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> If, however, the geological experts in the State government determined it to be prospectively valuable, it might well be that you would have a mineral leasing approach, just as we do under the 1920 Mineral Leasing Act.
>
> MR. PILLON. Does that clarify it? It does not to me, because it is too involved. I just cannot follow it.

Hearings at 223-226 (emphasis added).

Under Mr. Abbott's understanding of Mr. Franklin's proposed change, lands not classified or known as being valuable for minerals could go to patent; that suggestion was not followed. Mr. Franklin's efforts to delete the mandatory leasing requirements were in vain: 6(i) remained unchanged.

Mr. Franklin was successful, however in making another suggestion. He advocated for the inclusion of an express provision allowing the state to dispose of lands prior to the issuance of patents. This further suggestion was part of the discussion quoted above. Earlier, Mr. Franklin suggested adding a provision to the statehood act similar to that in the Alaska Mental Health Act, which would provide "Following the selection of lands . . . but prior to the issuance of final patent, the territory shall be authorized to lease and to make conditional sales of such selected lands." Hearings at 225. Since patent would not issue until perimeter surveys were made, and surveys in Alaska could take years, the ability to acquire mining rights might be uncertain without an express provision giving the state authority to allowing mining prior to receipt of patent.

But in the final provision, the ability of the state to conditionally lease mineral deposits was changed from the time of selection to the time of tentative approval. 6(g) now reads, in pertinent part:

> Following the selection of lands by the state and the tentative approval of such selection by the secretary or his designee, but prior to the issuance of final patent, the state is hereby authorized to execute conditional leases and to make conditional sales of such selected lands.

When House Bill 7999 (the statehood bill) reached the floor of the house, there was extensive debate on its merits. Besides the concern about the ability of the state to raise necessary revenues, there was apprehension that the federal government was giving away valuable minerals to the state and that the state would not responsibly deal with its lands. For example, on May 27, 1958, the following exchange took place between Representative O'Neill of Massachusetts and Representative O'Brien of New York:

> Mr. O'NEILL . . . There is another group in the House that is not so benevolent as the first group. They want to give away only 101 million acres of land and the property which belongs to the people of the United States. The gentleman from Texas is rather miserly in his thoughts; he wants to give them only 21 million acres.
>
> If there is ever going to be another Yazoo land scandal, if we are going to make the biggest giveaway in the history of this Nation, let us start with only 21 million acres. Please, let us not go hogwild completely.

Personally I am in opposition to the bill. I am going to vote against it regardless of what amendment is adopted because I honestly believe that the minerals up there, the fishing rights, the great forests up there belong to all the people of America. I do not think we have any right to delegate to a handful of people in a legislature in Alaska the authority to give away property that belongs to the people of America.

MR. O'BRIEN of New York. Mr. Chairman, will the gentleman yield?

Mr. O'NEILL. I yield.

Mr. O'BRIEN of New York. Is the gentleman aware that the State of Alaska would get only 400,000 acres of all the tremendous forest lands up there, the rest being reserved by the United States?

Mr. O'NEILL. I have read the bill. I know that it said that they have a period of 25 or 50 years in which to go in and pick out lots of 5,000 acres each.

Mr. O'BRIEN of New York. Except the forests.

Mr. O'NEILL. The gentleman knows and I know that for the next 25 years those people who are up there after having made surveys are not going to take up the useless property. They are going to pick out the best property.

Mr. O'BRIEN of New York. Is the gentleman familiar with the Teapot Dome scandal when the leasing was done under the Federal Government and not the State government?

Mr. O'NEILL Certainly I am familiar with that. But I think in writing a bill such as this and knowing what happened in connection with Teapot Dome and the leasing up there and knowing about the Yazoo scandal and the leasing and the sales made at that time the committee should have written some safeguards into a bill of this type.

Mr. O'BRIEN of New York. Does the gentleman know that the State of Alaska may not sell a single foot of mineral land but may only lease it?

Mr. O'NEILL Yes, I have read the bill.

Congressional Record, Vol. 104, p. 9610 (May 27, 1958). See also, Congressional Record, Vol. 104 at 9341, 9344-9345, 9361 (May 22, 1958) and id. at 9504 (May 26, 1958).

In response to criticisms of the bill, and particularly about including mineral deposits in the transfer of over 100 million acres of land, Delegate Bartlett addressed the House on May 26, 1958, Congressional Record, Vol. 104, at pp 9514-9516. In the course of these remarks he stated:

> Now, let us turn to the proposition of mineral grants. H.R. 7999 proposes that the minerals as well as the surface should be turned over to the State of Alaska the land transfers. From what has been said and written around here one might believe that this is the crime of the century. Let us have a look at this situation. It deserves one. Alaska is not, as we all know basically dependent upon agriculture. This despite the fact that Government experts who have surveyed its agriculture potentials estimate that 65,000 square miles---41,600,000 acres--are suitable for crop production and for cultivation and in addition another 35,000 square miles---22,400,000 acres--are suitable for grazing. Development of these lands will come. But, very frankly, I do not believe that the time will ever arrive when agriculture products from Alaska will be in direct competition with those from what are now in the 48 States. Further, I contend there is nothing wrong with that. This is all to the good. It serves to strengthen the economy of our whole Nation. The gentleman from New York (Mr. O'Brien) suggested in his opening speech that in a comparatively

few years after statehood Alaska will have 10 million people. I hope he is right. In any case, Alaska will have many more people than it now has and will be raising much more of the food it consumes than it now does. But always, as I see it, there will be a need for importation of foodstuffs. They will be paid for by exportation of our natural resources, raw or refined. And that will be mutually advantageous.

Right now the fact is that the subsurface values, generally speaking, are more valuable than the surface values. Alaska has always been a mining country and there is a very strong possibility that the great mining booms of the past will fade into insignificance when matched against what we believe is the coming oil boom.

The situation now is that generally speaking a citizen may go upon public domain land in Alaska--federally owned land that is--and locate a mining claim to which he may, if he so desires, obtain fee simple title. He might find the richest gold mine in the world and become its absolute owner. And, parenthetically, as far as I am concerned that is perfectly all right. It is in accordance with American free enterprise and ownership of property. Oil and gas lands may not, of course, be owned outright. They may only be leased from the Federal Government under the Mineral Leasing Act of 1920. The Alaska statehood bill is much more stringent than Federal laws. It provides that the State may never sell mineral rights. It may only lease them. This provision was inserted with the thought and hope that future citizens of the State of Alaska would continue to derive benefits from the utilization of these minerals through a leasing system. The people of Alaska are mindful of the trust reposed in the constitution for the state-to-be a resource article which meets every test

which might be applied to it. Already their legislature has enacted what is now chapter 184 Session Laws of Alaska, 1957, legislation creating a Department of Lands and establishing the ground rules under which it will operate. I feel confident that any fair-minded persons devoted to the principles of conservation will applaud that law.

If it has not already been said it will be said, undoubtedly, that the policy of granting mineral rights to a new State departs from tradition and from precedent. It is true that most of the Western States were given the surface of the land only. But any such statement would not be literally true. The Oklahoma Enabling Act was so phrased as to give that State its minerals. The Republic was not shattered by what was done there and I for one have never heard that Oklahoma is to be reprimanded and castigated for its management of these minerals instead of having them exclusively under the jurisdiction of Washington which I maintain is in contradiction to States rights.

There is another element which ought to be considered here. A material change in the attitude of the Congress toward the granting of mineral lands to the States came about in 1928 (sic). A bill then enacted and signed into law provided in effect that all grants to the States of numbered sections in place for the support of public schools should encompass sections mineral in character equally with sections nonmineral. That represented more modern thinking on this subject and influenced, or so I believe, the committees which over these many years have been considering Alaska statehood legislation.

Id., at 9515 (mphasis added).

The House passed H.R. 7999 on May 28, 1958, with the Senate approval coming on June 30, 1958. The Statehood Act, P.L. 85-508, 72 Stat. 339 became effective July 7, 1958, and with subsequent voter approval and Presidential declaration, Alaska became a state on January 3, 1959.

III. DISCUSSION OF LEGAL QUESTIONS RAISED

A. THE 6(i) LEASING REQUIREMENT APPLIES TO ALL STATE-SELECTED (6(a) AND (b)) LANDS

1. State officials were incorrect in believing the leasing requirement applied only when the state had sold or disposed of the surface interest.

After the passage of the Statehood Act, state (then territorial) officials interpreted the leasing restrictions as applying only to lands where the surface interest had been disposed. On April 4, 1959, for example, Phil R. Holdsworth, then holdover territorial commissioner of mines and soon to become the state's first commissioner of natural resources, offered what was to become the state position.

Section 6(i) of Public Law 508 entitled Mineral Land Grants makes the following statement: "All grants made or confirmed under this Act shall include mineral deposits." This section goes on to say that whenever the State of Alaska sells, grants, deeds, or patents any of the mineral lands so granted, conveyances will "....contain a reservation to to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same." From this it can be seen that lands selected by the State and which are not conveyed to a second party may be considered State public domain land. The present interpretation of Section 6(i) of Public Law 508 infers that the usual mining rights contingent upon discovery and appropriation will apply on State public domain lands the same as they presently apply on Federal public domain lands within Alaska. The major difference in the case of State lands is that the owner of an unpatented mining claim will not come to the State for a patent to that claim. Such action would compel the State to reserve the minerals in that land to the State or its lessee. Mineral deposits which have been reserved to the State in the conveyance of lands as described above "shall be subject to lease by the State as the State Legislature may direct." This concept closely parallels the policies of Public Law 167 which segregates the surface rights from subsurface mineral rights.

Presentation to the Fourth Annual Mining, Mineral and Petroleum Conference, Anchorage, Alaska, April 4, 1959.

This "inference" was included in the first Alaska Lands Act, 1959 Alaska Session Laws, art. IX, ch. 169:

> Section 1. Discovery and Appropriation Rights. Except as herein provided, all minerals which are subject to location under the mining laws of the United States, and the mineral lands in which they are contained, shall be subject to discovery, appropriation and location under the provisions of Sections 47-3-9 through 47-3-93, ACLA 1949, as amended. In the case of tide and submerged lands, and acquired lands known to contain such minerals, or lands which have been sold, granted, deeded, or patented reserving such minerals to Alaska, the right to mine and remove such minerals may be acquired only by lease on such terms and conditions as may be recommended by the Director and approved by the Commissioner.

This approach has been consistently adhered to since statehood, and is presently seen in the regulations - 11 AAC 86.135(b)

We are of the opinion that, although longstanding, this interpretation of 6(i) is incorrect. A long standing contemporaneous state interpretation of a federal statute is of little weight */; here it is particularly suspect given the intense and adverse state feelings about the 6(i) restrictions. Although the state officials recognized that they could not issue a patent that included the subsurface estate, they apparently attempted to restrict the application of the leasing language to as narrow an interpretation as possible. Although their goals may have been laudable, the attempt to retain the federal claim-staking system on state lands was precluded by 6(i).

