

ALASKA LEGISLATURE COMMITTEE FILE 1903-1904

3023 SSA SB 68-71 (FILE 9) - SB 83 8672

THIS AGREEMENT, made and entered into as of the 16 day of December, 1982, by and between MARATHON OIL COMPANY, hereinafter referred to as "Seller", and ALASKA PIPELINE COMPANY, hereinafter referred to as "Buyer",

WHEREAS, Buyer owns and operates a natural gas pipeline transmission system within the State of Alaska; and

WHEREAS, Seller owns or controls oil and gas leaseholds and/or lands located on or near the Kenai Peninsula, Alaska, which leaseholds and/or lands are further described in Exhibit "A" attached hereto and made a part hereof, and Seller has a supply of gas available from said leaseholds and/or lands and is desirous of selling a portion of such gas to Buyer; and

WHEREAS, Buyer desires to purchase such gas from Seller for a portion of the requirements of its said system;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties do hereby covenant and agree as follows:

#### I. DEFINITIONS

The parties hereto have agreed that, except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used herein and shall be construed to have meanings as follows:

1. The term "day" shall mean a period of twenty-four (24) consecutive hours beginning and ending at eight o'clock a.m. local time.

2. The term "month" shall mean a period beginning at eight o'clock a.m. on the first day of a calendar month and ending at eight o'clock a.m. on the first day of the next succeeding calendar month.

3. The term "year" shall mean a period of twelve (12) consecutive months beginning on January 1 next succeeding the date deliveries

of gas commence hereunder, and beginning each succeeding date of January 1. The period of time from the date deliveries of gas commence hereunder until the following January 1, and the period of time from the last date of January 1 occurring during the term of this Agreement until the end of the term of this Agreement shall each be considered to be a year.

4. The term "gas" shall mean natural gas including both gas well gas and oil well gas, and the residue gas therefrom of merchantable quality as described in Article X hereof.

5. The term "Mcf" shall mean one thousand (1,000) cubic feet.

6. The term "delivery capacity" shall mean the maximum quantity of gas, expressed in Mcf, which can be withdrawn (subject to any valid rules, orders and regulations of any State or Federal regulatory body) in any one day from the leaseholds and/or lands of Seller covered by this Agreement and which is available for delivery to Buyer at the points of delivery hereunder at the pressure provided for in Article VI hereof.

7. The term "Annual Contract Quantity" is the quantity of gas Seller agrees to sell and deliver to Buyer and Buyer agrees to take and pay for, or pay for if available whether taken or not, during each year of the term hereof, as said quantity is determined from time to time pursuant to the provisions of this Agreement.

8. The term "Total Contract Quantity" is the sum of the Annual Contract Quantities up to but not exceeding a total of two-hundred fifty million (250,000,000) Mcf, as said quantity is determined from time to time pursuant to the provisions of this Agreement.

9. The term "Swing Rate" shall mean the maximum rate of delivery of gas expressed in Mcf per day which Buyer shall have the right to request Seller to deliver from time to time, and which Seller shall have available for delivery, as said rate is determined from time to time pursuant to the provisions of this Agreement.

10. The term "FERC" shall mean the Federal Energy Regulatory Commission or any successor governmental authority.

11. The term "Btu" shall mean British Thermal Unit and the term "MMBtu" shall mean one million British Thermal Units.

12. The term "gross heating value" shall mean the total calorific value expressed in Btu's obtained by the complete combustion, at constant pressure, of the amount of the gas which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees Fahrenheit (60°F) if saturated with water vapor and under a pressure equivalent to that of thirty (30) inches of mercury at thirty-two degrees Fahrenheit (32°F) and under standard gravitational force (980.665 cm. per second per second) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by combustion is condensed to the liquid state.

## II. PRECEDENT CONDITIONS AND SCOPE OF AGREEMENT

1. Subject to all of the terms, conditions, reservations and limitations herein set forth, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from Seller, gas, in the quantities hereinafter provided which Seller owns, controls, or otherwise has the right to dispose of and which is produced from or attributable to Seller's lands described in Exhibit "A" attached hereto and made a part hereof; subject, however, to the reservation by Seller of sufficient gas therefrom for compliance with any and all gas commitments made by Marathon Oil Company prior to the date of this Agreement including that certain Gas Purchase Contract, dated May 13, 1960, between Marathon Oil Company, et al, Seller, and Alaska Pipeline Company, Buyer, as heretofore amended and supplemented (see Exhibit "B").

2. Each of the parties hereto agrees to proceed with due diligence in a good faith effort to obtain Governmental authorizations as may be necessary to enable performance of this Agreement. The performance of this Agreement is subject to such Governmental authorizations being issued in form satisfactory to both Seller and Buyer, and either party will have the right to cancel this Agreement if such authorizations are not issued in form satisfactory to such party on or before March 1, 1983. Each party hereto shall promptly notify the other party in writing when such party has received authorization and whether or not it is acceptable. It is agreed and understood that a determination as to whether or not such authorization is acceptable shall be made in the sole and exclusive discretion of the party to whom such authorization is issued. Upon receipt and acceptance by both Buyer and Seller of the necessary Governmental authorizations referred to above, Buyer and Seller agree to commence and prosecute with due diligence

all things necessary to enable Seller to deliver and Buyer to receive at the point or points of delivery hereinafter specified the quantities of gas contemplated by this Agreement. Subject to the other provisions of this Agreement, the initial delivery of gas hereunder shall commence as soon as Buyer's and Seller's facilities to receive and deliver gas from the Beaver Creek Unit Area are installed and operative. If initial delivery of gas hereunder has not commenced by March 1, 1983, as extended for time lost because of force majeure, and if this failure to commence delivery is due to the failure of either party to prosecute the completion of its facilities with the due diligence required above, then either party who is then ready and able to commence performance hereunder shall have the right and option to terminate and cancel this Agreement by serving thirty (30) days advance written notice upon the other party, whereupon both parties shall be relieved of any further liability hereunder.

