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- if exports become a reality, the price term in these contracts will increase along with any increase in the sales price for Prudhoe Bay oil.

- The Shell offer of a \$1 premium for 20,000 b/d for their Anacortes, Washington refinery is short-term only, and does not guarantee in-state processing. It can still be pursued if these contracts are approved.

- Several West Coast refiners are also interested in purchasing Alaska royalty oil. Large volume royalty oil sales on the West Coast can result in lower North Slope crude oil prices. The State must therefore look carefully at the effect of such sales on all royalty and severance tax revenues before consummating any agreement.

- State retains the option to purchase and re-sell residual produced under these contracts.

III. Existing Agreements

- A. Cook Inlet - Tesoro takes all royalty oil under 1969 contract; expires in 1983; a ten-year renewal is now before the Legislature (HB 320).

- B. Prudhoe Bay
 - 1. Golden Valley Electric Association - may take up to 5,000 barrels a day (b/d) under their 1977 agreement which expires in 1984. Currently working with DNR on renewal.

 - 2. North Pole Refining (Mapco) - entitled to 15 percent, or up to 35,000 b/d under their 1978 agreement, which expires in 2003.

 - 3. Tesoro - entitled to 24.5 percent, or up to 46,000 b/d under their 1982 agreement, which expires in 1994.

All of these existing contracts were approved by the Alaska Legislature. Two other long-term agreements, with Alpetco and Doyon, were approved by the Legislature in 1978 and 1982, respectively, but have since been terminated.

In the opinion of the Commissioner of Natural Resources, the proposed Chevron and Tesoro contracts meet existing and projected needs for in-state refining. The Administration will provide other royalty oil options, as well as generally reviewing the statutes, before the next legislative session.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

April 26, 1983

The Honorable John Ringstad
Co-Chairman, House Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Ringstad:

I very much appreciate the opportunity to present the House Resources Committee with some additional comments on our proposed royalty oil agreements with Tesoro and Chevron. During previous discussions, several questions were raised on specific aspects of the agreements. I thought it might be useful to you and the committee if I provided our response in writing, as well as in oral testimony before the committee.

The contract with Tesoro would commit the State to providing 13.867% of Prudhoe Bay Unit production, or approximately 26,000 barrels a day (b/d) at current production levels, if Tesoro expands the capacity of their refinery to process the oil by 1986. The agreement expires on January 1, 1995; at the same time Tesoro's existing royalty oil contract for 46,000 b/d terminates. The basic rationale for this contract is fairly straightforward - providing a long-term guaranteed crude supply enables Tesoro to make a significant, new in-state investment, with attendant employment, supply, and tax base benefits.

The Chevron contract would furnish their Kenai refinery with 9.6% of Prudhoe Bay production, currently 18,000 b/d, until 1995. The Kenai refinery is not an economic component of Chevron's West Coast refining system, and the company has threatened to close it without a long-term supply of oil from the State. Chevron has consistently requested a 38,000 b/d contract, and will continue to seek an additional 20,000 b/d for processing on the West Coast and return to Alaska in the form of products. The 18,000 b/d agreement will enable the company to operate the Kenai refinery for as long as possible; that volume of oil must be processed at the Kenai plant to maintain the effectiveness of the contract.

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Several legislators have questioned the duration (eleven years) of the Chevron and Tesoro contracts. The reasons for the concern, to our knowledge, include a desire to leave royalty oil uncommitted so that it can later be offered as an incentive for economic development projects, or so that it can be sold in Japan or elsewhere at a higher price, or a general desire to retain flexibility in the face of ever-changing oil markets and the future decline in Prudhoe Bay production. We agree that these are valid points, but feel that they have been addressed in the following ways:

1. The contracts provide for a certain percentage of Prudhoe production, not a certain volume. As Prudhoe production declines, so will the contract volumes. At current levels, the contracts leave available 62,500 b/d of Prudhoe royalty production, as well as all Kuparuk royalty oil (currently 12,000 b/d). We expect additional production from Kuparuk and new production from North Slope fields now under development to add somewhere between 30,000 to 80,000 b/d to total of available royalty oil. Approximately 50,000 b/d of residual oil may also be available for sale by the State as a result of the option that the State retains for that oil in most of its royalty oil agreements.

Until 1995, the State will have sufficient royalty volumes (75,000 to 125,000 b/d) available to take advantage of other opportunities that may arise.

2. Mapco and Tesoro already have royalty contracts until 2005 and 1995, respectively, for their base volumes. Although those contracts were consummated by the previous Administration, we felt that Chevron's request for a contract at least as long deserved some consideration in the interest of preserving equity among competing refineries. As a general principle, to preserve fair competition among in-state refiners, we believe that the same term should be offered to all in-state refiners.

3. The term was a negotiated item; although the State originally sought a shorter term from Tesoro (nine years), the additional premium over the in-value price of \$.30 was agreeable because the State was willing to offer the eleven-year term. Tesoro stated that the premium affected the amortization schedule of the expansion, and necessitated at least an additional two to three years.

4. The contract's price term is tied to the in-value price, based on producer sales. If Japanese exports become a reality, the price to royalty purchasers will

increase if sales to Japan result in higher average prices for North Slope oil.

5. We have reviewed the previous Administration's determination that the highest and best use for royalty oil is for in-state processing, all other things being equal, and concur with it, in light of the existing royalty oil statutes. These contracts are for that use. Since in-state refiners have sought long-term commitments to make in-state processing economic, we believe that we must seriously consider their requests, given current law.

Legislators have also understandably questioned the recent acquisition by two Charter Co. life insurance subsidiaries of 20% of Tesoro's stock, and the placing of Charter directors Raymond Mason and Gerald Ford on the Tesoro board. The involvement of a corporation with which the State has significant litigation was a cause of serious concern to us at the time of contract negotiations. In response to that concern, we took the following measures to protect the State from possible harm because of the involvement of Charter:

1. A "third-party control" provision in the royalty agreement allows the Commissioner to unilaterally terminate the contract if Charter gains a greater degree of influence over the management of Tesoro.
2. An agreement between Tesoro and Charter requires that Charter vote its shares in the same proportion as the shares held by all other Tesoro stockholders, and prevents Charter from seeking proxy votes.
3. Tesoro may not take the oil unless the Commissioner determines that the refinery will be capable of processing the additional crude; the contract terminates if the refinery expansion has not been completed by July 1986; and all oil taken under the contract must be run at the Tesoro Kenai refinery, and may not be traded, exchanged or otherwise disposed of.
4. The State retains the option to purchase and resell the substantial volumes of residual oil produced by the refinery.
5. Tesoro owns facilities worth over a hundred million dollars in Alaska.

We would hope that the concerns expressed do not stem from a desire to "punish" Charter by rejecting this agreement. We do not believe that Charter would be much affected by rejection of this contract. A vigorous legal effort to

collect the money owed the State by Alaska Oil Co. seems to us to be the proper course at this point. Tesoro is a long-standing Alaska business, and deserves to have its contract treated on the merits.

The effect of in-kind royalty oil sales on the State's production tax and royalty income is also a matter of concern. I have attached a short paper which discusses this issue for your consideration.

The provisions of the contract which specify in-state processing and supply are "sideboard" or minimum provisions which protect the State from abuses against the intent of the contract by the purchaser. The State insisted that the oil taken under the contracts be processed in an in-state refinery, that the refinery actually produce significant amounts of products, and that the purchaser otherwise exercise its best efforts to produce and market in Alaska some minimum quantity of oil products. The State left economic decisions on how best to meet the local demand for products to the individual refiner. We do not feel that anything other than these requirements are appropriate. Any further specificity would likely act against the interests of Alaskans in the long run, by reducing the flexibility to meet changing market conditions.

Thank you for your consideration of these important agreements. Please let me know if you have any comments or questions, or if we can provide additional information to the committee.

Sincerely,



Esther C. Wunnicke
Commissioner

Attachment

4/26/83
ADNR

EFFECT OF IN-KIND ROYALTY OIL TAKING ON STATE FINANCES

The price term for sales of royalty oil is founded on the average destination sales price (or internal transfer price) received by the Producers for all sales of Alaska North Slope (ANS) crude oil, netted back (i.e., with transportation and pipeline tariff charges subtracted) to Pump Station No. 1, the point of sale; this is referred to as the Producers' Weighted Average Field Price. Because ANS crude oil is marketed both on the West Coast and the Gulf Coast of the United States, the Weighted Average Field Price is necessarily a mixture of sales prices for both markets. Traditionally, the average netback price for West Coast sales has been higher than for Gulf Coast sales (as explained in Section IV-F, pp. 175-211, of the Department's January 1, 1983 Review of Alaska Royalty Oil). Since Prudhoe Bay began production, this differential has ranged from one to three dollars per barrel. The differential netback is often called the two-tier price structure; the State believes this structure is a valid indication of the value of ANS in the respective markets and will persist in the future.

The two-tier price structure creates two potential adverse financial consequences to the State for a royalty oil sale to a West Coast destination. First, since the Producers'

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Weighted Average Field Price is used to calculate severance tax and royalty payments due the State, a State royalty sale to a West Coast destination may replace a higher netback West Coast producer sale. The State estimated that the effect of displacement in the proposed sales to Tesoro and Chevron would be in the neighborhood of two to five cents per barrel. That analysis partially provided the rationale for the required per barrel premium of \$.30 in the 1983 Tesoro and Chevron contracts. (In the 1982 royalty sales to Tesoro and Doyon, as well as in the 1978 sale to North Pole Refining, the State had not asked for any premium, instead relying on the array of benefits provided by in-state processing of the oil.)

Second, if the State's mixed-market Producers' Weighted Average Field Price were substantially below the West Coast Commercial Price for ANS crude oil, large volume sales by the State on the West Coast could create a downward trend on the price of ANS generally with some major adverse effects on royalty and severance tax payments to the State. This apparently happened once previously when approximately 159,000 b/d of the State's royalty oil was on the market short term from several of the State's purchasers. The potential losses to the State from creating a downtrend in the market can be in the tens of millions of dollars annually.

While economic and other benefits can generally be identified as an offset to the potential losses from in-state processing, the same is not necessarily true of royalty oil processed elsewhere. For this reason, the State has recently avoided entering into agreements with West Coast refiners.

The State believes that the \$.30 per barrel premium established in the proposed Prudhoe Bay Unit agreements with Tesoro and Chevron more than offsets any proposed financial loss to the State which might occur as a result of the two-tier price structure for ANS crude oil. In addition, the employment, tax base, and general economic benefits also should be included in any judgement of the net cost to the State of in-kind royalty oil sales.

STATE OF ALASKA
THE LEGISLATURE

FOURTH STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 5, 1983

SUBJECT: Royalty oil sales under AS 38.06.055
(Work Order No. 13-1361)

TO: Representative John Cowdery

FROM: Richard C. Folta *RC*
Legislative Counsel

You have asked if the legislature does not approve a royalty oil sale under the above statute, may the commissioner of natural resources sell the oil without legislative approval to the same company on a negotiated short term contract substantially different from the original sale.

The answer is yes, if the sale is determined by the commissioner to be needed to "relieve storage and market conditions". AS 38.06.055(b)(1) provides that legislative approval is not required when the sale, exchange, or other disposition of oil or gas for one year or less if the sale, exchange, or other disposition is entered into to relieve storage or market conditions. The commissioner may also forego competitive bidding if in the "best interest of the state" after notice to the Royalty Board (AS 38.05.183(a)).

The transaction may be viewed with suspicion by the legislature, who after disapproving a sale of royalty oil sees the commissioner finding a sudden storage and market crisis and proceeding with a sale under AS 38.06.055(b)(1). If there was litigation over the sale the standard of review by the courts would be as set out in National Bank of Alaska v. Department of Revenue, 642 p.2d 811 (1982).

The reasonable basis standard is used where the question at issue, i.e., determination of "relieve storage or market conditions" implicates special agency expertise or the determination of fundamental policies within the scope of the agency's statutory functions. The second test or independent judgment standard is when the court makes its own determination of the meaning of the statute and need not

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Representative John Cowdery

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May 5, 1983

follow the agency's construction even if it is one of several reasonable readings. Very likely the court would invoke the former rule in coming to a decision.