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*/ See, generally, 2A Sutherland Statutory Construction, 4th ed., §49.05 at pp. 238. 238-249.

At no time prior to the passage of 6(i) and the Statehood Act was this interpretation offered or discussed. On the contrary, as Mr. Franklin's testimony shows and as the committee reports state, the 6(i) restriction was understood as applying to all mineral lands.

The state officials' position rests upon distinguishing between a "patent" system and a "claim-staking" system; namely, that the 6(i) restriction only applied to prevent a patent from issuing to mineral lands, not to claim-staking. Congress, under this view, only intended leasing to apply to lands where the surface was held by others with permanent rights.

But this application of the 6(i) restriction would result in a system practically identical to the federal "patent" system. Under the federal system, the only land open to claim-staking was unoccupied land, where no one else held superior rights. See, e.g., Rancher's Exploration and Development Co. v. Anaconda Co., 248 F. Supp. 708,714 (D. Utah 1965). Even under the federal system, therefore claim-staking was restricted to areas where no one had a prior permanent surface interest.

Second, merely preventing patent does little, both pratically and legally, to change the federal mining

scheme. The rights conveyed by discovery and location gave, for all practical purposes, rights identical to those conveyed by patent. As the United States Supreme Court stated:

> The rule is established by innumerable decisions of this Court, and of state and lower federal courts, that when the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term; and may be sold, transferred, mortgaged, and inherited without infringing any right or title of the United States. The right of the owner is taxable by the state; and is "real property" subject to the lien of a judgment recovered against the owner in a state or territorial court. Belk v. Meagher, 104 U.S. 279, 283; Manuel v. Wulff, 152 U.S. 505, 510-511; Elder v. Wood, 208 U. S. 226, 232; Bradford v. Morrison, 212 U.S. 389. The owner is not required to purchase the claim or secure patent from the United States; but so long as he complies with the provisions of the mining laws, his possessory right, for all practical purposes of ownership, is as good as though secured by patent.

Wilber v. United States ex rel. Kershnic, 208 U.S. 306, 316-317 (1930) (emphasis added).

But the purpose of the 6(i) restriction was to impose significantly stricter controls over mineral disposal than under the federal scheme. As Delegate Bartlett stated in the Congressional floor debate, "The Alaska statehood bill is much more stringent than federal laws. It provides that the State may never sell mineral rights. It may only lease them" 104 Congressional Record at 9515 (May 26, 1958).

The purpose of the leasing system was to provide continuing state control of minerals, to provide revenue for the state through rental or royalties, and to prevent minerals from being "given away" to third parties. A loophole as large as the one offered by early state officials is antithetical to that purpose.

Therefore, we believe that the approach offered by state officials in 1959 was not contemplated by anyone prior to the passage of the Statehood Act. The history of the 6(i) provision, the School Lands Act, the committee reports, and the expressed purposes of the provisions lead us to the conclusion that the leasing requirement applies to all mineral lands, whether or not the state has previously disposed of the surface interest.

2. "Mineral lands" as used in 6(i) means all 6(a) and (b) lands valuable for minerals, no matter when the mineral character may become known

In our opinion, a closer question is whether the term "mineral lands" in 6(i) restricts the leasing and mineral reservation provisions to only certain, but not all, 6(a) and 6(b) lands. 6(i) states in part:

> 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 [the minerals be reserved] . . . . Mineral deposits in such lands shall be subject to lease . . . .

Although state administrators never took this position, an argument could be made that the 6(i) restriction applies only to "mineral lands" as that term was applied by case law to pre-1927 land transfers; namely, land which was known or expected to contain minerals at the time of transfer. If this question was being answered for Federal/State transfers in 1926, under the case law at that time, we would be of the opinion that that interpretation of "mineral lands" would be appropriate.

But in the context of the School Lands Act and the Statehood Act, we believe that the leasing requirement, and the requirement that minerals be reserved in any sale, applies to 6(a) and 6(b) lands whether or not they are known or believed to contain minerals at the time of their transfer to the state.

Under the case law applicable to statehood grants enacted before the School Lands Act, "mineral lands" meant lands that were known or believed to be valuable at the time that the state had performed all actions required for it to be entitled to the statutory grant. This application is a judicial rule foreclosing inquiry, and is based upon congressional intent and the desire to avoid inequitable and unforeseeable title disputes. The rule was explained in Wyoming v. United States, supra;

> [The grantees were not] at liberty to select lands which were then known to contain minerals. Congress did not intend to grant any mines or mineral lands . . . . We say "lands then known to contain mineral," for it cannot be that Congress intended that the grant should be rendered nugatory by any future discoveries of mineral. . . . The title was then to pass, and it would be an insult to the good faith of Congress to suppose that it did not intend that the title, when it passed, should pass absolutely, and not contigently upon subsequent discoveries. This is in accord with the general rule as to the transfer of title to the public lands of the United Stat[illegible] In cases of homestead, preemption, c[illegible]n site entries, the law exclude[illegible]eral lands, but it was never doubte[illegible] the title, once passed, was free f[illegible] conditions of subsequent discoverie[illegible] mineral.

255 U.S.at 499. (Quoting from Shaw v. Kellog, 170 U.S. 312, 332-333 (1898)) The court went on to describe how this general rule applied to state selections prior to the School Lands Act.

> The Land Department uniformly has ruled that the states acquire a vested right in all school sections in place which are not otherwise appropriated, and not known to be mineral, at the time they are identified by the survey, --- or at the date of the grant, where the survey precedes it, --- regardless of when the matter becomes a subject of inquiry and decision, and that this right is not defeated or affected by a subsequent mineral discovery.

255 U.S. at 500.

This rule prevents inquiry into whether the land was known to be mineral in nature after a certain date. The purpose of this rule was to prevent the grantor from subsequently attempting to recover lands which were thought to be unconditionally transferred. It also was applied only where the land which was transferred was not known to be mineral in character at the time of the transfer.

But we question whether the rule is applicable where the transfer of title does not depend upon a distinction between mineral and non-mineral land, where the rule is not necessary in order for title to be unaffected by subsequent discovery of minerals, and where the inquiry would be meaningless in terms of the question of ownership between the federal government and the state. Instead, the purpose of determining the mineral nature of the land is entirely different under the 6(i) provision --- it is to determine how

the state may deal with its resources in a disposal of the property after title has passed from the federal government to the state. The purpose of the restriction was to promote state control over the mineral deposits, not to foreclose state ownership.

In addition the rule was based, in part, on the rationale that Congress could not have intended that title be transferred upon the condition that there would be no subsequent discovery of minerals. But the School Lands Act and the 6(i) grant, in part, were meant to eliminate the problems caused by distinguishing between lands known to be valuable for minerals and other lands. These problems were solved by granting the mineral interest to the states. There is no reason, and we do not believe that Congress intended, to apply the rule to restrictions on the state's subsequent handling of the land. To impose the rule would shift the very problem the legislation was intended to solve from the point of federal/state transfer to the state/third party transfer. For if the rule were to apply, then a third party's title would be challengable at any time on the basis that the land was known to be mineral at the time of transfer from the federal government to the state.

We see no reason, and do not believe Congress intended, to apply the rule restricting the application of the term "mineral lands" in a totally different context and in a manner that would create the very problems the legislation that the parent of the 6(i) provision (the School Land Act) was supposed to prevent. A similarly narrow application of the term "mineral lands" was deleted from earlier versions of the Statehood Act at the request of territorial officials (although for arguably different reason), and we are of the opinion that it should not be implied. */

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*/ As was stated, we do believe that the question is close and that a legimate and reasonable argument can be made to the contrary. In fact, the state has argued the above definition of "mineral lands" in a prior case. See Brief of Appellant State of Alaska in State v. Lewis, Supreme Court No. 3039 at 40-46 (filed August 16, 1976). The Supreme Court did not reach the issue in its decision. State v. Lewis, 559 P.2d 630 (Alaska 1977) appeal dismissed, 432 U.S. 901 (1977). In addition to the arguments presented therein, additional support can be gleaned from Senate Report 1163, 85th Congress, 1st session (August 29, 1957, page 2) and one of the drafts of Art. VIII, sec. 11 of the Alaska constitution. And, the original 6(i) draft also intended that a mineral/non-mineral distinction based upon known character at the time of transfer be applied.

But in reviewing the entire history, the expressed purposes of the legislation, and the purpose of the rule foreclosing inquiry into its known nature after transfer, we believe that the better view is the one explained in the text.

B. THE LEASING SYSTEM SET FORTH IN AS 38.05.185 - 280 IS CONSTITUTIONAL AND APPLIES TO ALL 6(a) AND 6(b) LANDS

Section 6(i) left the choice of a leasing system to the state legislature. As Mr. Slaughter of the Department of the Interior stated,

> The Alaska legislature is left . . . with the untrammelled right to frame its own mineral leasing laws; it can, if it so chooses, establish priorities that will tend to keep the surface and mineral right in the same hands and can, in general, fit the provisions of its mineral leasing system to whatever may be its concept of the public interest.

Slaughter memorandum, supra, at 10.

Acquisition and retention of mineral rights in Alaska lands are governed by the Alaska Land Act at AS 38.05.185 - 280. These statutes apply to rights in "locatable minerals", or, more specifically, "minerals which on January 3, 1959, were subject to location under the mining laws of the United States." These minerals include metal ores (gold, silver, and the like), and high-value non-metallic minerals such as asbestos, high purity limestones, building stone, magnesite, and silica sand. These are to be distinguished from what are traditionally termed "leasable minerals," which include oil, natural gas, oil shale, asphalt, bitumen, coal, phospate, sodium, potassium, and, by state statute, sulfur. Whether or not found on 6(a) or 6(b) lands, these "leasable" minerals can only be acquired by lease. AS 38.05.135-181.

For "locatable" minerals, the statutes set up two basic methods to acquire the right to extract and sell the minerals, each of which applies to different categories of state lands. One method is the staking of a mining claim under AS 38.05.195. That statute provides for claim-staking on lands open to mineral location and rights are acquired simply by a valid discovery, location, and filing. Once a proper filing has been made, and so long as there is compliance with the annual requirements of labor or improvements, the locator immediately gains "the exclusive right of possession and extraction of all minerals lying within the boundaries of his claim." AS 38.05.195.

Another method is to acquire a lease under AS 38.05.205. A valid mining claim on lands open to claim-staking must be converted to a lease upon request of the locator. AS 38.05.205(c). On lands which are not open to claim-staking, an applicant must still discover, locate and file. On these lands, however, a valid filing only "initiates prior rights." After the director is notified, he must send the locator an application for a lease, which must then be filed by the claimant within 90 days. Only after executing the lease does the mineral lessee have "exclusive rights of

possession and extraction of all minerals . . . lying within the boundaries of his lease." AS 38.05.205(a). But prior to the issuance of a lease, "minerals may not be mined and marketed or used . . . except for a limited amount necessary for sampling or testing." AS 38.05.205(a). The law also provides for certain terms and conditions to be included in a mineral lease. AS 38.05.205.

