

ALABAMA LEGISLATIVE COMMISSION ON GOVERNMENT REFORM

2765 HRES HJR 40 - HJR 57

2765

increased domestic producer revenues. The other 56 cents worth resulted from higher pipeline and distribution costs and the costs of imported natural gas and liquefied natural gas.

It's important to keep things in perspective. Although its price has risen, natural gas is still far cheaper than other fuels. Carl Ericson of the American Gas Asso-

"The continuation of past regulations is the problem. Were it not for more than two dozen artificial prices for different [gas] vintages... there would be only one market price."

ciation, which favors some of the "recontrol" proposals being advanced, notes that while natural gas costs an average \$5 per million

BTU, oil costs \$.90 and electricity \$18-\$19.

The reason we notice gas price increases more is because it is

catching up after nearly three decades of government controls. Even after 1955, nearly half of all natural gas will remain subject to federal price ceilings. The sooner we get rid of all price regulations, the sooner we can move toward a unified market price and stop worrying about constant distortions and disruptions.

(January 6, 1983)

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NATURAL GAS REGULATIONS HELP OPEC KEEP AMERICA HOSTAGE

By G. Henry M. Schuler

There is a special irony in the fact that OPEC was debating reaffirmation of a freeze on international oil prices at artificially high levels at the same time that Congress was debating reimposition of a freeze on domestic natural gas prices at artificially low levels. Although the debates took place in disparate forums, they were inextricably entwined by the fact that **American natural gas is the most attractive alternative to imported oil based on resource potential, established delivery system, environmental acceptability and cost competitiveness.** Moreover, both debates recognized the link between supply and price in the market place, even though OPEC oil producers are anxious to avoid downward market

by perceptions of the outcome of the other. Thus, U.S. proponents of regulated low natural gas prices believe that the "oil glut" will persist, thereby diminishing earlier justification for natural gas initiatives on the grounds of energy supply security. For their part, OPEC proponents of regulated high oil prices believe that the "oil glut" will disappear because of the slowed development of alternatives, marked among other things by the decline in gas exploration wells. It is clear that both perceptions cannot be correct; therefore, since both OPEC and Congress postponed the decisions, we should take advantage of the extra time to reexamine the future of the "oil glut."

In the aftermath of OPEC's

economists argue that a drastic oversupply will produce a collapse of prices by \$6 to \$8 per barrel. Unfortunately for consumers, this stubborn adherence to the conventional Western perception that international oil pricing decisions

The pricing structure will survive intermittent economic challenge because its keystone, the House of Saud, wants to survive persistent political challenge. It is this fundamental political dimension that makes it extremely

"If we focus on the political survival of the House of Saud instead of OPEC's economic survival, we come to the inescapable conclusion that a durable oil glut and price collapse is impossible."

are economically driven and, therefore, must be set either by the forces of competition in a free market or by the principle of collective revenue optimization in a classic cartel misses the mark. In fact, neither of these conventional models describe the world oil pricing structure because the underlying perception is erroneous.

This is not to say that the classic forces of supply and demand are irrelevant. There will, of course, be occasions when individual oil producers engage in price shaving during a slack market just as the past has seen them engage in price gouging during tight markets, but the basic pricing structure will survive without dramatic reductions.

dangerous to predicate production and prices on the basis of either the free market or a classic cartel. Dangerous because both of these models lead to a comforting view of expanding production and declining prices, which saps Free World resolve to reduce its vulnerability to sudden interruptions and price escalations.

If, however, we focus on the political survival of the House of Saud instead of OPEC's economic survival, we come to the inescapable conclusion that a durable oil glut and price collapse is impossible. Being essentially free of population-driven revenue requirements, the rulers of Saudi Arabia have enormous latitude in

"American natural gas is the most attractive alternative to imported oil based on resource potential, established delivery system, environmental acceptability and cost competitiveness."

pressures by restricting supplies, while U.S. natural gas producers are willing to risk similar market pressures by expanding drilling activity and supplies.

Perhaps, most important, both debates were significantly affected

Vienna meeting, American adherents of the perpetual oil glut theory have crowed about OPEC's apparent inability to agree upon market sharing, the prerequisite tool of the classic cartel. Absent such formal agreement, these

...either to maintain market prices by reducing price or to maintain prices by reducing production. It is entirely clear that the producers outside the Arab Peninsula expect the senior leaders who set Saudi policy to choose the latter course. Since these expectations reflect political and ideological hostility as well as economic self-interest, the Saudis must decide whether to risk further stability by exercising their undisputed oil power. In making that decision, astute and cautious leaders will recognize that the kingdom lacks the military strength, diplomatic maneuvering room, national

cohesion and established political legitimacy to challenge rival regional producers. If they do not move to defuse the internal, regional and international pressures, they vastly increase the risk

calculation or precipitously through cataclysm.

Thus, it becomes clear that the proponents of regulating U.S. natural gas prices are working under an erroneous assumption

scheduled for decontrol, they will have fulfilled the OPEC perception that alternatives pose little long-term threat to OPEC oil. Instead of guaranteeing another energy security and price "crunch" in the future, it surely makes better sense to deregulate natural gas and make it clear that the OPEC perception is erroneous.

"...the proponents of regulating U.S. natural gas prices are working under an erroneous assumption that the oil glut will persist..."

of an explosion. In either event, the course for future oil prices is the same, and the only question is whether it proceeds evenly through

that the oil glut will persist. If they persevere in blocking full deregulation or, worse, in re-regulating the limited volumes that are

The writer is director of energy programs for The Center for Strategic and International Studies at Georgetown University.

(December 28, 1982)

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GAS FREEZE: A STEP IN THE WRONG DIRECTION

By Milton R. Copulos

Natural gas is in oversupply and yet prices are rising. This irony is doubly painful with the onset of winter. It is no wonder that Congressmen are feeling pressure from constituents to "do something." As a result, there was a flurry of natural gas legislative activity as the lame duck session entered its second week. The principal initiatives are S. 3069, introduced by Senator Thomas Eagleton (D-Mo.), which would freeze domestic natural gas prices at their August 31, 1982 level; and S. 3076, sponsored by the Northeast/Midwest Coalition, which would abrogate "take or pay" contracts that many gas distribution companies signed in the 1970s. As is so

This is not true. On average, the wellhead price for domestic natural gas accounts for only around 40 percent of the price consumers pay. The remaining 60 percent goes for

sumption which led to higher transportation costs on a per unit basis.

In the early 1970s, when price controls on domestic natural gas

"Quick fix" approaches will not address the causes of the natural gas price run-up. Instead, they will probably mean higher prices for the consumer.

"There is only one way to eliminate the underlying cause of high natural gas prices: decontrol. Approximately 60 percent of domestic natural gas will be decontrolled under existing law in 1985, and the Administration plans to introduce legislation in the new Congress to remove controls from the balance."

Often the case with "quick fixes," neither of these approaches will address the real causes of the price run-up. More important, they will probably mean higher prices for the consumer.

pipeline tariffs and local distribution costs. According to the Department of Energy, wellhead prices for natural gas increased by around 15 percent last year, which would translate into a 6 percent rise at the burner tip. However, the price residential consumers pay went up 22 percent over the same period. What accounts for the other 16 percent? Two factors seem primarily responsible for the rise: 1) the high cost of imported gas, and 2) reduced con-

caused a sharp drop in U.S. reserves, many gas distribution companies entered into long-term contracts with producers in Mexico, Canada, and even Algeria, to assure supplies. The price foreign suppliers could charge was not subject to U.S. controls and was of little concern to the pipelines, as they could pass costs on to the consumer.

In 1981, U.S. gas imports reached 904 Billion Cubic Feet

Rather than some expedient, what is needed is to get rid of the morass of federal controls on natural gas. Administration action is expected in January. "Temporary solutions," such as those offered by Senator Eagleton and the Coalition, only serve to give liberal members an excuse to delay acting on decontrol. Further, both measures proceed from a faulty premise. **The "freeze" and the "take or pay" bills** are based on the assumption that the past year's gas price increase is solely the result of higher domestic wellhead prices.

(Bcf), or nearly 5 percent of total consumption. For the first nine months of 1982, imports totalled 704 Bcf, but were expected to rise sharply in the final quarter. Even though the cost of these imports ranges from \$4.84 per thousand cubic feet (mcf) to \$7.18 per mcf, as compared with an average of \$2.50 per mcf for domestic gas, the long-term contracts firms entered into as a result of price controls prevent them from taking advantage of the newly available, cheaper domestic supplies. In fact, Canadian producers want to lower prices, but are prohibited from doing so by their government. As a result, U.S. consumers paid \$4.2 billion for gas from Canada and Mexico in 1981, and \$204 million for liquefied natural gas from Algeria.

A second major factor is the fact that the reduced volumes flowing through pipelines due to widespread conservation and lower levels of industrial activity mean that fixed capital costs must be spread over a smaller amount of gas. As a result, a higher proportion of capital costs must be assigned to each cubic foot.

Freezing domestic wellhead prices, or invalidating domestic

"take or pay" contracts (which require that pipelines pay for a specified volume of gas whether they use it or not), will do nothing to address either the high cost of imports or higher transportation charges. In fact, the "freeze" proposed would

"Recent experience with oil decontrol teaches that eliminating government interference can lower prices and increase supplies. It is a lesson Congress should apply to natural gas."

actually *raise* prices in the most expensive category: deep gas. Deep gas prices have fallen sharply in recent months, now averaging less than \$6. The freeze, though, would be based on the August 31, 1982, prevailing price, which ranged between \$9 and \$10 per mcf.

The Coalition bill could also result in higher prices in the long run by eliminating a major incentive for producers to enter into the long-term contracts pipelines require. Without the protection "take or pay" contracts afford, producers would have to recoup their investments more rapidly through higher prices. These would be passed on to the consumer.

One "temporary" measure, proposed by Representative Tom Corcoran (R-Ill.), might give consumers some immediate relief. His bill would suspend import licenses for foreign gas in six months, unless prices were renegotiated. At the

end of the six months, if foreign suppliers were unable to agree to a price the Secretary of Energy approved, domestic producers of lower cost gas could replace foreign supplies.

There is only one way to elimi-

nate the underlying cause of high natural gas prices: decontrol. Approximately 60 percent of domestic natural gas will be decontrolled under existing law in 1985, and the Administration plans to introduce legislation in the new Congress to remove controls from the balance. The "temporary" freeze proposals would actually delay decontrol for at least two years, thereby prolonging the existing market imperfections. Recent experience with oil decontrol teaches that eliminating government interference can lower prices and increase supplies. It is a lesson Congress should apply to natural gas.

Mr. Copulos is a policy analyst with the Heritage Foundation.

December 10, 1982

This report is published by the Natural Gas Consumers Information Center, which is supported by industrial, agricultural, and other consumers of natural gas, as well as other parties interested in natural gas and energy. The Center provides information to all consumers on the impact of natural gas regulation.

Address inquiries to:

NGCIC • Suite 900 • 605 Fourteenth Street, NW • Washington, D.C. 20005
Telephone: 202 347-6300

**NATURAL GAS
CONSUMERS INFORMATION
CENTER**

Suite 900
605 Fourteenth Street, NW
Washington, D.C. 20005

Panel leaves old-gas decontrol in bill

Senate energy committee agrees to retain old-gas decontrol in administration's natural gas proposal. Close vote could mean compromise needed. Committee also considers proposal to expand scope of provision requiring contract carriage.

Old-gas decontrol will remain in legislation before the Senate energy committee, at least for the time being.

The panel voted 10-8 last week not to strike old-gas deregulation from the administration's natural gas bill, which it has begun to mark up.

The vote is not binding on future action but helped the committee decide whether to junk the administration bill, of which old-gas decontrol is the keystone.

The committee, at a later date, still will have to vote affirmatively to leave old-gas decontrol in the bill.

The committee launched its rewrite of the Natural Gas Policy Act last week by debating provisions that would make the surplus capacity of interstate pipelines subject to common carrier provisions.

The committee was preparing to vote on a "contract carriage" amendment by Sen. Bill Bradley (D-N.J.) that goes further than the Reagan administration's gas policy bill.

Compromise possible. Sen. James McClure (R-Idaho), committee chairman, beforehand said a close vote could signal the necessity for a compromise on old-gas decontrol.

That was the effect of the 10-8 vote, because two senators—Spark Matsunaga (D-Hawaii) and John Melcher (D-Mont.)—abstained from voting.

That offers the possibility of a tie vote later, and under a committee agreement, a majority vote will be necessary to leave old-gas decontrol in the administration's bill.

Most of the senators seem to agree with Sen. Pete Domenici (R-N.M.), who said "I don't think we can preclude deregulation of old gas from this bill at this point. That doesn't mean we have to vote to deregulate it 3 weeks from now."

Sen. Don Nickles (R-Okla.) agreed. "If we don't have decontrol of old gas we don't have a bill."

But Sen. John Heinz (R-Penn.) said, "We're kidding ourselves if we think decontrol of old gas can get through Congress."

Sen. Wendell Ford (D-Ky.) immediately introduced another amendment to the administration bill calling for exclusion of the section that would remove Natural Gas Policy Act price

controls from all categories of gas.

The National Association of Manufacturers praised the vote. "The committee wisely recognized that the most important element in the whole natural gas problem was the need to deregulate old gas."

Contract carriage. The administration bill would permit contract carriage when a pipeline declined to take part of a producer's gas or did not renew a contract but had excess capacity.

The producer then could contract to sell the gas to a third party, and the pipeline would be required to move the volumes for them. The pipeline would receive a 5¢/MMBTU bonus, plus expenses.

Bradley's amendment would require interstate pipelines, if they have surplus capacity, to move gas for any producer and purchaser. He said the goal was to get as much gas to market at the lowest possible price.

If the pipeline agreed to contract carriage, it could recover costs plus a 5¢/MMBTU fee. But if it protested, the pipeline would have to prove to the Federal Energy Regulatory Commission it did not have the extra capacity.

If FERC determined the capacity existed, the line would be denied the bonus. If FERC determined the pipeline was protecting capacity for existing customers, FERC could allow as much as the 5¢/MMBTU bonus.

Under stiff pressure from other senators, Bradley relaxed a provision that could have required lines to build facilities or add compressors, with reimbursement, to move the contract carriage gas.

The amendment now says FERC "may order a pipeline which does not have available capacity to construct and operate minor facilities necessary for the transportation of natural gas under this section."

The contract carriage parties would have to pay for construction and operation of the facilities. The term "minor facilities" was defined as items such as sales taps that do not involve substantial costs.

Other senators also were concerned contract carriage deals might absorb all existing surplus capacity on interstate lines, leaving them unable to

expand their own volumes when the recession ends or gas demand increases.

Bradley agreed to permit FERC to consider the foreseeable requirements of a pipeline's customers when hearing a contract carriage request.

Pete Domenici sought to expand contract carriage to intrastate pipelines. FERC could order them to carry contract gas if appropriate state agencies declined to consider such requests.

Other senators voiced these concerns about contract carriage: that FERC would be swamped with appeals; that the amendment would circumvent state public utility regulatory commissions; and that pipelines' fixed costs would be spread over a thinner volumetric base.

House hearings. Meanwhile, the House fossil and synthetic fuels subcommittee continued to gather data on gas decontrol options.

Joseph Crosby, Cities Service Co. natural gas sales vice-president, said Congress should not lose sight of the current situation. "The market is in disarray. Supplies are greater than demand, and prices are increasing. Drilling is way off its 1981 peak. The only thing we are assured of with the status quo is a worsening situation."

"Nothing short of comprehensive legislation to achieve a deregulated, free market atmosphere for natural gas will create the appropriate environment for intelligent investment and consumption decisions."

Robert Burke, senior vice-president of Moody's Investors Service, said, "Eventual decontrol of gas prices at the wellhead is a step in the right direction, but it will not alleviate the distortions arising from the filtering of prices through the regulated labyrinth of transmission and distribution companies."

Donald Dufresne, vice-president of Merrill Lynch, said his firm disagrees that the administration bill would cut gas prices below expected NGPA levels but said a decontrolled market wouldn't support higher prices either.

Dufresne said a "windfall profits" tax on old gas "could be a disaster for all segments of the industry, considering that wellhead prices are falling."

Independents, majors clash over old-gas price decontrol

Arguments between independent and major producers sparked a recent House energy subcommittee hearing on natural gas decontrol.

Shell Oil Co. said "forever regulated" old-gas reserves could jump by 52 trillion cu ft if old gas were decontrolled. Old-gas reserves at present are estimated at 115 trillion cu ft.

It also denied major oil companies would glean huge profits from old gas decontrol. It said of each incremental dollar from the sale of gas, 52¢ would go for taxes, 7¢ for royalties, 9¢ to shareholders, and the remaining 33¢ to the firm.

But Robert Hefner III, president and managing partner of GHK Cos., Oklahoma City, said the Reagan administration's old-gas deregulation proposal would enrich majors and impoverish independents.

The House fossil and synthetic fuels subcommittee, chaired by Rep. Phil Sharp (D-Ind.), held the hearing to see how various natural gas pricing bills would affect domestic energy supplies.