RCF:ljb

17/031

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Alaska State Legislature

Sen. Bettye Fahrenkamp,
Co-Chairman
Sen. Vic Fischer
Sen. Don Bennett



Rep. John J. Cowdery,
Co-Chairman
Rep. Mike Davis
Rep. Joe Hayes
Rep. John Ringstad
Rep. Mike Szymanski
Rep. Rick Uehling
Rep. Anthony N. Vaska

Joint Committee on Oil and Gas

May 6, 1983

TO: ALL LEGISLATORS
FROM: Rep. John J. Cowdery
RE: For Your Information

This report contains some good background material on the dispute between the State of Alaska and Alaska Oil Company, more commonly recalled as the ALPETCO deal or the Charter sale.

I would call your attention to at least the last 4 pages of the report, pages 13 - 16.

Thank you.

MEMORANDUM REGARDING PRICE DISPUTE

BETWEEN THE STATE OF ALASKA AND

ALASKA OIL COMPANY

April 19, 1983

AGO 786731

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1 I. INTRODUCTION

2 The litigation between the State of Alaska ("State")
3 and Alaska Oil Company ("AOC") arises from AOC's failure to
4 pay approximately \$62.6 million of the full invoiced price
5 for royalty oil purchased by AOC from the State in 1981 and
6 1982. The State has insisted from the beginning of the dis-
7 pute that the price invoiced by the State was calculated in
8 accordance with the contract between the State and AOC, and
9 that the full invoiced price must be paid. But AOC claims
10 that the price invoiced by the State exceeds the "market
11 price" which AOC asserts was agreed to in the contract, and
12 AOC has therefore paid the State a lower price in accordance
13 with AOC's unilateral calculations of the "market value" of
14 the oil.

15 Section II of this memorandum briefly discusses
16 the State's right to and its options for the disposition
17 of royalty oil from Prudhoe Bay. Then, in Section III, the
18 negotiation and amendment of the AOC contract will be con-
19 sidered, and the price terms will be examined. AOC's with-
20 holding from payments to the State, and AOC's claimed reasons
21 for such withholding, are described in Section IV. Finally,
22 in Section V, the ongoing litigation between the State and
23 AOC is reviewed.

24 II. ROYALTY OIL FROM PRUDHOE BAY LEASES

25 During the 1960s, the State sold leasehold interests
26 at Prudhoe Bay to various oil companies. Each lease reserves
27 for the State a one-eighth (12.5%) royalty share, to be taken
28

1 "in kind" or "in value," in any production which might occur
2 after the leases are explored and developed.

3 Under the lease terms, if the State opts to take
4 all or part of its royalty share "inkind," the State takes
5 possession of the royalty oil at Pump Station No. 1 after
6 giving the North Slope Producers six months notice of the
7 volume of oil desired. Traditionally, the State does not
8 take physical custody of the oil, but rather resells it at
9 Pump Station No. 1.

10 Under the "in value" alternative in the Prudhoe Bay
11 leases, the State can receive cash payments from the North
12 Slope Producers for the value of some or all of the State's
13 12.5% of Prudhoe Bay oil. Although in this case the State
14 has no control of how the oil is marketed, the State is em-
15 powered to audit the Producers to insure that proper value is
16 received for the State's royalty oil.

17 Disposition of the royalty oil to which the State
18 is entitled under the Prudhoe Bay leases is governed by AS
19 38.05.182-183. Section 182(a) requires the Commissioner of
20 Natural Resources to take royalty oil "in-kind" unless the
21 Commissioner finds that "in value" taking is in the best
22 interest of the State. Section 183(e) requires the
23 Commissioner to evaluate royalty oil purchase proposals
24 (where sale is other than by competitive bid) in light of,
25 among other things, the cash value offered, the benefits of
26 refining or processing in the State, and the ability of the
27 purchaser to supply refined products in-state with price or
28

1 supply benefits. These statutory directives imply a prefer-
2 ence for taking royalty oil "in kind" rather than "in value,"
3 and a preference for in-state processing over purely export
4 sales.

5 In 1974 the Alaska Legislature established the
6 Alaska Royalty Oil and Gas Development Advisory Board, and
7 invested it with authority to approve or disapprove any
8 royalty oil disposition contracts submitted by the
9 Commissioner of Natural Resources. Under the 1974 legis-
10 lation, proposals for the sale of royalty oil first had to be
11 approved by the Royalty Board, and then submitted to the
12 Alaska Legislature for its concurrence.

13 III. ALPETCO AOC CONTRACT

14 A. Negotiations

15 In the summer of 1977, the Department of Natural
16 Resources formally solicited bids for the sale of the State's
17 royalty oil from Prudhoe Bay. The solicitation required each
18 bid to provide for the use in Alaska of "some or all" of the
19 purchased royalty oil. Concurrently, the Royalty Board supple-
20 mented the existing statutory guidelines with several policies
21 to guide the disposition of the State's royalty oil. Among
22 the policies was the requirement that the price at which the
23 State sold royalty oil should be no less than the amount the
24 State would have received had the State opted for "in value"
25 cash payments from the Producers instead of taking the oil
26 "in kind."

27 Ten preliminary proposals responding to the State's
28 solicitation were received by August 1, 1977. After the

1 Commissioner of Natural Resources evaluated the proposals,
2 the list of bidders was reduced to four companies who sub-
3 mitted final proposed contracts for large-volume purchases of
4 royalty oil. Following intensive negotiations with the final
5 four bidders, on February 22, 1978 the Commissioner signed,
6 and the Royalty Board approved, an Agreement for the Sale and
7 Purchase of State Royalty Oil (the "Contract") between the
8 State and Alaska Petrochemical Company ("APC"). The initial
9 Contract was for a term of 27 years and authorized the pur-
10 chase of up to 150,000 barrels per day of royalty oil for
11 processing in a world-scale petrochemical plant APC agreed to
12 construct in Alaska.

13 B. Amendments to APC Contract

14 The APC Contract was amended twice. The first
15 amendment occurred as a result of the legislative approval
16 process for the initial Contract; changes were mandated by
17 the Legislature in some of the terms of the Contract relating
18 to required expenditures and construction obligations. The
19 amended Contract required Alpecto to expend certain amounts
20 in furtherance of the project at specified intervals, to
21 enter into arrangements for construction and financing by
22 December of 1979. The amended Contract was approved by the
23 Legislature on June 13, 1978.

24 The second amendment stemmed from three events.
25 First, the project sponsors indicated that the petrochemical
26 portion of the project was not immediately feasible, and that
27 the facility constructed would in fact be a refinery (although
28 a highly sophisticated refinery using state of the art technology).

1 Second, the State's determination in December 1979 that Alpetco
2 had met required conditions regarding construction and financing
3 arrangements, entitling them to interim taking of royalty
4 oil, met with substantial public criticism. Third, the owner-
5 ship of the project changed substantially in 1979 when APC
6 assigned its interest in the Contract to the Alpetco Company,
7 which later changed its name to Alaska Oil Company ("AOC").
8 AOC is a general partnership presently consisting of Charter
9 Oil (Alaska) Inc. (85.31%), Valdez Oil, Inc. (8.04%) and
10 Barbour Oil Company (6.65%). Charter Oil (Alaska), Inc. and
11 Valdez Oil, Inc. are both wholly owned subsidiaries of The
12 Charter Company, which therefore has an indirect 93.35% inter-
13 est in AOC.

14 The second amendment, entered into in May 1980,
15 reduced the volume of oil to be purchased by AOC beginning in
16 July 1980 from 150,000 to 75,000 barrels per day. Only when
17 the promised refinery was operational would AOC be permitted
18 to purchase up to 100,000 barrels per day. To ensure that
19 AOC constructed the refinery in an expeditious manner, the
20 amended Contract also required AOC to meet specific project
21 development criteria by December 31, 1981, before the
22 Commissioner would approve further sales of North Slope
23 crude to AOC.

24 c. Contract Price Provisions

25 The price provisions of the Contract were not
26 altered by either amendment. Since price is at the center of
27 the State's dispute with AOC, the price provisions are des-
28 cribed below in some detail.

1 The State had insisted from the outset that the
2 minimum acceptable price for its royalty oil would be the
3 equivalent of the "in value" price the State would have re-
4 ceived from the Producers had the State not opted to take its
5 oil "in kind." In keeping with the State's unwavering posi-
6 tion on price, the Contract expressly provides that the final
7 price to be paid by APC/AOC "shall be equal to the sum the
8 [State] would have received from the [Producers] had [the
9 State] received its royalty in value instead of . . . in
10 kind." (Article 8.1.1.) This provision reflects the simple
11 fact that the State had no intention of diminishing its
12 royalty income as a result of taking its royalty oil "in
13 kind" (for sale to AOC) instead of "in value" (i.e., cash).

14 At the time the Contract was signed, the method of
15 determining the "in-value" price of royalty oil was the sub-
16 ject of a still unresolved lawsuit entitled State of Alaska,
17 et al. vs. Amerada Hess Corporation, et al. Since the
18 "in value" price had yet to be determined in the Amerada Hess
19 litigation, the Contract provided for two prices: a final
20 price to be paid once Amerada Hess establishes the "in value"
21 price, and an interim price to be charged pending the resolu-
22 tion of Amerada Hess.

23 Article 8.1.1 of the Contract provides that the
24 final price under the Contract will equal the "in value"
25 price to be judicially determined in Amerada Hess.

26 After such time as [Amerada Hess] shall
27 be resolved among Seller and [the Produ-
28 cers], the parties hereto will be bound
by the terms of such resolution, judicial
or otherwise. Seller and Buyer expressly

1 recognize that adjustments in prices
2 previously paid may be necessary follow-
ing said resolution . . .

3 Article 8.1.1 of the Contract also specifies the
4 interim price to be used until Amerada Hess is decided:

5 Pending resolution of said dispute among
6 Seller and [Producers], by judicial deci-
7 sion or settlement in the [Amerada Hess]
8 case, the in value royalty under the
9 Leases, and therefore the price here-
under, shall be computed in accordance
with Exhibit "B", attached [to the Con-
tract.]

10 Exhibit B was designed to yield a price akin
11 to what the State believes the Court in Amerada Hess will
12 eventually determine is the proper "in value" price. The
13 Exhibit B price is calculated each month in two steps. First,
14 a per barrel royalty oil "value" is determined for each Pro-
15 ducer, by taking the higher of the weighted average of the
16 actual prices received by that Producer or the weighted aver-
17 age of the actual prices received by all other Producers.
18 The "values" for each Producer are then used in the second
19 step of the Exhibit B calculation, which computes the weighted
20 average of the "values" of all the Producers. The effect of
21 this method of price calculation is to disregard, for purposes
22 of the final weighted average, the lower prices received by
23 some Producers, and unless all Producers report exactly the
24 same prices, the Exhibit B price will always exceed the weighted
25 average of all Producers' prices for that month.

26 The fact that neither the final price nor the Ex-
27 hibit B price under Contract would necessarily equal "market"
28

1 value was repeatedly recognized during negotiation of the
2 Contract, and on at least three occasions the parties re-
3 jected use of "market price" as a price standard. APC's
4 original contract proposal called for a "market price" tied
5 to the price of Saudi crude oil. But the State insisted on
6 receiving an "in value" price pegged to the price the Pro-
7 ducers would have paid the State had the State's royalty been
8 taken "in value" rather than "in kind," and Alpetco eventually
9 agreed.

10 Later in the negotiations, discussion turned to the
11 interim price to be paid by APC pending resolution of Amerada
12 Hess. Until Amerada Hess is decided, royalty payments by the
13 Producers are based on a weighted average of all Producers'
14 actual sales, a formula which yields a price lower than the
15 "in value" price which the State in Amerada Hess claims is
16 appropriate, and which Exhibit B approximates. APC objected
17 to paying a higher interim price than the interim price the
18 Producers were paying, and sought to base its interim price
19 on the weighted average of the prices reported to the State
20 by all the Producers. The State, however, was unwilling to
21 allow APC to follow the Producers in paying less than the
22 price the State expects Amerada Hess to establish since APC
23 had no security in Alaska comparable to the Producers' leases.
24 APC eventually agreed to base the interim price (Exhibit B)
25 on the State's position in Amerada Hess, and thus agreed to a
26 price higher than the weighted average of the Producers'
27 prices.
28

1 Thereafter, during the detailed negotiation on
2 using the State's position in Amerada Hess as a basis for the
3 interim price, market price was once again rejected, this
4 time by APC. In Amerada Hess, the State asserts that each
5 Producer should pay the highest of three price standards, one
6 of them being "market price." The State proposed using the
7 same three-part standard for APC's interim price, but APC
8 objected that "market price" is too subjective to use in
9 computing price. The parties then agreed to exclude "market
10 price" from Exhibit B calculations, a decision reflected in
11 Footnote 5 to Exhibit B:

12 "Market" . . . value shall not be used in
13 calculating the "In Value Price to Buyer"
14 unless and until the methodology of deter-
15 mining same is judicially decided.

