Department solicitor and rejected at the time by Cook Inlet Region, Bohlen said. That offer would have turned over substantial acreage in the Kenai National Moose Range to the corporation.

The Land Use Commission heard from Bohlen and representatives of CIRI and the state Division of Lands

How valuable is the land?
See Page 2

Friday, and the commission will meet again today to make recommendations to the legislature on whether to approve the trade.

The legislature must act before March 12 to meet a congressionally imposed deadline.

Mike Smith, director of the Division of Lands, and Roy Huhndorf, president of CIRI, both attacked recent evaluations of the trade which are based solely on economic values.

THE STATE WILL RECEIVE more than equal value in the trade, but the values are not strictly economic, Smith said.

"Anyone today who believes government's role vis-a-vis land and resource management is concerned strictly with economic values is Neanderthal in their thinking," Smith said.

The federal Homestead Act and the act which gave lands for railroads to



E.U. Curtis Bohlen, deputy assistant secretary of the Department of Interior.

cross are examples of land resources being given away to further a public purpose that wasn't strictly economic, Smith said.

IN THE STATE, THE new homesite bill and the open entry program are similar public interest programs. Some of the critics of the land swap are people who support those programs and

(Continued on page 2)

Native land held for corridors

BY PAM ROGERS
Daily News Staff Writer

All lands conveyed to Natives under the Alaska Native Claims Settlement Act will be reserved for future energy-related easements under an order handed down Friday by Interior Secretary Thomas S. Kleppe.

The Interior Department's long awaited decision is an abrupt reversal of earlier proposals to identify and set aside specific corridors across Native lands

Friday afternoon that reserving all Native lands for future easements will remove any cloud on the lands which could be created by identifying specific corridors at this time.

THE ORDER APPEARS TO contradict itself on the question of whether or not the government will set aside easements for the purpose of transporting privately owned resources.

Section 5 of the order says it will not: "Privately



Aftermath of an accident

A four-car collision at the intersection of Road and Airport Heights Drive Friday caused no deaths, but severely damaged the vehicles and injured (above center) Frank C. [Name partially obscured], left, and Michelle Doran, 20. Paramedics [Name partially obscured], left, and Bobbie Smith treated the scene.

Banks may be asked to report home loans

By HOWARD WEAVER
Our Juneau Bureau Chief

JUNEAU — Homeowners would be able to tell if banks "have written off their neighborhood" under provisions of a bill which passed the House by a 21-11 margin Friday.

The measure, House Bill 572, would require banks to report annually how

much they have loaned in neighborhoods and follows the guidelines but narrows the report by zip-district to a census which must be reported

"PEOPLE HAVE a bankers have written off neighborhoods," Rep. D-Dist. 9, said. He told bill he sponsored information so a wide area could assess what action to ensure a flow of capital "redlined" by financial

KcKinnon called practice a "self-fulfilling" banks decide not to lend because it is decaying. money will cause it further," he said.

Rep. Rick Urion, R-Dist. 10, called the bill "unnecessary,

they do not know whether the term "United States" means the federal government or the nation as a whole.

Asked whether offshore oil development would be considered public or private, a spokesman said there is "no question" the leases are owned by the government and thus will require government-reserved easements across Native lands.

Exempted from reservation for easements are islands off the coast of Alaska and the southwest

down to the \$102 million the board will decide upon Monday night.

necessary to the system. One cut, that of an artists - in - the - schools program

approves the budget, it will be sent to the Anchorage Assembly, which has the final say.

Well, no matter, for the performance of Bonita Mertes is alone worth the price of admission.

government.

Colyar follows specialist William Col relations officer, Ran top level administrato the government since the year. Coleman wa by Roy Wesley, a fo resident who was employed by the city a Francisco as direct relations.

Wesley, however, w the job, Sullivan said explained that on the w one of Wesley's cl seriously ill, requiring and intensive medical c had to change his plans. had resigned from his posi*

Home

(Continued from p length of loans as well.

The bill does not rec make loans in any loc McKinnon said, it information to be use whether state assistanc whether residents in r should consider lobbying taking their business to more sensitive to their ne

"There is a lot of community action in McKinnon said. "The councils granted in the charter would be a gr discussion based on reported under this act."

HE ALSO SAID the redl "to a certain degree" te zoning decisions made governments. "Banks c decide, for example, not f for single family homes View. Eventually, Mount contain nothing but apar though the people doing wanted a mix of differen McKinnon said.