The next question is, to what lands do each of these methods apply. AS 38.05.185(a) states that "the director, with the approval of the commissioner, shall determine those lands from which mineral deposits may be mined only under lease and . . . those lands which shall be closed to mining." This authority must be read in conjunction with the strictures of 6(i) of the Statehood Act: namely, that mineral deposits in 6(a) and 6(b) lands may only be mined pursuant to a lease. Thus, for 6(a) or 6(b) lands, the director's only option is to allow mining by lease or to close those lands to mining.

The director's discretion under AS 38.05.185(a) is further limited by AS 38.05.250, which provides that mineral deposits in tide or submerged lands may be prospected for by permit and extracted pursuant to a competitive or non-competitive lease. Other lands, pursuant to AS 38.05.185(a), may either be closed to mining, mined by lease only or mined

pursuant to a mineral claim. */

One other distinction between leases and claims is whether annual labor is required. For state land, it is only mining claims, and not leases, which require annual labor for continued validity. Mineral leases, on the other hand, require only discovery, location, and filing to establish the prior right to the lease. AS 38.05.205. In fact, prior to a lease being issued, AS 38.05.205 would prevent extracting minerals.

AS 38.05.205(b), which provides that leasehold locations will accrue an annual rental of $200, against which labor may be credited whether or not the location is actually under lease, does not indicate to the contrary. We believe that this section contemplates payment being due upon award of the lease, and that a claimant need not make payment or do any work until issuance of the lease. In part, the scheme set up by AS 38.05.205(a) compels this result. After a location has been recorded (thus perfecting

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*/ Provisions of other statutes dealing with particular categories of non 6(a) and (b) lands must also be consulted. E.g., AS 38.05.030(a) concerning leasing of university lands.

the prior right to a lease), the potential lessee has only 90 days in which to file his lease application with the director after receiving the application from the department. Thus the only source of delay during which a yearly rental would be due would be the time taken by the department in identifying the location, determining the correctness of the filing, determining if the lands were open to leasing, and complying with applicable notice requirements. Until the department responded, the locator would have no justification for assuming he had any claim or lease upon which he could prudently make improvements. Therefore, an initially valid location is sufficient to vest a locator with a prior right to a mining lease without performance of annual labor.

In summary, under existing law the only means by which a mining lease may be acquired is by discovery, location, and filing under either state (AS 38) or federal (AS 27) procedures. A discovery and appropriation automatically leads to the issuance of a mining lease. This approach forecloses competitive leasing. This scheme is similar to the mandatory leasing systems of a number of Western States. E.g. Arizona, (ARS § 27-231 - 238); Colorado, (Colorado Revised Statutes Annotated, §36-1-140); and Oregon, (ORS § 273-551, 517.420). We are also of the opinion that non-competitive leasing is constitutionally preferred in Alaska.

Article VIII, section 11 of the Alaska Constitution provides that

> Discovery and appropriation shall be the basis for establishing a right in . . . [locatable minerals]. Prior discovery, location, and filing as prescribed by law, shall establish a prior right to these minerals and also a prior right to . . . leases.

Although there may be some instances where competitive leasing may be allowable, such as when a mining lease is forfeited or returned to the state, the language Article VIII section 11 indicates that non-competitive leasing of valuable minerals is at least constitutionally preferred, if not required. Since there is no statutory authorization for competitive leasing of locatable minerals, however, we do not need to decide that question at this time.

C CLAIMS LOCATED AFTER STATE SELECTION BUT PRIOR TO TENTATIVE APPROVAL WILL BE VALID UNDER STATE LAW ONLY UPON THE STATE RECEIVING TENTATIVE APPROVAL AND SUBJECT TO PATENT OR CLASSIFICATION OF THE LANDS.

One problem that has arisen since statehood is based on the delay between state selection and tentative approval Under 6(g), as previously mentioned, the state

does not have authority to grant or validate mining rights until the state receives tentative approval. Therefore, until the state receives tentative approval, mining operations on these lands are governed by federal law.

A claim located under federal law prior to state selection is unaffected by the state selection. The first proviso in both 6(a) and 6(b) states:

> That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the lands so occupied.

On the other hand, federal law prevents a valid location under federal mining law after state-selection by providing that state selection segregates the land from mineral entry. The applicable federal regulation provides:

> Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, <u>including locations under the mining laws</u>, when the State files its application for selection in the proper office properly describing the lands.

43 CFR 2627.4(b) (emphasis added).

Therefore, locations made between state selection and tentative approval are in a legal no-man's land: they are ineffective under federal law and, until the state receives tentative approval, they are outside the reach of state law.

Recognizing this problem, the state legislature passed an act which provided for recognization of a location made between state selection and tentative approval at the time the state received tentative approval. Section 11 chapter 123, SLA 1961 provided:

> Locations made on lands which have been selected from federal lands and which were made in accordance with this article will constitute valid mining claims, mining leasehold locations, or prospecting site locations at the time Alaska receives tentative approval of its selection. Such locations shall be subject to the provisions of said tentative approval and to land classification by the state after such tentative approval. Extraction of minerals prior to classification of the land and receipt of patent by the State shall be at the risk of the locator.

With subsequent amendments, discussed later, this section is now AS 38.05.275.

James A. Williams, Director of the Alaska State Division of Mines and Minerals, summarized the scheme in a presentation before the Northwest Mining Association Convention, Spokane, Washington, Dec. 1-2, 1961:

> Locations made on lands selected by the State but prior to the time the State receives tentative approval of the selection

> from BLM are made at the locator's risk. When the State receives tentative approval of its land selection, the locations will become valid and the State may issue conditional mining leases, subject to conditions of the tentative approval and land classification by the State. These rights will be lost, or partly lost, in the event the State does not eventually receive title or patent to all or part of the lands. A claim holder on Federal public domain cannot lose his mineral rights through State land selection, because the State cannot select land included within valid mining claims.

Similar statements, particularly emphasizing that locations made between selection and tentative approval are at the locator's risk, have consistently appeared in mining handbooks issued by the state.

Section 11, chapter 163, SLA 1961 was extensively amended in 1966. Section 3, ch. 96, SLA 1966 provided,

> Mining locations made on state lands, including shorelands, tidelands or submerged lands, or state selected lands, under secs. 185 -280 of this chapter or in the manner described in AS 27.10.010 -27.10.240 acquire for the locator mining rights under secs. 185 - 280 of this chapter, subject to existing claims and to any denial of or restriction in the tentative approval of state selection or the patent of the lands to the state. If shorelands, tidelands or submerged lands are included in a mining location or within the projected boundaries of a mining location made in accordance with this section, the locator is required to file a certificate of location with the division of lands

> within 90 days following the date of posting the notice of location, in addition to filing a certificate of location as required by Sec. 195 of this chapter. The certificate of location must identify the position of the mining location in the system of rectangular or protracted surveys.

The purpose of this provision was to extend state recognition of claims to claims located under either the federal or state procedures. In a letter to the chairman of the House Resources Committee, Charles F. Herbert, then Deputy Commissioner of the Department of Natural Resources, stated;

> In Section 3, we ask the Legislature to meet the problem of acquiring State mining rights to State tidelands and submerged lands that form fractional parts of mining claims staked on adjoining Federal lands. Where a coast line is highly irregular and many indentations and tidal basins exist, it is often most difficult to trace out the boundaries between the Federal lands and the State lands. If this difficulty is not corrected, there could be unending litigation over fractional claims and technically illegal staking.
>
> Section 3 would also protect the prospector who is not aware if the land he stakes is owned by the Federal or State government and would also permit him to stake a Federal claim that might include navigable waters, which, of course, are state-owned.

This letter was printed in the House Journal at the request of the committee. 1966 House Journal at 691-692

(March 23, 1966). These provisions are the current AS 38.05.275. Therefore the state must recognize a claim if it is staked either in accordance with the procedure for either federal lands under AS 27 or for state lands under AS 38.05.185.

But the 1966 amendment, with its extensive rewording, raised another question. The previous legislation recognized the validity of a location at tentative approval, with the phrase "subject to the provisions of said tentative approval and to land classification by the state after such tentative appraisal." The 1966 amendment dropped the emphasized language.

Although an argument could be made to the contrary, this deletion does not prevent the state from closing any lands to mining upon receipt of tentative approval. First, the same amendment that deleted the above language added the provision that a location would only "acquire for the locator mining rights under secs. 185-280 of this chapter . . . ." Therefore, by that addition a locator's rights were subject to the provisions of AS 38.05.185 that:

> The director, with the approval of the commissioner, shall determine . . . those lands which shall be closed to mining.

By adding the language subjecting the locator's rights to AS 38.05.185-280, the legislature retained the authority of the Department of Natural Resources to close lands to mining.

Second, we can find no indication of legislative intent to achieve a different result. The only expression of intent is contained in the Herbert letter quoted earlier. That letter gives no indication of any intention to take the larger step of eliminating the ability of the state to close lands to mining once it received tentative approval and land management authority.

Third, there was no effort to change the present 11 AAC 86.115, which states:

> (a) Locations made on lands selected by the state prior to the state's receipt of tentative approval for the selection are made at the locator's risk.
> (b) If such locations are made in accordance with this chapter, they constitute valid mining claims, leasehold locations, or prospecting sites upon receipt by the state of tentative approval for the selection from the federal government, subject, however, to the provisions of the tentative approval and to land classification by the State.

This regulation has been in effect since at least 1967. Consequently, contemporaneous administrative practice supports the interpretation allowing closing of lands to mining after receipt of tentative approval. See, generally, 2A Sutherland Statutory Construction, 4th ed., §49, at 228-267.

Therefore, it is our opinion the state may close lands to mining upon receipt of tentative approval, even if there are existing locations made after state selection but prior to tentative approval. */

D. PUBLIC NOTICE UNDER AS 38.05.305 AND AS 38.05.345 IS REQUIRED PRIOR TO ISSUING A MINING LEASE.

A final question concerns the public notice required prior to granting a mineral lease to a locator, and the timing of that notice. Article VIII, section 10, provides that:

> No disposals or leases of state lands, or interest therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

---

*/ In addition, the Department of Natural Resources, with the approval of this department, has previously taken this position in an administrative decision dated December 10, 1973 concerning "Clarence Hershberg, 723 W. 6th Avenue, Anchorage, Alaska Rainy day No. 1, Rainy day No. 2, Rainy day No. 3, Jackson No. 1, Allison No. 1, Placer mining claims." There the department specifically rejected the claim that the state could not close land to mining upon receipt of tentative approval if a location had been made after state selection but prior to tentative approval. In memoranda dated January 17, 1974, April 12, 1974, May 1, 1974, and May 28, 1974, this office concurred in that decision.