15 Thus, during negotiation of the Contract, the subject of
16 using "market price" as a standard arose three times. On
17 each occasion, its use was rejected.

18 IV. THE PRICE DISPUTE

19 A. AOC Cancellation of Refinery Project

20 By meeting certain "benchmark" requirements of the
21 Contract pertaining to progress on the refinery project, AOC
22 became entitled to and began receiving 75,000 barrels per day
23 of royalty oil in July 1980. Each month thereafter, the
24 State tendered an invoice to AOC for the oil purchased the
25 previous month. The price used in each invoice was computed
26 by applying the formula in Exhibit B of the Contract to data
27 reported by Producers for royalty purposes. The State also
28 provided AOC with certain data from the Producers' royalty

1 reports which were used to calculate the Exhibit B price.
2 For almost one year, AOC paid each monthly invoice, based on
3 the interim Exhibit B price, in full.

4 On May 21, 1981, AOC announced the cancellation of
5 the refinery project, claiming that they had determined that
6 they would be unable to obtain adequate project financing
7 before the Contract deadline of December 31, 1981. The State
8 and AOC thereafter mutually agreed to terminate the Contract.
9 But because of the notice requirement in the Prudhoe Bay Unit
10 Agreement for denominating royalty oil, the Contract provided
11 that AOC had to continue taking royalty oil for seven months
12 after notice of termination unless the State could make alter-
13 nate sales arrangements. The State was unable to place the
14 oil elsewhere under satisfactory terms, and AOC therefore
15 continued to take 75,000 barrels per day until January 12,
16 1982, when the Contract was officially terminated.

17 B. AOC Withholding from Payments to State

18 In mid-1981, shortly after AOC's cancellation of
19 the refinery project, AOC became dissatisfied with the interim
20 Exhibit B price established by the Contract and decided to
21 set the price unilaterally. Thereafter, during the remaining
22 months of the Contract, AOC paid about \$62.6 million less for
23 the State's royalty oil than the amount invoiced by the State
24 pursuant to Exhibit B.

25 In underpaying the State for oil delivered from
26 June 1981 to January 1982, AOC not only unilaterally "ad-
27 justed" the Exhibit B price to a lower price arbitrarily set
28

1 by AOC; it also subtracted a portion of its payments previously
2 made at the Exhibit B price for the months of February through
3 May 1981. For example, for the month of November 1981, AOC
4 underpaid the State approximately \$3 million on the basis of
5 its unilateral price adjustment for the month of November,
6 and withheld an additional \$7.5 million as a "retroactive
7 adjustment" for February 1981 -- even though AOC had previously
8 paid the February 1981 invoice in full.

9 By this device of "retroactive adjustment," AOC
10 attempted to disguise the magnitude of its unilateral price
11 revisions. For example, AOC purported to reduce the price it
12 paid for oil in November 1981 by \$1.92 per barrel and attri-
13 buted the remainder of its November underpayment to a "retro-
14 active adjustment" of \$3.53 per barrel for the month of
15 February, 1981; the combined effect of these "adjustments,"
16 however, was a price reduction of more than \$6 a barrel below
17 the \$22.91 invoiced price calculated pursuant to Exhibit B
18 for oil delivered in November.

19 The oil for which AOC had underpaid the State was
20 re-sold by AOC, through an affiliate, for a profit which has
21 been estimated at between \$32 million and \$38 million. The
22 disposition of this profit by AOC is difficult to trace with
23 precision, but it is clear that AOC itself retained virtually
24 none of the profit. Instead, the profit was transferred to,
25 AOC's partners and to other affiliates of The Charter Company
26 (which indirectly owns 93.35% of AOC).

1 C. AOC's Claimed Justification for Withholding

2 AOC claims that the Contract price for the oil
3 should represent a "market price," and that AOC does not have
4 to pay any price higher than the "market price" calculated by
5 AOC. The basis for AOC's claim that it should pay only a
6 "market price" (rather than the invoice price computed pur-
7 suant to Exhibit B of the Contract) has never been thoroughly
8 explained. But AOC argues that the invoiced Exhibit B price
9 was too high because the prices reported by the Producers, on
10 which the Exhibit B calculation is based, were too high.
11 Despite repeated requests from the State for evidence support-
12 ing AOC's claim that the Producer reported prices were too
13 high, AOC's only evidence to date consists of theoretical
14 calculations by AOC of what the true "market price" for
15 Prudhoe Bay oil should be. AOC's claim of inflated price
16 reports from the Producers is especially implausible since
17 the severance tax paid to the State by the Producers is based
18 on the prices they report. In other words, if, as AOC claims,
19 the Producers are reporting prices which are too high, then
20 the Producers are thereby deliberately increasing the amount
21 of severance tax they must pay to the State.

22 Although the factual basis for AOC's withholding
23 remains murky, the claimed legal basis for that withholding
24 is more focused. Article 9.3 of the Contract provides in its
25 entirety:

26 Billing Disputes. Should any portion of
27 the account furnished to Buyer by Seller
28 be disputed in good faith, Buyer and
Seller agree to mutually arrive at a fair
and equitable resolution of such dispute,

1 if possible, and Buyer agrees to pay the
2 amount so determined to be due to Seller
3 within fifteen (15) days after such resolu-
4 tion. Buyer shall pay for such amounts
5 as it does not in good faith dispute in
6 accordance with the provisions of this
7 Article IX.

8 The State's position is that this Contract provision is designed
9 to cover routine and relatively minor billing disputes, and
10 that, in any event, AOC's price dispute is not in "good faith."
11 But AOC interprets the provision much more broadly, arguing
12 that it covers matters as fundamental as the method of calcula-
13 ting the price, and that AOC has no obligation to pay amounts
14 it unilaterally disputes until fifteen days after the resolu-
15 tion of such dispute.

16 V. LITIGATION BETWEEN THE STATE AND AOC

17 The State met on numerous occasions with AOC and
18 its lawyers in an attempt to determine if AOC had any valid
19 grounds for claiming the existence of a pricing dispute within
20 the meaning of the Contract, and to hear various presentations
21 made by AOC in support of their claim. On December 14, 1981,
22 a letter was sent by the State to AOC setting forth the State's
23 determination that no cause for a price dispute existed, and
24 demanding payment of the full amount due to the State under
25 the Contract. The day following receipt of this letter, AOC
26 filed a Complaint for declaratory judgment against the State
27 in Fairbanks Superior Court. The State answered, alleging
28 that the Contract price term controls, and that AOC had en-
gaged in various fraudulent conveyances and other transactions
which had depleted its assets. That case is currently pending,
but has been stayed by the petition filed by the State in the

1 United States Bankruptcy Court in Anchorage seeking to have
2 AOC declared an involuntary bankrupt.

3 The decision to proceed against AOC in the Bankruptcy
4 Court rather than in Fairbanks Superior Court reflected the fact
5 that AOC itself has virtually no assets, having transferred them
6 to its affiliates. In order to recover any substantial portion
7 of the money owed to the State by AOC, it will be necessary for
8 the State to collect from AOC's parent (The Charter Company) and
9 its affiliates -- a process which is far easier in the Bank-
10 ruptcy Court than in State Court. Moreover, the Bankruptcy
11 Court has broader jurisdiction over witnesses and documents
12 outside of Alaska, and Bankruptcy proceedings tend to be re-
13 solved more quickly than State Court actions.

14 The bankruptcy proceeding was commenced by the
15 State in February 1982 and the matter was tried in January
16 1983. During the intervening months, nine separate hearings
17 were held, dozens of briefs and memoranda were filed by both
18 sides, thirty-one depositions were taken in four states, and
19 tens of thousands of pages of documents were exchanged and
20 reviewed.

21 Trial commenced in Anchorage on January 17, 1983,
22 and continued for five very full trial days. At the conclu-
23 sion of the trial, the Bankruptcy Judge denied the State's
24 petition to have AOC placed in involuntary bankruptcy. This
25 ruling does not, however, prevent the State from now proceeding
26 against AOC in the Alaska State Courts.

27 The Findings of Fact and Conclusions of Law which
28 the Bankruptcy Judge must issue to conclude the bankruptcy

1 proceedings are still the subject of memoranda and argument
2 before the Court, and are not expected to be issued before
3 the end of April. But even in the absence of a definitive
4 statement from the Court, the oral ruling by the Judge at the
5 close of the trial in Anchorage gives a fair indication of
6 the basis for his ruling.

7 The Bankruptcy Judge stated that, based solely on the
8 price provisions of the Contract, AOC has a debt to the State
9 for at least some portion of the amount withheld from AOC's pay-
10 ments for royalty oil. But the Judge also concluded that AOC's
11 price dispute is in good faith within the meaning of Article
12 9.3, and that Article 9.3 of the Contract gives AOC the right
13 to withhold payment of any amounts disputed in good faith until
14 such time as the dispute is resolved. Therefore, the Court con-
15 cluded, AOC's debt to the State is not yet "due" to be paid
16 because of the good faith price dispute, and AOC could not be
17 judged to be bankrupt for failing to pay that debt. Counsel for
18 the State believe that the Court's ruling is not consistent with
19 existing law, and the prospects for an appeal of the Bankruptcy
20 Court's decision are now being evaluated.

21 The State is also considering the extent to which
22 it will be fruitful to pursue the State Court action against
23 AOC to recover the \$62.6 million withheld by AOC from its
24 payments for royalty oil. Among the factors to be considered
25 in connection with that decision is the fact that Article
26 9.3, which proved to be the major stumbling block in the
27 Bankruptcy Court proceeding, would have little bearing on an
28 action in Alaskan Courts. AOC was able to avoid involuntary

1 bankruptcy by convincing the Bankruptcy Court that its dispute
2 with the State was in good faith, and that (because of Article
3 9.3) AOC's debt was not yet "due" to be paid. But in State
4 Court, the central issue would be simply whether or not AOC
5 has paid the price called for by the Contract, and AOC's good
6 faith (or lack thereof) would not control whether AOC must
7 pay the State the amount withheld. Another important consi-
8 deration bearing on the decision whether to pursue the
9 State Court case is the fact that much of the research and
10 discovery already conducted in the bankruptcy proceeding
11 could be used in a State Court action.

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HB 370

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 19, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which provides for legislative approval of a royalty oil contract between the state and Chevron, U.S.A., Inc. for the sale of Prudhoe Bay royalty oil.

This contract is described in the findings entitled "Proposed Disposition of Royalty Oil, Chevron, U.S.A." issued by the Department of Natural Resources on March 16, 1983. Copies of these findings have been made available to the legislature and the public for review.

This contract is being submitted for legislative approval for two reasons. First, although this and the previous administration have consistently taken the position that the statutory requirement of legislative approval of royalty oil contracts is unconstitutional (AS 38.06.055), as a matter of comity I respect the legislature's desire to have a direct voice in major disposals of royalty oil. Therefore, this contract contains provisions requiring approval by the legislature before it becomes effective. Second, this bill would ratify the agreement for the sale of oil. This ratification would cure any procedural defect that may have occurred in the process of entering into this contract.