Shell responds. Donald Russell, Shell production vice-president, said, "In a desperate attempt to preserve their subsidized price structure, a few individuals (a small minority) have resorted to a demagogic attack on major oil companies.

"They argue that major producers own more old gas than new gas and are therefore seeking to decontrol old gas prices at the expense of new gas prices. This charge is not supported by the facts.

"Of the largest producers, 10 had average gas prices above the national average in 1981, and 10 had average prices below the average. Shell was one of those major producers whose price was above the national average.

"If, as these independents assert, abolition of the multiple vintage price structure will force all prices to the average, those major producers whose prices are already above that level would not benefit."

Shell, a deep-gas producer, said there is a need for deep and other high-cost gas.

Comparison of three gas policies*

Hodel vs. NGPA				Recontrol vs. NGPA				Hodel vs. recontrol			
1985	1990	1995	2000	1985	1990	1995	2000	1985	1990	1995	2000
Domestic production (trillion cu ft/year)											
-0.1	+1.4	+2.0	+2.3	-0.2	-0.6	-0.6	-0.7	+0.1	+2.0	+2.6	+3.0
Cumulative production (trillion cu ft)											
-0.1	+3.2	+12.4	+23.4	0.3	-2.6	-5.5	-8.7	+0.2	+5.8	+17.9	+32.1
Cumulative reserve additions (trillion cu ft)											
-1.6	+43.0	+53.8	+64.5	-2.9	-7.7	-11.0	-14.7	+1.3	+50.8	+64.8	+79.2

*Policies compared are the administration's natural gas bill, written by Energy Sec. Don Hodel (OGJ, Apr. 18, p. 41); the existing Natural Gas Policy Act (NGPA); and a bill extending NGPA controls, which has been introduced in both houses (OGJ, Mar. 14, p. 50).

Source: Shell Oil Co.

"But this gas should be developed at a unit cost that the nation's consumers are prepared to pay. If large enough gas reserves are found, expensive deep gas wells can be just as cheap in terms of the unit cost of gas produced as shallow low-cost wells with small reserves."

Higher output seen. Shell released an engineering study showing old gas decontrol would result in 52 trillion cu ft more old gas production. It said 27 trillion would result from lower levels at which pressures dictate abandonment, 18 trillion from infill drilling, and 7 trillion from well stimulation.

The study examined the remaining gas reserves in the 14 largest producing fields in the Lower 48 and determined the total additional gas reserves that could be produced if price controls were removed. The data then were expanded to all fields in the Lower 48.

The study examined published analog data from Hugoton, Panhandle, San Juan, Jalmat, Puckett, Carthage, Katy, Old Ocean, Gomez, Kettleman Hills, Rio Vista, Bayou Sale, Bastian Bay, and Mocane-Laverne fields.

Shell said decontrol would result in 1.4 trillion cu ft/year more gas being produced in 1990 over what would be produced under the Natural Gas Policy Act, while legislation to recontrol gas prices would result in 600 billion cu ft/year less (see table).

Other views. Hefner, whose

firm explores for deep gas in the Anadarko basin, called the administration bill "The Oil Company and OPEC Protection Act."

He said the current gas price crisis is ebbing and declared that major oil companies are pushing decontrol of old gas.

"Oil companies benefit in two ways if old gas is decontrolled. First, they stand to earn billions more—\$7 billion/year or from \$200 billion to \$150 billion over the life of the reserves—for the old gas supplies they own.

"Second, with less incentive to discover gas and with higher gas prices to the consumer, these companies benefit from larger oil markets and therefore higher prices for oil."

Edward Erickson, a North Carolina State University economics professor, said, "Price incentives should be in place to find, develop, and produce the least cost gas first. This is not the pattern we have observed under the NGPA.

"If we gerrymander an incentive structure to be other than that which the completely unregulated market would create, I anticipate being back before you in short order to discuss again our dissatisfaction with the resulting distortions" he told the committee.

Patrick Martin, the Louisiana Department of Natural Resources' commissioner of conservation, attacked recontrol bills that would allow pipelines to unilaterally abrogate contract terms and provide a rollback in gas prices.

INITIAL ANALYSIS

HJR-40 - Requesting Congress to decontrol all natural gas

The whereases in this resolution establish that natural gas is the only commodity still subject to price controls, that this causes distortion in gas prices and supplies, and discourages maximum recovery from shallow fields. It further points out that Congressional attempts to adjust gas controls without actually decontrolling all gas could lead to a serious shortage later on, and that phased decontrol would be more equitable, would result in more efficient pricing, and would benefit consumers.

With a final whereas advocating the free market system rather than artificial government price controls, the resolution asks Congress to decontrol all natural gas. Copies will be sent to President Reagan, Vice President Bush, Speaker O'Neill, and the Alaska Delegation.

98TH CONGRESS
1ST SESSION

S. 615

To cover deficiencies in the Natural Gas Policy Act of 1978, to protect natural gas consumers from price increases because of current distortions in the regulated market for natural gas, to provide for a free market for natural gas, to permit natural gas contracts to reflect the change from a regulated to a free market, to eliminate incremental pricing requirements for natural gas, to eliminate certain fuel use restrictions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28 (legislative day, FEBRUARY 23), 1983

Mr. McCURE introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To cover deficiencies in the Natural Gas Policy Act of 1978, to protect natural gas consumers from price increases because of current distortions in the regulated market for natural gas, to provide for a free market for natural gas, to permit natural gas contracts to reflect the change from a regulated to a free market, to eliminate incremental pricing requirements for natural gas, to eliminate certain fuel use restrictions, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That this Act may be cited as the "Natural Gas Consumer*
- 4 *Regulatory Reform Amendments of 1983".*

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Sec. 501. Repeal of certain sections of the Powerplant and Industrial Fuel Use Act of 1978.

Sec. 502. Conforming amendments.

Sec. 503. Repeal of incremental pricing requirements.

1 TITLE I—PURCHASED GAS COST

2 PURCHASED GAS COST

3 SEC. 101. (a) Title VI of the Natural Gas Policy Act of
4 1978 (15 U.S.C. 3431 et seq.) is amended by adding a new
5 section 603 to read as follows:

6 "SEC. 603. LIMITATION ON THE PASSTHROUGH OF CERTAIN
7 PURCHASED GAS COSTS.

8 "(a) LIMITATION ON PURCHASED GAS ADJUST-
9 MENTS.—Notwithstanding section 601(c) of this Act, for pur-

1 poses of sections 4 and 5 of the Natural Gas Act, from the
2 first day of the first month following enactment of the Natu-
3 ral Gas Consumer Regulatory Reform Amendments of 1983
4 through December 31, 1985, the part of a pipeline's rate that
5 reflects purchased gas costs may not exceed its allowed rate
6 for purchased gas cost, except as provided in subsection (b).

7 “(b) RECOVERY OF ADDITIONAL PURCHASED GAS
8 COST.—A pipeline may file an application under this subsec-
9 tion with the Commission to increase its rates to reflect any
10 purchased gas cost that subsection (a) of this section prevents
11 it from recovering. Notwithstanding section 4(e) of the Natu-
12 ral Gas Act, no increase to the rates of a pipeline that may
13 be recovered under this subsection may go into effect unless
14 the Commission, after opportunity for hearing, issues an
15 order that grants the application, in whole or in part, with
16 such modifications and upon such terms and conditions as the
17 Commission may find necessary and appropriate. The pro-
18 ceeding under this subsection shall be conducted by the Com-
19 mission separately from proceedings on other rate applica-
20 tions that are filed under section 4 of the Natural Gas Act. In
21 any such proceeding, the Commission shall allow recovery if
22 it determines that the costs sought to be recovered were just,
23 reasonable, and prudently incurred. In making this determi-
24 nation, the Commission shall consider the reasonable avail-
25 ability of lower cost supplies to the pipeline and the necessity

1 costs for the pipeline to render adequate service to its
2 customers. Within sixty days of the date of the en-
3 actment of the Natural Gas Consumer Regulatory Reform
4 Amendments of 1983, the Commission shall prescribe rules
5 for applications under this subsection. These rules shall facili-
6 tate expeditious decisions on these applications.

7 "(c) DEFINITIONS.—

8 "(1) ALLOWED RATE FOR PURCHASED GAS.—

9 The term 'allowed rate for purchased gas' means, for a
10 particular pipeline, for a particular month, the pipe-
11 line's average cost per million Btu's for purchased gas
12 delivered to the pipeline during the month preceding
13 the enactment of the Natural Gas Consumer Regula-
14 tory Reform Act of 1983 plus the adjustment amount
15 for that particular month.

16 "(2) ADJUSTMENT AMOUNT.—The term 'adjust-
17 ment amount' means, for a particular month, the differ-
18 ence between the national rate and the adjusted na-
19 tional rate for that particular month.

20 "(3) NATIONAL RATE.—The term 'national rate'
21 means the national average cost per million Btu's for
22 purchased gas delivered to all interstate pipelines
23 during the month preceding the enactment of the Natu-
24 ral Gas Consumer Regulatory Reform Amendments of
25 1983.

1 “(4) ADJUSTED NATIONAL RATE.—The term ‘ad-
2 justed national rate’ means—

3 “(A) for the month in which the Natural Gas
4 Consumer Regulatory Reform Amendments of
5 1983 is enacted, the national rate multiplied by
6 the annual inflation adjustment factor (as defined
7 in section 101(a) of this Act) for that month; and

8 “(B) for any particular succeeding month, the
9 adjusted national rate for the preceding month
10 multiplied by the annual inflation factor (as de-
11 fined in section 101(a) of this Act) for that partic-
12 ular month.

13 “(d) REPORTING REQUIREMENT.—By the fifth day fol-
14 lowing the enactment of the Natural Gas Consumer Regula-
15 tory Reform Amendments of 1983, each interstate pipeline
16 shall report its average cost per million Btu’s for purchased
17 gas delivered to it during the month preceding the enactment
18 of the Natural Gas Consumer Regulatory Reform Amend-
19 ments of 1983 and the volume of purchased gas delivered to
20 it during that month.

21 “(e) PUBLICATION.—The Commission shall compute
22 and publish the adjustment amount for each month at least
23 five days before the beginning of that month.

24 “(f) AFFILIATED PRODUCTION.—No interstate pipeline
25 may recover any costs associated with its own production or

1 purchases from any affiliated producer to the extent such pro-
2 duction or purchases were not reduced to a percentage of
3 deliverability no higher than the percentage of deliverability
4 to which the pipeline had exercised contemporaneously a
5 contractual right to reduce its takes of less expensive gas.”.

6 (b) The table of contents of the Natural Gas Policy Act
7 of 1978 (15 U.S.C. 3301 note) is amended by inserting after
8 the item relating to section 602 the following:

“Sec. 608. Purchased Gas Cost.”

9 TITLE II—REMOVAL OF WELLHEAD PRICE CON-
10 TROLS AND REPEAL OF JURISDICTION OVER
11 CERTAIN FIRST SALES

12 REMOVAL OF WELLHEAD PRICE CONTROLS

13 SEC. 201. Section 121 of the Natural Gas Policy Act of
14 1978 (15 U.S.C. 3391) is amended to read as follows:

15 “SEC. 121. ELIMINATION OF PRICE CONTROLS FOR CERTAIN
16 NATURAL GAS SALES.

17 “(a) GENERAL RULE.—The provisions of subtitle A re-
18 specting the maximum lawful price for any first sale of natu-
19 ral gas shall cease to apply to any first sale of natural gas
20 subject to any contract that was executed or amended after
21 the date of enactment of the Natural Gas Consumer Regula-
22 tory Reform Amendments of 1983, unless the contract spe-
23 cifically provides that the contract shall not operate to termi-
24 nate the application of subtitle A.

1 “(b) HIGH-COST NATURAL GAS.—Except as provided
2 in subsection (a) of this section, with respect to the first sale
3 of high-cost natural gas which is described in section 107(c)
4 (1), (2), (3), or (4)—

5 “(1) beginning on the effective date of the incre-
6 mental pricing rule required under section 201, the
7 provisions of subtitle A respecting the maximum lawful
8 price for the first sale of natural gas shall cease to
9 apply; and

10 “(2) beginning on the date of enactment of the
11 Natural Gas Consumer Regulatory Reform Amend-
12 ments of 1983 through December 31, 1985, the price
13 shall not exceed the higher of the contract price on the
14 date of the enactment of the Natural Gas Consumer
15 Regulatory Reform Amendments of 1983 or the gas
16 cap price, if published, for the month during which the
17 gas is delivered.

18 “(c) SPECIAL RULE FOR CERTAIN GAS.—Except as
19 provided in subsection (a), with respect to the first sale of gas
20 covered by this subsection—

21 “(1) beginning January 1, 1985, the provision of
22 subtitle A respecting the maximum lawful price shall
23 cease to apply; and

1 “(2) beginning January 1, 1985, through Decem-
2 ber 31, 1985, the price shall not exceed the gas cap
3 price for the month during which the gas is delivered.

4 “(3) GAS COVERED BY THIS SUBSECTION.—This
5 subsection applies to—

6 “(A) new natural gas (as defined in section
7 102(c));

8 “(B) natural gas produced from any new, on-
9 shore production well (as defined in section
10 103(c)), if such natural gas—

11 “(i) was not committed or dedicated to
12 interstate commerce on April 20, 1977; and

13 “(ii) is produced from a completion loca-
14 tion which is located at a depth of more than
15 5,000 feet; and

16 “(C) natural gas sold under an existing con-
17 tract, any successor to an existing contract, or
18 any rollover contract, if—

19 “(i) such natural gas was not committed
20 or dedicated to interstate commerce on the
21 day before the date of the enactment of this
22 Act; and

23 “(ii) the price paid for the last deliveries
24 of such natural gas occurring on December
25 31, 1984, or, if no deliveries occurred on

1 such date, the price that would have been
2 paid had deliveries occurred on such date is
3 higher than \$1 per million Btu's.

4 “(d) REMOVAL OF WELLHEAD PRICE CONTROLS ON
5 ALL NATURAL GAS.—Except as provided in subsections (a),
6 (b), or (c), beginning January 1, 1986, the provisions of subti-
7 tle A respecting maximum lawful price shall cease to apply to
8 the first sale of any natural gas.”.

9 REPEAL OF NATURAL GAS ACT JURISDICTION OVER FIRST
10 SALES OF COMMITTED OR DEDICATED NATURAL GAS

11 SEC. 202. Section 601(a)(1)(B) of the Natural Gas
12 Policy Act of 1978 (15 U.S.C. 3431(a)(1)(B)) is amended to
13 read as follows:

14 “(B) COMMITTED OR DEDICATED NATURAL
15 GAS.—Effective on January 1, 1985, for the pur-
16 poses of section 1(b) of the Natural Gas Act, the
17 provisions of such Act and the jurisdiction of the
18 Commission shall not apply solely by reason of
19 any first sale of natural gas which was committed
20 or dedicated to interstate commerce as of the day
21 before the date of enactment of this subsection.
22 Effective on the date of enactment of the Natural
23 Gas Consumer Regulatory Reform Amendments
24 of 1983 through December 31, 1984, for the pur-
25 poses of section 1(b) of the Natural Gas Act, the

1 provisions of such Act and the jurisdiction of the
2 Commission under such Act shall not apply solely
3 by reason of any first sale of natural gas which is
4 committed or dedicated to interstate commerce as
5 of the day before the date of enactment of this
6 Act and which is—

7 “(i) high-cost natural gas (as defined in
8 section 107(c) (1), (2), (3), or (4) of this Act);

9 “(ii) new natural gas (as defined in sec-
10 tion 102(c) of this Act);

11 “(iii) natural gas produced from any
12 new onshore production well (as defined in
13 section 103(c) of this Act);

14 “(iv) natural gas exempted from the op-
15 eration of subtitle A of title I pursuant to
16 section 121(a), or

17 “(v) natural gas that was subject to a
18 contract that expired, lapsed, was terminated
19 pursuant to its own terms, or was terminated
20 pursuant to the provisions of section 316 of
21 this Act.”

1 REPEAL OF PROVISIONS ALLOWING REIMPOSITION OF
2 PRICE CONTROLS AND REPORT TO CONGRESS

3 SEC. 203. (a) Sections 122, 123, and 507 of the Natural
4 Gas Policy Act of 1978 (15 U.S.C. 3332, 3333, and 3417)
5 are repealed.

6 (b) The table of contents of the Natural Gas Policy Act
7 of 1978 (15 U.S.C. 3301 note) is amended by striking the
8 items relating to sections 122, 123, and 507.

9 TITLE III—TRANSITIONAL PRICE AND
10 CONTRACT PROVISIONS

11 LIMITATION ON CEILING PRICES FOR CERTAIN NATURAL
12 GAS

13 SEC. 301. (a) Title I of the Natural Gas Policy Act of
14 1978 (15 U.S.C. 3311-3333) is amended by adding the fol-
15 lowing new section:

16 "SEC 311. LIMITATION ON CEILING PRICES FOR CERTAIN NAT-
17 URAL GAS.