3. Seller will advise Buyer regarding the productive status of each leasehold and/or tract of land described in said Exhibit "A", and Seller agrees as soon as practical to inform Buyer as to any reductions of the leaseholds and/or lands covered by this Agreement, including, without limitation, any termination, release, and/or assignment of any of the leaseholds and/or lands or portions thereof covered by this Agreement, and further agrees as soon as practical to inform Buyer of any changes in the productive status of any such leaseholds and/or lands. Seller shall not be precluded from abandoning any wells or any leaseholds or permitting the lapse of any leases or mineral rights which, in Seller's sole judgment, are deemed to be unproductive commercially or without substantial value; provided, however, Seller agrees to provide Buyer with copies of any regulatory authorizations

required of Seller upon abandoning any wells or leaseholds or portions of leaseholds or permitting the lapse of any leases or mineral rights or portions thereof.

### III. RESERVATIONS OF SELLER

Seller hereby expressly reserves unto Seller the following rights with respect to the leaseholds and/or lands covered by this Agreement together with sufficient gas produced from said leaseholds and/or lands to satisfy such rights:

1. The right to operate Seller's oil and gas producing properties and to use gas produced from such properties for operation of Seller's oil and gas producing properties free from any control by Buyer in such manner as Seller, in Seller's sole discretion, may deem advisable; including, without limitation the right, but never the obligation, to drill new wells, to repair and rework old wells, to renew or extend, in whole or in part, any oil and gas lease covered hereby, and to abandon any well or surrender any such oil and gas lease, in whole or in part, when no longer deemed by Seller to be capable of producing gas in paying quantities.

2. The right, free from any and all control by Buyer, to continue participation in or to form or to participate in the formation of any unit which may include all or any part of Seller's properties subject to this Agreement, and thereafter to increase or decrease Seller's properties contained in such unit so formed and to pool and combine any unit or any part of any unit with properties owned by others; provided, however, that this Agreement shall continue to apply to the interest of Seller in any unit so formed, or, having been formed, continued, increased or decreased, to the extent Seller's interest in said unit is derived from the land initially or subsequently made subject to this Agreement.

3. The right to use gas produced from said leaseholds and/or lands for delivery to the lessors of Seller's leases committed hereto which such lessors are entitled to use under the terms of such existing leases.

4. The right to use gas produced from said leaseholds and/or lands for the operation of the facilities which Seller may install in order to deliver gas hereunder in accordance with the terms hereof.

5. To use gas produced from the leases described in Exhibit "A" hereof for gas lift operations.

6. Seller specifically reserves the exclusive right to process, or cause to be processed, at all times and from time to time, gas to be delivered hereunder (and to use such gas as fuel for such processing), prior to delivery thereof to Buyer for the recovery of liquefiable hydrocarbons (other than methane, except methane necessarily removed in such processing), sulfur, helium and other gaseous components. It is understood that Buyer shall not acquire any right, title or other interest under this Agreement in any products resulting from such processing.

#### IV. RESERVE DETERMINATIONS AND PROVISION FOR THIRD PARTY SALES

1. The term "Seller's Gas Reserve" as used in this Agreement shall mean the total quantity of future recoverable gas contained in the various gas-bearing formations underlying the oil and gas leaseholds and/or lands described in Exhibit "A" attached hereto, which are attributable to the interest of Seller, less the estimated volumes of gas reserved and/or heretofore committed to others by Seller. Exhibit "B" attached hereto lists the gas sales and rental obligations of Seller which are in effect and outstanding prior to the date of this Agreement.

2. Promptly after the date of this Agreement, Seller shall make a determination of Seller's Gas Reserve and provide the results thereof to Buyer.

Such determination shall include all gas-bearing formations in and under Seller's oil and gas leaseholds and/or lands that are subject to the terms of this Agreement. Seller shall make available to Buyer all information, material and data which Seller has available and does not consider confidential concerning Seller's Gas Reserve so that Buyer can make its own determination if it so desires. Should Buyer disagree with Seller's determination, the parties hereto shall endeavor to agree upon a determination of Seller's Gas Reserve; provided, however, if agreement has not been reached within ninety (90) days after Seller provides Buyer with said information, material and data, then the determination shall be made by arbitration as provided in Article XVII hereof. The effective date for said determination of Seller's Gas Reserve shall be the date of this Agreement. Seller's Gas Reserve as determined pursuant to this Paragraph 2 shall remain in effect until re-determined under the provisions of Paragraph 3 of this Article IV.

3. Redeterminations of Seller's Gas Reserve shall be made in the same manner as provided in Paragraph 2 of this Article IV upon the written request by either Seller or Buyer, but in no event sooner than one (1) year after the date of the last determination; provided, however, if agreement as to such Gas Reserve has not been reached within ninety (90) days after redetermination was requested, then a redetermination shall be made by arbitration as provided in Article XVII hereof. The effective date for any redetermination of Seller's Gas Reserve shall be the first day of the month following the date of notice by either Seller or Buyer for such redetermination.

4. If, as a result of the initial determination or redetermination of Seller's Gas Reserve under Paragraphs 2 or 3 of this Article IV, it is

determined that Seller's Gas Reserve is less than the undelivered portion of the two-hundred fifty million (250,000,000) Mcf anticipated to be delivered to Buyer hereunder, then the Annual Contract Quantities and Swing Rates set forth in Paragraph 1 of Article V hereof remaining on the effective date for such determination or redetermination shall be adjusted as of such date by multiplying said Quantities and Rates by a fraction, the numerator of which is Seller's Gas Reserve as determined or redetermined and the denominator shall be the undelivered portion of said two-hundred fifty million (250,000,000) Mcf. The Total Contract Quantity will be reduced by an amount equal to the sum of such reductions in Annual Contract Quantity.

5. Seller shall have the right and option during the term hereof, at any time or times, to sell and deliver gas produced from Seller's Gas Reserve to any new gas purchaser or purchasers, or to increase sales to the gas purchasers set forth in Exhibit "B" hereof; provided, however, such gas to be sold is not, in Seller's sole judgement, needed to meet its obligations to Buyer hereunder.

In reaching its decision for such additional sales, Seller agrees that it will not on or after the date hereof enter into a contract or contracts for the sale of gas from Seller's Gas Reserve which obligates the Seller to deliver more than Seller's Gas Reserve less the undelivered portion of the Total Contract Quantity and less the undelivered portion of delivery obligations under such other contracts entered into by Seller subsequent to the date of this Agreement.