Although we believe that all necessary steps have been taken, the statutes and regulations governing the disposal of royalty oil represent often conflicting desires and goals, both procedural and substantive. For example, even if statutorily requiring legislative approval were constitutional, the present statutes provide, on the one hand, that the legislature is to approve the contract by enacting legislation (AS 38.06.055(a)), but, on the other

hand, they also provide that a report of the Royalty Board "shall be submitted for legislative review at the time of [sic] resolution for legislative approval of a proposed disposition of royalty oil and gas is introduced in the legislature" (AS 38.06.070(c)). Since legislative approval is required anyway as a matter of contract, I believe it only prudent to present this contract for legislative approval and ratification at this time.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor

I. REQUEST

Bill/Resolution No.: HB 370
 Title: Chevron Prudhoe Bay Unit Royalty
 Sponsor: Governor Oil Agreement
 Requestor: Governor

II. FISCAL DETAIL

Agency Affected: Natural Resource Mgmt.
 Program Category Affected: Mgmt of Energy
 BRU, Program of Subprogram(s) Affected: Res
Oil and Gas Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)	0	0	0	0		

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
	0	0	0	0		

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Mark Wittow Phone: 465-2400
 Division: Commissioner's Office, DNR Date: 4/8/83
 Approved by Commissioner: Maughallera Date: 4/8/83
 Department: Natural Resources

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

H B

371

COMMITTEE REPORT
HOUSE

Rule

(9)

FURTHER:

4/19/83

Date: 1-19-1984

Mr. Speaker:

The Committee on RESOURCES has had HB 371

"An Act relating to the sale of Prudhoe Bay royalty oil by the State of Alaska to the Tesoro Alaska Petroleum Company; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 371 same title
 new title
- and recommends DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note
 Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature] GAULTZ
[Signature] LARSON
[Signature] BUSSELL
[Signature] LISKA
[Signature] UELLEN
[Signature] KILGUSTAD

[Signature] SALL
[Signature] ASIA

[Signature]
CHAIRMAN

LETTER OF INTENT
FOR CSHB 371
January 19, 1984


The House Resources Committee has considered CSHB 371, providing for approval of the Agreement between the State of Alaska and Tesoro Alaska Petroleum Company for the sale of a portion of Alaska's royalty oil. This Agreement must be approved by the legislature under the provisions of AS 38.06.055(a) which provides that "the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature."

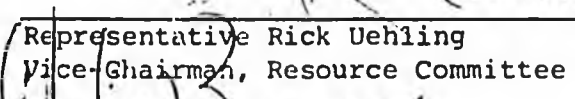
Section 19.1 of the Agreement provides that the Agreement may be "supplemented, amended or modified at any time, but only by written instrument duly executed by the parties to this Agreement." In making any such changes to the Agreement pursuant to this section, the Commissioner would be acting on behalf of the State of Alaska as one of the parties to the Agreement.

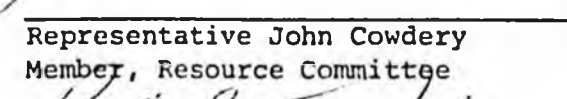
The Committee recognizes that a supplement, amendment, or modification of the Agreement could be a further "sale, exchange, or other disposition" within the meaning of AS 38.06.055(a). The Committee is also cognizant that pursuant to Section 20.1 of the Agreement, the Commissioner has the right to "grant" (consent to) an assignment of the Agreement.

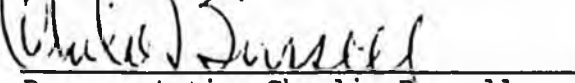
It is the intent of the Committee that it be understood that approval of CSHB 271 does not constitute prior approval of any supplement, amendment or modification or any assignment that would be a further "sale, disposition, exchange, or other disposition" within the meaning of AS 38.06.055(a) and that it is expected that any such action by the Commissioner must first be preceded by compliance with the procedures for obtaining the prior approval of the legislature.

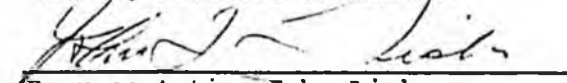

Representative John Ringstad
Co-Chairman, Resource Committee

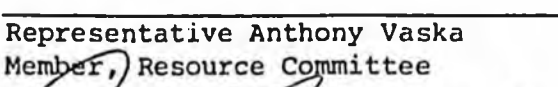

Representative Dick Shultz
Co-Chairman, Resource Committee

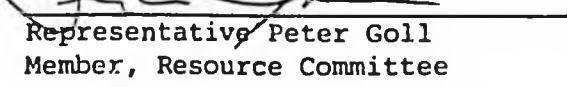

Representative Rick Uehling
Vice-Chairman, Resource Committee

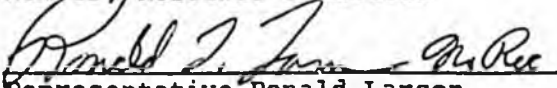

Representative John Cowdery
Member, Resource Committee


Representative Charlie Bussell
Member, Resource Committee


Representative John Liska
Member, Resource Committee


Representative Anthony Vaska
Member, Resource Committee


Representative Peter Goll
Member, Resource Committee


Representative Ronald Larson
Member, Resource Committee



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

M E M O R A N D U M

To: All Members, House Resources Committee,
Senate Resources Committee and
Joint Committee on Oil and Gas

From: House Resources Committee Staff

Date: January 16, 1984

Re: Royalty oil contract changes

Major contract differences between those contracts submitted to the 1983 Legislative session and those which will be presented to the 1984 session are as follows:

Section 2.13 has been deleted. In the old contracts, section 2.13 read:

2.13. Future Dispositions of Royalty Oil. Seller recognizes that AS 38.05.183, which governs disposition of royalty oil by the State of Alaska, establishes a statutory preference for dispositions proposing (1) in-state processing of royalty oil and (2) in-state supply of products generated from processing of royalty oil, in that order. Seller represents that, in conjunction with future dispositions of royalty oil, Purchaser will be afforded the consideration contemplated by AS 38.05.183.

The Purchasers' needs originally addressed in Section 2.13 have been met by other contract terms, and this provision will no longer be a standard contract term.

2. A second change to the contracts is that they and future contracts will no longer require legislative approval for any amendments.
3. Changes to specific contracts are as follows:
 - a. Tesoro Alaska Petroleum Company, Prudhoe Bay
The previous Tesoro/Prudhoe contract outlined a

provision in the price term that would allow the premium paid by Tesoro to be applied against the Amerada Hess settlement if the State prevails in that dispute. The new contract does not contain this provision. Translated into dollars to the State, this negotiated provision means an additional \$24.9 million in revenue.

An additional five cents has been added to the premium of the new contract. Translated over the life of the contract at the estimated number of barrels to be taken, this means an additional \$3.6 million in revenue to the State.

The new contract contains a six year price reopener term with reopeners at two year intervals thereafter.

b. Chevron, USA

The Chevron contract now differs from the previous contract in that it now contains provisions for a price reopener every two years.

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 269
 Title: sale of royalty oil to Chevron, U.S.A., Inc.
 Sponsor: Rules Committee
 Requestor: Governor
 Date of Request: 4-19-83

FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: Management of Energy Resources
 BRU, Program or Subprogram(s) Affected: Oil and Gas Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Sharon L. Barton Phone: 465-2400
 Division: Commissioner's Office Date: 1-12-84

Approved by Commissioner: Wm D Arnold Deputy Date: 1/12/84
 Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 371
 Title: sale of Prudhoe Bay
royalty oil to Tesoro
 Sponsor: Rules Committee
 Requestor: Governor
 Date of Request: 4-19-83

FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: Management of Energy Resources
 BRU, Program or Subprogram(s) Affected: Oil and Gas Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Sharon L. Barton Phone: 465-2400
 Division: Commissioner's Office Date: 1-12-84

Approved by Commissioner: Mrs. D. Anna, Deputy Date: 1/12/84
 Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

AGO 786777

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 320
 Title: sale of royalty oil
to Tesoro Alaska Pet. Co.
 Sponsor: Rules Committee
 Requestor: Governor
 Date of Request: 4-4-83

FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: Management of Energy Resources
 BRU, Program or Subprogram(s) Affected: Oil and Gas Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Sharon L. Barton Phone: 465-2400
 Division: Commissioner's Office Date: 1-12-89

Approved by Commissioner: Wm D Arnold, Deputy Date: 1/21/89
 Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

12/1/83

AGO 786778

provision in the price term that would allow the premium paid by Tesoro to be applied against the Amerada Hess settlement if the State prevails in that dispute. The raw contract does not contain this provision. Translated into dollars to the State, this negotiated provision means an additional \$24.9 million in revenue.

An additional five cents has been added to the premium of the new contract. Translated over the life of the contract at the estimated number of barrels to be taken, this means an additional \$3.6 million in revenue to the State.

The new contract contains a six year price reopener term with reopeners at two year intervals thereafter.

b. Chevron, USA

The Chevron contract now differs from the previous contract in that it now contains provisions for a price reopener every two years.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS & ENERGY MANAGEMENT

Contracts which will be presented to the 1984 legislature:

1. Long-term sale of Cook Inlet crude.

Purchaser: Tesoro Alaska Petroleum Company
Quantity : 100% royalty crude from Cook Inlet
Term : January 1, 1985 to January 1, 1995. (This contract commences upon the termination of the one-year emergency contract (1/1/84-12/31/84)).
Price : Volume-weighted average of the producers in the Cook Inlet area. (What the state would have received had it taken the oil in-value).

2. Long-term sales of Prudhoe Bay Royalty Oil:

- A. Purchaser: Chevron U.S.A., Inc.
Quantity : 09.60% of the State's daily royalty share of crude. (Approximately 18,000 bpd).
Term : May 31, 1984 to January 1, 1995. (The expiration date of the emergency one-year contract is May 30, 1984).
Price : Volume-weighted average of all producer prices, 30 cents premium, plus field costs, to be adjusted upon settlement of the Amerada Hess litigation. Price reopener two years after date of first delivery and every two years thereafter.

Option contract: In the event that the above contract for the sale of approximately 18,000 bpd of royalty crude is not approved by the Alaska State Legislature, Shell Oil Company will purchase the 18,000 bpd of nominated crude commencing May 31, 1984. This contract will contain all of the standard State contract terms with a price term equalling volume-weighted average producer's field price, plus \$1.00 premium, plus field costs, to be adjusted upon settlement of the Amerada Hess litigation.

- B. Purchaser: Tesoro Alaska Petroleum Company
Quantity : 13.867% of the State's daily royalty crude (approximately 26,000 bpd).
Term : January 1, 1985 is the estimated date of first delivery with January 1, 1995 the date of termination.
Price : Volume-weighted average of all producer prices, plus 35 cents premium, plus field costs, to be adjusted upon settlement of Amerada Hess. Price reopener after six years from date of first delivery and at two year intervals thereafter.

ROYALTY OIL INFORMATION

I. Existing Agreements

A. Cook Inlet - Tesoro takes all royalty oil under 1969 contract; expires in 1983; a ten-year renewal is now before the Legislature (HB 320).

B. Prudhoe Bay

1. Golden Valley Electric Association - may take up to 5,000 barrels a day (b/d) under their 1977 agreement which expires in 1984. Currently working with Department on renewal.
2. North Pole Refining (Mapco) - entitled to 15 percent, or up to 35,000 b/d under their 1978 agreement, which expires in 2003.
3. Tesoro - entitled to 24.5 percent, or up to 46,000 b/d under their 1982 agreement, which expires in 1994.

All of the existing Prudhoe Bay agreements were approved by the Alaska Legislature. Two other long-term proposals, by Alpetco and Doyon, were approved by the Legislature in 1973 and 1982, respectively, but have since been terminated.