18 "(a) GENERAL RULE.—Except as provided in section
19 121 of this Act, beginning on the date of enactment of this
20 section, the maximum lawful price of any first sale of natural
21 gas subject to this subtitle shall not exceed the lower of the
22 applicable price as calculated pursuant to sections 102
23 through 106, 108, and 109 or the gas cap price, if published,
24 for the month during which the gas is delivered.

1 “(b) SPECIAL RULE FOR SECTION 107(c)(5) GAS.—
2 Except as provided in section 121 of this Act, beginning on
3 the date of the enactment of the Natural Gas Consumer Reg-
4 ulatory Reform Amendments of 1983, the maximum lawful
5 price for gas described in subsection (c)(5) of section 107 of
6 this Act shall be no higher than the maximum lawful price for
7 such gas during the month in which the Natural Gas Con-
8 sumer Regulatory Reform Amendments of 1983 are enacted.

9 “(c) DEFINITION OF GAS CAP PRICE.—The term ‘gas
10 cap price’ means, for a particular month, the volume-weight-
11 ed average price of natural gas that is estimated to be—

12 “(1) delivered during the second, third, and fourth
13 months preceding that particular month; and

14 “(2) delivered during the first three months of de-
15 liveries under a contract filed under subsection (e) of
16 this section.

17 “(d) CALCULATION AND PUBLICATION OF THE GAS
18 CAP PRICE.—Beginning with the fourth month after enact-
19 ment of the Natural Gas Consumer Regulatory Reform
20 Amendments of 1983, the Commission (in accordance with
21 section 101(a)(6) of this subtitle) shall compute and publish
22 the gas cap price for each month through December 1985.

23 “(e) FILING REQUIREMENT.—A purchaser of natural
24 gas subject to a first sale contract executed or amended on or
25 after the date of the enactment of the Natural Gas Consumer

1 Regulatory Reform Amendments of 1983 shall file with the
2 Commission within five days of the date on which the con-
3 tract is executed or amended—

4 “(1) a summary of the contract and all ancillary
5 agreements, including all pricing provisions;

6 “(2) the prices to be paid under the contract
7 during the first three months of deliveries;

8 “(3) the estimated volumes (in millions of Btu's)
9 to be delivered during the first year of the contract;
10 and

11 “(4) any additional data required by the Commis-
12 sion.

13 This filing requirement does not apply in the case of an
14 amendment of a contract for which data previously relating
15 to price has been filed with the Commission under this sub-
16 section.

17 “(f) COMMISSION RULES.—Within thirty days of the
18 enactment of the Natural Gas Consumer Regulatory Reform
19 Amendments of 1983, the Commission shall issue rules to
20 implement this section.”

21 (b) The table of contents of the Natural Gas Policy Act
22 of 1978 (15 U.S.C. 3301 note) is amended by inserting after
23 the item relating to section 110 the following:

“Sec. 111. Limitation on Ceiling Prices for Certain Natural Gas.”

24 (c) Section 101(b)(5) of the Natural Gas Policy Act of
25 1978 (15 U.S.C. 3311(b)(5)) is amended by striking the

1 period at the end and inserting the following: “, but in no
2 event shall the operation of this paragraph be deemed to enti-
3 tle any seller to collect a price in excess of that established
4 pursuant to section 111.”.

5 (d) Section 105(b)(3)(B) of the Natural Gas Policy Act of
6 1978 is amended by adding a new sentence at the end to
7 read as follows: “This definition shall not include any clause
8 which establishes the price for natural gas exempted from the
9 operation of this subtitle pursuant to section 121(a).”.

10 REPEAL OF CERTAIN CONTRACT REQUIREMENTS AND

11 IMPOSITION OF TAKE-OR-PAY LIMITS

12 SEC. 302. (a) Section 315 of the Natural Gas Policy
13 Act of 1978 (15 U.S.C. 3375) is repealed, and a new section
14 315 is inserted in its place to read as follows:

15 “SEC. 315. IMPOSITION OF TAKE-OR-PAY LIMITS.

16 “(a) GENERAL RULE.—In the case of any first sale
17 contract in effect on the date of enactment of the Natural Gas
18 Consumer Regulatory Reform Amendments of 1983, which
19 has not been amended subsequent to the date of enactment,
20 and which contains a clause requiring a purchaser to take
21 delivery of, or if not taken, to pay for, volumes of gas in
22 excess of 70 per centum of available deliverability from these--
23 wells included under a contract, the purchaser may exercise
24 without obligation to pay for volumes not taken in excess of
25 70 per centum of well deliverability, a right not to accept

1 delivery of any portion of the total volume which exceeds 30
2 per centum of well deliverability. This right applies only to
3 deliveries under a contract from the date of enactment of the
4 Natural Gas Consumer Regulatory Reform Amendments of
5 1983 through December 31, 1985.

6 “(b) NOTICE REQUIREMENT.—Any purchaser electing
7 to reduce volumes purchased pursuant to this section must
8 give the seller a minimum of thirty days written notice prior
9 to the date of delivery of the natural gas involved.

10 “(c) RELEASE OF CONTRACTUAL OBLIGATIONS.—
11 Upon receipt of the notice provided for in subsection (b), the
12 seller shall have the right to terminate the contract with re-
13 spect only to amounts not taken by reason of this section. If
14 the seller elects to terminate the contract in accordance with
15 this section, the purchaser shall tender to the seller full and
16 unconditional release from all duties and obligations in con-
17 tract or in law. The purchaser, if a transporter of natural gas,
18 shall tender transportation in accordance with the provisions
19 of section 316(d) of this Act.

20 “(d) DRAINAGE SITUATIONS.—The Commission, by
21 rule or order, may determine that this section shall not apply
22 to the extent the production of the volume for which delivery
23 is required to be taken is necessary in order to prevent drain-
24 age and protect the correlative rights of the person producing
25 the natural gas involved.

1 “(1) the party wishing to terminate the contract
2 must give notice to the other party between November
3 16, 1984., and November 15, 1985, and at least forty-
4 five days in advance, that the contract is to be
5 terminated;

6 “(2) the party giving notice of termination does
7 not materially breach the contract at any time prior to
8 the end of the notice period; and

9 “(3) the party giving notice of termination must
10 offer to the other party a full and unconditional release
11 from all future duties and obligations in contract or in
12 law relating to the contract, which release is effective
13 upon termination of the notice period.

14 “(b) EFFECT OF SECTION 315 REDUCTION.—A reduc-
15 tion of a take-or-pay obligation pursuant to section 315 of
16 this Act shall not be considered an amendment for purposes
17 of subsection (a) of this section.

18 “(c) OBLIGATIONS OF PARTIES UPON TERMINA-
19 TION.—Neither party to a contract terminated pursuant to
20 this section shall have an obligation to perform any act be-
21 cause of the contract on and after the effective date of the
22 termination of the contract, except that a party that has re-
23 ceived a good or service under the contract before the effec-
24 tive date of its termination shall have a duty to pay for that
25 good or service as provided for in the contract and that a

1 party that has received payment under the contract for a
2 good or service that was not provided before the effective
3 date of its termination shall have a duty to make restitution
4 of the payment in cash or in kind in accordance with the
5 contract.

6 “(d) TRANSPORTATION OBLIGATION.—

7 “(1) IN GENERAL.—In the event that a contract
8 is terminated under this section, a pipeline that was a
9 party to the terminated contract shall have an obliga-
10 tion to transport natural gas for a producer that was a
11 party to the terminated contract. The obligation of the
12 pipeline shall not exceed on an annual basis the largest
13 volume delivered under the contract during any twelve
14 consecutive months in the thirty-six months prior to its
15 termination.

16 “(2) LIMITATION OF OBLIGATION.—The Com-
17 mission, or in the case of an intrastate pipeline the
18 State agency with jurisdiction over that pipeline, upon
19 application by the pipeline and after opportunity for
20 hearing, may order a limitation of the obligation of the
21 pipeline under this subsection if compliance with the
22 obligation would require construction of additional
23 facilities or would impair the ability of the pipeline to
24 render adequate service to its existing customers.

1 “(3) CONSIDERATION.—The consideration for any
2 transportation provided under this subsection shall be
3 \$0.05 per million Btu’s plus the cost of such transpor-
4 tation, as established by the appropriate State or Fed-
5 eral regulatory body, unless the Commission has estab-
6 lished, by rule, a different rate as just compensation for
7 such transportation. No amount of such consideration
8 shall be required to be credited and flowed back to the
9 customers of such pipeline.”.

10 (b) The table of contents of the Natural Gas Policy Act
11 of 1978 (15 U.S.C. 3301 note) is amended by inserting after
12 the item relating to section 315 the following:

 “Sec. 318. Market-Out Provision.”.

13

EFFECT OF GAS CAP PRICE

14 SEC. 304. (a) Title III of the Natural Gas Policy Act of
15 1978 (15 U.S.C. 3361–3375) is amended by adding a new
16 section 318 to read as follows:

17 “SEC. 318. EFFECT OF GAS CAP PRICE.

18 “(a) Price Escalator Clauses.—Except for natural gas
19 described in section 107 of this Act, no price escalator clause
20 may operate to establish a price for natural gas which is sub-
21 ject to the provisions of subtitle A respecting the maximum
22 lawful price for the first sale of natural gas higher than the
23 gas cap price. For purposes of this subsection, the term
24 “price escalator clause” means any contract clause that pro-
25 vides for a periodic price increase, either on a fixed or indefi-

1 nite basis, or that references other natural gas prices, federal-
2 ly imposed price ceilings, or prices of other commodities.

3 “(b) AREA RATE CLAUSES.—For purposes of an area
4 rate clause, the gas cap is a Federally established rate or
5 price. After December 31, 1985, the gas cap price for De-
6 cember 1985 is a federally established rate or price.”.

7 (b) The table of contents of the Natural Gas Policy Act
8 of 1978 (U.S.C. 3301 note) is amended by inserting after the
9 item relating to section 317 the following:

“Sec. 318. Effect of Gas Cap Price.”.

10 **TITLE IV—REMOVAL OF IMPEDIMENTS TO**
11 **INTERSTATE MOVEMENTS OF GAS**
12 **AUTHORIZATION OF CERTAIN INTERSTATE SALES,**
13 **TRANSPORTATION AND ASSIGNMENTS**

14 **SEC. 401. (a) Section 311(a) of the Natural Gas Policy**
15 **Act of 1978 (15 U.S.C. 3371(a)) is amended by—**

16 (1) amending subparagraph (A) of paragraph (1) to
17 read as follows:

18 “(A) IN GENERAL.—The Commission may,
19 by rule or order, authorize any interstate pipeline
20 to transport natural gas on behalf of any person.”.

21 (2) inserting “AND LOCAL DISTRIBUTION COMPA-
22 NIES” after “INTRASTATE PIPELINES” in the para-
23 graph (2) heading;

24 (3) inserting in paragraph (2) “or local distribution

1 (4) amending subparagraph (A) of paragraph (2) to
2 read as follows:

3 "(A) IN GENERAL.—The Commission may
4 by rule or order, authorize any intrastate pipeline
5 or local distribution company to transport natural
6 gas on behalf of any person."

7 (5) in subparagraph (B)(ii) (I) and (II) of para-
8 graph (2), inserting "or company" after "pipeline".

9 (b) Section 311(b) of the Natural Gas Policy Act of
10 1978 (15 U.S.C. 3371(b)) is amended by—

11 (1) amending paragraph (1) to read as follows:

12 "(1) IN GENERAL.—The Commission may, by
13 rule or order, authorize any pipeline or local distribu-
14 tion company to sell natural gas to any pipeline or
15 local distribution company."

16 (2) amending paragraph (2) by—

17 (A) striking "MAXIMUM FAIR AND EQUITA-
18 BLE PRICE" after the subparagraph designator
19 "A". and inserting in its place "INTRASTATE
20 PIPELINES AND LOCAL DISTRIBUTION COMPA-
21 NIES";

22 (B) inserting "or local distribution company"
23 following "pipeline" and "or local distribution
24 company's" following "pipeline's" wherever they
25 appear; and

1 (C) inserting "(including storage)" after
2 "transportation" in clause (i) of subparagraph (B);

3 (D) adding a new subparagraph (D) to read
4 as follows:

5 "(D) INTERSTATE PIPELINES.—The rates
6 and charges of any interstate pipeline with respect
7 to any sales authorized under subsection (b)(1)(A)
8 shall be just and reasonable (within the meaning
9 of the Natural Gas Act).";

10 (3) in paragraph (4), striking "pipeline's" and in-
11 sserting in its place "seller's", and striking "INTRA-
12 STATE" in the heading and inserting in its place "EX-
13 ISTING";

14 (4) in paragraphs (4)–(7), except for subparagraph
15 (5)(a)(i), striking "intrastate pipeline" or "pipeline"
16 wherever they appear and inserting in their place
17 "seller";

18 (5) in paragraph (5)(A)(i), striking "interstate pipe-
19 line or local distribution" and inserting in its place
20 "purchasing"; and

21 (6) adding a new paragraph (S) to read as follows:

22 "(8) DEFINITION OF SELLER.—For purposes of
23 this subsection, the term 'seller' means any person that
24 sells gas under paragraph (b)(1).".

1 (c) Section 312 of the Natural Gas Policy Act of 1978
2 (15 U.S.C. 3372) is amended—

3 (1) by amending subsection (a) to read as follows:

4 “(a) AUTHORIZATION OF ASSIGNMENTS.—The Com-
5 mission may, by rule or order, authorize a pipeline or local
6 distribution company to assign, without compensation, to any
7 other pipeline or local distribution company, all or any por-
8 tion of the assignor's right to receive surplus natural gas at
9 any first sale, upon such terms and conditions as the Com-
10 mission determines appropriate.”; and

11 (2) by amending subsection (c) to read as follows:

12 “(c) SURPLUS NATURAL GAS.—For purposes of this
13 section, the term ‘surplus natural gas’ means, with respect to
14 any pipeline or local distribution company, any natural gas
15 which exceeds the then current demands of such person for
16 natural gas, as determined by—”

17 “(1) the Commission, or

18 “(2) the State agency having regulatory jurisdic-
19 tion over that person.”.

20 ACCESS TO INTERSTATE SUPPLY SOURCES

21 SEC. 402. (a) Section 314 of the Natural Gas Policy
22 Act of 1978 (15 U.S.C. 3374) is amended by—

23 (1) striking “first” in subsection (a), and

24 (2) amending subsection (b) to read as follows:

1 “(b) NATURAL GAS COVERED BY THIS ACT.—For
2 purposes of subsection (a), the term ‘natural gas covered by
3 this Act’ means—

4 “(1) for any first sale contract, natural gas—

5 “(A) which is not subject to the jurisdiction
6 of the Commission under the Natural Gas Act by
7 reason of section 601(a)(1) (A) or (B);

8 “(B) the sale in interstate commerce of
9 which—

10 “(i) is authorized under section 302(a)
11 or 311(b); or

12 “(ii) is pursuant to an assignment under
13 section 312(a); or

14 “(C) the transportation in interstate com-
15 merce of which is—

16 “(i) pursuant to any order under section
17 302(c) or section 303 (b), (c), (d), or (h), or

18 “(ii) authorized by the Commission
19 under section 311(a); or

20 “(2) for any contract, natural gas the sale or
21 transportation of which under the contract is not in in-
22 terstate commerce by reason of section 601(d) of this
23 Act.”.

1 (b) Section 601 of the Natural Gas Policy Act of 1978
2 (15 U.S.C. 3431) is amended by adding new subsections (d)
3 and (e) to read as follows:

4 "(d) LIMITATION OF COMMISSION JURISDICTION
5 OVER INTRASTATE TRANSACTIONS.—

6 "(1) GENERAL RULE.—No intrastate pipeline or
7 local distribution company shall be subject to the juris-
8 diction of the Commission under the Natural Gas Act
9 by reason of purchasing natural gas in a covered trans-
10 action.

11 "(2) SUBSEQUENT TRANSACTIONS.—Any trans-
12 portation or sale of natural gas purchased in a covered
13 transaction which occurs beyond the point at which
14 such gas is received in the facilities of the purchaser in
15 the covered transaction shall not be in interstate com-
16 merce (within the meaning of the Natural Gas Act)
17 and shall not be subject to the jurisdiction of the Com-
18 mission under the Natural Gas Act to the extent that
19 such gas remains in the State of purchase.

20 "(3) NATURAL-GAS COMPANY.—For purposes of
21 the Natural Gas Act, the term 'natural-gas company'
22 (as defined in section 2(6) of that Act) shall not include
23 any person by reason of, or with respect to, any trans-
24 portation or sale of natural gas if the transportation or

1 sale is not subject to the jurisdiction of the Commission
2 solely by reason of paragraph (2) of this subsection.

3 “(4) STATE OF PURCHASE RULE.—For purposes
4 of this subsection, natural gas shall be deemed to
5 remain in the State of purchase if the gas is not trans-
6 ported outside the State in which it was received into
7 the facilities of the purchaser of the gas in a covered
8 transaction, unless such transportation occurs in con-
9 nection with—

10 “(A) transportation authorized under sections
11 302(a) or 311(a) of this Act, or

12 “(B) a sale or assignment authorized under
13 sections 311(b) or 312 of this Act.