In addition, Seller will provide in the sales contracts with said gas purchasers that if any redetermination of Seller's Gas Reserve made subsequent to said sale(s) is found to be less than that last determined or redetermined pursuant to Paragraphs 2 or 3 of this Article IV, the quantities remaining to be delivered to such purchaser(s) shall be reduced to meet the

short fall in Seller's delivery obligation to Buyer hereunder. It is, however, expressly understood and agreed that Seller shall not be liable for its failure or inability to deliver to Buyer the total quantity of gas contemplated hereunder by reason of the inadequacy of Seller's Gas Reserve or the sale and delivery of gas in accordance with this Paragraph 5 to such other purchaser(s).

6. Subject to all the terms, conditions, reservations, and limitations set forth in this Agreement, Seller will deliver to Buyer during the term hereof a Total Contract Quantity of gas up to but not in excess of two-hundred fifty million (250,000,000) Mcf, which will be delivered exclusively from the lands and leaseholds described in Exhibit "A". Seller does not warrant and Buyer agrees that this Agreement shall not be construed by Buyer that Seller has warranted, either expressed or implied, that Seller's Gas Reserve as of the date of this Agreement will contain two-hundred fifty million (250,000,000) Mcf.

It is further agreed, that Buyer shall have no call upon gas from any other lands or leaseholds of Seller and that Buyer's right to gas under this Agreement is limited exclusively to gas produced from the lands and leaseholds described in Exhibit "A" hereto. Seller, however, reserves the right, in its sole discretion, to specifically add to the lands and leaseholds described in said Exhibit "A" without in any way enlarging its delivery obligations hereunder.

#### V. QUANTITY OF GAS

1. Subject to the provisions of this Agreement, Seller agrees to sell and deliver to Buyer and Buyer agrees to take and pay for, or pay for if available whether taken or not, during each year during the term hereof,

a quantity of gas which is at least equal to the Annual Contract Quantity shown in the following schedule:

<u>Year</u>	<u>Annual Contract Quantity (Mcf)</u>	<u>Swing Rate (Mcf per day)</u>
1983	8,000,000	26,000
1984	9,000,000	32,000
1985	9,000,000	35,000
1986	14,000,000	100,000
1987	14,000,000	110,000
1988	15,000,000	120,000
1989	16,000,000	130,000
1990	18,000,000	133,000
1991	19,000,000	130,000
1992	19,000,000	130,000
1993	27,000,000	125,000
1994	27,000,000	115,000
1995	27,000,000	95,000
1996	16,000,000	60,000
1997	12,000,000	35,000

Total Contract Quantity      257,000,000 Mcf

The gas to be delivered by Seller hereunder at any time and from time to time may, at Seller's option, be delivered from Seller's gas reserves underlying the leases covered hereby within the (a) the Kenai Unit Area, (b) the Beaver Creek Unit Area, or (c) the Trading Bay Unit Area ("Unit Areas"), or any combination thereof. In order to enable Buyer to develop hardware requirements for each Unit Area, Seller will cooperate with Buyer by providing on March 1, 1983, and on January 1 of each year thereafter a written 2 year development plan for each Unit Area.

2. The Total Contract Quantity, the Annual Contract Quantities and the Swing Rates set forth in Paragraph 1 of Article V hereof shall be reduced whenever and to the extent that any Lessor or Lessors within the Kenai Unit Area, the Beaver Creek Unit Area or the Trading Bay Unit Area shall exercise partially or wholly any right to take in kind its share of royalty gas attributable to Seller's leaseholds and/or lands covered by this Agreement.

3. Seller recognizes that Buyer's ability to take the Annual Contract Quantity is limited to demands for gas made on Buyer by Buyer's customers and that if said customers discontinue or reduce their demands for Buyer's gas as a result of obtaining increased quantities of gas from any source other than Buyer or any affiliate of Buyer, then to the extent of such increased quantities Buyer's Annual Contract Quantity obligation to Seller shall be reduced, and the Total Contract Quantity will be reduced by an amount equal to the sum of said reductions in Annual Contract Quantities. In such event, Seller's Swing Rate obligation shall be proportionally, expressed as a percentage, reduced simultaneously.

4. Seller further recognizes that Buyer's ability to take the Annual Contract Quantity(s) provided for in this Agreement is limited to demands for gas made on Buyer by increased demand(s) by Buyer's customers and that if such customers' projected demand(s) fail to materialize, then undue hardship will result as to Buyer. Therefore, notwithstanding any other provisions of this Agreement, if, in its sole discretion, Buyer determines at any time and from time to time that Buyer cannot market some or all of the gas to be delivered hereunder at the Annual Contract Quantity(s) provided for herein due to a decrease in said projected demand, Buyer shall so notify Seller in writing, no later than April 1 of any year, identifying the lower annual quantity(s) which Buyer projects it will be able to market during the following year(s); provided, however, that notwithstanding the other provisions of this Paragraph 4, such lower annual quantity(s) shall never be less than seventy (70) percent of the Annual Contract Quantity(s) for any year(s), set forth in Paragraph 1 of this Article V on the date hereof as adjusted pursuant to Paragraph 4 of Article IV and Paragraphs 2 and 3 of Article V.

As of January 1 of the following year the Annual Contract Quantity(s) shall be the identified lower annual contract quantity(s) as set forth in the hereinabove mentioned notice from Buyer; provided, however, in consideration of the relief provided by Seller to Buyer, Buyer agrees to pay to Seller for all gas delivered a premium on the then adjusted applicable gas price, including any premium deliverability charge in effect, as determined by Article XI as follows:

If the Annual Contract Quantity is Reduced		The Adjusted Applicable Price per MCF Shall be Increased By
From	To	
0%	10.0% or less	5.6%
more than 10.0%	20.0% or less	12.5%
more than 20.0%	30.0% or less	21.4%

Thereafter, the Total Contract Quantity will be irrevocably reduced by an amount equal to the difference between the scheduled quantity(s) and such lower annual contract quantity(s) ("released quantity(s)") and Seller shall have the right to commit and deliver all or any portion of such released quantity(s) for Seller's own use or to any other purchaser.

If Seller has not committed such released quantity(s) to its own use or another purchaser, Seller shall have the right and option to extend the term of this Agreement by recommitting such quantity(s) to Buyer, including a Swing Rate which, when divided by the daily average of the quantity to be delivered each year, yields a ratio of 1.33, otherwise upon the same terms and conditions set forth herein, provided Seller gives Buyer written notice three (3) years prior to the end of the term of this Agreement.