DEPARTMENT OF NATURAL RESOURCES

MINERALS AND ENERGY MANAGEMENT

Pouch 7-034
Anchorage, Alaska 99510

Prudhoe Bay Oil:

Nominations as of August 1, 1983

<u>Contracts</u>	<u>% of Daily Royalty</u>	<u>BPD</u>	<u>Term</u>
North Pole Refinery (MAPCO)	.186667	35000	12/2003
Golden Valley Electric Assn	.026667	5000	6/30/84
Tesoro Alaska Petroleum Co.	.206178	38658	1/1/95
Chevron U.S.A., Inc.	.096	18000	5/31/84
Royalties taken in-value	<u>.484488</u>	<u>90842</u>	
	100%	<u>187500</u>	

Nominations as of January 23, 1984

MAPCO	.186667	35000	
GVEA	.026667	5000	
Tesoro	.21208	39765	
Chevron	.096	18000	
Royalties taken in-value	<u>.478586</u>	<u>89735</u>	
	100%	<u>187500</u>	

Nominations if the new contracts pass

MAPCO	.186667	35000	
GVEA	.026667	5000	6/94
Tesoro Alaska (old)	.21208	39765	
Tesoro Alaska (new)	.13867	26000	1/1/95
Chevron (new)	.096	18000	1/1/95
Royalties taken in-value	<u>.339916</u>	<u>63735</u>	
	100%	<u>187500</u>	

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
AVAILABILITY OF ROYALTY OIL FOR SALE

YEAR	ESTIMATED TOTAL PRODUCTION PER DAY			ESTIMATED ROYALTY BARRELS PER DAY			ESTIMATED SALES OF ROYALTY OIL						ROYALTY IN VALUE	
	PRUDHOE	KUFARUK	TOTAL	PRUDHOE ROYALTY BRLS PER DAY	KUFARUK ROYALTY BRLS PER DAY	TOTAL ROYALTY BRLS PER DAY	MAPCO PRODUCTION COMPANY (1)	GVEA (OLD) (2)	GVEA (NEW) (3)	TESORO (OLD) (4)	TESORO .13867 (NEW) (5)	CHEVRON (OLD) (6)	CHEVRON .096 (NEW) (7)	RIV (8)
1983	1500000	120000	1620000	187500	15000	202500								
1984	1500000	120000	1620000	187500	15000	202500	35000	5000		38658		18000		105842
1985	1500000	120000	1620000	187500	15000	202500	35000	5000		39765		18000		104735
1986	1500000	200000	1620000	187500	15000	202500	35000		5001	39765	26001		18000	78734
1987	1475000	200000	1675000	187500	15000	202500	35000		5001	39765	26001		18000	78734
1988	1325000	200000	1525000	165675	25000	209375	35000		4917	39102	25567		17700	87008
1989	1175000	200000	1375000	144875	25000	171875	35000		4417	38094	22967		15900	74247
1990	1050000	200000	1250000	131250	25000	156250	35000		3917	33781	20367		14100	64709
1991	950000	200000	1150000	118750	25000	143750	35000		3500	32200	18200		12600	54750
1992	850000	200000	1050000	106250	25000	131250	35000		3167	29133	16467		11400	48583
1993	750000	200000	950000	93750	25000	118750	35000		2834	26066	14734		10200	42416
1994	650000	170000	820000	81250	21250	102500	35000		2500	23000	13000		9000	36750
1995	575000	145000	720000	71875	18125	90000	35000		2167	19933	11267		7800	26333
1996	510000	120000	630000	63750	15000	78750	35000			17633	9967		6900	20500
1997	460000	100000	560000	52500	12500	65000	35000							43750
1998	420000	80000	500000	52500	10000	62500	35000							35000
1999	380000	75000	455000	47500	9375	56875	35000							27500
2000	340000	65000	405000	42500	8125	50625	35000							21875
2001	300000	55000	355000	37500	6875	44375	35000							15675
2002	270000	50000	320000	33750	6250	40000	25000							15000
2003	240000	40000	280000	30000	5000	35000	20000							15000
2004	210000	35000	245000	26250	4375	30625								15000
2005	180000	25000	205000	22500	3125	25625								30675
2006	160000	25000	185000	20000	3125	23125								25675
2007	140000	20000	160000	17500	2500	20000								23125
2008	110000	20000	130000	13750	2500	16250								20000
2009	80000	10000	90000	10000	1250	11250								16250
2010	50000	10000	60000	6250	1250	7500								11250

NOTES: (1) Mapco's daily quantity is not to exceed 15% of Seller's royalty oil minus that minimum quantity of oil which must be taken in-value for pricing purposes. Mapco may purchase up to 35,000 bpd from Prudhoe and other state leases if the oil is available and unobligated. This contract expires December, 2003.

(2) GVEA's current contract expires June 30, 1984.

(3) GVEA's proposed contract would commence July 1, 1981 and expire June 30, 1974. Quantity is 2.667% of daily royalty crude.

(4) Tesoro's current contract calls for a maximum quantity of 24,533% of daily royalty crude less Enol net royalty production. Cook Inlet production is expected to be at a minimal level in 1990. This contract expires December, 1995.

(5) Tesoro's proposed contract calls for a maximum quantity of 13.867% of daily royalty production. The contract is anticipated to commence January, 1985. The expiration date of this proposed contract is January 1, 1995.

(6) Chevron is currently taking royalty oil on a one-year emergency contract which expires May 31, 1984.

(7) Chevron's proposed contract calls for a maximum quantity of 9.6% of daily royalty production. It would commence on June 1, 1984 and expire January 1, 1995.

(8) Some minimum amount of oil must be retained for contract pricing purposes. Currently, that amount is 15,000 bpd.

Shell Oil Announces Buying Price for Crude From Prudhoe Bay

A WALL STREET JOURNAL NEWS Roundup

Shell Oil Co. announced a buying price of \$18.75 a barrel for Alaskan North Slope crude oil at Prudhoe Bay, the first time an oil company has posted a price for this crude.

When transportation costs to West Coast markets of about \$7.50 a barrel are added, the price would be about \$26.25 for the crude, which Houston-based Shell said represents about a dollar-a-barrel premium over the average current value reported by some producers for the oil at the pumping station.

The move, some analysts believe, reflects a long simmering controversy surrounding the North Slope oil. Critics in Congress and elsewhere have charged that Los Angeles-based Atlantic Richfield Co., which produces oil at Prudhoe Bay, has set too low a price on the Alaskan oil its exploration units sell to its own refineries.

Oil industry sources said this arrangement has the effect of reducing windfall profit taxes on Arco's Alaskan crude. This tax saving allows Arco to undercut gasoline competitors on the West Coast, these critics allege.

In October, the Internal Revenue Service rejected Arco's method of computing its windfall tax on Alaskan crude. Arco has denied any wrongdoing.

A source close to Shell said the company is posting a price for Alaskan crude "because we feel they (Arco) have an advantage."

A Shell spokesman said the company posted the price because it has an "urgent need" for Alaskan oil, primarily for its West Coast refineries.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 19, 1983

SUBJECT: HB 370 & HB 371
TO: Representative Ringstad
FROM: Thomas A. Sofo *TAS*
Legislative Counsel

You have asked whether HB 370 and HB 371, the pending bills for ratification of the Chevron and Tesoro royalty oil contracts, can be used as vehicles for the ratification of the more recently negotiated contracts with the same firms. Since the subject matter of the latter agreements is nearly identical, the only change necessary would be the removal of the March 16, 1983 reference and the insertion of the date of the new contracts in its place.

TAS:csh
c2/120

AGO 786761

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 371 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the sale of Prudhoe Bay royalty
7 oil by the State of Alaska to the Tesoro Alaska
8 Petroleum Company; and providing for an effective
9 date."

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

11 * Section 1. The "Agreement for the Sale and Purchase of Royalty Oil
12 between the State of Alaska and Tesoro Alaska Petroleum Company," dated
13 December 9, 1983, for the sale of Prudhoe Bay royalty oil, is hereby
14 approved and ratified.

15 * Sec. 2. This Act takes effect immediately in accordance with
16 AS 01.10.070(c).

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 320 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the sale of royalty oil by the
7 State of Alaska to the Tesoro Alaska Petroleum
8 Company; and providing for an effective date."

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

10 * Section 1. The "Agreement for the Sale and Purchase of Royalty Oil
11 between the State of Alaska and Tesoro Alaska Petroleum Company," dated
12 December 9, 1983, is hereby approved and ratified.

13 * Sec. 2. This Act takes effect immediately in accordance with
14 AS 01.10.070(c).

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IN THE SENATE

BY THE RESOURCES
COMMITTEE

HOUSE CS FOR SENATE BILL NO. 269 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the sale of royalty oil by the State of Alaska to Chevron, U.S.A., Inc.; and providing for an effective date."

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

* Section 1. The "Agreement for the Sale and Purchase of Royalty Oil between the State of Alaska and Chevron, U.S.A., Inc.," dated December 9, 1983, for the sale of Prudhoe Bay royalty oil, is hereby approved and ratified.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

HB 320 HOUSE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/04/83	01	0722	FIRST READING -- COMMITTEE REPORTS
04/04/83	02	0722	GOV TRANSMITTAL LETTER
04/04/83	03	0722	F/NOTE EQUALS ZERO
06/14/83	04	1715	FIN COMM REFERRAL ADDED BY UNAN CONSENT
06/21/83	05	1851	NOT MOVED FROM RES COMM BY DIV 16-23-01
06/25/83	06	2016	NOT MOVED FROM RES COMM BY DIV 18-22-00
			RESOURCES
			FINANCE
			RULES

HB 371 HOUSE ACTION

<u>DATE</u>	<u>SEQ</u>	<u>PAGE</u>	<u>LEGISLATIVE ACTION</u>
04/19/83	01	0919	FIRST READING -- COMMITTEE REPORTS
04/19/83	02	0919	GOV TRANSMITTAL LETTER
04/19/83	03	0919	F/NOTE EQUALS ZERO
06/14/83	04	1715	FIN COMM REFERRAL ADDED BY UNAN CONSENT
06/21/83	05	1851	NOT MOVED FROM RES COMM BY DIV 16-23-01
06/25/83	06	2016	NOT MOVED FROM RES COMM BY DIV 18-22-00 RESOURCES FINANCE RULES

SB 269 SENATE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/19/83	01	0747	FIRST READING -- COMMITTEE REPORTS
04/19/83	02	0748	GOV TRANSMITTAL LETTER
04/19/83	03	0747	F/NOTE EQUALS ZERO
05/10/83	04	0934	RES -- DP06, NR01
06/01/83	05	1159	FIN -- DP06
06/15/83	06	1317	RLS -- OTHER04 TAKEN UP IMMEDIATELY
06/15/83	07	1319	SECOND READING
06/15/83	08	1319	ADVANCED TO 3RD READING BY UNAN CONSENT
06/15/83	09	1319	THIRD READING
06/15/83	10	1319	PASSED BY DIV 18-02-00
06/15/83	11	1320	EFFECTIVE DATE VOTE SAME AS PASSAGE

SB 269 HOUSE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
06/16/83	12	1734	FIRST READING -- COMMITTEE REPORTS RESOURCES FINANCE RULES

LETTER OF INTENT
FOR CSHB 271
January 19, 1984

The House Resources Committee has considered CSHB 271, providing for approval of the Agreement between the State of Alaska and Tesoro Alaska Petroleum Company for the sale of a portion of Alaska's royalty oil. This Agreement must be approved by the legislature under the provisions of AS 38.06.055(a) which provides that "the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature."

Section 19.1 of the Agreement provides that the Agreement may be "supplemented, amended or modified at any time, but only by written instrument duly executed by the parties to this Agreement." In making any such changes to the Agreement pursuant to this section, the Commissioner would be acting on behalf of the State of Alaska as one of the parties to the Agreement.

The Committee recognizes that a supplement, amendment, or modification of the Agreement could be a further "sale, exchange, or other disposition" within the meaning of AS 38.06.055(a). The Committee is also cognizant that pursuant to Section 20.1 of the Agreement, the Commissioner has the right to "grant" (consent to) an assignment of the Agreement.

It is the intent of the Committee that it be understood that approval of CSHB 271 does not constitute prior approval of any supplement, amendment or modification or any assignment that would be a further "sale, disposition, exchange, or other disposition" within the meaning of AS 38.06.055(a) and that it is expected that any such action by the Commissioner must first be preceded by compliance with the procedures for obtaining the prior approval of the legislature.

Representative John Ringstad
Co-Chairman, Resource Committee

Representative Dick Shultz
Co-Chairman, Resource Committee

Representative Rick Uehling
Vice-Chairman, Resource Committee

Representative John Cowdery
Member, Resource Committee

Representative Charlie Bussell
Member, Resource Committee

Representative John Liska
Member, Resource Committee

Representative Anthony Vaska
Member, Resource Committee

Representative Peter Goll
Member, Resource Committee

Representative Ronald Larson
Member, Resource Committee

LETTER OF INTENT
FOR CSHB 320
January 19, 1984

The House Resources Committee has considered CSHB 320, providing for approval of the Agreement between the State of Alaska and Tesoro Alaska Petroleum Company for the sale of a portion of Alaska's royalty oil. This Agreement must be approved by the legislature under the provisions of AS 38.06.055(a) which provides that "the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature."

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The Committee recognizes that a supplement, amendment, or modification of the Agreement could be a further "sale, exchange, or other disposition" within the meaning of AS 38.06.055(a). The Committee is also cognizant that pursuant to Section 20.1 of the Agreement, the Commissioner has the right to "grant" (consent to) an assignment of the Agreement.

It is the intent of the Committee that it be understood that approval of CSHB 320 does not constitute prior approval of any supplement, amendment or modification or any assignment that would be a further "sale, disposition, exchange, or other disposition" within the meaning of AS 38.06.055(a) and that it is expected that any such action by the Commissioner must first be preceded by compliance with the procedures for obtaining the prior approval of the legislature.