14 “(5) DEFINITION OF COVERED TRANSACTION.—
15 For purposes of this subsection, the term ‘covered
16 transaction’ means—

17 “(A) a first sale of gas—

18 “(i) which is not subject to the jurisdic-
19 tion of the Commission under the Natural
20 Gas Act by reason of subparagraph (A) or
21 (B) of paragraph (1) of subsection (a),

22 “(ii) which is produced on the Outer
23 Continental Shelf, or

1 “(iii) which is transported pursuant to
2 an order issued under section 317 of this
3 Act;

4 “(B) a sale or assignment authorized under
5 section 302(a), 311(b), or 312(a) of this Act; or

6 “(C) a sale for resale by any person not sub-
7 ject to the jurisdiction of the Commission solely
8 by reason of section 1(c) of the Natural Gas Act.

9 “(e) NONDISCRIMINATION PROVISION.—The Commis-
10 sion may not condition or deny any authorization of the sale
11 or transportation of natural gas under this Act or the Natural
12 Gas Act on the basis of whether the gas is consumed in the
13 interstate market or the intrastate market.”.

14 CONTRACT CARRIER AUTHORIZATION

15 SEC. 403. (a) Title III of the Natural Gas Policy Act of
16 1978 (15 U.S.C. 3361-3375) is amended by adding a new
17 section 317 to read as follows:

18 “SEC. 317. CONTRACT CARRIER AUTHORIZATION.

19 “(a) IN GENERAL.—Upon application by a producer of
20 natural gas or by a purchaser of natural gas from a producer,
21 the Commission shall order any interstate pipeline to carry
22 gas under contract between producer and purchaser upon
23 such terms and subject to such conditions as it considers just
24 and reasonable if the Commission finds that such pipeline has
25 available capacity, that no undue will be place upon such

1 pipeline, that no construction of new facilities would be re-
2 quired, and that such order would not impair the ability of
3 such pipeline to render adequate service to its existing cus-
4 tomers. The Commission may implement this section by rule
5 or order.

6 “(b) CONSIDERATION.—The consideration for any
7 transportation provided under this section shall be \$.05 per
8 million Btu's plus the cost of such transportation, as estab-
9 lished by the Commission, unless the Commission has estab-
10 lished, by rule, a different rate as just compensation for such
11 transportation. No amount of such consideration shall be re-
12 quired to be credited and flowed back to the customers of
13 such pipeline.”

14 (b) The table of contents of the Natural Gas Policy Act
15 of 1978 (15 U.S.C. 3301 note) is amended by inserting after
16 the item relating to section 316 the following:

“Sec. 317. Contract Carrier Authorization.”

17 TITLE V—REPEAL OF CERTAIN RESTRICTIONS
18 ON NATURAL GAS AND PETROLEUM USE
19 AND PRICING

20 REPEAL OF CERTAIN SECTIONS OF THE POWERPLANT AND
21 INDUSTRIAL FUEL USE ACT OF 1978

22 SEC. 501. (a) The following sections of the Powerplant
23 and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et
24 seq.) are repealed:

- 1 (1) section 102 (a)(16), (a)(18), (a)(19), and (a)(29))
2 (42 U.S.C. 8302 (a)(16), (a)(18), (a)(19), and (a)(29));
3 (2) sections 201 and 202 (42 U.S.C. 8311 and 8312);
4 (3) section 302 (42 U.S.C. 8342);
5 (4) section 401 (42 U.S.C. 8371);
6 (5) section 402 (42 U.S.C. 8372); and
7 (6) section 405 (42 U.S.C. 8375).

8 (b) The table of contents in section 101(b) of the Power-
9 plant and Industrial Fuel Use Act of 1978 (42 U.S.C.
10 8301(b)) is amended by striking the items relating to the sec-
11 tions repealed by subsection (a) of this section.

12 CONFORMING AMENDMENTS

13 SEC. 502. (a) Section 102 of the Powerplant and Indus-
14 trial Fuel Use Act of 1978 (42 U.S.C. 8301) is amended by
15 striking "and major fuel-burning installations" and "and
16 new" wherever these phrases appear.

17 (b) Section 103 of the Powerplant and Industrial Fuel
18 Use Act of 1978 (42 U.S.C. 8302) is amended—

- 19 (1) in subsection (a)(13)(B), by—
20 (A) striking clause (ii)(III);
21 (B) striking "; or" at the end of clause
22 (ii)(II), and inserting a period in its place; and
23 (C) inserting "and" at the end of clause
24 (ii)(I);

1 (2) in subsection (a)(15), by striking "or major
2 fuel-burning installation" and "or new" wherever these
3 phrases appear;

4 (3) in subsection (a)(20), by striking "or major
5 fuel-burning installation";

6 (4) by redesignating subsections (a)(17), (a)(20),
7 (a)(21), (a)(22), (a)(23), (a)(24), (a)(25), (a)(26), (a)(27),
8 and (a)(28) as subsections (a)(16), (a)(17), (a)(18),
9 (a)(19), (a)(20), (a)(21), (a)(22), (a)(23), (a)(24), and
10 (a)(25);

11 (5) in subsection (b), by striking "or major fuel-
12 burning installation" wherever this phrase appears;

13 (6) in subsection (b)(1)(D), by striking everything
14 after "synthetic gas involved" and inserting in its place
15 a period; and

16 (7) by striking subsection (b)(3), and redesignating
17 subsection (b)(4) as subsection (b)(3).

18 (c) Section 104 of the Powerplant and Industrial Fuel
19 Use Act of 1978 (42 U.S.C. 8303) is amended to read as
20 follows:

21 "The provisions of this Act shall apply in all the States,
22 Puerto Rico, and the territories and possessions of the United
23 States."

24 (d) Section 302 of the Powerplant and Industrial Fuel
25 Use Act of 1978 (42 U.S.C. 8343) is amended—

1 (1) by striking "or installation" and "or installa-
2 tions" wherever the phrases appear;

3 (2) by striking "or 302" wherever the phrase
4 appears;

5 (3) by striking subsection (a)(3);

6 (4) by amending subsection (b)(1) to read as
7 follows:

8 "(1) The Secretary may prohibit, by rule, the use
9 of natural gas or petroleum under section 301(b) in ex-
10 isting electric powerplants.";

11 (5) in subsection (b)(3), by striking "or major fuel-
12 burning installation"; and

13 (6) by amending the last sentence of subsection
14 (b)(3) to read as follows: "Any such rules shall not
15 apply in the case of any existing electric powerplant
16 with respect to which a comparable prohibition was
17 issued by order."

18 (e) Section 403 of the Powerplant and Industrial Fuel
19 Use Act of 1978 (42 U.S.C. 8373) is amended by striking—

20 (1) in subsection (a)(1), "major fuel-burning instal-
21 lation, or other unit" and the comma immediately pre-
22 ceding this phrase and "installation, or unit" and the
23 comma immediately preceding this phrase;

24 (2) in subsection (a)(2), "installation, or other
25 unit" and the comma immediately preceding that

1 phrase, and "installation, or unit" and the comma im-
2 mediately preceding that phrase;

3 (3) in subsection (a)(2), the last sentence; and

4 (4) subsection (a)(3).

5 (f) Section 404 of the Powerplant and Industrial Fuel
6 Use Act of 1978 (42 U.S.C. 8374) is amended by striking—

7 (1) in subsection (c), "new or" in the phrase "ap-
8 plicable to any new or existing electric powerplant";

9 and

10 (2) subsection (g).

11 (g) Section 701 of the Powerplant and Industrial Fuel
12 Use Act of 1978 (42 U.S.C. 8411) is amended by striking—

13 (1) in the last sentence of subsection (b), "or in-
14 stallation";

15 (2) subsection (c);

16 (3) in the title of subsection (d), "AND EXEMP-
17 TIONS";

18 (4) in the first sentence of subsection (d)(1), "or
19 any petition for any order granting an exemption (or
20 permit)";

21 (5) in subsection (d)(1)(B), "or in the consideration
22 of such petition";

23 (6) in subsection (f), "or a petition for an exemp-
24 tion (or permit) under this Act (other than under sec-
25 tion 402 or 404)"; and

1 (7) subsection (g).

2 (h) Section 702 of the Powerplant and Industrial Fuel
3 Use Act of 1978 (42 U.S.C. 8412) is amended by striking—

4 (1) in the title of subsection (a), "OR EXEMP-
5 TION";

6 (2) in subsection (a), "or granting an exemption
7 (or permit)";

8 (3) subsection (b), and redesignating subsection (c)
9 as subsection (b);

10 (4) in the first sentence of subsection (b)(1) (as re-
11 designated), "or by the denial of a petition for an order
12 granting an exemption (or permit) referred to in sub-
13 section (b),";

14 (5) in the first sentence of subsection (b)(1) (as re-
15 designated), "such rule, order, or denial is published
16 under subsection (a) or (b)" and inserting in its place
17 "such rule, or order is published under subsection (a)";

18 (6) in the first sentence of subsection (b)(2) (as re-
19 designated), "the rule, order, or denial" and inserting
20 in its place "the rule or order";

21 (7) in the second sentence of subsection (b)(2) (as
22 redesignated), "(or denial thereof)"; and

23 (8) in subsection (b)(3) (as redesignated), "any
24 such rule, order, or denial" and inserting in its place
25 "any such rule or order".

1 (i) Section 711 of the Powerplant and Industrial Fuel
2 Use Act of 1978 (42 U.S.C. 8421) is amended by striking in
3 the first sentence of subsection (a), "or major fuel-burning
4 installation".

5 (j) Section 721 of the Powerplant and Industrial Fuel
6 Use Act of 1978 (42 U.S.C. 8431) is amended by striking
7 subsection (c) and redesignating subsection (d) as subsection
8 (c).

9 (k) Section 723 of the Powerplant and Industrial Fuel
10 Use Act of 1978 (42 U.S.C. 8433) is amended by striking
11 subsection (b) and redesignating subsections (c) and (d) as
12 subsections (b) and (c).

13 (l) Section 731 of the Powerplant and Industrial Fuel
14 Use Act of 1978 (42 U.S.C. 8441) is amended by striking--

15 (1) "or major fuel-burning installation" wherever
16 the phrase appears; and

17 (2) "title II or" in subsections (a)(1) and (g)(3).

18 (m) Section 745 of the Powerplant and Industrial Fuel
19 Use Act of 1978 (42 U.S.C. 8455) is amended by striking in
20 the first sentence of subsection (a), "from new and existing
21 electric powerplants and major fuel-burning installations"
22 and inserting in its place "from existing electric power-
23 plants".

24 (n) Section 761 of the Powerplant and Industrial Fuel
25 Use Act of 1978 (42 U.S.C. 8471) is amended by striking--

1 (1) in subsection (a), "any existing or new electric
2 powerplant or major fuel-burning installation" and in-
3 serting in its place "any existing electric powerplant";
4 and

5 (2) in subsection (b)—

6 (A) "new or" in the phrase "In the case of
7 any new or existing facility"; and

8 (B) "except to the extent provided under sec-
9 tion 212(b) or section 312(b)" and the comma im-
10 mediately preceding that phrase.

11 REPEAL OF INCREMENTAL PRICING REQUIREMENTS

12 SEC. 503. (a) Subject to subsections (b) and (c) of this
13 section, title II of the Natural Gas Policy Act of 1978 (15
14 U.S.C. 3341-3348) is repealed, and the items relating to
15 title II are stricken from the table of contents of that Act.

16 (b) A rule promulgated by the Commission under title II
17 of the Natural Gas Policy Act of 1978 shall continue in effect
18 only with respect to the flow-through of costs incurred before
19 the enactment of the Natural Gas Consumer Regulatory
20 Reform Amendments of 1983, including any surcharges
21 based on such costs.

22 (c) The Commission may take appropriate action to im-
23 plement this section.

HJR

43

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



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

Senate Committee on Resources

April 26, 1983

Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

Subject: SJR 25, Birch and Beaver Creek Wild Rivers

The 1980 Alaska National Interest Lands Conservation Act (ANILCA) designated a number of rivers in Alaska as "wild rivers" under the National Wild and Scenic Rivers System. Included in these designations were Beaver Creek and Birch Creek which are located north of Fairbanks.

At the time of study of these rivers little placer gold mining was occurring in the region due primarily to low gold prices. However, the Circle gold district which both the rivers are located in was one of the first placer districts in Alaska and was among the leading producers of gold over much of the past century (dating back to 1890). With the resurgence of gold prices dramatic increases in placer mining activity have occurred on many of the tributary streams to both Beaver and Birch Creek. Consequently, many problems and conflicts are currently taking place centering on water quality, access, navigability determinations of the waters involved and other users of the river areas. Most of these problems are directly related to the wild river designations which have caused intensified management efforts and stricter environmental standards and regulations to be applied.

In an effort to recognize the multiple use values of these river areas, particularly mineral values and activities, the resolution would ask Congress to amend ANILCA to delete wild river designation of the two rivers.



Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

March 4, 1983



MAR 14 1983

DRAFT

Carl D. Johnson
District Manager
Fairbanks District Office
Bureau of Land Management
P.O. Box 1150
Fairbanks, Alaska 99707

Dear Carl:

We are enclosing the Commission comments on the Draft River Management Plan for the Birch Creek National Wild River. These comments represent the issues which are of primary concern to the Commission and the different user groups which will be affected by the management plan.

On an overall basis, the draft management plan is written with an unconcealed bias against placer mining operations. There are many editorial comments contained in different sections of the plan which have no place in a document designed to establish management prescriptions.

The plan fails to take into consideration the considerable economic impacts on Fairbanks and the Central area if mining activity in the Birch Creek watershed is unduly restricted or curtailed. This information was not analyzed in the Environmental Impact Statement and appears nowhere in the draft river plan. Such an impact should be considered before the final river plan is developed.

On the attached pages we have identified five issues which we feel are extremely important and which are discussed at length. Following this discussion are specific comments relating to the plan.

To this point the people in your office have been extremely helpful in providing us with the information we needed to develop this commentary. It has been very useful for the staff to be able to meet with BLM personnel and discuss the issues face to face. We look forward to continuing this working relationship in developing the final plan for the Birch Creek Wild River.

Sincerely,

Bettye Fahrenkamp, Chairman
Alaska State Senator

BIRCH CREEK WILD RIVER DRAFT MANAGEMENT PLAN

GENERAL DISCUSSION

1. BOUNDARY DETERMINATION
2. NAVIGABILITY
3. ACCESS
4. VIEWSHEDS
5. WATER QUALITY

1. Boundary determination. The draft plan states the boundary of Birch Creek Wild River will be located within Section 25, Township 7N, Range 10E, Fairbanks meridian. Section 603, paragraph 46 of ANILCA states that the segment of Birch Creek which will be designated a wild river begins on the south side of the Steese Highway, but mentions no specific section, nor does any piece of legislative history.

The Final Environmental Impact Statement for the proposed Birch Creek National Wild River prepared by the Department of the Interior in 1974, stated the proposed corridor was to begin in the vicinity of the confluence of North Fork Creek and Birch Creek. This point is located at approximately river mile 5 in the Draft River Plan. This administrative addition of five miles to the wild river segment of Birch Creek adds over 3,000 acres to the river corridor. Persons originally responsible for studying the location of the boundary state conclusively there was never any intention of extending the river corridor to Butte Creek.

To further augment this position, page 9 of the Draft River Plan states that placer mining activity has made it difficult and often impossible to float the first 3 miles of the river. This activity would indicate that most of the first 5 miles of the proposed river corridor do not meet the criteria for designation as a wild river. It further states that most float trips begin at river mile 5, the originally proposed beginning of the wild river segment.

The discretionary power which BLM has used to move the river endpoint five miles, should be used to move that boundary back to the confluence of the North Fork Creek and Birch Creek. This action would simplify management of the wild river and its corridor and help avoid any potential conflicts between recreational boaters and placer mining operations.

2. Navigability.

The State has asserted that all waters in Alaska are navigable while federal agencies ignore this argument. There is much available material and historical references to prove that Birch Creek is, and has been, a corridor of commerce in fact, and as such, is a corridor of commerce in

law. While it remains the responsibility of the Department of Natural Resources and the Department of Law to formally assert the navigability claim, it is essential that this fact be considered in the draft plan.

3. Access. Access to valid mining claims and along existing RS 2477 rights-of-way must be insured. ANILCA guarantees access to inholdings and valid mining claims (Sec. 1110).

In addition, the Senate Committee on Energy and Natural Resources Report 96-413, contained in the legislative history of ANILCA, states:

"In Administering wild and scenic rivers in Alaska, the Committee expects the appropriate Secretary to carefully consider access needs in terms of the special authority granted him in Title XI of the Committee amendment. Holders of mining claims, for example, may need access up and down proposed wild and scenic rivers or study rivers in connection with various mining activities. Likewise, inholders should not be denied reasonable access to their inholdings as a result of wild and scenic river designation."