This provision by its terms applies to the leasing of a mineral interest in state land. The problem is in identifying the moment the state disposes of its mineral interest.

Even though a valid location in an area open to mining automatically leads to a mining lease, we do not believe that disposal of the mineral interest within the meaning of article VIII, section 10 occurs prior to the issuance of a mining lease. The primary reason for this conclusion is the existence of article VIII, section 11, and the attempt of the delegates to the convention to allow following federal mining law to the extent permitted by the terms of 6(i). See, e.g., 4 Alaska Constitutional Convention 1955-56 Minutes at 2452. Discovery and appropriation is complete upon filing of the notice with the state under both federal and state law. Prior to the filing, the act of location and discovery is unknowable to the state. Thus there could be no "prior public notice" under section 10 if discovery and appropriation gave the miner an immediate right to produce and sell the mineral. But under the federal system, discovery and appropriation, without more, did give the miner an immediate right to mine and sell minerals. The delegates clearly intended that this result could occur if the Statehood Act permitted.

As a result, the interest acquired by discovery and appropriation, even if it gives an automatic right to eventual ownership of a mineral, is not a disposal under article VIII, section 10. Rather, notice prior to the issuance of the mining lease is the constitutional notice required by article VIII, section 10.

Pursuant to this mandate, the legislature has enacted two applicable statutes: AS 38.05.305 and AS 38.05.345. AS 38.05.305 states in full:

> (a) No land or interest in land within the boundaries or within six linear miles of the boundaries of a general law, home rule or unified municipality, as defined under AS 29, may be classified, reclassified, sold or leased, or otherwise disposed of, including the renewal of a lease entered into after September 22, 1976, unless the following procedures have been complied with:
>
> (1) A notice of the proposed action shall be sent to the governing body of each municipality a boundary of which is within six linear miles of the land involved.
>
> (2) The notice shall be sent at the earliest practicable time but no less than 30 days before the proposed action.
>
> (3) The notice must contain a statement of the proposed action, identifying the land involved and the action proposed in sufficient detail to fairly inform the recipient of the nature of the proposed action. If the land is not surveyed, a legal description need not be used; but the land must be described in sufficient detail to allow the recipient to understand its approximate

size, number of tracts involved, and location. The notice must also contain a statement to the effect that the municipality is invited to comment on the proposed action and that, upon the request of the governing body, chief executive officer, or planning agency, the division will consult with the municipal officials on the proposed action. Any request by a municipality for consultation must include the name of the municipal official to be consulted and be sent no later than 15 days after receipt of the notice by the municipality, and the notice must contain a statement to this effect and name the official and address to which the municipality's request should be sent.

(4) In consulting with the municipal officials, the proposed action and the authority under which it is to be taken shall be explained and the reason for the proposed action shall be given. A public hearing need not be held, but the municipal officials may hold a public hearing or otherwise allow public participation and comment. A hearing held under this paragraph shall be attended by the commissioner of natural resources or his designee.

(5) A municipality having a right to notice or consultation under this section may appeal to the superior court and have set aside any action taken which does not conform to this section. A municipality incorporated or established less than 30 days before the action is taken has no right to notice or consultation under this section.

(b) No land or interest in land outside the boundaries of a general law, home rule, or unified municipality, as defined under AS 29, may be classified, reclassified, sold or leased, or otherwise disposed of,

including the renewal of a lease entered into after September 22, 1976, unless a notice of the proposed action as required by (a)(3) of this section is (1) given to the regional corporation organized under the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. secs. 1601-1626), within the boundaries of which the land is located; (2) given to the village corporation organized under the Alaska Native Claims Settlement Act which owns land or has selected federal land which is in the vicinity of the state land to be disposed of; and (3) posted in three public places in a community with 25 or more permanent residents located in the vicinity of the state land to be disposed of. The president of the affected regional corporation or his designee has the same rights of notice, consultation, hearing and appeal as those provided for in (a)(2)-(5) of this section.

(c) When notice is given under (b) of this section, the requirements of § 345 of this chapter relating to notice apply in addition to any other applicable notice requirements. If requested, the director shall hold a hearing within the affected area under (b) of this section. No action proposed by the director which is subject to the notice requirement specified in (b) of this section is final until at least 30 days after the date the notice was published.

(d) Before any sale, lease under AS 38.05.070-38.05.105, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect of the disposal and the effect of the estimated population density that would result from the disposal upon existing traditional uses by residents in the vicinity of the land to be disposed of. The commissioner shall consider any potential conflicts with the traditional uses of the land which

could result from the sale, lease or disposal and, if he finds it necessary, he shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of this chapter.

By their terms, the requirements of 305(a), (b), (c), and (d) apply to mineral leases. See Moore v. State, 553 P.2d 8, 26-27 n. 37 Alaska 1976. A more difficult question is the applicability of AS 38.05.345, which provides:

> Notices. (a) Public notice of a sale, lease or other disposal of land or interest in it shall be substantially as follows.
>
> (b) Notice shall be published once a week for four consecutive weeks preceding the time of sale stated in the notice, in newspapers of general circulation in the state and by the electronic media covering the region of the state in which the land is located. If there is no newspaper of general circulation in the vicinity of the land offered for sale, notices shall be posted not later than four weeks before the public auction is to be held in three public places near the land to be sold or leased. The public auction shall be held not less than 45 days after publication of the first notice and not more than five weeks following the last appearance of the published notice.
>
> (c) [deleted]
>
> (d) Where the land involved is adjacent to a body of water or waterway which the department has not previously determined to be navigable or public, or not navigable or public, the notice shall state that such a determination is to be made.

(e) The director shall publish a public notice of each disposal of state land under the procedures specified in AS 38.05.057 and AS 38.08 in newspapers of general circulation in the state and by the electronic media covering the region of the state in which the land is located. The notice shall be published once each week for four consecutive weeks before the beginning date of an application period.

(f) If there is no newspaper of general circulation in the general vicinity of land offered for disposal, notices required by (e) of this section shall be posted not later than four weeks before the land is offered in three public places near the land.

(g) A notice under this section shall contain

(1) a description of the land sufficient for identification by the public;

(2) the date of the auction or the beginning of the application period;

(3) a statement that a purchaser of state land offered is responsible for the construction of access roads and capital improvements that may be required by an authority having platting authority; and

(4) the location and address of places where the public may obtain information concerning the land offered for disposal.

While subsection (a) states that the procedures apply to "all disposals," each of the remaining subsections is clearly intended to operate in situations where the land is offered for auction, (b) and (g), lottery, (e) and (g),

or other competitive public offerings initiated by the state (f). But the statutory leasing system under AS 38.05.205 is not initiated by the state; in fact, if the land is open to mineral discovery, the state has no discretion as to whom it may offer a lease.

Despite this difference, it is our opinion that the provisions of section 345(a) apply; namely, that a disposal under sections 185-280 must "substantially" comply with the procedures in section 345. Therefore, the publishing requirements of (b) must be followed to the extent they apply even though no auction is contemplated.

Although Section 345(b) appears to apply to mineral leases, sections (e) and (f) do not. Subsection (f) applies only if subsection (e) applies, and subsection (e) applies to lottery and homesite disposals under AS 38.05.057 and AS 38.08. Similarly, it also appears that subsection (d), which requires a statement in the notice of determinations for adjacent navigable or public waters, would apply to disposals of the surface estate, not to subsurface interests. Similarly, sections (g)(2) and (3) also do not appear to apply.

If the proposed lease is within the boundaries, or within six miles of the boundaries, of a general-law, home-rule, or unified municipality, the requirements of AS 38.-05.305(a)(1)-(5) must be followed; for other land, the requirements of section 305(b) apply, which track the requirements of (a)(2)-(5). In addition, the commissioner must

consider the matters set forth in AS 38.05.309(d) when the leasehold is in an unorganized borough.

IV CONCLUSION

Therefore, for the reasons stated in this opinion, we conclude that

1. the state may not issue a patent to mineral interests in 6(a) or 6(b) lands;

2. the state may only dispose of mineral deposits in 6(a) and 6(b) lands by lease;

3. the constitutionally preferred method is non-competitive leasing based on discovery and location;

4. the annual labor requirements do not apply to locations leading to a lease;

5. a location is valid if it follows either the federal, AS 27, or state, AS 38.05.185 - 280, procedures;

6. a location made after selection but prior to tentative approval is outside state law and at the locator's risk;

7. a location made after state selection but before tentative approval will be recognized by the state upon receipt of tentative approval, subject to: (1) conditions of tentative approval, (2) eventual receipt of patent, and (3) possible closure of the lands to mining upon receipt of tentative approval; and

8. public notice under AS 38.05.305 and AS 38.05.345 must be given prior to issuing a mineral lease.

SB

745

SB 745

COMMITTEE REPORT

SENATE

2/11/82

FURTHER: Finance

Date: 2/11/82

Mr. President:

The Committee on RESOURCES has had SB 745

extending the lapse date for the FY 82 appropriation for land disposal surveys

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

SENATE RESOURCES COMMITTEE
LEGISLATION CHECKLIST

BILL NUMBER SB 745

IDENTIFICATION:

BILL NAME: "An Act extending the lapse date for the FY 82 appropriation for land disposal surveys; and providing for an effective date."

SPONSOR(S): Rules (Governor's request)

RELATED BILLS PENDING:

DATE INTRODUCED: 2/11/82

REFERRALS Resources, Finance

INITIAL RESEARCH:

INITIAL BILL SUMMARY COMPLETED

SUMMARY BY LEGAL DIVISION:
DEPT. OF LAW SUMMARY:

SPONSOR CONTACTED FOR BACKUP MATERIALS:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPRATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/CS DRAFTED:

DNR — Sharon 2:00 3/4 Mtg. Rd. - Mark Witten will be here (65)

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 11, 1982

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill extending the lapse date for $13,684,800 of the FY 82 appropriation to the Department of Natural Resources to fund land disposal surveys. The difference between this $13,684,800 and the $15,000,000 which appears on page 108, line 19, of ch. 82, SLA 1981 represents the amount appropriated for operating expenses of the land disposal program. Although in prior years the program's surveying costs were funded through capital appropriations, last year they were included in the appropriation for HB 31 (SCS CSHB 31 (Fin) am S (am FCC); ch. 113, SLA 1981) as operating expenses. Thus the unspent and unobligated part of the appropriation will lapse at the end of FY 82. However, surveying activities normally begin in the spring and continue through the fall, relying more on weather than on fiscal years. The surveying which will begin this spring is for FY 83 land disposals, and it is necessary to extend the lapse date for the appropriation.