Representative John Ringstad
Co-Chairman, Resource Committee

Representative Dick Shultz
Co-Chairman, Resource Committee

Representative Rick Uehling
Vice-Chairman, Resource Committee

Representative John Cowdery
Member, Resource Committee

Representative Charlie Bussell
Member, Resource Committee

Representative John Liska
Member, Resource Committee

Representative Anthony Vaska
Member, Resource Committee

Representative Peter Goll
Member, Resource Committee

Representative Ronald Larson
Member, Resource Committee

LETTER OF INTENT
FOR CSSB 269
January 19, 1984

The House Resources Committee has considered CSSB 269, providing for approval of the Agreement between the State of Alaska and Chevron U.S.A., Inc., for the sale of a portion of Alaska's royalty oil. This Agreement must be approved by the legislature under the provisions of AS 38.06.055(a) which provides that "the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature."

Section 19.1 of the Agreement provides that the Agreement may be "supplemented, amended or modified at any time, but only by written instrument duly executed by the parties to this Agreement." In making any such changes to the Agreement pursuant to this section, the Commissioner would be acting on behalf of the State of Alaska as one of the parties to the Agreement.

The Committee recognizes that a supplement, amendment, or modification of the Agreement could be a further "sale, exchange, or other disposition" within the meaning of AS 38.06.055(a). The Committee is also cognizant that pursuant to Section 20.1 of the Agreement, the Commissioner has the right to "grant" (consent to) an assignment of the Agreement.

It is the intent of the Committee that it be understood that approval of CSSB 269 does not constitute prior approval of any supplement, amendment or modification or any assignment that would be a further "sale, disposition, exchange, or other disposition" within the meaning of AS 38.06.055(a) and that it is expected that any such action by the Commissioner must first be preceded by compliance with the procedures for obtaining the prior approval of the legislature.

Representative John Ringstad
Co-Chairman, Resource Committee

Representative Dick Shultz
Co-Chairman, Resource Committee

Representative Rick Jehling
Vice-Chairman, Resource Committee

Representative John Cowdery
Member, Resource Committee

Representative Charlie Bussell
Member, Resource Committee

Representative John Liska
Member, Resource Committee

Representative Anthony Vaska
Member, Resource Committee

Representative Peter Goll
Member, Resource Committee

Representative Ronald Larson
Member, Resource Committee

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: (907) 465-2400

March 12, 1983

Mr. James F. Smith
President
Tesoro Alaska Petroleum
Company
8700 Tesoro Drive
San Antonio, Texas 78286

Dear Mr. Smith:

On March 12, 1983, the State of Alaska and Tesoro Alaska Petroleum Company ("Tesoro Alaska") entered into an Agreement for the Sale and Purchase of Royalty Oil (the "Agreement"). Article 7.5 of the Agreement provides that the State may elect to terminate the Agreement in the event that a "third party" obtains "control" (as such terms are defined therein) of Tesoro Alaska or its parent, Tesoro Petroleum Corporation ("Tesoro").

During the negotiations which led to the execution of the Agreement, you informed the State that, on January 26, 1983, two Charter Security Life Insurance Companies, subsidiaries of The Charter Company ("Charter"), had entered into a Purchase Agreement, a Stockholders Agreement, a Registration Rights Agreement and a Certificate of Designation Establishing A Series of \$2.20 Cumulative Convertible Preferred Stock (the "agreements") with Tesoro to purchase 2,875,000 shares of a new series of Cumulative Convertible Preferred Stock of Tesoro. Furthermore, those agreements contemplate that the Charter Security Life Insurance Companies or other companies affiliated with The Charter Company may purchase additional shares of Tesoro so that The Charter Company and companies affiliated with The Charter Company may own up to 30 percent of the voting interest in Tesoro. You also informed us that the Charter Security Life Insurance Companies will be entitled to up to three seats on Tesoro's Board of Directors, depending upon the size of Tesoro's Board.

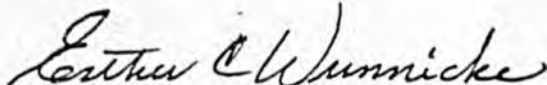
RECEIVED
Department of Law

MAR 11 1983

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The purpose of this letter is to set forth the understanding and intent of the State and Tesoro Alaska with respect to the application of Article 7.5 of the Agreement to the contemplated relationship between Charter and Tesoro. If the arrangements described in the preceding paragraph are effected, it is the understanding and intent of the parties that Charter and/or its affiliates will not control Tesoro or Tesoro Alaska within the meaning of Article 7.5 of the Agreement. If, however, Charter and/or its affiliates materially increases its or their ability to direct or cause direction of the management and policies of Tesoro or Tesoro Alaska over that contemplated in the agreements, Article 7.5 will be applicable.

Sincerely,


Esther C. Wunnicke
Commissioner

ACCEPTED AND AGREED TO:

James F. Smith, President
Tesoro Alaska Petroleum Company

TESORO

MOVE § ASK UNANIMOUS CONSENT TO
ADOPT CS FOR HB 320

TESORO

MOVE § ASK UNANIMOUS CONSENT TO
ADOPT CS FOR HB 371

CHAZRON

MOVE § ASK UNANIMOUS CONSENT TO
ADOPT House CS FOR SB 269

~~1/1/84~~

MOVE § ASK UNANIMOUS CONSENT TO PASS CS HB 320
FROM COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS.

"

CS HB 371

"

H CS SB 269

H B

376

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

May 26, 1983

SUBJECT: Constitutionality of penalties for illegal
 purchase of fish (CSHB 376 (Resources))

TO: Representative John Ringstad
 Representative Richard Shultz
 Co-Chairmen, House Resources Committee

FROM: Edward H. Hein *EH*
 Legislative Counsel

In drafting the committee substitute for HB 376 it occurred to me that there is a substantial constitutional problem with penalty provisions already in statute for illegal purchases of fish.

Briefly, the problem is this: AS 16.10.265 makes it unlawful for someone in the business of buying fish (processors, fish buyers, or their agents, etc.) to buy from a seller who does not have the required permit. Punishment for this offense varies depending on whether it is a first, second, or third conviction. A first conviction is punishable as a class B misdemeanor, mandatory minimum fine of \$1,000, and a maximum fine of \$5,000 and a maximum 90 days imprisonment. Under AS 16.05.680(2) it is unlawful for any person, including processors and fish buyers, to purchase fish from a seller who does not have the required permit. This offense is punishable under AS 16.05.720 as a class A misdemeanor, maximum fine of \$5,000 and maximum sentence of one year imprisonment.

The problem is that a processor or fish buyer may be prosecuted under either section for the same criminal conduct. The elements of proof essential to conviction are exactly the same. Thus a prosecutor would have unbridled discretion to file charges under either statute, depending on which penalty the prosecutor wanted to subject a defendant to.

Unless a court were to determine that there is some substantial difference in the elements of proof essential to

Representative John Ringstad
Representative Richard Shultz
Page 2
May 26, 1983

conviction under both statutes, the disparity of punishments is likely to be found in violation of the equal protection and due process requirements of the Alaska and United States Constitutions. As the Alaska Supreme Court has said,

We have never held that statutes which allow differing punishments for the same criminal conduct are necessarily unconstitutional as giving prosecuting officials unwarranted charging discretion. However, we have recognized that a substantial question is thereby presented.

Holden v. State, 602 P.2d 452, 454 (Alaska 1979).

In addition to any possible constitutional problems, you may wish to consider whether the statutory punishment scheme frustrates the apparent legislative intent in enacting AS 16.10.265 last year. That statute was apparently intended to increase the penalty for those who profit financially from illegally purchasing fish. The result now is that we may be punishing the person who makes an occasional illegal purchase to put fresh fish on the dinner table more severely than we punish the commercial buyer who has a financial incentive to break the law.

If you have any questions or comments about the subject of this memorandum, feel free to contact me at your convenience.

EHH:ljb
22/001

Amendments to House Bill 376
Proposed by Commercial Fisheries Entry Commission
May 23, 1983

New Title: "An Act establishing landing permits and amending the Limited Entry Act; and providing for an effective date."

* Section 1. AS 16.05 is amended by adding a new subsection to read:

Sec. 16.05.675. LANDING PERMIT. (a) The holder of a federal fishing permit to operate commercial fishing gear in the fishery conservation zone who has in his possession a landing permit issued by the Commercial Fisheries Entry Commission may transport, possess, sell, or offer to sell within the state fish taken in the fishery conservation zone.

(b) The commissioner may adopt regulations establishing eligibility for landing permits. Landing permits may not be authorized for any fishery unless the commissioner finds in writing that the issuance of such permits is consistent with state conservation and resource management practices.

(c) The Commercial Fisheries Entry Commission may establish by regulation annual fees for landing permits which reasonably reflect the costs incurred in the administration and enforcement of the provisions of this section.

* Section 2. AS 16.05.680(2) is amended to read:

(2) to purchase fish from a fisherman who neither is the holder of a permit issued under AS 16.43 or a landing permit issued under AS 16.05.675, nor is exempt under AS 16.05.660, or

* Section 3. AS 16.10.265(a) is amended to read:

Sec. 16.10.265. PURCHASE OF FISH FROM PERMIT HOLDERS. (a) It is unlawful for an individual while acting as a fish processor or primary fish buyer, or as an agent, director, officer, member, or employee of a fish processor, of a primary fish buyer, or of a cooperative corporation organized under AS 10.15 to intentionally or knowingly make an original purchase of fish from a seller who does not hold an entry permit or interim-use permit issued or transferred to the seller in accordance with AS 16.43, or a landing permit issued under AS 16.05.675.

Section 1. of HB 376 amending AS 16.43.040 is renumbered Section 4.

Section 2. of HB 376 amending AS 16.43.100(a) is renumbered Section 5.
and rewritten to add a new paragraph (17) to read:

(17) issue landing permits to qualified applicants and collect
fees as provided in AS 16.05.675.

The remaining sections of HB 376 are renumbered consecutively.

IV. ANALYSIS: HB 376 Page 2 of 2

Section 1 instructs the commission to adopt regulations providing for measures to be taken in instances where a tie vote occurs in the adjudication of a permit application.

Section 2 grants the commission the power to charge reasonable fees to defray the costs of service it renders to members of the public.

Section 3 instructs the commission to issue regulations governing the correction of its administrative error, as, for example, where an applicant has been mistakenly credited with points for vessel ownership when the applicant did not own a vessel.

Section 4 is a technical change reflecting the fact that AS 16.43.380(3), which defines the term "fishery", was amended in 1981 to provide that a fishery may cover more than one administrative area.

Section 5 is intended to clarify in AS 16.43.150(f) what is already apparent elsewhere in the Limited Entry Act, namely that the permit of "minor economic hardship" applicant under AS 16.43.250(c), which permits are expressly non-transferable does not survive the death of the holder, and cannot be transferred in any way after his death.

Section 6 tightens up the "contrary intent" language in the existing law such that a permit will go directly to the deceased permit holder's surviving spouse unless the permit holder made other provision for its disposition in a valid will.

Section 7 is intended to end the possible ambiguity in the current language of AS 16.43.170(b) and make clear that the commission is not obligated to approve a permit transfer whenever the proposed transferee can show the present ability to actively participate. Under the proposed language of Section 7, the commission will plainly be able to disapprove a transfer when it would be improper, as, for instance, if the transfer is a lease forbidden by AS 16.43.150(g).

Section 8 is intended to give the commission discretion in determining what years are to be considered in setting eligibility to apply in a newly limited fishery. Under the law as currently interpreted, anyone who has ever held an Alaska gear license (first issued in 1960) in a given fishery is eligible to apply if that fishery is limited. As 1960 becomes increasingly distant, and the character of the State's fisheries changes, it is increasingly inappropriate to allow eligibility based on participation that may be twenty-five years in the past. The proposed amendment to AS 16.43.260(a) will give the commission the necessary flexibility.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 21, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill proposing technical amendments to the Limited Entry Act, AS 16.43. These amendments are necessary to assure the continued smooth functioning of the limited entry program.

Section 1 of the bill deals with the potential problem of deadlocks when only two members of the Commercial Fisheries Entry Commission are participating in an adjudication. It instructs the commission to adopt regulations providing for measures to be taken in this situation.