If during the term hereof Buyer elects to reduce the Annual Contract Quantity as set forth hereinabove, Buyer agrees to concurrently reduce in the same proportion the Annual Contract Quantity as to all other contracts entered into by Buyer after November 1, 1982. Buyer also agrees to take gas ratably, in so far as operationally possible from all others supplying gas to Buyer during said year(s). For the purposes hereof the term ratably shall

mean in the same proportion as each supplier's applicable Annual Contract Quantity bears to the sum of the applicable Annual Contract Quantities of all such suppliers for said year(s).

5. Seller shall, with due diligence, operate the lands and leaseholds subject to this Agreement in a skillful and reasonably prudent manner to the end that Seller's delivery capacity shall be maintained from time to time during the term hereof equal to the Swing Rates provided for in this Agreement; provided, however, in the event Seller should at any time during a year fail or be unable to develop, or having developed fail to maintain, the delivery capacity necessary to deliver to Buyer the applicable Swing Rate, the Swing Rate for the remainder of such year shall be reduced to a quantity equal to Seller's delivery capacity. Further, for any year that the Swing Rate is reduced to Seller's delivery capacity, the Annual Contract Quantity for the remainder of such year shall be reduced in the same proportion as the reduction in the Swing Rate. In the event there is a further change in Seller's delivery capacity during such year, the Annual Contract Quantity and Swing Rate for the remainder of such year shall thereafter be either further reduced or increased, as the case may be, by the method hereinabove set forth; provided, however, the Annual Contract Quantity and Swing Rate as may be increased by the foregoing provision shall never exceed the Annual Contract Quantity and Swing Rate for such year set forth in Paragraph 1 of this Article V on the date of this Agreement. No such adjustment of Swing Rate and Annual Contract Quantity during any year shall affect the Swing Rate and Annual Contract Quantity for any subsequent year, all of which shall remain as set forth in Paragraph 1 of Article V unless modified pursuant to other provisions of this Agreement; provided, however, if Seller's delivery capacity remains below the Swing Rate for each of two successive years after 1986, then Buyer shall have the option to reduce the Swing Rate for each remaining

year of the term of the contract by an amount equal to the difference between Seller's delivery capacity maintained during and the Swing Rate for the last such successive year. Should Buyer exercise this option, the Annual Contract Quantity will be reduced for each such remaining year of the term of this Agreement in the same proportion, expressed as a percentage, as the reduction in the Swing Rate for each such year, and the Total Contract Quantity will be reduced by an amount equal to the sum of such reductions of Annual Contract Quantity. To determine the quantity of gas Buyer is required to pay Seller for whether taken or not, during any year that more than one Annual Contract Quantity may be in effect, the several volumes of the Annual Contract Quantity shall be prorated on the basis of the portion of the year each such volume was in effect.'

6. Seller's delivery capacity may be determined upon request by either party by actual measurements and calculations and shall be estimated or calculated for each month in the months in which no actual tests are made using the result of the last actual test, if any as the basis of the estimation. Tests may be made by individual wells or groups of wells. Each test will be for a period of seven (7) consecutive days during which time the wells will be produced at the maximum efficient rate of flow, as determined by Seller against the pressures provided for in Article VII hereof or under such other conditions as determined by mutual agreement of the parties. For purposes of determining Seller's delivery capacity, the average of the rates during the last two days of each test shall be deemed to be the delivery capacity.

7. If, during the term of this Agreement, Buyer has not taken and paid for or paid for whether taken or not, two-hundred fifty million (250,000,000) Mcf (which quantity may have been reduced from time to time pursuant to the provisions of Paragraph 4 of Article IV and Paragraphs 2, 3, 4 and the exercise of Buyer's option in Paragraph 5 of Article V hereof) due to reductions

in any of the Annual Contract Quantities established in Paragraph 1 of this Article V and such reductions were due to Seller's failure or inability to maintain the applicable Swing Rates, then the term of this Agreement shall be extended for a period of time sufficient to enable Buyer to purchase and receive a volume of gas equal to the lesser of (1) the difference between the volume actually taken and paid for and said two-hundred fifty million (250,000,000) Mcf (as may have been reduced as above stated) or (2) the total of the reductions in Annual Contract Quantity resulting from Seller's failure or inability. Said extended period shall not exceed the time required for Seller to deliver said volume at the rate of ninety (90) percent of Seller's delivery capacity. The price to be paid for any such gas shall be the volume weighted average of the prices paid for gas delivered hereunder subsequent to the time Seller failed or was unable to maintain the applicable Swing Rates.

8. It is understood and agreed that nothing in this Agreement shall be construed to require Seller to produce and deliver or Buyer to purchase and receive from Seller or pay Seller for any quantities of gas in excess of that which may be produced under the applicable rules, regulations and orders of regulatory bodies having jurisdiction. It is expressly understood that Buyer shall have the right and option to purchase at any time and from time to time such daily quantity of gas as it desires up to the Swing Rate then in effect, and in addition, such daily quantities of gas, if any, in excess of the Swing Rate then in effect which in Seller's sole judgement can be produced and delivered from Seller's lands and leaseholds efficiently and in accordance with good operating practices. It is recognized that Seller is not obligated to provide facilities to meet the quality specifications set forth in Article X for quantities of gas in excess of the Swing Rate in effect from time to time, and therefore any additional gas which Buyer may elect to receive under this paragraph, which is in excess of the capacity of Seller's

facilities as then installed, may be by-passed around such facilities and the quality specifications of Article X shall not apply to such excess quantity. The taking by Buyer of such by-passed gas shall be at Buyer's sole risk.