He said it is not reasona to refuse loans to peopl credit ratings just br neighborhood has been banks. Disclosure of this would make it possible to question, McKinnon said.

Evaluating the Cook Inlet swap decision

(Continued from page 1)

don't recognize the similar ty, he said.

Huhndorf said the coal reserves to be transferred to CIRI have been subject to evaluations that have "an inflation rate that defies imagination." Each week it seems that Cook Inlet is to obtain more and more coal until the region is literally drowning in it."

The Native corporation executive also recounted what CIRI gave up in the deal:

-Claims to Point Campbell, Campbell Airstrip and Point Woronzoff in the Anchorage Borough and claims to the Swanson River oil fields.

-Claims that would adversely affect wildlife habitats and recreational interests.

-Claims to lands located near potential capital sites.

The region had to shift more than half its land outside the boundaries of the region against its will, and the total surface land to which the corporation is entitled has been reduced. The state and federal government will have more control over CIRI selections than selections by any other region.

ALL THREE NEGOTIATORS also talked about provisions of the land trade agreement that call for CIRI to choose some land from the regions surrounding it.

Doyon, Inc., the Fairbanks-based regional Native corporation, is

agitating for further concessions from Cook Inlet Region, and Doyon has more leverage than most because its president, John Sackett, is an influential state senator and a Doyon board member, Tim Wallis, is also in the legislature.

Bohlen said, "I find it a shame that after having reached that agreement there is now slippage - an effort to extract that extra pound of flesh." CIRI bent over backwards to be accommodating to the other regions when the agreement was being drawn up, Bohlen said.

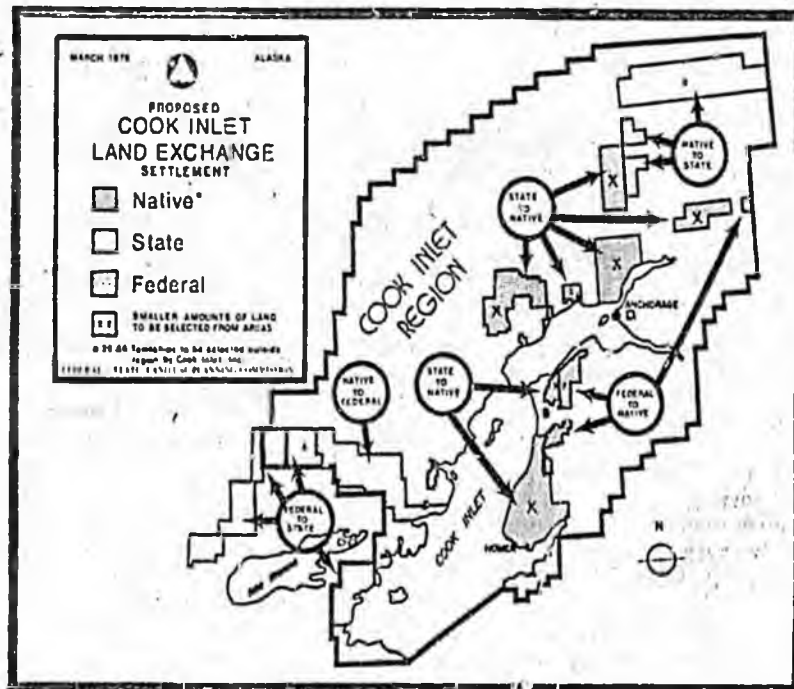
Huhndorf said the provisions for out-of-region selections were made "only with the deepest tolerance and concern by our sister regions."

Huhndorf and Smith both discounted arguments that the out-of-region selections will jeopardize the state's interest in its own future selections. Smith showed graphically in a diagram that there would be very little conflict between state selections and CIRI selections, mostly because the CIRI selections would be minimal compared to the land available to the state.

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What's the land worth?

The state would give up an estimated \$2 billion in potential mineral royalties, but about 40 per cent of that amount would not be realized for 100 years or more, U.S. Department of Mines personnel said in a mineral evaluation of the Cook Inlet land trade Friday.

About \$196.9 million of the royalties that could be lost may begin to be realized during the next 20 years, the study by the Mines department said. Ninety-five per cent of the royalties would probably not commence for 20 years or more, according to the report.