Section 2 of the bill grants the commission the power to charge reasonable fees to defray the costs of services it renders to members of the public, such as processing permit transfer applications.

Section 3 of the bill instructs the commission to adopt regulations governing the correction of its administrative errors, as, for example, where an applicant has been mistakenly credited with points for vessel ownership when the applicant did not own a vessel. This section will not allow the commission to undo discretionary determinations made by previous members of the commission. Nor will it require the commission to reopen closed applications when a court determines that the commission has misinterpreted a statute or regulation.

Section 4 of the bill is a technical change reflecting the fact that AS 16.43.380(3), which defines the term "fishery", was amended in 1981 to provide that a fishery may cover more than one administrative area.

Section 5 of the bill slightly modifies existing AS 16.43.150(f), which states flatly that an entry permit survives the death of its holder. Revised section 150(f) would provide that permits held by persons who qualified as "minor economic hardship" applicants under AS 16.43.250(c) -- persons with minimal ties to the fishery in which they hold permits -- cease to exist when their holders die. These permits are currently non-transferable under AS 16.43.170(e) before the commission sets an optimum number under AS 16.43.290 in a fishery (unless the commission estimates that the number of permits outstanding in that fishery does not exceed the optimum number); they are transferable after the optimum number is set, but only to the commission under AS 16.43.170(c).

Section 6 of the bill modifies the "contrary intent" language in the existing law to make clear that, if there is a surviving spouse, the permit of the deceased permit holder will go directly to that surviving spouse unless the holder has made other provision for the permit's disposition in a valid will that has been probated. This modification should assure that the Limited Entry Act is construed consistently with Alaska's probate code, and that questions of probate law are left to the courts rather than to the Commission.

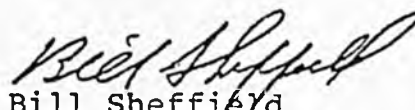
Section 7 of the bill is intended to end the possible ambiguity in the current language of AS 16.43.170(b) and make clear that the commission is not obligated to approve a permit transfer solely because the proposed transferee can show the present ability to actively participate. Under the amendments in sec. 7, even if a transferee demonstrates the ability to participate, the commission will plainly be able to disapprove the transfer if it would be improper, as, for instance, if the transfer is a lease forbidden by AS 16.43.150(g).

Section 8 of the bill is intended to give the commission discretion in determining what years are to be considered in setting eligibility to apply for an entry permit in a newly-limited fishery. Under the law as currently interpreted, anyone who has ever held an Alaska gear license (first issued in 1960) in a given fishery is eligible to apply if that fishery is then limited. This has not been a problem to date. But as 1960 becomes increasingly distant, and the character of the state's fisheries changes, it will be increasingly inappropriate to allow eligibility based on participation that may be 25

years in the past. The proposed amendment to AS 16.43.260(a) will give the commission necessary flexibility.

I urge your prompt action on this bill.

Sincerely,


Bill Sheffield
Governor

I. REQUEST

Bill/Resolution No.: HB 376
 Title: An Act amending the Limited Entry Act.
 Sponsor: Governor
 Requestor: Resource Committee

II. FISCAL DETAIL

Agency Affected: Dept. of Fish & Game
 Program Category Affected: Fish. Res. Consv. BRU, Program of Subprogram(s) Affected: Commercial Fisheries Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: There will be no negative fiscal impact. The bill streamlines existing language in Title 16 of the statutes enabling the commission to operate more effectively.

IV. ANALYSIS: Attach a separate page for any Analysis (see attachment)

Prepared By: Derrill L. Johnson Phone: 465-4081
 Division: CFEC Date: 04/11/83
 Approved by Commissioner: John Williams Date: 04/11/83
 Department: Commercial Fisheries Entry Commission (ADF&G)

Distribution:

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adopt regulations : APA public notice requirements | Williams
Twombly

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IT SEEMS PARTICULARLY APPROPRIATE THAT YOUR MEETING IS BEING HELD IN ALASKA, AND IN A CITY WHICH WAS DEVASTATED BY ONE OF THE HISTORICALLY GREAT EARTHQUAKES EVER RECORDED. NO COMMUNITY ON EARTH HAS A GREATER INTEREST IN YOUR CONCERNS THAN ANCHORAGE. THAT INTEREST IS HEIGHTENED BY THE FACT THAT ANCHORAGE AND ALASKA ARE IN WHAT IS PROBABLY ONLY THE BEGINNING OF A CONSTRUCTION PERIOD WHICH MAY RIVAL ANY WE'VE EVER SEEN. THE PROBABILITY OF A NEW CAPITAL CITY AT WILLOW: THE LIKELIHOOD THAT WE WILL BE EXPANDING TRACKAGE FOR THE ALASKA RAILROAD: THE FACT THAT WE ARE CONSTRUCTING PUBLIC AND PRIVATE BUILDINGS IN VIRTUALLY EVERY COMMUNITY IN THE STATE: THAT NEW HARBORS, AIRPORTS, ROADS AND BRIDGES ARE IN THE OFFING IN MANY LOCATIONS: THAT WE ARE PRESENTLY PREPARING TO BUILD THE KNIK ARM CROSSING: NOT TO MENTION THE TREMENDOUS PLANS WE HAVE FOR HYDROELECTRIC DEVELOPMENT, INCLUDING THE GIANT SUSITNA PROJECT, AND THE PROBABILITY OF NEW PIPELINE PROJECTS, ALL MAKE THE RESULTS OF YOUR RESEARCH EFFORTS OF PRIMARY IMPORTANCE TO ALASKA.

AS AN ENGINEER, I CAN APPRECIATE THE SPECIAL IMPORTANCE OF YOUR WORK. I THINK ANYONE WHO IS NOT AN ENGINEER OR IN A RELATED DISCIPLINE, OR WHO WAS NOT IN ANCHORAGE IN MARCH OF 1964, CANNOT FULLY COMPREHEND THE AWESOME FORCES PENT UP IN THE EARTH WHICH IT IS YOUR MISSION TO UNDERSTAND AND TO PROTECT AGAINST IN CONSTRUCTION.

BOTH SEISMIC PREDICTION AND ENGINEERING DEFENSIVELY AGAINST SEISMIC DISRUPTION HAVE COME OF AGE. COMPUTERS HAVE GIVEN US THE CAPABILITY NOT ONLY OF USING PROBABILITY PREDICTION WITH RESPECT TO OCCURRENCE OF QUAKES, BUT ALSO TO MODEL POTENTIAL CONSEQUENCES. EVEN PREVIOUSLY UNACCOUNTABLE ANIMAL BEHAVIOUR IS BEING STUDIED AS A KEY TO SEISMIC UPSET.

ALTHOUGH I AM NOT PROFESSIONALLY QUALIFIED TO SPEAK ON THE MORE TECHNICAL ASPECTS OF YOUR UNDERTAKINGS, I DO HAVE AN ENGINEER'S APPRECIATION OF THEIR VALUE. YOUR RELATIVELY ESOTERIC AND TREMENDOUSLY EXCITING FIELD IS OF IMPORTANCE TO EVERY ALASKAN, FROM HOMEOWNERS TO ROAD BUILDERS, FROM INVESTORS TO CIVIL AUTHORITIES AT EVERY LEVEL. AS AN ENGINEER IN PUBLIC OFFICE, I HAVE A VERY SPECIAL INTEREST IN YOUR WORK AND IN THIS CONFERENCE, PARTICULARLY BECAUSE OF THE UNDERSTANDING I DO HAVE OF YOUR FIELD, AND OF THE INTEREST GOVERNMENT MUST NECESSARILY HAVE IN IT. IT IS OBVIOUS TO ME THAT YOUR INTEREST IN MY PARTICIPATION HERE IS THE DUAL ROLE I HAVE OF ENGINEER AND ELECTED OFFICIAL. I CAN APPRECIATE THE IMPORTANCE OF YOUR WORK MORE THAN THE AVERAGE LAYMAN MIGHT, AND I WILL HAVE AT LEAST SOMETHING TO SAY ABOUT HOW AND TO WHAT EXTENT STATE GOVERNMENT AFFECTS YOUR EFFORTS AND INTENTIONS.

BEING ON THE CONSERVATIVE SIDE OF THE POLITICAL SPECTRUM, I TEND TO RESIST GOVERNMENT INVOLVEMENT IN AREAS IN WHICH IT IS NOT ESSENTIAL, BELIEVING THAT GOVERNMENT BEST WHICH GOVERNS LEAST. IN THIS LATTER HALF OF THE TWENTIETH CENTURY, HOWEVER, GOVERNMENT IS NECESSARILY AND UNAVOIDABLY INVOLVED MORE AND MORE IN ALL OUR LIVES. AS MANKIND PROBES FURTHER INTO THE MYSTERIES OF THE EARTH AND OF THE UNIVERSE, WE FIND MORE AND MORE INTERESTS WHICH ARE BEYOND THE FINANCIAL CAPABILITIES OF PRIVATE FUNDING, AND WHICH ARE OF SUFFICIENT BROAD PUBLIC INTEREST AND IMPORTANCE THAT THEY BECOME A CONCERN OF GOVERNMENT. REGULATION FOR STANDARDIZATION, FOR THE SAKE OF BOTH PUBLIC AND PRIVATE SAFETY, HAVE COME TO BE LEGITIMATE CONCERNS OF GOVERNMENT. IT BECOMES THE RESPONSIBILITY OF THE CONSERVATIVE, IT SEEMS TO ME, TO REGULATE THE REGULATORS: TO BE SURE THAT REQUIREMENTS IMPOSED BY GOVERNMENTS ARE NOT SOMETHING WHICH MIGHT BETTER, MORE EFFICIENTLY, OR MORE

PROPERLY BE ACCOMPLISHED BY THE PRIVATE SECTOR.

IN THAT CONNECTION, THERE ARE TWO AREAS I WOULD LIKE TO DISCUSS WITH YOU. BOTH ARE SUGGESTIONS FOR YOUR CONSIDERATION. NEITHER IS A PROMISE OR A GUARANTEE.

IN ONE OF THE MOST EARTHQUAKE-PRONE REGIONS OF THE WORLD, WE DO NOT HAVE DESIGN, ENGINEERING OR CONSTRUCTION STANDARDS WHICH ARE CONSISTENT AND RELIABLE FOR BOTH PUBLIC AND PRIVATE ENTERPRISES. WE HAVE SOME VERY GENERALIZED GUIDELINES AND BASIC STANDARDS WHICH ARE COMMONLY OBSERVED, BUT NO RULE BOOK UPON WHICH ALL MAY RELY AND TO WHICH ALL MAY TURN FOR THE ANSWERS TO SOME VERY IMPORTANT QUESTIONS. THE ESTABLISHMENT OF EARTHQUAKE CONSTRUCTION STANDARDS, WHICH DOUBTLESS WOULD DIFFER IN MANY LOCAL REGIONS, GIVEN THE WIDE VARIETY OF GEOLOGY IN ALASKA AND IN THE COUNTRY, WOULD BE OF INTEREST AND VALUE TO A NUMBER OF DIVERSE CONCERNS. ARCHITECTS, ENGINEERS AND BUILDERS OBVIOUSLY WOULD HAVE A PRIMARY INTEREST. IN ADDITION, HOWEVER, INSURANCE COMPANIES, REAL ESTATE BROKERS AND FINANCIAL INSTITUTIONS WOULD HAVE AN INTEREST. AT THE CORE OF GOVERNMENT INTEREST IS PUBLIC SAFETY AND THE FINANCIAL STAKE IN THE BROAD VARIETY OF PUBLIC FACILITIES WHICH THIS STATE PRESENTLY OWNS AND OPERATES, AND THE MAJOR ADDITIONS TO THAT INDUSTRY WHICH WE WILL BE CREATING IN COMING DECADES AS ALASKA ATTEMPTS TO CATCH UP WITH ITS OLDER SISTER STATES IN DEVELOPING ITS PUBLIC INSTITUTIONS AND SERVICE SYSTEMS. OTHER STATES AS WELL, CONTINUE TO ERECT PUBLIC BUILDINGS AND FACILITIES WHICH ARE SUBJECT TO EARTHQUAKES.

OUR STATE GOVERNMENT, IN PARTICULAR THE LEGISLATURE, HAS A VESTED INTEREST IN THESE CONCERNS. IT WOULD BE OUR RESPONSIBILITY TO CONSIDER FINANCIAL ASSISTANCE FOR THE RESEARCH REQUIRED TO ESTABLISH SUCH STANDARDS.