9. In the event Buyer is required by the provisions of this Agreement to pay Seller for a quantity of gas which Buyer shall not have actually taken during any year of the term hereof, then during the years next succeeding the year in which Buyer has failed to take the gas so paid for, all gas taken by Buyer from Seller which is in excess of the Annual Contract Quantity for the current year shall be known as Make-up Gas and shall be delivered without charge to Buyer until such excess equals the amount of gas previously paid for but not taken; provided, Buyer will pay Seller any price differential between that price previously paid and that price in effect when such Make-up Gas is actually taken. In the event Buyer has not by the end of the term of this Agreement made up all gas paid for but not taken, then Seller shall refund, without interest, monies to Buyer for that portion of the gas volumes paid for but not taken which Seller is unable to deliver as a result of Seller's wells not being capable of producing all of such volumes as Make-up Gas when produced at their delivery capacity throughout the remaining term following the year in which Buyer has failed to take the gas so paid for; provided, however, in lieu of accepting such refund, Buyer shall have the right and option to extend the term of this Agreement for a period of time which is sufficient to enable Buyer to receive the volumes paid for but not received. Said extended period shall not exceed the time required for Seller to deliver said volume at the rate of ninety (90) percent of Seller's delivery capacity.

10. Notwithstanding any other provision in this Agreement to the contrary, Buyer agrees to purchase, or to pay for if available and not taken,

all of the oil well gas tendered by Seller to Buyer hereunder; subject, however, to Buyer's right to refuse to accept delivery of any such gas pursuant to the provisions of Article X hereof.

VI. POINTS OF DELIVERY

1. The points of delivery for the gas to be delivered by Seller to Buyer hereunder shall be at the inlet of Buyer's meter to be located as follows:

- (a) Kenai Unit Area - At the upstream flange of Buyer's master meter located in Section 30, Township 5 North, Range 11 West, Kenai Peninsula Borough, Seward Base, and Meridian, Alaska.
- (b) Beaver Creek Unit Area - At the upstream flange of Buyer's meter to be installed at or near Buyer's existing pipeline within the NW 1/4 SW 1/4, Section 7, Township 6 North, Range 10 West, Seward Meridian.
- (c) Trading Bay Unit Area - At a mutually agreeable point between Seller's and Buyer's existing pipeline facilities near Nikiski, Alaska.

2. As between the parties hereto, Seller shall be in control and possession of the gas deliverable hereunder and responsible for any damage to property or injury or death of persons caused thereby, and Seller shall protect, defend, and indemnify Buyer, its agents, servants, employees, officers, and directors to the full extent that the law will allow, prior to the delivery to Buyer. After the gas has been delivered to Buyer, Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or death of persons or damage to property caused thereby, and Buyer shall protect, defend, and indemnify Seller, its agents, servants, employees, officers, and directors to the full extent that the law will allow.

## VII. PRESSURE

1. The gas delivered hereunder at the points of delivery specified under Paragraphs 1(a) and 1(c) of Article VI hereof, shall be delivered into Buyer's facilities at the pressure existing therein from time to time; provided, however, that Seller shall not be required to deliver such gas at a pressure (a) in excess of seven hundred (700) pounds per square inch gauge prior to January 1, 1986; (b) in excess of five-hundred (500) pounds per square inch gauge from January 1, 1986, through December 31, 1992; nor (c) in excess of two-hundred fifty (250) pounds per square inch gauge thereafter during the term hereof. Each year during the term hereof, Seller shall provide Buyer with a pressure forecast for each of the next succeeding two years. The use of such forecasts by Buyer shall be at Buyer's sole risk.

2. The gas delivered hereunder at the point of delivery specified under Paragraph 1(b) of Article VI hereof shall be delivered into Buyer's facilities at the pressure existing therein from time to time but not in excess of one-thousand (1,000) pounds per square inch gauge, and so long as Seller's natural well pressures are sufficient to permit Seller to continue deliveries at such pressure existing in Buyer's line. When the natural well pressures decline Seller shall not be required to deliver such gas at a pressure (a) in excess of seven-hundred (700) pounds per square inch gauge prior to January 1, 1986; (b) in excess of five-hundred (500) pounds per square inch gauge from January 1, 1986, through December 31, 1992; nor (c) in excess of two-hundred fifty (250) pounds per square inch gauge thereafter during the term hereof.

3. Neither Buyer nor Seller shall be obligated to install or operate compression facilities in order to deliver or receive gas hereunder, but either may do so at its option. In the event, however, that the gas

cannot be delivered at the aforesaid pressures, and if neither Seller nor Buyer installs or operates compression facilities; then either party, at its option, may request that the Unit Area in question be removed from this Agreement upon thirty days written notice to the other party, unless such other party advises the party giving such termination notice within said thirty (30) day period that it elects to take steps to meet such delivery pressures. In the event any Unit Area is removed from this Agreement, a redetermination of Seller's Gas Reserve shall be made immediately upon such removal in accordance with all applicable provisions of Article IV hereof.

4. Buyer shall make reports to Seller, as often as may be necessary in practice, of the pressure at which the gas is being delivered hereunder and the rate of such deliveries. Seller shall have agents or employees available at all times to receive from Buyer's dispatchers advices and requests for changes in the rates of delivery of gas hereunder as required by Buyer from time to time. Buyer recognizes that Seller's leaseholds are situated in an isolated location and therefore a reasonable period will be allowed for Seller to comply with the dispatching requests of Buyer.

#### VIII. MEASURING STATIONS

1. Buyer shall install, maintain, and operate or cause to be operated, at Buyer's own expense, at or near each point of delivery, a measuring station, designed and installed in accordance with the current recommendations of the American Gas Association, properly equipped with orifice meters, and other necessary equipment, including gas temperature recorder, by which the volume of gas delivered hereunder shall be measured. The orifice meters shall utilize flange taps and shall be installed, maintained, and operated with volumes computed in accordance with the American Gas Association Gas Measurement Committee Report No. 3, revised 1969 (ANSI/API 2530, First Edition), and as such has been or may be revised

from time to time. Seller shall have access to such metering equipment at reasonable hours, but the calibrating and adjusting thereof shall be done by Buyer. The changing and integrating of charts shall be done by Buyer.

2. Seller may install, maintain, and operate, at its own expense, such pressure regulators and check measuring equipment as it shall desire and Buyer to the extent that Buyer has the right to do so, hereby grants to Seller the right to install, maintain, and operate such equipment in and connected to Buyer's measuring station or stations, provided that such equipment shall be so installed as not to interfere with the operation of Buyer's measuring equipment. Buyer shall have access to such check measuring equipment at reasonable hours, but the reading, calibrating, and adjusting thereof and the changing of charts shall be done by Seller.