Sincerely,

Jay S. Hammond
Governor

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

March 8, 1982
1:35 p.m.

Beltz Room
Room 211 - Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

Hearing:

SB 730	An Act establishing the Aleksandr Baranof State Game Refuge.
SB 745	An Act extending the lapse date for the FY 82 appropriation for land disposal surveys.
SB 759	An Act relating to the size of trapping cabins.
SB 832	An Act extending the lapse date for the FY 82 appropriation for the Citizen Advisory Commission.

SB 745

Jeff Haynes, Deputy Commissioner, Department of Natural Resources, explained that this capital appropriation is necessary to continue survey work ($11 million) and municipal grants ($2 million).

Senator Fischer asked that SB 832 be heard before any action was taken on SB 745.

SB 832

Senator Fischer stated he would like SB 745 and SB 832 combined since they both amend the same line of the same statute.

Senator Fahrenkamp expressed opposition in consideration of the sponsors.

Senator Mulcahy moved SB 745 and SB 832 with individual recommendations.

SB 759

Jeff Haynes stated that the existing statute limits the size of trapping cabins to 192 square feet. DNR feels the increase to 768 square feet that SB 759 would provide is too great. A smaller size would discourage the establishment of a permanent residence on a $10/year trapping permit.

Senator Fahrenkamp said a Committee Substitute had been prepared that limits the size to 400 square feet.

Senator Eliason disagreed with the size limit, stating that criteria for obtaining a permit limit the cabin's use to trapping.

Senator Gilman moved the adoption of the Committee Substitute for SB 759. He then moved CSSB 759 with individual recommendations.

SB 730

Senator Sturgulewski moved to rescind the Committee's action on SB 730.

Senator Fahrenkamp explained that after action was taken last Friday, the land manager in Kodiak called about a technical error in the bill.

Senator Mulcahy stated that on page 1 line 29, and page 2 line 1, "21" should read "23". He moved the adoption of the Committee Substitute for SB 730. He then moved CSSB 730 with individual recommendations.

The meeting was adjourned at 2:00 p.m.

Alaska State Legislature

Senate

Resources Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate Resources Committee

FROM: Senate Resources Committee Staff

RE: Committee Meeting, March 8, 1982

DATE: March 5, 1982

Please find attached background information for the Monday, March 8 hearing on the following bills:

SB 745 Extending the lapse date for the FY 82 appropriation for land disposal surveys.

SB 759 Relating to the size of trapping cabins.

SB 832 Extending the lapse date for the FY 82 appropriation for the Citizen Advisory Commission.

The meeting will be held at 1:30 p.m. in the Beltz Room.

LEGISLATIVE SUMMARY

SB 745 "An Act extending the lapse date for the FY 82 appropriation for land disposal surveys; and providing for an effective date."

Sec. 1. Extends the lapse date for the appropriation of $13,684,000, for land disposal surveys, until June 30, 1983.

Sec. 2. Effective date is immediately.

SPONSOR: RULES COMMITTEE BY REQUEST OF THE GOVERNOR

				APPROPRIATION ITEMS	APPROPRIATION FUND SOURCES GENERAL FUND	OTHER FUNDS
* SEC. 29 THE FOLLOWING APPROPRIATION ITEMS ARE FOR OPERATING EXPENDITURES FROM THE GENERAL FUND OR OTHER FUNDS AS SET OUT IN THE FISCAL YEAR 1982 BUDGET SUMMARY BY FUNDING SOURCE TO THE STATE AGENCIES NAMED AND FOR THE PURPOSES SET OUT IN THE NEW LEGISLATION FOR THE FISCAL YEAR BEGINNING JULY 1, 1981 AND ENDING JUNE 30, 1982. THE APPROPRIATION ITEMS CONTAIN FUNDING FOR LEGISLATION ASSUMED TO HAVE PASSED DURING THE FIRST SESSION OF THE TWELFTH LEGISLATURE AND ARE TO BE CONSIDERED PART OF THE AGENCY OPERATING BUDGET. SHOULD A MEASURE LISTED IN THIS SECTION EITHER FAIL TO PASS, ITS SUBSTANCE FAIL TO BE INCORPORATED IN SOME OTHER MEASURE, OR BE VETOED BY THE GOVERNOR, THE APPROPRIATION FOR THAT MEASURE SHALL LAPSE.						
HB	17	ESTABLISH OLDER ALASKANS COMMISSION		383,300	383,300	
		APPROPRIATED TO DEPARTMENT OF ADMINISTRATION				
HB	31	RELATING TO MANAGEMENT OF STATE LAND		15,000,000	15,000,000	
		APPROPRIATED TO DEPARTMENT OF NATURAL RESOURCES				
HB	91	AN ACT RELATING TO DOMESTIC VIOLENCE		257,400	257,400	
		APPROPRIATED TO DEPARTMENT OF PUBLIC SAFETY				
HB	92	LIBRARY ASSISTANCE GRANTS		1,080,000	1,080,000	
		APPROPRIATED TO DEPARTMENT OF EDUCATION				
HB	94	AN ACT RELATING TO WORKER'S COMPENSATION		302,800	415,100	(112,300)
		APPROPRIATED TO DEPARTMENT OF LABOR				

SB
759

COMMITTEE REPORT

SENATE

2/15/82

FURTHER: None

Date: 2/18/82

Mr. President:

The Committee on RESOURCES has had SB 759

relating to the size of trapping cabins

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for [X] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
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BOB MULCAHY
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STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
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Senate

Committee on Resources

March 8, 1982
1:35 p.m.

Beltz Room
Room 211 - Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

Hearing:

SB 730 An Act establishing the Aleksandr Baranof State Game Refuge.
SB 745 An Act extending the lapse date for the FY 82 appropriation for land disposal surveys.
SB 759 An Act relating to the size of trapping cabins.
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SB 745

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Senator Fischer asked that SB 832 be heard before any action was taken on SB 745.

SB 832

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Senator Fahrenkamp expressed opposition in consideration of the sponsors.

Senator Mulcahy moved SB 745 and SB 832 with individual recommendations.

SB 759

Jeff Haynes stated that the existing statute limits the size of trapping cabins to 192 square feet. DNR feels the increase to 768 square feet that SB 759 would provide is too great. A smaller size would discourage the establishment of a permanent residence on a $10/year trapping permit.

Senator Fahrenkamp said a Committee Substitute had been prepared that limits the size to 400 square feet.

Senator Eliason disagreed with the size limit, stating that criteria for obtaining a permit limit the cabin's use to trapping.

Senator Gilman moved the adoption of the Committee Substitute for SB 759. He then moved CSSB 759 with individual recommendations.

SB 730

Senator Sturgulewski moved to rescind the Committee's action on SB 730.

Senator Fahrenkamp explained that after action was taken last Friday, the land manager in Kodiak called about a technical error in the bill.

Senator Mulcahy stated that on page 1 line 29, and page 2 line 1, "21" should read "23". He moved the adoption of the Committee Substitute for SB 730. He then moved CSSB 730 with individual recommendations.

The meeting was adjourned at 2:00 p.m.

Senate

465-3834

TO: B Billy Berrier
Director
Legal Services

DATE: 3/2/82

FROM: Bettye Fahrenkamp
Chairman

RE: Committee Substitute for SB 759

I would appreciate you writing a Committee Substitute for SB 759 deleting "768" on page 4, line 18, and replacing it with "400".

If you have any questions please contact Resa King at 465-3834. Please return the final bill to Senate Resources Committee, Room 211, Capitol Building.

Attachment

SENATE RESOURCES COMMITTEE
LEGISLATION CHECKLIST

BILL NUMBER SB 759

IDENTIFICATION:

BILL NAME: "An Act relating to the size of trapping cabins."

SPONSOR(S): Kerttula (request)

RELATED BILLS PENDING:

DATE INTRODUCED: 2/15/82

REFERRALS Resources

INITIAL RESEARCH:

INITIAL BILL SUMMARY COMPLETED *yes*

SUMMARY BY LEGAL DIVISION:
DEPT. OF LAW SUMMARY:

SPONSOR CONTACTED FOR BACKUP MATERIALS:
3/4 3721 left word.

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPRATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES:
Mark Witten, DNR

SUGGESTED AMENDMENTS/CS DRAFTED:

Alaska State Legislature

Official Business

Senate

Resources Committee

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate Resources Committee

FROM: Senate Resources Committee Staff

RE: Committee Meeting, March 8, 1982

DATE: March 5, 1982

Please find attached background information for the Monday, March 8 hearing on the following bills:

SB 745 Extending the lapse date for the FY 82 appropriation for land disposal surveys.

SB 759 Relating to the size of trapping cabins.

SB 832 Extending the lapse date for the FY 82 appropriation for the Citizen Advisory Commission.

The meeting will be held at 1:30 p.m. in the Beltz Room.

LEGISLATION SUMMARY

SB 759: " An Act relating to the size of trapping cabins."

Sec. 1: Amends existing law to allow a trapping cabin permittee to construct one cabin of up to 768 square feet in size. Any other cabins constructed under the same permit may not exceed 192 square feet in size.

NOTE: Existing law allows a trapping cabin permittee to construct a specified number of cabins for established traplines, none to exceed 192 square feet in size.

PRIME SPONSOR: Kerttula (by request)

CO-SPONSOR(S): None

EARCH - QUERY
0009 '38.95.080'.CITATION.

S38.95.080 DOCUMENT= 1 OF 1
EADINGS TITLE 38.
PUBLIC LANDS.
CHAPTER 95.
MISCELLANEOUS PROVISIONS.
ARTICLE 2.
MANAGEMENT CONTRACTS AND LAND EXCHANGES; P.L. 92-203 CORPORATIONS.
ITATION SEC. 38.95.080.
ATCH LINE

TRAPPING CABIN CONSTRUCTION PERMITS.

EXT (A) THE DIRECTOR OF THE DIVISION OF LANDS SHALL ISSUE A NONTRANSFERABLE PERMIT FOR THE CONSTRUCTION OF A TRAPPING CABIN ON STATE LAND TO A PERSON WHO MEETS THE FOLLOWING QUALIFICATIONS:

(1) THE PERSON MUST HAVE AN ESTABLISHED TRAPLINE WITH PROOF OF REGULAR USE;

(2) THE PERSON MUST HAVE A TRAPLINE OF SUFFICIENT LENGTH TO JUSTIFY THE NEED FOR CABIN CONSTRUCTION.

(B) NOTHING IN (A) OF THIS SECTION PREVENTS THE DIRECTOR FROM ISSUING A PERMIT TO MORE THAN ONE QUALIFIED PERSON FOR THE CONSTRUCTION AND USE OF THE SAME TRAPPING CABIN.