IT WOULD BE OUR JOB TO "REGULATE THE REGULATORS" IN DETERMINING WHETHER OR HOW MUCH CONTROL, BY WAY OF STANDARDS ENFORCEMENT, WOULD BE APPROPRIATE, NECESSARY, AND NOT UNDULY RESTRICTIVE. IT WOULD BE OUR DUTY TO MONITOR THE USE OF SUCH CONTROLS, PERHAPS THROUGH THE DEVICE OF OUR SUNSET LAWS, AND BY PERIODIC AMENDMENT WHICH MIGHT BE APPROPRIATE. GIVEN THE MAGNITUDE OF THE EFFECTS OF SUCH INFORMATION AS YOUR RESEARCH CAN PRODUCE -- WHICH ALL OF US WHO WERE HERE IN 1964 CAN APPRECIATE -- IT SEEMS ENTIRELY APPROPRIATE THAT THE LEGISLATURE SHOULD BE INVOLVED ON BEHALF OF THE CITIZEN-STOCKHOLDER OF THE STATE OF ALASKA.

MY OWN RECOLLECTIONS OF THE 1964 EARTHQUAKE, IF I MAY DIGRESS, ARE VARIED: THEY RANGE FROM CONSTERNATION TO TERROR TO A LITTLE HUMOR. A SECRETARY, FLEEING THE TWO-STORY BUILDING IN WHICH MY OFFICE WAS HOUSED, WENT THROUGH A STREET DOOR JUST AS THE SECOND-STORY CONCRETE BLOCK WALL FOLDED ON ITS RE-BAR HINGES AND PINNED HER AGAINST THE WALL OF THE FIRST STORY. WHEN OTHER EMPLOYEES FROM THE BUILDING MANAGED TO SWING THE WALL BACK TO FREE HER, THEY SAW HER IMAGE IN BLOOD ON THE LOWER WALL. SHE WAS PROBABLY ONE OF THE MOST SERIOUSLY-INJURED OF THE QUAKE SURVIVORS. I HAD AN AUTOMOBILE WHICH DIED OF A CRACKED DISTRIBUTOR CAP IN FLIGHT FROM A POTENTIAL TIDAL WAVE ZONE, BUT I SURVIVED WITH FAMILY INTACT. ALMOST IMMEDIATELY AFTER THE QUAKE I WAS ASSIGNED TO A TEAM WHICH MET DAILY TO REPORT MONITORING OF POTENTIAL BUILDING SLIPPAGE, WHICH WE CHECKED WITH ELECTRONIC MEASURING INSTRUMENTS. I WAS ASSIGNED TO ANOTHER TEAM RESPONSIBLE FOR CHECKING AND CERTIFYING THE SAFETY OF PUBLIC BUILDINGS BEFORE THEIR BEING REOCCUPIED. I WAS IN THE CEILING CRAWL SPACE OF A THEATRE BUILDING A FEW DAYS LATER, WORKING ALONG ON MY BACK CHECKING TRUSS JOINTS WITH THE AID OF A FLASHLIGHT, WHEN ANOTHER QUAKE OCCURRED. I AM VERY GRATEFUL TO

THIS DAY THAT MY CLAUSTROPHOBIA QUOTIENT IS MINOR. I WOULD PROBABLY OTHERWISE HAVE HAD A HEART ATTACK. THE INEVITABLE HUMOR WHICH ARISES IN SUCH SITUATIONS WAS PROVIDED BY ONE OF MY BUSINESS PARTNERS AT THE TIME. HE RECALLS HAVING DIVED UNDER A DESK OR CONFERENCE TABLE WITH A CLIENT WHO WAS IN THE OFFICE AT THE TIME OF THE QUAKE. YEARS LATER, HIS MOST VIVID RECOLLECTION OF THE EARTHQUAKE WAS THAT THE CLIENT HAD HAD A GENEROUS PORTION OF GARLIC AT LUNCH THAT DAY.

MY OWN RECOLLECTIONS NOTWITHSTANDING, I RETURN TO CONSIDERATION OF STATE PARTICIPATION IN YOUR EFFORTS. FOR THE REASONS CITED, I INVITE YOUR INSTITUTE -- PERHAPS EVEN AT THIS WEEK'S MEETING, TO CONSIDER PROPOSING STATE-ENDORSED EARTHQUAKE ENGINEERING STANDARDS, AND A PROPOSAL FOR STATE FINANCIAL ASSISTANCE FOR YOUR RESEARCH EFFORTS, UPON WHICH SUCH STANDARDS WOULD NECESSARILY BE BASED.

I DELIBERATELY REFER TO "STATE ENDORSED" STANDARDS, AS OPPOSED TO PERHAPS "STATE ENFORCED" STANDARDS, FOR A NUMBER OF REASONS. AS TO STATE CONSTRUCTION, OF COURSE, AND PROJECTS INVOLVING STATE LOANS OR PARTICIPATION, SUCH STANDARDS COULD BE EXPECTED TO BE A MATTER OF SPECIFICATION. VENTURES MADE POSSIBLE THROUGH THE LOAN GUARANTEES OF THE ALASKA INDUSTRIAL DEVELOPMENT AUTHORITY WOULD PROBABLY ALSO BE AFFECTED. THE STANDARDS WOULD ALMOST CERTAINLY BE USED BY MANY PRIVATE ENTERPRISES AS WELL. THE DISTINCTION BETWEEN ENFORCEMENT AND ENDORSEMENT WOULD ALSO PROTECT THE OPTIONS AND CONTROL OF LOCAL GOVERNMENTS WITHIN THE STATE. IF OUR JOINT EFFORTS -- THOSE OF YOUR INSTITUTE AND OF STATE GOVERNMENT -- WERE TO MAKE SUCH WELL-RESEARCHED AND DEFENSIBLE STANDARDS AVAILABLE, THEY WOULD PROBABLY BECOME A BENCHMARK FOR THE CONSTRUCTION INDUSTRY, SIMPLY BECAUSE OF THE EFFECTS THEY WOULD HAVE

IN THE MARKET. SUCH STANDARDS WOULD INFLUENCE INSURANCE, FINANCING, SALE AND RESALE, AND MOST OTHER CONSIDERATIONS INVOLVING BUILDING CONSTRUCTION. THEY SHOULD, WE MAY HOPE PROMOTE REDUCTIONS IN INSURANCE PREMIUMS WHERE EARTHQUAKE INSURANCE IS AVAILABLE AND USED, AND THEY SHOULD PROMOTE EXTENSIONS OF THE LIFE EXPECTANCY OF BOTH PUBLIC AND PRIVATE CONSTRUCTION IN LARGER PROJECTS THEY SHOULD IMPROVE PUBLIC AND PRIVATE SAFETY -- AND IF EVEN ONE HUMAN LIFE WERE TO BE SAVED BY THEIR IMPLEMENTATION, THEIR VALUE WOULD HAVE BECOME IMPOSSIBLE TO QUANTIFY.

SHOULD YOUR INSTITUTE ELECT TO SEEK THE ESTABLISHMENT OF SUCH STANDARDS WITH THE ASSISTANCE OF THE LEGISLATURE, I CAN ASSURE YOU OF THE COMPETENT AND WILLING COOPERATION OF MY OFFICE AND OTHER LEGISLATIVE AGENCIES. I WOULD CERTAINLY USE MY OFFICE AND ITS INFLUENCE TO HELP YOU GAIN THE COOPERATION OF APPROPRIATE ADMINISTRATIVE AGENCIES. I WOULD LOOK WITH FAVOR UPON A PROPOSAL FOR FINANCIAL PARTICIPATION IN YOUR RESEARCH EFFORTS BY THE STATE, AND WOULD EXPECT TO BE ABLE TO SUPPORT A REASONABLE PROPOSAL. SUCH A MOVE WOULD CERTAINLY BE TO THE BENEFIT OF ALL THE STATES REPRESENTED AT THIS MEETING, AND PRESUMABLY TO MOST OTHER STATES AND TO MANY FOREIGN NATIONS.

THE UNITED STATES' TRADITIONAL ROLE AS A LEADER IN PURE RESEARCH IN MANY DISCIPLINES MAKES IT APPROPRIATE THAT WE SHOULD PURSUE SUCH A COURSE, AND ALASKA'S POSITION IN THE VANGUARD OF AREAS NEEDING AND PURSUING PRIVATE, PUBLIC AND COMMERCIAL DEVELOPMENT PROPERLY PLACES IT IN THE FOREFRONT OF SUCH INVESTIGATION. I WILL LOOK FORWARD TO WORKING WITH THE APPROPRIATE COMMITTEES OF YOUR INSTITUTE, AND TO HEARING FROM YOU SHOULD YOU ELECT TO ACCEPT MY INVITATION. IF THE EFFECTS OF OUR JOINT EFFORTS REACH AS FAR AS I THINK THEY MIGHT, AND IF THEY SERVE WELL THE GOOD INTENTIONS I KNOW YOU HAVE, THEY MIGHT EVEN BE CALLED EARTHSHAKING. THANK YOU.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF GEOLOGICAL AND GEOPHYSICAL SURVEYS

Bill Sheffield — Governor
Esther Wunnicke — Commissioner
Ross G. Schaff — State Geologist

April 1983

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Report of Investigations 83-11
SEISMIC, VOLCANIC, AND TSUNAMI
MITIGATION IN ALASKA - AN UNMET NEED

By
J.N. Davies

STATE OF ALASKA
Department of Natural Resources
DIVISION OF GEOLOGICAL & GEOPHYSICAL SURVEYS

According to Alaska Statute 41, the Alaska Division of Geological and Geophysical Surveys is charged with conducting 'geological and geophysical surveys to determine the potential of Alaska lands for production of metals, minerals, fuels, and geothermal resources; the locations and supplies of ground waters and construction materials; the potential geologic hazards to buildings, roads, bridges, and other installations and structures; and shall conduct other surveys and investigations as will advance knowledge of the geology of Alaska.'

In addition, the Division shall collect, evaluate, and publish data on the underground, surface, and coastal waters of the state. It shall also file data from water-well-drilling logs.

DGGS performs numerous functions, all under the direction of the State Geologist---resource investigations (including mineral, petroleum, and water resources), geologic-hazard and geochemical investigations, and information services.

Administrative functions are performed under the direction of the State Geologist, who maintains his office in Anchorage (3001 Porcupine Dr., 99501, ph 274-9681).

This report is for sale by DGGS for \$1. It may be inspected at any of the four DGGS information offices: Alaska National Bank of the North Bldg., Geist Rd. and University Ave., Fairbanks; 3601 C St. (10th Floor), Anchorage; 230 So. Franklin St. (4th Floor), Juneau; and the State Office Bldg., Ketchikan. Mail orders should be addressed to DGGS, P.O. Box 80007, College, AK 99708.

Workshop participants:

Pictured (left to right): front row - George Carte, Selena Billington, Klaus Jacob, Ray Steinmetz, J.P. Singh; second row - Lynn Sykes, Bob Engdahl, Cliff Frolich, Tom Sokolowski; third row - Carl Benson, Woody Savage, John Lahr; back row - Bob Page, Mike Blackford, Juergen Kienle.

Not pictured: Ross Schaff, Bill Barnwell, Randy Updike, John Reeder, Dick Reger, John Davies, Rod Combellick (photographer), Jack Townshend, Tom Miller, Jim Riehle, John Sindorf, Niren Biswas, Hans Pulpan, Larry Gedney, Lloyd Tuner, Don Drury, Dennis Thomason, Bob Horner.

Participating agencies, universities, and firms:

U.S. Geological Survey, Department of the Interior
Alaska Tsunami Warning Center, National Weather Service
Division of Geological and Geophysical Surveys, Department of Natural Resources, State of Alaska
Division of Emergency Services, Department of Military Affairs, State of Alaska
Geophysical Institute, University of Alaska, Fairbanks
Pacific Geoscience Centre, Victoria B.C.
Lamont-Doherty Geological Observatory, Columbia University
Cooperative Institute for Research in Environmental Sciences
(University of Colorado/National Oceanic and Atmospheric Administration)
Geophysics Institute, University of Texas, Austin
Alaska Oil and Gas Association
Woodward-Clyde Consultants
Harding-Lawson and Associates

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