Existing State rights-of-way within or through the corridor should be recognized. In the Final EIS the State of Alaska submitted comments which dealt with existing rights-of-way along a number of surface transportation routes and along protracted section lines. The response from BLM indicated that these rights are recognized. Recognition of these rights should be included in the appropriate section of the river plan.

In addition, BLM should work with individual miners while preparing the management plan so that they can be assured of the access which is currently only given lip service. In working with the mining and environmental communities on specific cases, some of the problems which currently exist in the plan could be resolved. From a claim owner's point of view, specific actions are more palatable than "reasonable guarantees".

4. Viewsheds. The concept of viewsheds is one which is becoming more popular in the planning field. However, we can find no statutory authority in the Wild and Scenic Rivers Act, or in the Guidelines for Evaluating Wild, Scenic, and Recreational River Areas Proposed for Inclusion in the National Wild and Scenic Rivers System Under Section 2, PL 90-542, dated September 7, 1982 for the creation of viewsheds in the Draft River Plan. ANILCA specifically restricts the wild and scenic river corridors to "not more than" 640 acres per mile. The four to eight mile boundary as discussed in the plan certainly exceeds this statutory limit. The provision for viewsheds should be eliminated in the draft river plan. Any viewshed for the river corridor beyond the 640 acre limitation which contains federal lands should be contained in the management plan for the Steese National Conservation Area.

5. Water Quality. The issue which is most frustrating to each side of the management issue is turbidity. The miners see it as an unattainable standard which costs them hours, dollars, and perhaps at some point, their mines. The recreationists perceive turbidity as evidence that miners do not care about the environment and as an esthetic negative. The challenge will be to develop new technology which will enable the miner to continue his livelihood while the recreationists enjoy the river. It is no secret that this problem may be the most difficult to solve.

At this time, the technology which would stop turbidity is either non-existent or cost prohibitive. The Commission recommends that efforts be made by federal agencies and State agencies to coordinate efforts to develop the necessary technology. It is necessary that the Plan clearly recognizes the lack of technology, the soil conditions and the efforts of the mining community to control this problem.

SPECIFIC COMMENTS

INTRODUCTION

Descriptions contained in Part I need to be re-written to include more complete information on soils, geologic, and historic data. The information must be verified for accuracy. Several errors already exist. The section must be written in a less negative fashion. State management responsibilities must be recognized.

The section on geological and mineral resources contains only two paragraphs on the resources of the river corridor. The first paragraph deals only superficially with the mineral resources while the second paragraph is primarily a commentary on the adverse effects of placer mining on the river. This is out of place in a section which is supposed to deal with resource description. Editorial comments should be omitted or reserved for more appropriate sections. Please note, too, that Harrison Creek is not in the headwaters of Birch Creek. It enters the river at River Mile 59.

Page 10 has a statement which says the effect of turbid water on biological resources is not precisely known, but is generally believed to be having an adverse impact. Page 21 has a statement that "degraded water quality caused by vehicle use and mining operations impairs the biological productivity of the river environment, harming the fishery and other aquatic wildlife." If turbidity and water quality are conclusively demonstrated to adversely affect biological resources on the river, this should be consistently stated. If, on the other hand, there is no conclusive proof available to indicate that they do adversely affect biological resources, this fact should be consistently stated.

Management Considerations

Item 4--Water Quality. This section contains conflicting statements. The section on minerals management states that most placer mining operations affecting the river corridor are properly located and are operating in compliance with State and federal regulations for resource protection. The section on water quality makes the statement that many placer mining operations within the watershed make little or no effort to limit effluent discharge in the tributaries of Birch Creek. Meetings with miners operating in the area indicate that most are making every effort to comply with existing water quality standards. Again, these conflicting statements should be reconciled.

The statement that implementation of water quality standards may increase costs or time to develop mining claims should be changed to state that costs will definitely increase.

Item 5--Water Rights. Water rights are not an issue. The State retains jurisdiction over water rights. This section appears to be put in just so there could be a place to say later that reservation of current water levels would be sought for the river.

Item 7--Visitor Management. What are "on-site management controls"?

Item 9--Biotic Resources. Care must be taken to identify the differences between managing endangered species which have been identified and those which are only "believed" to exist.

Management Actions

This section will require considerable revision before these management practices can be implemented. While the separate issues are outlined in each management action, there is little or no discussion or description on how they will be implemented. Reference to the statutory authorities for management are helpful, but a detailed description of the guidelines contained within the statutes is necessary in the river plan.

As a general comment, each management action should include the statement that it applies to the river corridor and not to surrounding or adjacent private, State or native lands. Many of the management actions are also stated in a very negative manner. By a simple rewording, negative reactions to them would be lessened or eliminated.

Action for Issue 1-Surface Transportation.

This management action must contain provisions which will accommodate guaranteed rights of access.

Action 1.3. Restrictions for vehicular movement should be contained in individual mining plans of operation.

Action for Issue 3-Minerals Management.

No management action affecting mineral development within the river corridor should extend beyond the boundaries of the corridor. Plans of operation for mining claims within the river corridor must not contain restrictions which are unreasonable or which will make operation of those claims economically unfeasible. Care must be taken that recreational gold-panning not take place on private lands or on valid claims.

Action for Issue 6-Facility Management.

Action 6.3: Change "may" to "shall".

Action for Issue 8-Non-Federal Land.

There is no need to acquire additional lands or interests in lands for any reason, since there are no private, native or State owned lands located within the corridor. Actions 8.1 and 8.2 should be eliminated. The Commission does not support acquisition of any lands, particularly through condemnation proceedings.

Action for Issue 9-Biotic Resources.

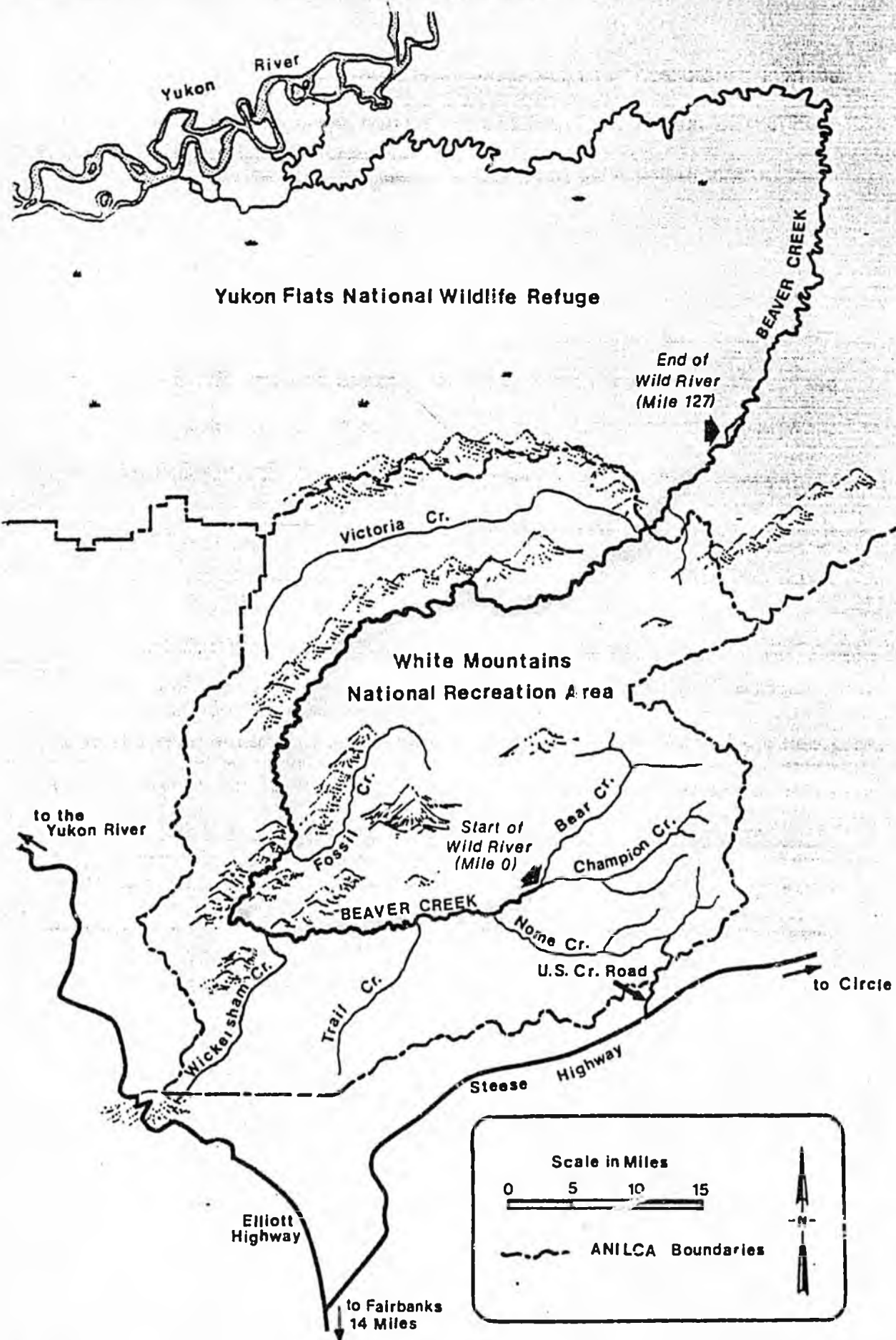
This section should not be limited to biotic resources within the river corridor. An inventory should be prepared for all natural resources within the corridor.

Action for Issue 11-Subsistence.

It has already been stated that there is no subsistence activity occurring within the corridor. There is no need to establish a management action.

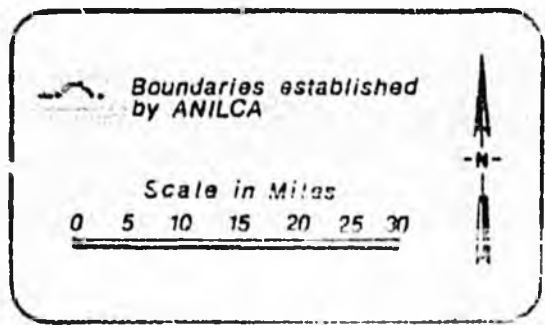
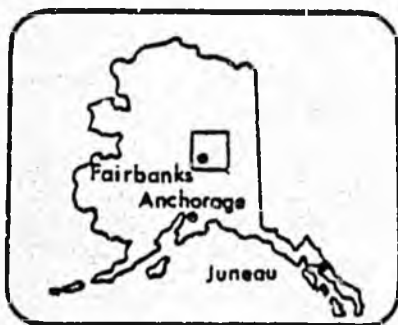
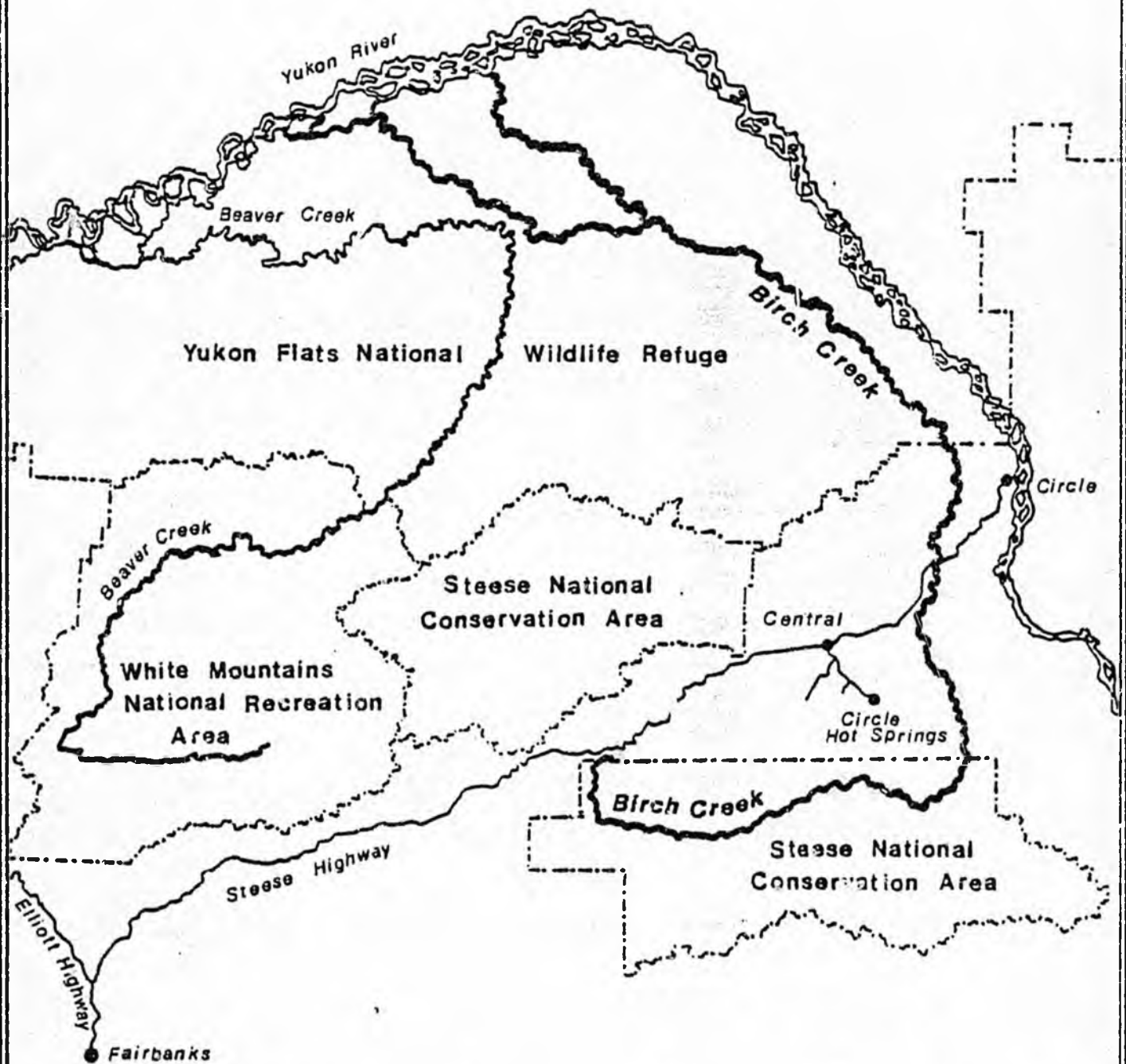
Beaver Creek National Wild River

Area Map



Birch Creek National Wild River

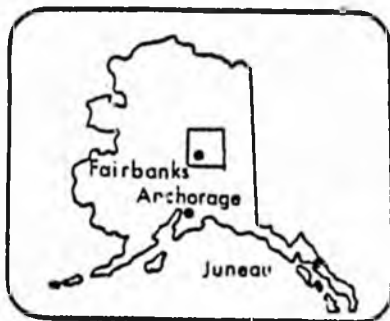
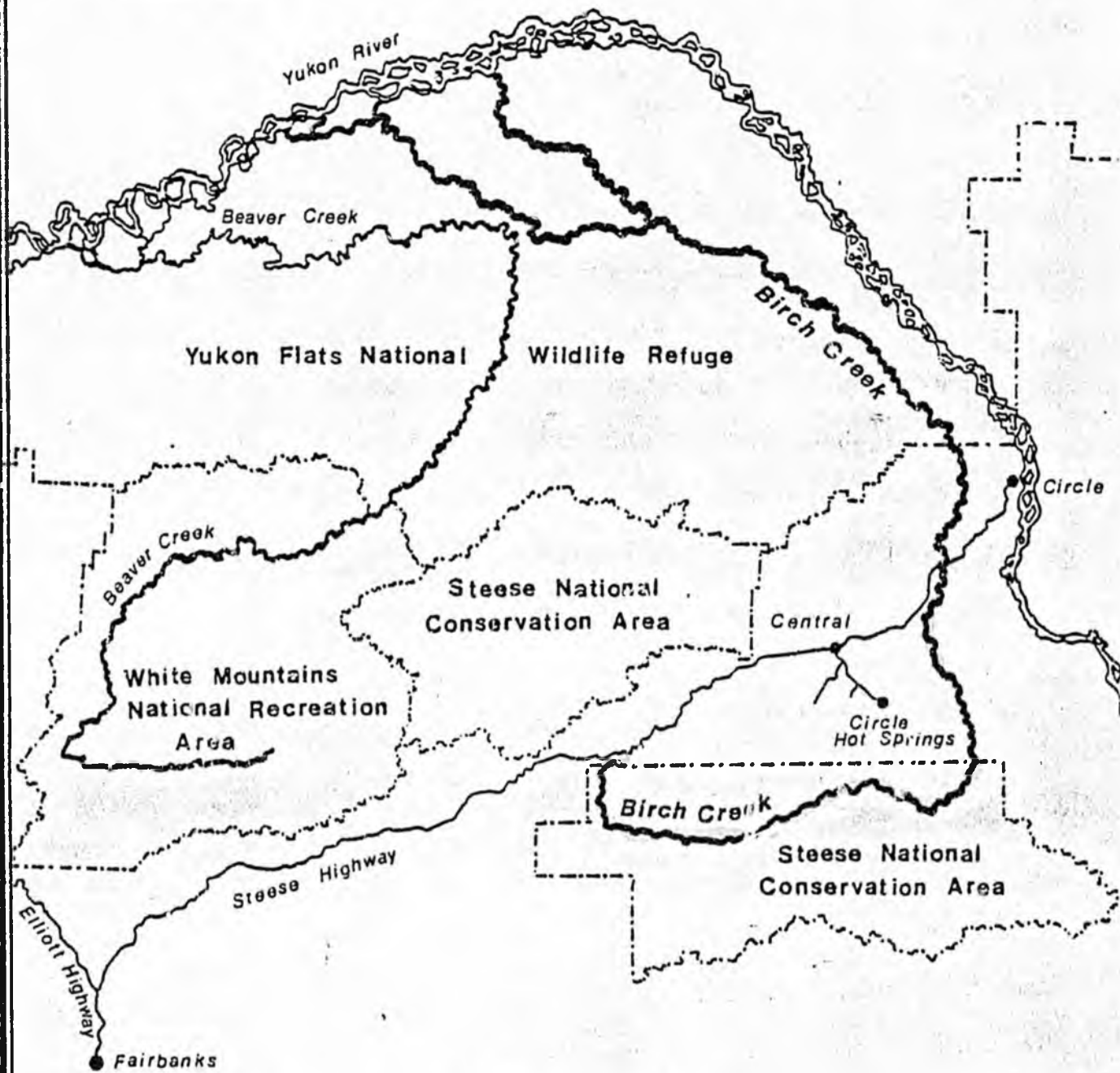
Regional Map