(C) THE DIRECTOR SHALL ESTABLISH, BY REGULATION, CONDITIONS ATTACHING TO THE PERMIT ISSUED UNDER (A) AND (B) OF THIS SECTION. THESE CONDITIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(1) PERMITS SHALL BE ISSUED FOR A PERIOD OF NOT MORE THAN 10 YEARS, WITH SUCCEEDING 10-YEAR RENEWAL OPTIONS, IF CONTINUED USE AND OCCUPANCY IS ESTABLISHED, AND THE QUALIFICATIONS OF (A) OF THIS SECTION CONTINUE TO BE MET;

(2) A CABIN SHALL BE CONSTRUCTED AND MAINTAINED ACCORDING TO REASONABLE SPECIFICATIONS ESTABLISHED BY THE DIRECTOR; HOWEVER, IN NO CASE MAY A LINE CABIN EXCEED 192 SQUARE FEET;

(3) A PERMIT SHALL SPECIFY THE NUMBER OF CABINS ALLOWED TO BE CONSTRUCTED AND INDICATE THEIR SPECIFIC GEOGRAPHICAL LOCATION; THE DIRECTOR MAY ESTABLISH A MAXIMUM NUMBER OF CABINS PER PERSON OR OTHERWISE LIMIT THEIR NUMBER BECAUSE OF THE PROBABILITY OF ADVERSE CONSEQUENCES;

(4) ADEQUATE PROVISION MUST BE MADE AT EACH CABIN FOR WASTE AND GARBAGE DISPOSAL, AS DETERMINED BY THE DIRECTOR;

(5) THE PAYMENT OF A TRAPPING CABIN PERMIT FEE OF $10.

(D) A PERMIT ISSUED UNDER (A) AND (B) OF THIS SECTION ENTITLES ITS HOLDER TO USE TIMBER IN THE IMMEDIATE VICINITY OF THE CABIN FOR PERSONAL NONCOMMERCIAL PURPOSES ONLY. NO OWNERSHIP RIGHTS TO THE LAND ARE CONVEYED BY THE ISSUANCE OF A TRAPPING CABIN PERMIT UNDER THIS SECTION.

(E) A PERSON WHO MAKES A FALSE STATEMENT AS TO ANY MATERIAL FACT RELATING TO A PERMIT ISSUED UNDER THIS SECTION IS GUILTY OF A MISDEMEANOR. A PERSON WHO VIOLATES THIS SUBSECTION OR ANY OF THE TERMS AND CONDITIONS OF A PERMIT ISSUED UNDER THIS SECTION MAY HAVE HIS PERMIT IMMEDIATELY REVOKED AND IS SUBJECT TO PAYMENT OF ALL COSTS REQUIRED IN DISMANTLING HIS CABIN STRUCTURE.

ISTORY (SEC. 1 CH 115 SLA 1976; AM SEC. 40 CH 113 SLA 1981)

LEGISLATIVE SUMMARY

CSSB 759 (res) "An Act relating to the size of trapping cabins."

Page 1, line 18, deletes "768" and inserts "400" in its place.

Sec. 1: Amends existing law to allow a trapping cabin permittee to construct one cabin of up to 400 square feet in size. Any other cabins constructed under the same permit may not exceed 192 square feet in size.

SB

769

COMMITTEE REPORT

SENATE

2/16/82

FURTHER: Finance

Date: 2/22/82

Mr. President:

The Committee on RESOURCES has had (SB 769)

removing the requirement that power projects constructed under the energy program for Alaska be owned by the the state

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for SB 769 [ ] same title [✓] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

Frank Ferguson

[signature]

Bob Mulcahy

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

Senate
Resources Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate Resources Committee

FROM: Senate Resources Committee Staff

RE: Committee Meeting, Friday, March 5, 1982

DATE: March 4, 1982

Please find attached background information for this Friday's meeting on the following bills:

SB 730 An Act establishing the Aleksandr Baranov State Game Refuge

SB 731 An Act establishing the Shuyak Island State Park

SB 769 An Act removing the requirement that power projects constructed under the energy program for Alaska be owned by the state.

The meeting will be held at 1:30 p.m. in the Beltz Room.

LEGISLATION SUMMARY

SB 769: "An Act removing the requirement that power projects constructed under the energy program for Alaska be owned by the state; and providing for an effective date."

Sec. 1: Eliminates the requirement under existing law that power projects acquired or constructed under the energy program for Alaska are owned by the state. The amendment does not effect the provision that projects so acquired or constructed shall be administered by the Alaska Power Authority.

PRIME SPONSOR: Gilman

C)-SPONSOR(S): None

MEMORANDUM

TO: Senator Fahrenkamp

FROM: Kurt S. Dzinich KSD

SUBJECT: Bradley Hydroelectric Project

DATE: March 1, 1982

On 22 February 1982 representatives of Alaska Power Administration, Alaska Power Authority and Alaska District Corps of Engineers held their second meeting originally scheduled for 5 February 1982. The meeting covered two main items of agenda with progress detailed below:

Memorandum of Understanding (MOU). The parties agreed to a draft MOU which was slightly modified since then. Current copy of the draft MOU is attached for your information. All parties are in the process of having the MOU reviewed by their respective supervisory elements. Mr. Robert Cross of the Alaska Power Administration took a copy along to Washington D.C. and will try to obtain informal review comments by the the federal agencies involved.

Working Agreements. It was agreed that working agreements would be drawn up addressing details of design, construction, operation, maintenance, financing and power marketing. The attendees further agreed to an initial draft of a Working Agreement for Design and Construction which is currently being staffed and reviewed. This agreement will again be discussed at the next meeting in Anchorage on Monday 8 March 1982. Other agreements will be drafted as required.

Project Costs. The Corps indicated that in October 1981 dollars the estimated project cost is $320.031 million (includes 20% for contingencies, 6.5% for Surveillance and Administration and 8% for engineering and design) and that when escalated to midpoint of construction it would total $363.684 million. As previously noted these figures are being reviewed by APA and exclude transmission system costs.

Future Actions. According to Corps and based on their discussion with Gianellis office the final step would probably be a meeting in D.C. to finalize MOU which will require approval by OMB but not by the appropriations committee (since no federal funds involved).

KSD/bb

Dzinich

24 February 1982

(DRAFT)

BRADLEY LAKE HYDROELECTRIC PROJECT

MEMORANDUM OF UNDERSTANDING

ALASKA POWER AUTHORITY, STATE OF ALASKA,

ALASKA DISTRICT CORPS OF ENGINEERS, AND

ALASKA POWER ADMINISTRATION, U.S. DEPARTMENT OF ENERGY

This agreement, effective _____, 1982, is made between the ALASKA POWER AUTHORITY (hereinafter called the AUTHORITY) on behalf of the STATE OF ALASKA (hereinafter called the STATE), the CORPS OF ENGINEERS (hereinafter called the CORPS), and the ALASKA POWER ADMINISTRATION (hereinafter called the ADMINISTRATION),

WHEREAS, the parties to this agreement are desirous of an early start on construction and early completion of the project, and

WHEREAS, the Bradley Lake Hydroelectric Project is authorized for design and construction by the Corps under the 1962 Flood Control Act, and the Corps has prepared a General Design Memorandum for the project, and under Title 33 U.S.C. 701h the Corps has authority to accept nonfederal funds for design and construction activities, and the Corps has the capability to design and construct the project, and

WHEREAS, the Authority recognizes that no Federal funds are programed for this project beyond fiscal year 1982, and the Authority is desirous of financing and obtaining the expeditious design and construction of

the Bradley Lake Hydroelectric Project, and to eventually acquire the completed project, including operation, maintenance, and marketing responsibilities, and

WHEREAS, the Authority will independently determine project feasibility pursuant to requirements of State law, and

WHEREAS, the Administration has power marketing responsibility for the project pursuant to Section 5, 1944 Flood Control Act (58 Stat. 890, 16 U.S.C. 825s) and operation and maintenance responsibility under a separate agreement with the Corps.

NOW, THEREFORE, it is mutually agreed, subject to successful completion of the necessary Federal and State feasibility tests, availability of appropriations, and necessary approvals:

The Corps agrees to perform the design, contract supervisi , and inspection work in accordance with applicable Federal laws and regulations and essentiall as shown and scheduled in the Bradley Lake General Design Memorandum as supplemented by feature Design Memorandums at the actual cost to the Government.

The Authority will seek necessary authority and funds to finance design and construction of the Bradley Lake Project, and make the funds available to the Corps in sufficient amount to allow the work to progress in an orderly manner.

The Administration will consult fully with the Authority in development of power marketing policies and allocations of power from the Bradley Lake Project so that the policies and allocations are consistent with applicable State and Federal law.

Federal revenue requirements would be limited to revenues necessary to recover Federal investment in the project including applicable interest plus any annual expenditures of Federal funds for operation, maintenance, and replacements.

The three parties to this agreement will coordinate fully on operation and maintenance requirements to assure consistency with State and Federal law.

The Authority will operate and maintain the project under contract with the Administration.

The three parties will adopt working agreements addressing details of design, construction, operation, maintenance, financing, and power marketing.

The three parties will pursue steps necessary to accomplish the State's objective of acquiring the project; including operation, maintenance, and marketing responsibilities.

DATE: _____

_____ _____ _____

U.S. Army Corps of Engineers

Alaska Power Authority

_____

Alaska Power Administration

From Senator Don Gilman

SECTIONAL ANALYSIS

CSSB 769 (Change of Title)

Title: "An Act relating to the use of the power development fund for federal power projects under the energy program for Alaska; approving the Bradley Lake hydroelectric project under AS 44.83.185; and providing for an effective date."

Bradley Lake is a project authorized by Congress to be constructed by the Corps of Engineers. It has gone through the entire Economic Feasibility and Environmental Impact stages. The project is expected to receive full approval for construction by July 1982.

Under ordinary circumstances, the Corps would receive funds to proceed with this project during FY 83. Due to Federal budget restrictions, there are no new-start water projects anywhere in the United States during FY 83.

Under Title 33 U.S.C. 701h, the Corps has authority to accept non-Federal funds for design and construction of water projects. Under AS 44.83.080(10), the Alaska Power Authority has the power to enter into contracts with the United States for financing and construction of power projects.

Under Section 5, 1944 Flood Control Act (58 Stat. 890, 16 U.S.C. 825s) the Alaska Power Administration has power marketing responsibility for Federal power projects. Under AS 44.83.080(11), the Alaska Power Authority has the power to enter into contracts to purchase power from the United States.

AS 44.83.396 provides that any project acquired or constructed by the Authority is owned by the state. AS 44.83.398 addresses marketing of the power.

AS 44.83.185(c) requires all new power projects except the small projects (1.5 MW), to be authorized by law.

Section 1. Clarifies the ownership and marketing relationship. Marketing would be handled in the contract required in AS 44.83.080(10).

Section 2. Approves the Bradley Lake project provided that it meets all other tests required for any state project.