3. Each party shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of their owner, but upon request each will submit to the other its records and charts, together with calculations therefrom, for inspection and verification, subject to return within thirty (30) days after receipt thereof.

4. In the event a meter is out of service or registering inaccurately, the volumes of gas delivered hereunder shall be estimated:

(a) by using the registration of any check meter or meters if installed and accurately registering, or in the absence of (a);

(b) by correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculations, or in the absence of both (a) and (b), then:

(c) by estimating the quantity of delivery by deliveries during periods under similar conditions when the meter was registering accurately.

5. At least once each month, Buyer shall verify the accuracy of its measuring equipment and Seller will verify the accuracy of its check-measuring equipment. If either party shall notify the other that it desires to test the accuracy of any measuring equipment, the parties shall cooperate to secure a prompt verification of the accuracy of such equipment.

6. If, upon test, any measuring equipment is found to be not more than one percent (1%) inaccurate, previous records of such equipment shall be considered accurate in computing deliveries hereunder. In the event any measuring equipment shall be found to be inaccurate to the extent that it affects the measurement accuracy by an amount exceeding one percent (1%), at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not definitely known or agreed upon, such correction shall be for a period extending over one-half (1/2) of the time elapsed since the date of last test, not exceeding a correction period of sixteen (16) days. If any measuring equipment is found by test to be measuring inaccurately, such equipment shall be adjusted at once to measure accurately.

7. Each party shall preserve for a period of at least four (4) years all test data, charts and other similar records.

#### IX. MEASUREMENTS

1. The sales unit of the gas deliverable hereunder shall be one (1) Mcf of gas.

2. The volume of the gas delivered hereunder shall be determined as follows:

(a) The unit of volume for the purpose of measurement shall be one (1) cubic foot of gas at the base temperature of sixty degrees Fahrenheit (60°F) and at a pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch absolute with correction for deviation from Boyle's Law.

(b) The average absolute atmospheric pressure shall be assumed to be fourteen and seven-tenths (14.7) pounds to the square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

(c) Unless the parties hereto agree to the use of a spot test method, the specific gravity of the gas delivered hereunder shall be determined by the use of a recording gravitometer which is generally accepted in the industry. When a recording gravitometer is used, the arithmetical average of the specific gravity of gas flowing through the meters shall be used in computing gas volumes. If a spot test method is used, the specific gravity of the gas delivered hereunder shall be determined at monthly intervals or more often if found necessary in practice. Any such test shall determine the specific gravity to be used in computation of volumes effective the first day of the following month and shall continue to be used until changed in a like manner by subsequent test.

(d) The temperature of the gas shall be determined by a recording thermometer so installed that it will record the temperature of the gas flowing through the meters. The average of the record to the nearest one degree Fahrenheit (1°F), obtained while gas is being delivered, shall be used in computing measurements for that day.

#### X. QUALITY OF GAS

1. Seller agrees that:

(a) The gas delivered hereunder shall have a gross heating value of not less than nine hundred fifty (950) Btu's per cubic foot nor more than one thousand fifty (1,050) Btu's per cubic foot. In the event that the gross heating value of the gas tendered for

delivery hereunder falls below nine hundred fifty (950) Btu's per cubic foot, Buyer shall have the right to refuse to accept said gas so long as said heating value remains below nine hundred fifty (950) Btu's per cubic foot. In the event that the gross heating value of the gas tendered for delivery hereunder exceeds one thousand fifty (1,050) Btu's per cubic foot, Buyer shall have the right to refuse said gas so long as said heating value remains above one thousand fifty (1,050) Btu's per cubic foot.

(b) The gross heating value of the gas shall be determined from a representative composite gas sample taken at the point of measurement by periodic tests to be conducted monthly by Buyer or at such other intervals as the parties may mutually agree. The determination may be made by means of a calorimeter using the Thomas principle of calorimetry or its equal or by calculation from the component analysis using NGPA Publication 2145 (or the most recent revision) -- "Physical Constants of Paraffin Hydrocarbons or Other Compounds of Natural Gas".

2. Seller agrees that the gas delivered hereunder:

(a) Shall not contain more than four (4) pounds of water per million cubic feet of gas.

(b) Shall not contain more than one (1) grain of hydrogen sulfide per one hundred (100) cubic feet of gas.

(c) Shall not contain more than twenty (20) grains of total sulfur per one hundred (100) cubic feet of gas.

(d) Shall not contain in excess of:

(i) Three percent (3%) by volume of carbon dioxide; or

(ii) One percent (1%) by volume of oxygen.

(e) Shall not exceed one hundred twenty degrees Fahrenheit (120°F) in temperature at the point of delivery.

(f) Shall be commercially free from dust, gums, gum forming constituents, or other liquid or solid matter which might become separated from the gas in the course of transportation through pipelines.

3. All units of measurements of gas required in this Article X shall be at a temperature of sixty degrees Fahrenheit (60°F) and at an absolute pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch.

4. Buyer shall have the right to refuse to accept delivery of any and all gas which fails to meet the quality requirements of this Article X.

#### X1. PRICE

1. The amount to be paid by Buyer to Seller for gas delivered to Buyer hereunder shall be as follows:

(a) Subject to the provisions of Paragraph 2 below, the base price to be paid by Buyer to Seller for gas delivered to Buyer hereunder shall be \$2.32 per Mcf.

(b) As adjusted pursuant to the provision of Paragraph 2 below there shall be added to the base price a premium deliverability charge of 35¢ per Mcf for all gas delivered during the year 1986 and thereafter during the term hereof to the extent that Seller remains committed to deliver the applicable Annual Contract Quantities and maintains the ability to deliver, year by year, at swing factors of 2.5 or more during years 1986 through 1989, 2.25 or more during the year 1990 and 2.0 or more each year thereafter. For purposes hereof the term "swing factor" shall

mean the ratio obtained by dividing Seller's delivery capacity by the daily contract quantity where the "daily contract quantity" is the Annual Contract Quantity divided by three-hundred sixty-five (365). The Annual Contract Quantity utilized shall be that for the appropriate year as set forth in Paragraph 1 of Article V as of the date hereof. Notwithstanding other provisions hereof said Quantity(s) shall for the purposes of this Paragraph 1(b) remain unchanged except for those provided in Paragraph 4 of Article IV and Paragraphs 2 and 3 of Article V.