Birch Creek National Wild River

Regional Map

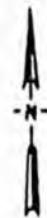
ALASKA ENVIRONMENTAL LOBBY
419 5th Street, Suite 328
Fairbanks, Alaska 99701



Boundaries established by ANILCA

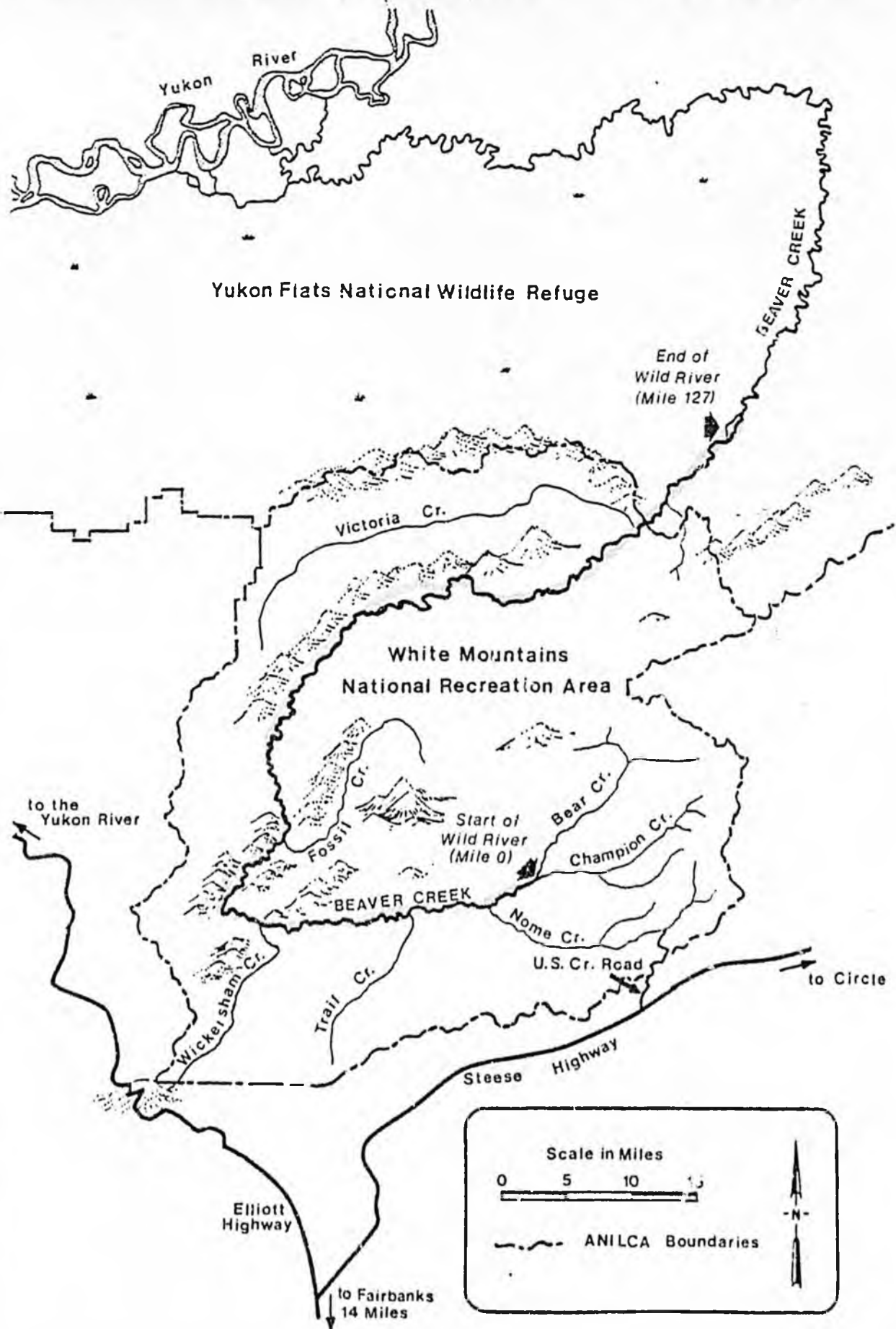
Scale in Miles

0 5 10 15 20 25 30



Beaver Creek National Wild River

Area Map



HJR

54

Alaska
MUNICIPAL
League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

January 23, 1984

To: House Resources Committee
From: Ginny Chitwood, AML Executive Director *Q.C.*
Re: HJR 54 - Supporting Variance Requests by Pulp Mills

The Alaska Municipal League urges your approval of HJR 54. Attached is a copy of the resolution in support that was unanimously adopted at the AML annual business meeting last November.

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE
SUPPORTING A VARIANCE FROM NATIONAL E.P.A.
REGULATIONS WHICH COULD FURTHER STRANGLE THE
ALASKA TIMBER INDUSTRY

WHEREAS, much of the economy of Alaska is dependent upon the health and continuance of the timber and fishing industries, and

WHEREAS there are two pulp mills in Alaska which process all of the pulp timber in Alaska, and

WHEREAS, the Environmental Protection Agency is considering forcing the pulp mills in Sitka and Ketchikan to upgrade to meet more stringent national waste water discharge standards, and

WHEREAS, to meet the national water discharge standards would entail burning the waste and thus cause further air pollution, and

WHEREAS, it is known that these more stringent standards would not significantly enhance the Alaskan environment, but it is also known that the cost of meeting the E.P.A. standards could force the pulp mills to close;

NOW, THEREFORE, BE IT RESOLVED:

That the Alaska Municipal League and its member municipalities fully support the variance request of the two Alaska pulp mills and urge the Environmental Protection Agency to grant the variance requests. The economy of Alaska and the individual jobs of our citizens need to be given great weight in the decision.

Adopted this 5th day of November, 1983.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



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

Senate

Committee on Resources

TO: Senate Resources Committee

FROM: Senate Resources Committee Staff

RE: Hearing on SJR 29, Supporting variance requests by pulp mills in Southeast Alaska.

DATE: January 13, 1984

On Monday, January 16, 1984 at 2:30 pm in the Beltz Room, the Senate Resources Committee will hear SJR 29, Supporting variance requests by pulp mills in Southeast Alaska.

The Alaska Lumber and Pulp Company (ALP), near Sitka, and Louisiana-Pacific/Ketchikan (LP/K), near Ketchikan, both engaged in the production of dissolving sulfite pulp, have requested a waiver from the national water pollution standards. These standards are to be met by all point source dischargers pursuant to the Clean Water Act.

In 1972, standards were established to limit the effluent discharge from pulp mills nationwide. Because of the "peculiar land, energy, and logistic constraints" which the Environmental Protection Agency (EPA) associated with ALP and LP/K, in 1974 they applied for and were granted permits allowing greater effluent discharge than pulp mills nationwide. [75 lbs./ton daily average, as compared to 60 lbs./ton nationwide.] In 1977, national standards were changed to limit discharge to 46.8 lbs./ton.

When the ALP and LP/K permits expired in 1979, the pulp mills requested a continued variance from EPA to allow discharge at the level determined in 1974 (75 lbs./ton). EPA regulations provide that upon finding factors relating to a particular discharge that are "fundamentally different" from the factors considered by EPA in establishing the national standards, alternative effluent limitations may be established for that discharge. The basis of ALP and LP/K's variance request centered around four factors:

SJR 29
1/13/84
page 2

- 1) Lack of land for disposal of wastewater solids.
- 2) Non-water quality environmental impacts, particularly the unavailability of external power sources.
- 3) The cost of compliance with the standards.
- 4) The lack of effect compliance would have on water quality.

In August, 1983, EPA made a tentative decision to deny the Fundamentally Different Factors variance request, based on the following findings:

- 1) The wastewater solids can be incinerated rather than landfilled.
- 2) ALP and LP/K have the capability of generating sufficient electricity.
- 3) Costs of compliance would not be disproportionate to the costs used in the guidelines.
- 4) According to EPA regulation, water quality is not a factor on which a variance can be granted.

Public comment was accepted on the tentative decision through December; a final decision by EPA is pending.

SJR 29 urges EPA to grant the variances requested by the mills, citing the economic impact of compliance with the national standard, the air pollution problem that would be created if the wastewater solids were burned, and the finding by the Alaska Department of Environmental Conservation that continued discharge will not violate state water quality standards.

TESTIMONY OF
THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BEFORE
THE U. S. ENVIRONMENTAL PROTECTION AGENCY
CONCERNING EPA'S PROPOSED DECISIONS
REGARDING
THE TWO ALASKA PULP MILLS

MY NAME IS DOCTOR RICHARD A. NEVE', COMMISSIONER OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION. I AM HERE TODAY TO TESTIFY ON THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSED DENIAL OF THE FUNDAMENTALLY DIFFERENT FACTORS VARIANCE REQUEST FROM THE ALASKA LUMBER AND PULP COMPANY, INCORPORATED, FOR THEIR SITKA MILL, AND THE LOUISIANA PACIFIC CORPORATION, KETCHIKAN DIVISION, FOR THEIR KETCHIKAN MILL.

THE EPA'S TENTATIVE DECISION TO DENY THE MILLS' REQUEST FOR A VARIANCE IS THE RESULT OF YEARS OF COMPLEX STUDY AND TECHNICAL WORK BY BOTH THE MILLS AND THE EPA. THE EPA'S FINAL DECISION WILL SUBSTANTIALLY CHANGE OUR VIEW OF BOTH MILLS' DRAFT NPDES PERMITS AND THE STATE OF ALASKA'S CLEAN WATER ACT SECTION 401 CERTIFICATION. BOTH THE PUBLIC AND THE STATE OF ALASKA NEED ADEQUATE TIME TO EVALUATE THE RELEVANT VERBAL AND WRITTEN COMMENTS PRESENTED AT THESE HEARINGS BEFORE PROVIDING MEANINGFUL INPUT ON THE EPA DRAFT NPDES PERMIT FOR THE MILLS. THEREFORE, I PETITION THE EPA TO EXTEND THE PUBLIC HEARING COMMENT PERIOD ON THE DRAFT NPDES PERMIT UNTIL IT HAS REACHED A FINAL DECISION ON THE VARIANCE REQUEST AND THE PROPOSAL FOR A SEPARATE SUB-CATEGORY FOR ALASKA.

OUR COMMENTS ON THE ESTABLISHMENT OF A SEPARATE ALASKA SUBCATEGORY OF THE PULP, PAPER, AND PAPERBOARD INDUSTRY WILL BE SENT TO ROBERT W. DELLINGER AS REQUESTED IN THE EPA'S PUBLIC NOTICE OF SEPTEMBER 23, 1983. I WILL MAIL YOU A COPY OF THAT LETTER FOR INCLUSION AS PART OF MY TESTIMONY HERE TODAY.

MY TESTIMONY, WITH THE ATTACHED WRITTEN DOCUMENTS, IS INTENDED TO HELP THE EPA AND THE ALASKAN MILLS SATISFACTORILY RESOLVE QUESTIONS SURROUNDING THE VARIANCE REQUEST. THESE WRITTEN DOCUMENTS IDENTIFY THE ITEMS WHICH MY DEPARTMENT BELIEVES NEED ADDITIONAL ATTENTION BEFORE THE EPA REACHES ITS FINAL DETERMINATION. THEY INCLUDE THE DEPARTMENT'S ANALYSIS OF THE EPA'S DECISION ON RESTORATION OF EXISTING COSTS THAT CONTRIBUTE TO ACHIEVING BEST PRACTICABLE TECHNOLOGY EFFLUENT LIMITATIONS AND A DISCUSSION OF COST ESTIMATES OF EXPANDED TREATMENT SYSTEMS THAT MAY BE NEEDED TO ACHIEVE BPT EFFLUENT LIMITATIONS.

THE EPA'S DECISION DOCUMENT DATED AUGUST 24, 1983, INDICATED THE NEED FOR BETTER QUANTIFICATION OF ADVERSE IMPACTS ON AIR QUALITY THAT WOULD RESULT FROM THE BURNING OF ADDITIONAL WASTEWATER SLUDGE. THE DOCUMENT ALSO POINTED OUT A LACK OF SUFFICIENT DATA TO IDENTIFY THE NON-WATER QUALITY ENVIRONMENTAL IMPACTS WHICH MAY RESULT IF THE VARIANCE REQUEST IS DENIED. MY STAFF HAS REVIEWED THE DECISION DOCUMENT WHICH SET THE STAGE FOR THE EPA'S PRELIMINARY DECISION TO DENY THE VARIANCE. OUR REVIEW OF THE EPA'S ANALYSIS REVEALED SOME AREAS THAT NEED FURTHER EXAMINATION BEFORE A FINAL DECISION IS MADE.

A PORTION OF THE COSTS INCURRED BY THE INITIAL EXPANSION OF THE WASTEWATER TREATMENT SYSTEMS IN THE LATE SEVENTIES HAS BEEN ESTIMATED BY THE INSTALLATION OF AN OIL BOILER. WHILE THIS MAY BE VALID TO ACCOUNT FOR THE POWER REQUIRED TO OPERATE THE WASTEWATER TREATMENT SYSTEM, THERE IS NO CREDIT ALLOWED FOR AN INCINERATOR TO BURN THE SLUDGE, THE POWER LOST IN EVAPORATING THE SLUDGE, AND, MOST IMPORTANTLY, THE COST OF CONTROLLING THE AIR POLLUTION FOR THE EMISSIONS FROM SLUDGE BURNING.

INCINERATION OF THE SLUDGE GENERATED BY OPERATION OF EXISTING SECONDARY WASTE-WATER TREATMENT CONTROLS HAS DELAYED BOTH MILLS' PROGRESS TOWARD COMPLIANCE WITH AIR QUALITY REGULATIONS. EXTENSIVE STUDIES AND THE INSTALLATION OF ADDITIONAL PROCESS CONTROLS HAVE BEEN NEEDED TO MINIMIZE THE SIGNIFICANT INCREASE IN AIR POLLUTANT EMISSIONS. ADDITIONAL CONTROLS ARE STILL NEEDED AT BOTH MILLS TO COMPLETELY CONTROL THE INCREASED AIR POLLUTION CREATED SINCE THE WASTEWATER TREATMENT PLANT SYSTEMS WERE INSTALLED IN THE LATE SEVENTIES.

THE COSTS OF THESE CONTROLS MUST BE CONSIDERED IN THE ANALYSIS OF WHETHER THE MILLS ARE BEING ASKED TO SPEND CONSIDERABLY MORE DOLLARS THAN EPA'S MODEL MILL.

A SECOND AREA THAT IS UNCLEAR IS THE ELIMINATION OF A LARGE PORTION OF CREDIT FOR THE REVISED SOLIDS HANDLING FACILITIES AT BOTH MILLS. THE REVISIONS PERFORMED AFTER THE INSTALLATION OF THE SECONDARY TREATMENT FACILITY ARE A RESULT OF THE WATER DISCHARGE REQUIREMENTS, AND SHOULD BE ALLOWED.

FINALLY, IN THE EVALUATION FOR THE COSTS OF WHAT WILL BE NEEDED TO BE INSTALLED TO MEET THE GUIDELINES TREATMENT, IT IS NOT CLEAR HOW THE ADDITIONAL SLUDGE GENERATED WILL BE HANDLED AND BURNED. IT IS POSSIBLE, HOWEVER, THAT THE ONLY VIABLE OPTION IS THE REPLACEMENT OF A POWER BOILER. IF THIS PROVES TO BE THE CASE, THEN THE COSTS TO MEET GUIDELINE LIMITS WILL NEED TO REFLECT THIS POSSIBILITY.