Homer Electric Association, Inc.
P.O. BOX 429 * HOMER, ALASKA 99603 * (907) 235-8551

March 11, 1982

Senator Don Gilman
Pouch V
Juneau, Alaska 99811

Re: Bradley Lake Hydroelectric Project

Dear Don:

Recently, Homer Electric Association requested the Alaska Power Authority to review the feasibility of building a transmission line from the proposed Bradley Lake hydroelectric project to Anchorage. It is my understanding that the Power Authority is currently reviewing this.

Should it become evident that the transmission line is not a feasible project for state financing, you should be aware that Homer Electric would be willing to finance and build that portion of the transmission facilities necessary within the Homer Electric service area. In the original plans for construction of Bradley Lake, it was anticipated that Homer Electric would build the required transmission facilities from the Fox River area to Soldotna and to the appropriate intertie in Homer. Should state financing of the transmission facilities not be feasible, Homer Electric would proceed on its own to build the required transmission facilities. At present, we anticipate these facilities to be 115 KV lines. These two lines have been identified in the long-range plans for Homer Electric and will be built. Also, it appears possible that Anchorage Municipal Light and Power and/or Chugach Electric might be interested in building a line from Soldotna to Anchorage.

You need to also be aware that the cost of wholesale power is increasing dramatically. During 1981, Homer Electric paid 16.705 mills per KWH to Chugach Electric for all wholesale power. In early 1982, that rate was increased to 19.370 mills. Immediately after receiving notification of that increase, Chugach announced its intention to file for a retail rate increase and the corresponding necessity to increase wholesale rates by 72.1 percent. The resultant wholesale rate by the end of 1982 will most likely be in excess of 30 mills. This means that in the two-year period from 1980 through 1982, the cost of wholesale power has nearly doubled. This near-doubling

in wholesale power cost is due primarily to the increase from approximately $130,000,000 of generation and transmission plant owned by Chugach in 1980 to in excess of $250,000,000 by the end of 1982. This increase has been financed at a much higher interest cost.

I trust the above information will help you. If I can be of any further assistance, please advise.

Sincerely,

E ..ent Wick
General Manager

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STAT CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3735

Senate

Committee on Resources

TO: Senator Don Gilman — DATE: 3/5/82

FROM Senator Bettye Fahrenkamp, Chairman — Re: Subcommittee on Bradley Lake Hydroelectric Project.

The following legislation has been referred to the Senate Resources Committee for consideration:

SB 769 "An Act removing the requirement that power projects constructed under the energy program for Alaska be owned by the state and providing for an effective date."

I am appointing you to Chair a Subcommittee of the Senate Resources Committee entitled "Bradley Lake Hydroelectric Project Subcommittee". I would appreciate you selecting two other Senators to serve with you on this Subcommittee. I am assigning SB 769 to this Subcommittee for your consideration.

cc: Senate Resources Committee Members

Alaska State Legislature

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

March 5, 1982
1:35 p.m.

Beltz Room
Room 211 - Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Gilman
Senator Sturgulewski
Senator Kertulla, President

Hearing:

SB 730 An Act establishing the Aleksandr Baranov State Game Refuge.
SB 731 An Act establishing the Shuyak Island State Park.
SB 769 An Act removing the requirement that power projects constructed under the energy program for Alaska be owned by the state.

SB 730

Senator Sturgulewski moved the bill with individual recommendations.

SB 731

Chip Dennerlein, Director, Division of Parks, Department of Natural Resources, spoke in support of the bill, but suggested two amendments: page 1, line 18 and page 5, line 17 replace "compatible" with "other", to avoid creating classes of users by implication. The Division of Parks would like to participate in writting the Committee Report or a letter of intent concerning tidelands inclusion, to assure them authority to build a boat ramp or dock in the future. The fiscal note on this bill is zero, as easements will be platted on paper only, and not constructed.

Bob Hinman, Deputy Director, Game Division, Alaska Department of Fish and Game, spoke in opposition to the suggested amendments, stating that "compatible" may have been deliberate wording so as not to exclude commercial hunting or trapping.

Senator Sturgulewski moved that the bill be held until Monday, so this concern could be resolved.

SB 769

Senator Gilman explained the reason for this bill. Bradley Lake is a Corps of Engineers hydro project. Feasibility studies and design work have been completed, but there are no federal funds for construction. SB 769 would allow the State to put money into the project without owning it. However, the Legal Division has informed Gilman that the proposed Committee Substitute may be unconstitutional because it is "special legislation." In addition, there have been several different cost estimates for the project. Gilman suggested the bill be held until he meets with the Alaska Power Authority, the Corps of Engineers, and the Office of Budget and Management to discuss the project.

Senator Fahrenkamp appointed Senator Gilman to chair a committee to resolve this issue, at which time the Resources Committee will expedite their action on SB 769.

The meeting was adjourned at 2:15 p.m.

DEPARTMENT OF THE ARMY
ALASKA DISTRICT. CORPS OF ENGINEERS
P.O. BOX 7002
ANCHORAGE. ALASKA 99510

REPLY TO
ATTENTION OF:

NPAEN

26 FEB 1982

SUBJECT: Draft Memorandum of Understanding (MOU) for Bradley Lake Hydroelectric Project, Alaska

CDR USACE (DAEN-CWZ-A)
WASH, DC 20314

1. Forwarded for your information and approval is the draft MOU for the Bradley Lake Hydroelectric Project, as requested by your staff. This document has been tentatively agreed to by representatives of the Alaska District, Alaska Power Authority, and Alaska Power Administration.

2. It is our understanding that your staff will review this document and determine if the Corps can enter into this agreement and proceed with negotiations leading to design and construction of the project. All parties to this agreement are desirous of an early construction start. Therefore, your expeditious review and approval is requested.

3. In a related conversation with Mr. Robert Eiland of the ASA(CW) office, Mr. Eiland indicated that the MOU should be reviewed by OMB and be available to his office prior to Mr. Gianelli presenting his program to Congress in early April.

Lee R. Nunn

1 Incl
as

LEE R. NUNN
Colonel, Corps of Engineers
Commanding

CF w/Incl:
(See page 2)

NPAEN
SUBJECT: Draft Memorandum of Understanding (MOU) for Bradley Lake Hydroelectric Project, Alaska

CF w/Incl:
Mr. Robert Cross
Alaska Power Administration
P.O. Box 50
Juneau, Alaska 99802

Mr. Eric Yould
Alaska Power Authority
333 West Fourth Avenue
Anchorage, Alaska 99501

Mr. Robert Eiland
Office of the Assistant
Secretary of the Army (CW)
Room 2E 570
Pentagon
Washington, D.C. 20310

Mr. Kurt Dzinich
Hydro Development Specialist
Senate Advisory Council
Pouch V, State Capitol
Juneau, Alaska 99811

Representative Hugh Malone
Pouch V, State Capitol
MS 3100
Juneau, Alaska 99811

Representative Patrick O'Connell
Pouch V, State Capitol
MS 3100
Juneau, Alaska 99811

Senator Donald Gilman
Pouch V, State Capitol
MS 3100
Juneau, Alaska 99811

NPDDE (ATTN: Dave Geiger)

25 February 1982

(DRAFT)

BRADLEY LAKE HYDROELECTRIC PROJECT
MEMORANDUM OF UNDERSTANDING
ALASKA POWER AUTHORITY, STATE OF ALASKA,
ALASKA DISTRICT CORPS OF ENGINEERS, AND
ALASKA POWER ADMINISTRATION, U.S. DEPARTMENT OF ENERGY

This agreement, effective _____, 1982, is made between the ALASKA POWER AUTHORITY (hereinafter called the AUTHORITY) on behalf of the STATE OF ALASKA (hereinafter called the STATE), the CORPS OF ENGINEERS (hereinafter called the CORPS), and the ALASKA POWER ADMINISTRATION (hereinafter called the ADMINISTRATION),

WHEREAS, all parties to this agreement are desirous of an early construction start and early completion of the project, and

WHEREAS, the Bradley Lake Hydroelectric Project is authorized for design and construction by the Corps under the 1962 Flood Control Act, and the Corps has prepared a General Design Memorandum and an Environmental Impact Statement for the project, and under Title 33 U.S.C. 701h the Corps has authority to accept nonfederal funds for design and construction activities, and has the capability to design and construct the project, and

WHEREAS, the Authority recognizes that Federal funds have not been programmed for this project beyond fiscal year 1982, and the Authority is desirous of financing and obtaining the expeditious design and construction of the Bradley Lake Hydroelectric Project, and to eventually acquire the completed project, including operation, maintenance, and marketing responsibilities, and

WHEREAS, the Authority will independently determine project feasibility pursuant to requirements of State law, and

WHEREAS, the Administration has power marketing responsibility for the project pursuant to Section 5, 1944 Flood Control Act (58 Stat. 890, 16 U.S.C. 825s) and operation and maintenance responsibility under a separate agreement with the Corps.

NOW, THEREFORE, it is mutually agreed, subject to successful completion of Federal and State feasibility tests, availability of appropriations, and necessary approvals:

The Corps agrees to perform the design, contract supervision, and inspection work at the actual cost to the Government, in accordance with applicable Federal laws and regulations and essentially as shown and scheduled in the Bradley Lake General Design Memorandum and as supplemented by feature Design Memorandums.

The Authority will seek necessary authorization and funds to finance the design and construction of the Bradley Lake Project, and will make the funds available to the Corps in sufficient amount to allow the work to progress in an orderly manner.

The Administration will consult fully with the Authority in development of power marketing policies and allocations of power from the Bradley Lake Project so that the policies and allocations are consistent with applicable State and Federal law. Federal revenue requirements would be limited to revenue necessary to recover Federal investment in the project including applicable interest plus annual expenditures of Federal funds for operation, maintenance, and replacement.

The Authority will operate and maintain the project under contract with the Administration.

All parties to this agreement will coordinate fully on operation and maintenance requirements to assure consistency with State and Federal law.

All parties will adopt working agreements addressing details of design, construction, operation, maintenance, financing, and power marketing.

All parties will pursue steps necessary to accomplish the State's objective of acquiring the project; including operation, maintenance, and marketing responsibilities.