THE MINERAL evaluation was one of several assessments prepared for study by the Federal-State Joint Land Use Planning Commission, which is making recommendations to the legislature.

Other assessments dealt with recreational lands involved in the

trade, and timber and potential agricultural resources in the trade.

The Department of Mines assessment differs drastically from estimates prepared by Harold Gallett, a consultant who has filed suit to stop the trade. Gallett contended Alaska citizens would lose more than \$5 billion worth of land and natural resources in the trade.

IN ADDITION to lost royalty opportunities, the Mines study says the state could forego \$43 million in tax revenues from mineral properties around Lake Clark if the trade goes through. The state will gain about \$300 million by acquiring land that can be leased for ore mining.

The Mines study also said oil and gas resources may be discovered outside known fields but inside the land area selected by the Natives.

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backed by panel

LAND SWAP BACKED BY PANEL

By ROSEMARY SHINOHARA
Daily News Staff Writer

The Joint Land Use Planning Commission gave its unanimous endorsement this weekend to the proposed Cook Inlet land exchange, and reported to the legislature that the negotiated agreement represents the best of several alternatives ways in which Cook Inlet Region Inc. could receive its settlement.

The commission's report said probable foregone state revenues will constitute only a "minute fraction" of the annual state revenues of the future. IF COAL royalties of \$1.5 million annually are realized on the land that goes to the Native corporation, it would amount to one-hundredth of 1 per cent of projected state revenues in 1990, the report said.

The solution arrived at in negotiations by the state, the federal government, and the Native corporation also offers the least probability for protracted lawsuits, the report said.

Land use benefits, such as state participation in the Native land selection process, and the protection of the highly-populated southcentral region also occur because of the agreement, the commission said.

THE COMMISSION met Friday and Saturday, studying analysis of the trade prepared by its staff from the perspectives of land use, economics, legal issues, the values involved in the trade, and the alternatives to it.

The chief negotiators for the three-way agreement spent a day testifying about it. The commission

staff was preparing a report and other documents late Sunday to have them ready for consideration by the legislature today.

In its report, the commission said most legal impediments to the trade were removed by Congress. It remains for the legislature to waive requirements that such an exchange be based on equal monetary value, and to approve conveyance of subsurface title to the Native corporation.

WITHOUT SUBSURFACE title, the corporation could not extract minerals on the land it will receive.

The agreement reserved certain federal lands for state selection, including Point Woronzof, which the state wants to use to build the North-South runway extension at Anchorage International Airport.

A conflict may exist because the agreement said the land would be held for the state for parks and recreation purposes when it has been declared surplus by the federal government.

THE COMMISSION report said the conflict between the North-South runway extension and parks and recreation uses is recognized by all parties. It may be solved if the federal government eliminates the land needed for the airport before it conveys the land to the state, the report said.

On economic issues, the report said losses that the state will incur appear to be "exaggerated."

"When highly speculative gross asset values are converted to the 'net present value' of probable foregone revenues, the state's expected losses are minimal," the report said.

THE STATE'S future economic viability is largely unaffected by the trade, the commission said. When the land transferred to Cook Inlet Region is developed, the state will earn revenues through various means of taxation.

The agreement also protects state revenues from the Swanson River oil fields.

School board to vote on budget

By JIM BABB
Daily News Staff Writer

The Anchorage School Board tonight scheduled to decide how much money it wants from the Anchorage Assembly in order to educate the 36,330 youngsters expected to be in area schools next year.

Most board members who could be contacted over the weekend expect the figure needed will be \$102 million. That may mean a 1.25-mill increase in the mill rate for property owners. Property owners presently pay 7.45 mills for education. That could go up to 8.69 mills if the proposed budget is finally approved.

ANCHORAGE would still be one of the lowest educational mill levies in the Northwest, according to school district documents. Spokane, Wash., has an educational mill rate of 12.84; Portland, Ore., one of the lowest in that state, has

"The only way to reduce dollars now would be to reduce the number of teachers," Millett Keller, a school board member, said. "And I think it would be difficult to get the public to accept that."

"This is a clean budget," Heather Flynn, also a member, said. "Every dime has been scrubbed. There's not one bit of padding, we can justify every dime," she said.

SHE SAID the school board and the budget advisory committee had spent more than 40 hours going through all budget documents this year. Last year there was criticism of the board for not thoroughly analyzing the budget.