ALSO, THE COSTS OF ANY NEW PERMITS REQUIRED BY THE INSTALLATION OF A NEW BOILER OR SLUDGE INCINERATOR OR BY THE MODIFICATION OF AN EXISTING WOODWASTE BOILER MUST BE INCLUDED. ADDITIONAL SLUDGE BURNING WILL PROBABLY FALL INTO THE REQUIREMENTS OF A PREVENTION OF SIGNIFICANT DETERIORATION AIR QUALITY

PERMIT. THESE PERMITS CAN REQUIRE UP TO ONE YEAR OF BACKGROUND METEOROLOGICAL AND AIR QUALITY MONITORING DATA AND EXTENSIVE COMPUTER MODELING TO SHOW VIOLATIONS OF AIR QUALITY REGULATIONS WILL NOT OCCUR ON THE NEARBY HILLSIDES. THIS ANALYSIS CAN BE VERY EXPENSIVE.

OTHER PORTIONS OF THE DECISION DOCUMENT ARE UNCLEAR BUT IT IS MORE APPROPRIATELY DISCUSSED BY THE PULP MILLS. I REQUEST THE PULP MILL REPRESENTATIVES PROVIDE SPECIFIC INFORMATION REGARDING THE ADDITIONAL COSTS IN THESE AREAS ALONG WITH PROOF OF NON-WATER QUALITY ENVIRONMENTAL IMPACTS AS REQUESTED BY THE EPA.

SINCE THE EXPANSION OF THE SLUDGE HANDLING AND DISPOSAL SYSTEM IS A DIRECT RESULT OF THE EPA'S PROPOSED DENIAL OF THE VARIANCE, PROOF THAT THE PROPOSED SOLUTION TO SLUDGE DISPOSAL WILL NOT IMPACT AIR QUALITY IS NEEDED BEFORE THE VARIANCE REQUEST IS RESCINDED. WE DO NOT WANT TO BE IN THE POSITION WE WERE IN, IN 1980, OF COPING WITH AN AIR POLLUTION PROBLEM CAUSED BY WATER DISCHARGE CONTROLS. IN FACT, THAT PROBLEM STILL EXISTS TODAY.

MY DEPARTMENT IS COMMITTED TO REQUIRING THAT BOTH ALASKA LUMBER & PULP AND LOUISIANA-PACIFIC, KETCHIKAN DIVISION, MEET THE AIR QUALITY REGULATIONS FOR THEIR PULP MILLS. WERE THERE NO WASTEWATER SLUDGE TO INCINERATE IT IS PROBABLE THE MILLS WOULD ALREADY BE MEETING AIR QUALITY REQUIREMENTS. MY DEPARTMENT IS ALSO ON RECORD AS STATING THAT WATER QUALITY NEAR THE PULP MILLS, SIGNIFICANTLY IMPROVED OVER EARLIER YEARS, WOULD NOT BE MEASURABLY BETTER AS A RESULT OF EPA'S REQUIREMENTS. THE ADDITIONAL END-OF-PIPE TREATMENT TO REMOVE BIOLOGICAL OXYGEN DEMAND BY 28 POUNDS PER TON OF PULP PRODUCED WOULD NOT RESULT IN A MARKED IMPROVEMENT OF THE WATERS NEAR THE PULP MILLS.

THE PROPOSED VARIANCE WOULD ALLOW THE PULP MILLS TO MAINTAIN A WASTEWATER DISCHARGE WITH A BOD₅ LEVEL OF 75 POUNDS PER TON OF PULP PRODUCED. BASED ON OUR WATER QUALITY SURVEY IN 1980, IT IS OUR OPINION THAT THE EXISTING LEVEL OF BOD₅ CONTROL IS NOT CAUSING AN ADVERSE IMPACT ON THE RECEIVING WATERS.

EVEN THE AMOUNT OF CONTROL REALIZED BY THE DENIAL OF THE VARIANCE IS MISLEADING. UNDER THE PROPOSED GUIDELINES FOR BOD₅ CONTROL THE MILLS WOULD LOWER THEIR BOD₅ DISCHARGE BY ABOUT 28 POUNDS PER TON OF PULP PRODUCED. THE GUIDELINES, HOWEVER, WOULD ALSO ALLOW THE MILLS TO RAISE THEIR WASTEWATER EMISSIONS OF TOTAL SUSPENDED SOLIDS IN THE WASTEWATER DISCHARGE BY ABOUT 12 POUNDS PER TON OF PULP PRODUCED. THIS OCCURS BECAUSE THE VERY ACT OF TREATMENT TO REMOVE BOD₅ FROM THE WASTEWATER STREAM CREATES SLUDGE AND SUSPENDED SOLIDS.

PREVIOUS COMMISSIONERS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAVE VOICED THIS SAME CONCERN, THAT THE REDUCTION OF BOD FROM THE EFFLUENT RESULTS IN SLUDGE TO BE BURNED AND ADDITIONAL SUSPENDED SOLIDS TO BE DISCHARGED. OUR OBJECTIONS TO PERMITS PROPOSED IN 1973 AND 1980 WERE BASED ON THAT VERY SAME POINT.

WE AS REGULATORS IN AN EFFORT TO PROTECT THE ENVIRONMENT HAVE AN EQUAL RESPONSIBILITY TO REALIZE AND CONSIDER THE EFFECTS THESE REGULATIONS WILL HAVE IN OTHER PARTS OF THE ENVIRONMENT AND ON THE PEOPLE FOR WHOM THE ENVIRONMENT WAS CREATED. IN THIS CASE, IT APPEARS TO BE A MATTER OF MINIMAL GAIN IN ONE AREA FOR AGGRAVATED LOSSES IN OTHERS. IF THE PULP MILLS WERE PROVEN TO BE DESTROYING THE WATER QUALITY NEAR THE MILLS AND IF THE SECONDARY TREATMENT HAD NOT AND WILL NOT IMPACT THE AIR QUALITY OF THE AREA, YOUR DECISION WOULD MORE THAN LIKELY BE EASIER.

IN CONCLUSION, I WOULD LIKE TO STATE THAT THE DEPARTMENT DOES NOT PRESENTLY SUPPORT THE EPA'S TENTATIVE DECISION TO DENY THE PULP MILLS' REQUEST FOR A VARIANCE. IT APPEARS TO US THAT RECENT, UPDATED INFORMATION ON THE ECONOMIC FACTORS AFFECTING THE MILLS' VARIANCE REQUESTS IS VITAL TO THE FINAL DECISION AND MUST BE GIVEN SERIOUS ATTENTION. I URGE THE EPA TO CAREFULLY CONSIDER THE TESTIMONY BEING PRESENTED HERE, AND I LOOK FORWARD TO CONTINUING OUR COOPERATIVE EFFORT TO ACHIEVE A REALISTIC RESOLUTION OF THE ISSUE OF WASTEWATER CONTROL FOR THE PULP MILLS.

THANK YOU FOR THIS OPPORTUNITY TO PRESENT MY DEPARTMENT'S VIEWS.



Luke Popovich is contributing editor-national affairs for Pulp & Paper.

Treatment for its own sake

Press reports last month confirmed our doubts about the future of the Administration's dwindling effort to deregulate business. Officials at the Office of Management & Budget (OMB) told reporters the effort for now was dead—"ended," as they delicately put it. Since OMB was the locus maximus of the deregulation effort, sadly we must take these officials at their word that little will be done to discourage environmental regulation until after the 1984 election, assuming the home team wins.

Vice President Bush chaired the President's Task Force on Regulatory Relief, which closed down this summer, leaving to OMB the day-to-day vigilance over unnecessary rules. In signaling an end to the much-touted deregulatory effort, the Administration has borrowed liberally from the Vietnam antiwar strategy propounded by former Vermont Senator George Aiken: simply declare a victory, allow a self-satisfied smile, and withdraw. But if a thumping victory has been won against environmental regulation, the paper industry has yet to be informed.

AN ALASKAN CASE. Battlefield conditions still suggest that the war against treatment for treatment's sake is far from over. A story from Alaska illustrates the enemy's tenacity. Ketchikan Paper Co. and Alaska Lumber & Pulp Co. of Sitka applied to the Environmental Protection Agency for variances from secondary-treatment requirements under the Clean Water Act in December 1981. The companies had good reasons for asking a waiver from compliance with costly best practicable technology (BPT) requirements beyond the secondary treatment they had already employed.

First, the companies cited insufficient sites for installing sludge disposal facilities. Second, alternative power sources were not available to run generators during installation of control technology. Third, the additional treatment would harm other, nonwater values. Together, they said, additional requirements to treat then-nonhazardous wastes would cost more than EPA's model for similar reductions in the lower 48 states had suggested was proper. Nor would the treatment result in cleaner water.

Their case looked persuasive. The state's Department of Environmental Conservation and congressional delegation okayed the variance. So too did EPA's then-Region X administrator John Spencer on Dec. 28, 1981 recommend that the variance be approved. Again on May 10, he wrote to his EPA superiors in Washington for a variance, citing EPA's own view, dating back to 1974, that "the Alaska

mills are entitled to different treatment . . . because of peculiar land, energy, and logistical constraints." Not only were the companies entitled to a variance, he said, but since EPA staff thought the BPT rule for the sulfite pulp category was "too stringent," the rule ought to be reviewed for immediate suspension.

So it was somewhat surprising that on Aug. 29, EPA announced it had tentatively decided to deny the variance, citing the absence of "fundamentally different factors" in the Alaskan case that would justify suspension of the additional secondary treatment requirements. "We did a thorough economic test and didn't find that their costs were out of line" with those facilities in the lower 48, said one EPA official in Washington.

INSIDE EPA. But an internal EPA memo from the Washington staff to EPA's acting water chief dated Feb. 3, 1982 suggests a different motivation for the denial. "A variance based on these problems does not appear to be entirely foreclosed," conceded EPA staff. "Nevertheless," the memo continued, "this [approval] could present a legal problem" because the "Natural Resource Defense Council has been closely following" the case. Worse, the memo alluded to the many other variance applications EPA would be forced to answer if it granted this one, thus upsetting its priorities for approving industrial permits.

Instead of granting the variance, EPA staff suggested the agency grant the two firms a temporary suspension of the BPT rules for the pulp category. And what of the quality of receiving water in all this decision making? It seems that consideration was irrelevant; water quality per se is expressly forbidden to bear on the issue of BPT compliance, and so it is irrelevant to the approval or disapproval of a variance. "If what these companies must do doesn't affect water quality one bit, they still have to install [BPT technology]," said EPA water effluent expert Bob Dellinger in Washington, D.C.

Treatment for treatment's sake is not only pointless but expensive. If the tentative decision isn't overturned after the Nov. 15 comment period expires, officials of Alaska Lumber & Pulp claim they'll be forced to spend \$51 million to achieve mandated reductions of 28 lb/ton. That's in addition to the \$45 million they've already spent to get from 275 lb to 75 lb/ton. "We don't have \$51 million to dump into this project," complained one company spokesman. Too bad money, like environmental quality, has nothing to do with the issue.

Introduced: 1/10/84
Referred: Resources

BY WENDTE, GRUSSENDORF
AND MCBRIDE

1 IN THE HOUSE

2 HOUSE JOINT RESOLUTION NO. 54

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 Supporting variance requests by pulp
6 mills in Southeast Alaska.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS the Environmental Protection Agency is now considering vari-
9 ance requests from the pulp mills in Southeast Alaska; and

10 WHEREAS the pulp mills in Sitka and Ketchikan provide an economic base
11 by employing many residents of Southeast Alaska; and

12 WHEREAS the quality of water and marine life ^{is not} [has not been] adversely
13 affected by the current effluent discharge from the pulp mills; and

14 WHEREAS the Alaska Department of Environmental Conservation has found
15 that continued discharge will not ^{impact} violate state water quality [standards] and
16 supports the issuance of the variance; and

17 WHEREAS the former Environmental Protection Agency Regional Adminis-
18 trator issued a tentative decision on December 28, 1981, that would have
19 granted the variance; and

20 WHEREAS the variance being considered would enable the pulp mills to
21 continue to treat their waste products in a more efficient and economical
22 manner; and

23 WHEREAS the denial of the variance would constitute treatment for
24 treatment's sake, would create an air pollution problem if the mills did
25 comply and would most likely cause the pulp mills and related facilities to
26 cease operating because the cost of additional waste treatment is prohibi-
27 tive; and

28 WHEREAS the United States Forest Service has determined that the
29 closure of the pulp mills would cause a ^{\$147.6} \$143 million per year loss of

1 income in Southeast Alaska;

2 BE IT RESOLVED that the Alaska State Legislature urges that the vari-
3 ances requested by the mills be granted; and be it

4 FURTHER RESOLVED that the Alaska State Legislature urges the Environ-
5 mental Protection Agency to consider the loss of income in the event of the
6 mills' closure as part of the cost of achieving guideline best ^{Practical} [practicable]
7 technology in determining whether the cost of compliance is wholly out of
8 proportion to the model mill.

9 COPIES of this resolution shall be sent to the Honorable Ronald
10 Reagan, President of the United States; the Honorable William Ruckelshaus,
11 Administrator of the Environmental Protection Agency; Ernesta Barnes,
12 Regional Administrator of the Environmental Protection Agency; and to the
13 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and
14 the Honorable Don Young, U.S. Representative, members of the Alaska delega-
15 tion in Congress.

Offered: 1/18/84
Referred: Rules

Louisiana Pacific

Original sponsors: Eliason, Ziegler
Ray, et al

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE JOINT RESOLUTION NO. 29 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION

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19 granted the variance; and

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21 continue to treat their waste products in a more efficient and economical
22 manner; and *Environmental*

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1 income in Southeast Alaska;

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14 the Honorable Don Young, U.S. Representative, members of the Alaska delega-
15 tion in Congress.

Forest Service Presentation to the House Resources Committee,
Alaska Legislature, Regarding
HJR 54 -- "Supporting Variance Requests
by Pulp Mills in Southeast Alaska"

3:00 p.m., January 23, 1984, Room 118, Alaska Capitol Building
Konrad B. Reinke, Director, Office of Information

The Forest Service is pleased to provide testimony on House Joint Resolution 54 relating to EPA's decision to deny the Fundamentally Different Factor Variance for secondary treatment of effluent from Alaskan pulp mills. James S. Watson, former Ketchikan Area Forest Supervisor, presented testimony on this matter to the EPA at a hearing in Ketchikan on May 11, 1976, concerning secondary treatment for the Ketchikan Pulp Company. Forest Service Supervisors Gee and Green also provided testimony to EPA on the subject at two hearings in November, 1983.

The significance of the timber industry to the economy of Alaska is fully recognized by the Forest Service. At the same time, the Forest Service is in full agreement with objectives of the Clean Water Act. We believe that a healthy timber-based economy can exist within the framework of this Act.

The value of the pulp industry to the economy of Southeast Alaska has been recognized since near the turn of the century. The efforts of many Alaskans during the first half of the century were instrumental in the development of the pulp industry in Alaska during the early 1950's. Some of the original and still valid objectives are: (1) encouraging the development of Alaska, (2) the establishment of new industry with a commercially sound and permanently economical basis while providing due regard for the protection of the natural resources of Alaska, and (3) specifically for the establishment of the pulp mill industry for the efficient utilization of forest products.

The nature and composition of the commercial forests of Southeast Alaska along with Pacific Rim markets dictate the type of industry needed to efficiently utilize the timber. Most of the timber stands are mature and overmature western hemlock with considerable defect. The optimal market for these stands is pulpwood. Without the pulp market, less than one-half of these stands would be marketable. There is no feasible economical opportunity to harvest saw logs only with such operations being silviculturally or environmentally acceptable. Integrated and balanced markets for both pulpwood and saw logs are key to sustaining the timber base economy of Southeast Alaska.

The Sitka and Ketchikan pulp mills provide the only economic outlet for pulpwood in Southeast Alaska. The plants have a total capacity of 392,000 short tons of pulp annually. Approximately 334 MMBF of logs are required each year for this production level. The material comes from National Forest, State of Alaska, and Alaska Native Corporation lands.

Closure of one or both mills will have a significant impact on Southeast Alaska and reverse decades of effort on the part of many to strengthen and diversify the economy. Well over 2,500 jobs could be lost to the Regional economy with the closure of these pulpmills.

We have recently evaluated the effects of closure of both pulp mills upon the economy of Alaska. A conservative estimate of the direct and indirect reduction in income as a result of the closure of both mills is \$147.6 million annually. This estimate assumes no alternative market for pulp logs and hemlock cant production can continue independent of pulp production.

This was derived by using the Alaska Interactive Policy Analysis Simulation System developed by the Forest Service (Pacific Northwest Forest and Range Experiment Station) in cooperation with the University of Minnesota.

Indirectly, the pulp industry has also provided benefits to Alaska and the country as a whole that exceeded the original objectives. These benefits relate to the continuing development of a critically needed ground transportation network in Southeast Alaska and the balance of payments through heavy export of timber products from Alaska.