2. It is expressly understood and agreed between the parties that the base price and premium deliverability charge provided for in Paragraphs 1(a) and 1(b) shall be adjusted annually as follows:

Effective January 1, 1984, and on January 1 of each year thereafter during the term this Agreement is in effect, the base price and premium deliverability charge shall be adjusted by multiplying said base price and premium deliverability charge by the following ratio:

The Posted Price of No. 2 Fuel Oil on the applicable  
January 1 divided by the Posted Price of No. 2 Fuel Oil  
on January 1, 1983.

The term Posted Price shall mean the posted price of No. 2 Fuel Oil FOB Tesoro Refinery, Nikiski, Alaska. In the event that there ceases to be a posted price for No. 2 Fuel Oil at Tesoro's Refinery at Nikiski, postings for No. 2 Fuel Oil as published in Platt's Oilgram (or another mutually agreed upon publication in the event Platt's Oilgram discontinues publishing such quotes) FOB refineries at or near Seattle, Washington, shall be substituted in the ratio described above.

3. It is further expressly understood and agreed between the parties that there shall be added to the amounts determined pursuant to Paragraphs 1 and 2 of this Article XI, so long as the following tax or taxes shall be in effect, the full amount of any tax or taxes paid by Seller irrespective of the mode or basis of imposition. The term "tax or taxes" as used herein shall mean (i) any tax (other than ad valorem, capital stock, general property, or income and excess profits taxes) or (ii) similar charge now or hereafter levied, assessed or made by any governmental or native authority, including any Federal windfall profits taxes, on the gas itself, or on the act, right or privilege or occupation of production, severance, gathering, transportation, sale or delivery of gas which tax is measured by the volume, value, removal price, prevailing value or sales price to Buyer of the gas in question but shall not include any value attributable to the liquid hydrocarbons in said gas, that are removed by processing; provided, however, that the term "tax" shall not be deemed to include (i) any processing tax imposed on Seller because of the fact that gas may be processed or handled through or in any plant, or (ii) any general franchise tax imposed on corporations on account of their corporate existence or on their right to do business within the state as a foreign corporation, or (iii) any delinquent interest and penalty that may be attributable to any tax. Taxes or assessments applicable to any royalty, overriding royalty, production payment, or similar interest shall be considered to be covered by the provisions hereof to the extent reimbursement made by Buyer to Seller with respect thereto is passed on by Seller to the owner of such royalty, overriding royalty, production payment, or similar interest.

The above provisions of this Paragraph 3 notwithstanding, should Seller at any time pay ad valorem mineral rights property taxes attributable

to gas which Buyer has the right to receive hereunder, Seller will notify Buyer in writing, stating the amount thereof, along with adequate supporting information, and Buyer will, within thirty (30) days after the receipt of such notice from Seller, reimburse Seller in the amount of such taxes. The reimbursement shall be based upon the ratio which the volume of gas Buyer has the right to receive hereunder as of the date of assessment bears to the total volume of gas reserves underlying the properties subject to this Agreement as of the assessment date or in the event the lands subject to this Agreement are not assessed separately but rather as part of other lands, the reimbursement shall be based upon the ratio which the volume of gas Buyer has the right to receive hereunder as of the date of assessment bears to the total volume of gas reserves underlying all the lands so assessed. Unless the total gas underlying the properties is valued separately for assessment purposes, the amount of the ad valorem mineral rights property taxes assigned to the gas each year shall be that portion of the total tax that the value of the gas bears to the total value of all liquids and gas combined as determined by the assessor before applying any depreciation charges, operating costs, or present worth factors. The intent of this paragraph is that the Buyer shall pay all ad valorem mineral rights property taxes reasonably attributable to gas which Buyer has the right to receive hereunder, and the amount of such taxes shall be determined in an equitable manner to produce that result. Nothing contained herein shall imply that Buyer has any title to any volume of gas it has the right to receive hereunder. Failure of Seller to notify Buyer within six (6) months after the due date, of the payment by Seller of any ad valorem mineral rights property taxes on gas which Buyer has the right to receive hereunder shall constitute a waiver by Seller of the reimbursement

by Buyer for that particular item, but shall not constitute a waiver of any rights to reimbursement for the payment of such tax for subsequent periods.

4. Seller agrees to pay or cause to be paid to the parties entitled thereto all royalties, overriding royalties or like charges against said gas or thereof. Buyer agrees to reimburse Seller for all "excess royalty payments" which Seller shall be required to pay to the State of Alaska, United States of America or other royalty owners with respect to gas sold and delivered to Buyer hereunder. Such payments shall be made by Buyer to Seller within ten (10) days following receipt of statements from Seller therefor. The term "excess royalty payments" as used herein is defined as the amount by which actual royalty payments by Seller to the State of Alaska, United States of America, or other royalty owners under the respective oil and gas leases subject to this Agreement exceeds the amount such payment would have been if the royalty value thereunder had been based upon the sums received by Seller pursuant to this Agreement.

## XII. BILLING

1. Buyer shall furnish a statement to Seller on or before the fifteenth (15th) day of each calendar month which states the total volume of all gas delivered during the preceding month. Buyer shall make payment to Seller on or before the twenty-fifth (25th) day of each calendar month, for all gas delivered during the preceding month according to the measurements, computations, and price herein provided; however, under no circumstances shall Buyer pay a price(s) that exceeds the applicable maximum lawful price(s) prescribed under the Natural Gas Policy Act of 1978 or other applicable regulation or legislation, insofar as regulated gas is concerned, but only so long as any such gas may be so regulated.

2. Each party shall have the right at reasonable hours to examine the books, records, and charts of the other party to the extent necessary to verify the accuracy of any statement, charge, or computation made pursuant to the provisions of any Article hereof. In the event an error is discovered in the amount billed in any statement rendered by Buyer, such error shall be adjusted within thirty (30) days of the determination thereof. No error will be adjusted after twenty-four (24) months from the date of such statement.

3. If Buyer shall fail in any year during the term hereof to take the Annual Contract Quantity, then Seller shall, within sixty (60) days after the end of such year, render a bill to Buyer for the amount of the deficiency based on the average price paid for gas delivered hereunder during the last month of the year in which such deficiency occurred. In computing the amount due Seller for any deficiency in takings by Buyer occurring during any year, the following quantities shall be deducted from such deficiency:

(a) The total of the daily quantities of gas which Buyer requests (up to and including the Swing Rate) and which Seller fails to deliver on any day or days during such year.