DATE: _____

_____
U.S. Army Corps of Engineers

_____
Alaska Power Authority

_____
Alaska Power Administration

Sec. 44.83.080. Powers of the authority. In furtherance of its corporate purposes, the authority has the following powers in addition to its other powers:

(1) to sue and be sued;

(2) to have a seal and alter it at pleasure;

(3) to make and alter bylaws for its organization and internal management;

(4) to make rules and regulations governing the exercise of its corporate powers;

(5) to acquire, whether by construction, purchase, gift or lease, and to improve, equip, operate, and maintain power projects;

(6) to issue bonds to carry out any of its corporate purposes and powers, including the acquisition or construction of a project to be owned or leased, as lessor or lessee, by the authority, or by another person, or the acquisition of any interest in a project or any right to capacity of a project, the establishment or increase of reserves to secure or to pay the bonds or interest on them, and the payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers;

(7) to sell, lease as lessor or lessee, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the authority; the action is in furtherance of its corporate purposes;

(8) to accept gifts, grants or loans from, and enter into contracts or other transactions regarding them, with any person;

(9) to deposit or invest its funds, subject to agreements with bondholders;

(10) to enter into contracts with the United States or any person and, subject to the laws of the United States and subject to concurrence of the legislature, with a foreign country or its agencies, for the financing, construction, acquisition, operation and maintenance of all or any part of a power project, either inside or outside the state, and for the sale or transmission of power from a project or any right to the capacity of it or for the security of any bonds of the authority issued or to be issued for the project;

(11) to enter into contracts with any person and with the United States, and, subject to the laws of the United States and subject to the concurrence of the legislature, with a foreign country or its agencies for the purchase, sale, exchange, transmission, or use of power from a project, or any right to the capacity of it;

(12) to apply to the appropriate agencies of the state, the United States and to a foreign country and any other proper agency for the permits, licenses, or approvals as may be necessary, and to construct, maintain and operate power projects in accordance with the licenses or permits, and to obtain, hold and use the licenses and permits in the same manner as any other person or operating unit;

(13) to perform reconnaissance studies, feasibility studies, and engineering and design with respect to power projects;

(14) to enter into contracts or agreements with respect to the exercise of any of its powers, and do all things necessary or convenient to carry out its corporate purposes and exercise the powers granted in AS 44.83.010 — 44.83.510;

(15) to exercise the power of eminent domain in accordance with AS 09.55.250 — 09.55.410;

(16) to recommend to the legislature

(A) the issuance of general obligation bonds of the state to finance the construction of a power project if the authority first determines that the project cannot be financed by revenue bonds of the authority at reasonable rates of interest;

(B) the pledge of the credit of the state to guarantee repayment of all

(B) the pledge of the credit of the state to guarantee repayment of all or any portion of revenue bonds issued to assist in construction of power projects;

(C) an appropriation from the general fund

(i) for debt service on bonds or other project purposes; or

(ii) to reduce the amount of debt financing for the project;

(D) an appropriation to the power project fund for a power project;

(E) an appropriation of a part of the income of the renewable resources investment fund for a power project;

(F) development of a project under financing arrangements with other entities using leveraged leases or other financing methods.

(G) an appropriation for a power project acquired or constructed under the energy program for Alaska (AS 44.83.380 — 44.83.425). (§ 1 ch 278 SLA 1976; am §§ 6 — 11 ch 156 SLA 1978; am §§ 16, 17 ch 83 SLA 1980; am § 5 ch 118 SLA 1981)

Sec. 44.83.185. Submission to the legislature. (a) The authority shall submit a feasibility study and plan of finance for a proposed new project to the legislature. When the report of the division of budget and management examining the feasibility study and plan of finance is completed as required by AS 44.83.183, it shall be submitted to the legislature.

(b) The authority may not proceed with work on the engineering or design phase of a proposed new project for which legislative approval is required until the legislature approves the proposed new project. However, the authority may proceed with the engineering or design work necessary to meet the requirements for submission of a license application for the proposed new project to the Federal Energy Regulatory Commission without obtaining legislative approval of the proposed new project.

(c) The legislature shall consider and must approve all proposed new projects except proposed new projects that are exempt under AS 44.83.187. The legislature may approve a proposed new project only by enacting law authorizing that project. (§ 24 ch 83 SLA 1980)

Cross reference. — As to application of this section to current projects of the Alaska Power Authority and exemption from the provisions of this section of pending projects of the Alaska Power Authority, see editor's note to AS 44.83.177.

Sec. 44.83.380. Program established. (a) The energy program for Alaska is established. The program shall be administered by the Alaska Power Authority.

(b) The energy program for Alaska is a program by which the authority may acquire or construct power projects with money appropriated by the legislature to the power development fund established in AS 44.83.382. A power project may be acquired or constructed as part of the energy program for Alaska only if the project is submitted to and approved by the legislature in accordance with procedures set out in AS 44.83.177 — 44.83.187.

(c) The provisions of AS 36.10.010 — 36.10.125 apply to power projects constructed by the authority under AS 44.83.380 — 44.83.425 (AS 44.83.400; § 1 ch 118 SLA 1981)

DRAFT

Sec 1: The Legislature finds that substantial benefits will inure to the State of Alaska through the prompt and expeditious construction of the Bradley Lake project and that prompt and expeditious construction will be facilitated through financial assistance by the Alaska Power Authority prior to and in anticipation of acquisition of the project by the Authority pursuant to AS 44.83.080 (10) (11) (14) and 44.83.380.

Sec 2: Pursuant to the findings set forth in section 1 of this act, the Alaska Power Authority is authorized to enter into contracts with the appropriate agencies of the United States Government for the financing of the Bradley Lake project and to expend such amounts appropriated to the Power Development Fund for this project as may be necessary, pursuant to such contracts, provided however that such contracts shall contain provisions which will allow and permit the acquisition by the Authority of the project at a later date.

Sec 3: The authorization contained in Sect 2 of this act constitutes an approval of the Bradley Lake project under 44.83.185.

Sec 4: This act takes effect immediately in accordance with AS 01.10.070(c).

DRAFT OF PROPOSED

Bradley Legislation (Art 9, AS 44.83.380)

New Section

As part of the energy program for Alaska, the Alaska Power Authority may also utilize the services of appropriate federal agencies to design, construct and operate hydropower projects in Alaska provided that the authority receives from the project a share of power comparable to its share of funding of the total project costs. For its share of the power the authority will set the wholesale power rate in accordance with AS 44.83.398. The authority may expand funds for a project only after a Memorandum of Agreement is approved by the parties concerned and AS 44.83.185 complied with.

New Section

Should it appear that the state funding share of the total project cost will approach or become 100%, the authority will initiate action to have the ownership transferred from the federal agency to the authority.

KSD/bb

MEMORANDUM

TO: Senator Gilman

FROM: Kurt S. Dzinich KSD

SUBJECT: Bradley Hydroelectric Project

DATE: March 1, 1982

On 22 February 1982 representatives of Alaska Power Administration, Alaska Power Authority and Alaska District Corps of Engineers held their second meeting originally scheduled for 5 February 1982. The meeting covered two main items of agenda with progress detailed below:

Memorandum of Understanding (MOU). The parties agreed to a draft MOU which was slightly modified since then. Current copy of the draft MOU is attached for your information. All parties are in the process of having the MOU reviewed by their respective supervisory elements. Mr. Robert Cross of the Alaska Power Administration took a copy along to Washington D.C. and will try to obtain informal review comments by the the federal agencies involved.

Working Agreements. It was agreed that working agreements would be drawn up addressing details of design, construction, operation, maintenance, financing and power marketing. The attendees further agreed to an initial draft of a Working Agreement for Design and Construction which is currently being staffed and reviewed. This agreement will again be discussed at the next meeting in Anchorage on Monday 8 March 1982. Other agreements will be drafted as required.

Project Costs. The Corps indicated that in October 1981 dollars the estimated project cost is $320.031 million (includes 20% for contingencies, 6.5% for Surveillance and Administration and 8% for engineering and design) and that when escalated to midpoint of construction it would total $363.684 million. As previously noted these figures are being reviewed by APA and exclude transmission system costs.

Future Actions. According to Corps and based on their discussion with Gianellis office the final step would probably be a meeting in D.C. to finalize MOU which will require approval by OMB but not by the appropriations committee (since no federal funds involved).

KSD/bb

Deinich

24 February 1982

(DRAFT)

BRADLEY LAKE HYDROELECTRIC PROJECT

MEMORANDUM OF UNDERSTANDING

ALASKA POWER AUTHORITY, STATE OF ALASKA,

ALASKA DISTRICT CORPS OF ENGINEERS, AND

ALASKA POWER ADMINISTRATION, U.S. DEPARTMENT OF ENERGY

This agreement, effective _____, 1982, is made between the ALASKA POWER AUTHORITY (hereinafter called the AUTHORITY) on behalf of the STATE OF ALASKA (hereinafter called the STATE), the CORPS OF ENGINEERS (hereinafter called the CORPS), and the ALASKA POWER ADMINISTRATION (hereinafter called the ADMINISTRATION),

WHEREAS, the parties to this agreement are desirous of an early start on construction and early completion of the project, and

WHEREAS, the Bradley Lake Hydroelectric Project is authorized for design and construction by the Corps under the 1962 Flood Control Act, and the Corps has prepared a General Design Memorandum for the project, and under Title 33 U.S.C. 701h the Corps has authority to accept nonfederal funds for design and construction activities, and the Corps has the capability to design and construct the project, and

WHEREAS, the Authority recognizes that no Federal funds are programed for this project beyond fiscal year 1982, and the Authority is desirous of financing and obtaining the expeditious design and construction of

the Bradley Lake Hydroelectric Project, and to eventually acquire the completed project, including operation, maintenance, and marketing responsibilities, and

WHEREAS, the Authority will independently determine project feasibility pursuant to requirements of State law, and

WHEREAS, the Administration has power marketing responsibility for the project pursuant to Section 5, 1944 Flood Control Act (58 Stat. 890, 16 U.S.C. 825s) and operation and maintenance responsibility under a separate agreement with the Corps.

NOW, THEREFORE, it is mutually agreed, subject to successful completion of the necessary Federal and State feasibility tests, availability of appropriations, and necessary approvals:

The Corps agrees to perform the design, contract supervision, and inspection work in accordance with applicable Federal laws and regulations and essentially as shown and scheduled in the Bradley Lake General Design Memorandum as supplemented by feature Design Memorandums at the actual cost to the Government.

The Authority will seek necessary authority and funds to finance design and construction of the Bradley Lake Project, and make the funds available to the Corps in sufficient amount to allow the work to progress in an orderly manner.

The Administration will consult fully with the Authority in development of power marketing policies and allocations of power from the Bradley Lake Project so that the policies and allocations are consistent with applicable State and Federal law.

Federal revenue requirements would be limited to revenues necessary to recover Federal investment in the project including applicable interest plus any annual expenditures of Federal funds for operation, maintenance, and replacements.

The three parties to this agreement will coordinate fully on operation and maintenance requirements to assure consistency with State and Federal law.

The Authority will operate and maintain the project under contract with the Administration.

The three parties will adopt working agreements addressing details of design, construction, operation, maintenance, financing, and power marketing.

The three parties will pursue steps necessary to accomplish the State's objective of acquiring the project; including operation, maintenance, and marketing responsibilities.

DATE: _____

_____ _____

U.S. Army Corps of Engineers Alaska Power Authority

_____

Alaska Power Administration