An example of the benefits to the transportation network is the approximately 70 miles of State highway system on Prince of Wales Island which links several island communities to the Alaska Marine Highway system. These State highways were developed by improving existing roads that were originally constructed for the harvest of timber. Currently there are about 300 miles of State highways in Alaska that were developed in this fashion, and more are planned.

Since most of Alaska's wood products are exported, indirect benefits may be more significant than the direct contribution to the Nation's economy. Alaska has historically exported many of its resource-based products in raw or semi-processed form. Logs, lumber, dissolving pulp, minerals, fish, and natural gas are the primary exports. Alaska major trading area is the Pacific Rim, accounting for nearly two-thirds of Alaska's domestic and foreign trade. Japan is Alaska's principal trading partner, representing more than 90 percent of Alaska's foreign import/export trade. The value of forest products exported has increased roughly 65 percent since 1976, with the greatest growth in round log and pulp exports. Forest exports represent approximately one-quarter of the total value of exports from Alaska, or about \$190 million dollars in 1983.

However, Alaska is supplying less than 1 percent of the total volume of wood being used in Japan, South Korea, the Peoples Republic of China, and Taiwan. Competition from Canada and other exporting countries is keen. Purchasers of National Forest timber in Alaska must meet much higher utilization, environmental practices, and primary manufacturing requirements than those required by these competing countries. These requirements add to the cost of production, and with the current poor market situation both the long-term pulp

timber sales are at or near "base rates" with little room to absorb additional production costs. Under present markets, these two pulpmills may not be able to operate if these requirements are to be imposed at this time.

Although we foresee some improvement in markets for the next rate redeterminations on the long-term sales, there is little chance that markets will improve to the point of absorbing the construction and operating costs of the additional secondary treatment requirements being considered. To date the mills have spent approximately \$49 million for environmental protection measures.

In our statement we have avoided making judgments on the impacts of effluent discharge on water quality. We recognize that the law simply does not provide for consideration of effects on receiving waters as the criterion for granting a variance. However, requiring sizeable expenditures if there is no improvement in water quality would seem inconsistent with the objective of environmental protection as well as the efforts to improve the competitive position of the United States in world markets.

GOOD AFTERNOON. MY NAME IS BILL SHEFFIELD, AND I AM THE GOVERNOR OF THE STATE OF ALASKA. I AM HERE TO DISCUSS THE STATE'S POSITION IN REGARD TO THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSED DENIAL OF WAIVERS TO CERTAIN WATER POLLUTION CONTROL REQUIREMENTS REQUESTED BY TWO PULP AND PAPER MILLS IN SOUTHEAST ALASKA.

I HAVE RECEIVED MANY, MANY LETTERS OF CONCERN LATELY FROM CITIZENS OF MY STATE ABOUT EPA'S TENTATIVE DECISION. THEREFORE I AM PRESENTING IN MY TESTIMONY THE STATE'S SENTIMENTS -- WHICH ARE SHARED BY MY CONSTITUENTS -- ABOUT THE SOLID REASONS WHICH WE BELIEVE SHOULD BE CAUSE FOR EPA TO REVIEW AND HOPEFULLY GRANT THE REQUEST FOR WAIVERS.

I SHOULD ADD THAT DUE TO THE IMPORTANCE OF THIS ISSUE TO THE STATE, I HAVE REQUESTED COMMISSIONER NEVE' OF THE STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND COMMISSIONER LYON OF THE STATE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO WORK WITH EPA AND OTHER RELEVANT PARTIES TO ACHIEVE A RESOLUTION OF THIS ISSUE THAT WILL BE REASONABLE, FAIR AND JUST.

THEY WILL BE TESTIFYING SEPARATELY ABOUT THE DETAILS OF THE MILLS' SITUATION, SO I WILL CONFINE MY REMARKS TO THE BROADER POLICY ISSUES. MY HOPE TODAY IS TO MAKE A CONVINCING CASE FOR EPA TO ACCEPT OUR OFFER OF TAKING ANOTHER LOOK AT THE PULP MILLS' REQUEST, AND TO WORK WITH THE STATE TO DEVELOP A EQUITABLE DECISION FOR THE MILLS.

THE CRUX OF OUR CONCERNS IS THAT EPA'S PROPOSED ACTION WILL HAVE SIGNIFICANT NEGATIVE ECONOMIC EFFECTS ON THE MILLS. EPA'S ACTION WILL BE TAKEN MERELY TO ACHIEVE WASTE DISCHARGE REDUCTIONS WHICH ARE NOT NECESSARY IN TERMS OF ENVIRONMENTAL PROTECTION.

I RECOGNIZE THAT THE ENVIRONMENTAL PROTECTION AGENCY AND THE TWO PULP MILLS HAVE BEEN IN DISCUSSIONS OVER THIS ISSUE FOR A LONG TIME. I ALSO UNDERSTAND THAT THE THRUST OF EPA'S CASE SUPPORTING ITS PROPOSED ACTION DOES NOT FUNDAMENTALLY HAVE TO DO WITH THE EFFECT OF THE MILLS' DISCHARGE ON LOCAL WATER QUALITY. RATHER, IT CENTERS AROUND THE CONCLUSION THAT THE COSTS OF INSTALLING ADDITIONAL POLLUTION CONTROL EQUIPMENT ARE NOT EXCESSIVE, ACCORDING TO EPA'S CURRENT INTERPRETATION OF LAW.

OUR DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS MONITORED THE TWO SITES IN QUESTION EXTENSIVELY FOR A NUMBER OF YEARS. WE CONCLUDE, CATEGORICALLY, THAT THERE IS NO APPRECIABLE ADVERSE EFFECT ON WATER QUALITY BY THE MILLS AT THE CURRENT LEVEL OF DISCHARGE. THEREFORE THE EPA DECISION, IF SUSTAINED, MAY WELL BE A CLASSIC EXAMPLE OF IMPOSING ADDITIONAL POLLUTION CONTROL REQUIREMENTS FOR THEIR OWN SAKE, AND NOT FOR ANY IDENTIFIABLE AND NEEDED ENVIRONMENTAL PROTECTION.

I AM SURE EPA IS SUBJECT TO LEGAL AND POLICY CONSTRAINTS WHICH HAVE CONTRIBUTED TO THE TENTATIVE DECISION. BUT I MUST BELIEVE THERE IS FLEXIBILITY TO ENABLE THE AGENCY TO REACH A DIFFERENT CONCLUSION BASED ON ALASKA ENVIRONMENTAL CONDITIONS OR ON THE RESULTANT COSTS TO THE MILLS.

AS GOVERNOR, I CANNOT STAND BY WHILE UNNECESSARY COSTS AND SEVERE ECONOMIC HARDSHIP TO MANY OF OUR CITIZENS IN SOUTHEAST ALASKA ARE LOOMING AS A RESULT OF WHAT APPEARS TO BE EPA'S DETERMINATION TO PREVAIL IN THIS MATTER, DESPITE THE MERITS.

WE ARE ASKING EPA TO AVOID A NEEDLESS THREAT TO THE VIABILITY OF THE TWO PULP MILLS AND TO THOUSANDS OF PRIMARY AND ASSOCIATED JOBS IN OUR STATE. WE ARE NOT ASKING EPA TO

18 matter, despite the merits.

19 We are asking EPA to avoid a needless threat to
20 the viability of the two pulp mills and to thousands of
21 primary and associated jobs in our State. We are not
22 asking EPA to avoid this threat at the risk of degrading
23 the environment or abandoning their official responsi-
24 bilities.

25 In EPA's effort to develop our nation's water
1 quality program, it has an obligation to consider the
2 effects of its controls on specific geographical areas
3 and in light of other environmental impacts. In the case
4 of Alaska's two pulp mills, EPA must consider this.

5 The two mills, in Sitka and Ketchikan, are
6 still reeling from the effects of a nation-wide depres-
7 sion, as is the nation's entire timber and pulp industry.
8 The mills are being told to spend millions of dollars for
9 an environmental improvement that cannot be measured in
10 terms of appreciable or significantly improved water
11 quality, and which may result in discernible air quality
12 degradation.

13 In the past, when we faced the question of how
14 to achieve the mutually-shared goal of cost effective
15 environmental protection, the Federal EPA and the State
16 Department of Environmental Conservation have always
17 worked closely together to obtain a satisfactory resolu-
18 tion. Usually, everyone has engaged in some give-and-
19 take and then concluded an agreement. In order to con-
20 tinue this history of cooperation, I hope these hearings
21 do not serve to start a confrontation. They must be the
22 beginning of a new attempt at dialogue. A fresh effort
23 focused on reaching an agreement acceptable to the State
24 and to EPA is of crucial importance to me. I commit
25 myself and my Administration to this goal and ask that

1 EPA do the same.

2 At my request, Commissioner Neve has developed
3 options available to the State to deal with EPA's tenta-
4 tive decision, including a review of the State's respon-
5 sibilities and obligations under Section 401 of the Clean
6 Water Act, and the Coastal Zone Management Act. They
7 have been provided to me and we are assessing these op-
8 tions carefully. To allow time to work together with EPA
9 and to explore collectively these options, I would like
10 to request that EPA extend the public comment period on
11 the proposed water discharge permits.

AND THE COASTAL ZONE MANAGEMENT ACT. THEY HAVE BEEN PROVIDED TO ME, AND WE ARE ASSESSING THESE OPTIONS CAREFULLY. TO ALLOW TIME TO WORK TOGETHER WITH EPA AND TO EXPLORE COLLECTIVELY THESE OPTIONS, I WOULD LIKE TO REQUEST THAT EPA EXTEND THE PUBLIC COMMENT PERIOD ON THE PROPOSED WATER DISCHARGE PERMITS.

TO BE SURE THAT THE PUBLIC DOCKET IS COMPLETE, I WOULD ALSO LIKE TO SUBMIT AS WRITTEN TESTIMONY THE LETTER I SENT LAST MONTH WITH ATTACHMENTS TO EPA ADMINISTRATOR RUCKELSHAUS. THE ATTACHMENTS INCLUDE THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S TESTIMONY AT THE PREVIOUS HEARING ON THE ISSUES BEING DISCUSSED TONIGHT AND VARIOUS LETTERS FROM ALASKA RESIDENTS WHICH DISCUSS THESE ISSUES.

IN CONCLUSION, I WOULD SIMPLY LIKE TO REITERATE THAT DENIAL OF THESE WAIVERS, IF IT WERE TO OCCUR, WILL HAVE A SIGNIFICANT ADVERSE IMPACT ON MY STATE -- BOTH ECONOMICALLY AND ENVIRONMENTALLY. THUS, I URGE EPA TO RE-EXAMINE ITS POSITION AND ASK WHETHER THESE IMPACTS ARE REALLY NECESSARY -- ON GROUNDS OF ENVIRONMENTAL BENEFITS, ECONOMIC CONSEQUENCES, OR AS A MATTER OF SOUND PUBLIC POLICY. THE STATE OF ALASKA REMAINS HOPEFUL THAT EPA WILL CONCLUDE THAT A DIFFERENT COURSE OF ACTION SHOULD BE TAKEN.

THANK YOU.

HJR

57

PETROLEUM REVENUE
(\$ Million; Nominal)

FY	<u>DOR</u> 50%	<u>DOR</u> 50%	<u>OMB</u> <u>Estimate</u>	<u>OMB</u> <u>Estimate</u>	<u>OMB</u> <u>Estimate</u>	Total Petroleum Revenue
	Gross Royalties	Severance Taxes	Corporate Petroleum Income Tax	Property Tax (Oil/Gas)	Federal Mineral Revenue Sharing	
1985	1,370	1,370	300	222	17	3,279
1986	1,480	1,450	325	226	18	3,499
1987	1,670	1,630	350	259	18	3,927
1988	1,820	1,520	363	257	18	3,978
1989	2,080	1,730	384	277	18	4,489
1990	2,140	1,770	374	230	18	4,582
1991	1,950	1,540	361	285	18	4,154
1992	1,940	1,460	359	309	18	4,086
1993	1,940	1,430	350	337	18	4,075
1994	1,900	1,370	341	352	18	3,981
1995	1,770	1,270	331	364	18	3,753
1996	1,650	1,100	322	339	18	3,429
1997	1,700	1,140	325	388	18	3,571
1998	1,750	1,150	327	405	18	3,650

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Warrigell
Type Petroleum
45,000,000 Grant
40,000,000 Grant
85,000,000 Total Grant
130,000,000 Total Price

Contributions to MPF (\$ Million; Nominal)				Contributions to Permanent Fund (\$ Million; Nominal)		
FY	Total Petroleum Revenue	10% to MPF FY 85 - 90	10% to MPF FY 85 - 90 5% to MPF FY 91 - 98	Non. Tax. Pet. Rev. (Excl. Bonuses)	Perm. Fund Contribution Rate	Perm. Fund Contributions
	1985	3,279	328	328	1,387	.25
1986	3,499	350	350	1,498	.25	375
1987	3,927	393	393	1,698	.25	422
1988	3,978	398	398	1,838	.25	460
1989	4,489	449	449	2,098	.25	525
1990	4,582	458	458	2,158	.25	540
1991	4,154		208	1,968	.25	492
1992	4,086		204	1,958	.27	529
1993	4,075		204	1,958	.27	529
1994	3,981		199	1,918	.28	537
1995	3,753		188	1,788	.28	501
1996	3,429		171	1,668	.29	484
1997	3,571		179	1,718	.30	515
1998	3,650		183	1,768	.30	530
TOTAL		2,376	3,912			

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UNRESTRICTED GENERAL FUND REVENUE
(\$ Million)

FY	Pet. Rev. Minus P.F. Contr.	<u>CMB</u> <u>Estimate</u> Investment Income	<u>OMB</u> <u>Estimate</u> Other (Non-Pet.) Revenue	Unrestricted Gen. Fund Revenue	Unrestricted Gen. Fund Revenue (1985 dollars)
	1985	2,932	250	253	3,435
1986	3,124	250	272	3,646	3,440
1987	3,505	250	287	4,042	3,609
1988	3,518	250	303	4,071	3,421
1989	3,964	250	320	4,534	3,598
1990	4,042	250	337	4,629	3,454
1991	3,662	250	355	4,268	3,006
1992	3,557	250	376	4,183	2,789
1993	3,546	250	397	4,193	2,637
1994	3,444	250	420	4,114	2,434
1995	3,252	250	443	3,945	2,204
1996	2,945	250	469	3,604	1,928
1997	3,056	250	495	3,801	1,891
1998	3,120	250	524	3,894	1,828

MPF CUMULATIVE BALANCE

<u>Deposit Date</u>	<u>Deposit Amount</u>	<u>9% Interest</u>	<u>Balance</u>	<u>Balance Date</u>	<u>Balance in \$ 1985 (6% inflation)</u>
1-1-85	328	30	358	12-31-85	358
1-1-86	350	64	772	12-31-86	728
1-1-87	393	105	1,270	12-31-87	1,134
1-1-88	398	150	1,818	12-31-88	1,528
1-1-89	449	204	2,471	12-31-89	1,961
1-1-90	458	254	3,193	12-31-90	2,383
1-1-91	208	306	3,707	12-31-91	2,611
1-1-92	204	352	4,263	12-31-92	2,842
1-1-93	204	402	4,869	12-31-93	3,062
1-1-94	199	456	5,524	12-31-94	3,269
1-1-95	188	514	6,226	12-31-95	3,478
1-1-96	171	570	6,973	12-31-96	3,670
1-1-97	179	644	7,796	12-31-97	3,879
1-1-98	183	718	8,697	12-31-98	4,083

Assumptions: 1) 10% 1985 - 1990; 5% 1991 - 1998.

2) No expenditures from the fund.

3) MPF lump sum deposit in the middle of the fiscal year.

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AMENDMENT 2

In Section 1, amending proposed Section 17(a) after "exceed \$100,000,000 in cost" add "and provide money for the weatherization fund".
Add a new Section 17(b) which reads *Notwithstanding (b) and (c) of this section,* "10 per cent of the annual revenue paid into the major projects fund shall be paid into a fund reserved for weatherization" *under A.S. 44.47.050 (18) and Residential Energy Conservation Fund under A.S. 45.89.0*
Add a new Section 17(g) which reads "Notwithstanding (c) of this section money may expended from the major projects fund for weatherization."

This amendment is designed to make up for deficiencies in the present approach of subsidization of energy costs which reduces the incentive to conserve energy and save money in that manner. By paying instead for the weatherization of homes across the state significant savings would be realized to consumers.

7:15 PM

ANCHORAGE

TO TESTIFY:

- 1.) BILL BATT; AK. POWER AUTHORITY
- 2.) ~~DEAN~~ GRIMES; FIRST SOUTHWEST; DALLAS, TX
- 3.) TONY DEAN; JOHN NEULLER CO.; CHICAGO, ILL.

TO OBSERVE + ANSWER QUESTIONS:

- 1.) LEWIS GREEN BAUM; BOYES PITT; CHICAGO
- 2.) STEVEN McALEN; FIRST BOSTON CORP. N.Y.
- 3.) TIM SEAGRAVES; R.W. BECK + ASSOCIATES;
SEATTLE, WA.