Approximately 35 new teaching positions are budgeted for next year. Most new teachers will handle the additional students expected. This year there were about 1,675 teachers



Inside today

I'll see you!

Dr. Terry Adkins, of Mountain Home, Idaho, waves good

...even the Cub
...which one of his two
...is a member.
...identified the main con-
cerns of Muldoon area residen-
ts as neighborhood "viability"
and the cost of government
services. He explains the first
as a desire on the part of the
residents to maintain and

service area budget.

Hart said a few of his con-
stituents, who strongly support-
ed unification in the Septem-
ber election, expected to see
more savings reflected as a
result of the merger. Hart said
also some of his constituents
are complaining about the
strong mayor form of govern-

myself."

Hart explained he calls the
responsible municipal depart-
ment and asks to be called
back when the problem is
resolved. "When you just refer
the people themselves to the
government," Hart said,
"frequently there's no action."
Other complaints Hart passes

usement for a planned
former borough gover-
He was then in Corvall
He holds an undergrad-
degree in urban geog-
from the Univers
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...ANCHOR D.N. MARCH 15, 1978

Storm land trade finally completed

From Our Juneau Bureau
JUNEAU — The Cook Inlet land exchange ended its brief but stormy legislative life late last week when it received final Senate approval and prompt affirmation from Gov. Jay S. Hammond.

The bill was approved on reconsideration by a vote of 13-6 with one supporter on excused absence. An 11th-hour amendment which could have killed the bill by dragging it past the federally-mandated deadline was withdrawn after a compromise move put a strongly-worded "letter of intent" into the record.

SEN. Kay Poland, an opponent of the trade, offered an amendment she said was necessary to ensure that federal land at Point Woronzof to be given to the state actually could be used for construction of a North-South runway at Anchorage International Airport. She said that was necessary because language in the exchange document said the land was to be used for parks and recreational purposes.

Bill permits workers to share full-time jobs

JUNEAU (AP) — The House has given final legislative approval to a bill that would allow part-time workers to share some full-time state jobs.

House Majority Leader Mike Miller said splitting full-time positions would cost the state nothing and would be "particularly advantageous to working mothers."

Proponents of the measure contend other states which

But a letter on legislative intent was accepted instead. It says that, "Acceptance of the trade is based in material part upon the assurances by the Department of Interior that the transfer of land at Point Woronzof will be made for airport purposes."

"We have them on record, and have reaffirmed our contention that this is the intention of all parties involved," Gov. Jay S. Hammond said of the airport question.

"THE LETTERS of intent almost guarantee we can win any lawsuit necessary to protect the runway," Commissioner of Natural Resources Guy Martin, the state's lead negotiator, said after the vote.

The land trade is an arrangement between the state, Cook Inlet Region, Inc. Native corporation and the federal government designed to settle land claims in the Anchorage area.

Hammond took a position distinctly different from legislators — especially senators — who endorsed the

have split jobs between part-time employees have experienced significantly lower absenteeism, sick leave and job turnover rates in those positions.

Since job benefits would be divided on a pro-rata basis, Miller said, the change would result in no additional costs.

The measure, passed by a 31-1 margin Thursday, was sent to Gov. Jay Hammond for his signature.

plan with considerable reluctance. "I regard this agreement with some pride as an initiative of this administration based on its overall policy to take a leadership role in shaping land use and ownership patterns in the public interest," he said. He was mildly critical of legislators who complained they had been rushed to a decision, and said it likely was "a question of involving them at all."

"THERE were a great many legislators who would have been happy for the administration to wear the hat for the whole thing. It is controversial, and some of them would prefer not to be on record at all," Hammond said.

He said state involvement in the arrangement had "reduced to its irreducible minimum" the "federal blackmail" which legislators criticized Wednesday. "It was a question of blackmail or grand larceny," he said. "With blackmail, at least we got something out of it."

Martin also said legislative distrust was misplaced, and said legislators may not have realized that land the federal government controlled in the swap was on the state's potential land selection list. "The chips the feds were playing with belong to us. We just decided to play our own hand," Martin said.

POLAND'S amendment caused a scramble in the Senate Thursday morning, as both parties recessed to caucus on the issue. Martin and Atty. Gen. Avrum Gross were on hand to lobby for the administration, and Cook Inlet Region Inc. President Roy Muhndorf was in attendance to watch the final proceedings.



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