(b) The total of the quantities of gas not included in (a) above which Buyer is unable to take on any day or days during such year by reason of force majeure or for failure to meet the quality requirements of Article X.

Buyer agrees to make full payment for the full amount for such deficiency within fifteen (15) days after receipt of such bill.

4. Without prejudice to any other remedy or remedies of Seller hereunder or by operation of law, if under the foregoing provisions of this Article XII, the correct amount is not paid when due, absent of a bona fide dispute as to whether such amount is due, interest on any unpaid amount shall be paid by Buyer which shall accrue daily at the rate provided by the FERC for

interest payable on refunds or at the prime rate in the absence of such FERC interest rate. Buyer agrees, notwithstanding that a part of the payments due Seller by Buyer may be in good faith dispute, to make payment to Seller for the full amount when due. If all or any part of the payment is in good faith dispute, then the amount of such payment in good faith dispute shall, when received by Seller from Buyer, be placed by Seller in an interest bearing account until such good faith dispute is settled. When any such settlement is made either in whole or in part in favor of Buyer, then Seller shall within fifteen (15) days thereafter make payment to Buyer for the amount plus interest accrued to date thereon for that part of such payment so settled in favor of Buyer. The amount plus interest to date thereon for any settlement made in part or in whole in favor of Seller shall be for the account of Seller.

#### XIII. FORCE MAJEURE

1. In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, the obligations of the party giving such notice as far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, governmental action, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, high winds, storms,

storm warnings, floods, tsunamis, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accidents to machinery or lines of pipe, the necessity for making repairs to or alterations of machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells or sources of supply of gas, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where either party hereto is required to obtain servitudes, rights-of-way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights-of-way grants, permits or licenses, and (b) in those instances where either party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence such materials and supplies, permits, and permissions. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of any opposing party when such course is inadvisable in the discretion of the party having the difficulty. In the event Buyer or

Seller has invoked force majeure and such force majeure prevents Buyer from taking and/or paying for the Annual Contract Quantity, expressed on a daily basis, provided in Article V hereof for three hundred sixty-five (365) consecutive days, Buyer or Seller will have the option of terminating this Agreement in the first three months following such three hundred sixty-five (365) consecutive days by giving thirty (30) days prior written notice.

2. An event of force majeure, as herein defined, which causes a major customer of Buyer to interrupt or curtail its gas purchases from Buyer shall be covered by Paragraph 1 above; provided, however, Buyer agrees that such interruption or curtailment predicated on use of an alternative fuel by such customers shall not be deemed to be an event of force majeure.

3. In the event Buyer invokes force majeure hereunder, Buyer agrees to take gas from Seller ratably in so far as operationally possible, based on deliverability, with all others supplying gas to Buyer during such periods of force majeure.

#### XIV. DEFAULT AND TERMINATION

1. If either party hereto shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this Agreement, the other party hereto, in addition to any and all other remedies which it may have, may at its option terminate this Agreement by proceeding as follows: The party not in default shall cause a written notice to be served on the party in default, stating specifically the cause for terminating this Agreement and declaring it to be the intention of the party giving notice to terminate the same; whereupon the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy, remove, or take all appropriate action to remedy or remove the cause or causes stated in the notice for terminating the Agreement, and if, within said period of thirty (30) days, the party in default does so remedy or take all appropriate action

to remedy or remove said cause or causes and fully protect, defend, and indemnify the party not in default for any and all consequences of such breach, then such notice shall be withdrawn and this Agreement shall continue in full force and effect. In case the party in default does not so remedy, remove, or take all appropriate action to remedy or remove the cause or causes and does not indemnify the party giving the notice from any and all consequences of such breach within said period of thirty (30) days, this Agreement, at the option of the party giving the notice, shall become null and void from and after the expiration of said period.

2. Any termination of this Agreement under the provisions hereof shall be without prejudice to the right of either Buyer or Seller to collect any amounts then due by the other party.

λ. TERM

Subject to the other provisions hereof, this Agreement shall be effective from the date hereof and shall continue and remain in full force and effect until December 31, 1997, or the fifteenth anniversary of initial delivery, whichever is later; provided, however, in the event Seller has after the effective date hereof and prior to the later of December 31, 1997, or said fifteenth anniversary, sold and delivered to Buyer the Total Contract Quantity established under all the provisions of Articles IV and V hereof, this Agreement shall thereupon terminate. None of the covenants or agreements made in this Agreement shall survive the expiration of the term hereof or any extension thereof as provided herein.

XVI. WARRANTY OF TITLE

Seller hereby warrants the title to all gas delivered by Seller to Buyer hereunder, the right to sell the same and that it is free from all liens

and adverse claims, and agrees, if notified thereof by Buyer, to indemnify and defend Buyer against all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of any adverse legal claims of any and all persons to or against said gas. Seller agrees to pay or cause to be paid all taxes and assessments levied on the gas prior to its delivery to Buyer, and to pay or cause to be paid to the parties entitled thereto all royalties, overriding royalties or like charges against said gas or the value thereof. In the event any adverse claim of any character whatsoever is asserted in respect to any of said gas, Buyer may retain the purchase price thereof up to the amount of such claim without interest until such claim has been finally determined, as security for the performance of Seller's obligations with respect to such claim under this Article XVI, or until Seller shall have furnished bond to Buyer, in an amount and with sureties satisfactory to Buyer, conditioned for the protection of Buyer with respect to such claim.

#### XVII. ARBITRATION

Any dispute arising between Seller and Buyer under Paragraphs 2 and 3 of Article IV of this Agreement shall be determined by a board of three (3) arbitrators to be selected for each such controversy so arising as follows: Either Seller or Buyer may, at the time such board of arbitration is desired, notify the other of the name of an arbitrator and such other party shall, within ten (10) days thereafter, select an arbitrator and notify the party desiring arbitration of the name of such arbitrator. If such other party shall fail to name a second arbitrator within ten (10) days, then the party who first served the notice may, on reasonable notice to the other party, apply to the person who is then Chief Federal Judge of the Federal Judicial District covering the Cook Inlet Basin Area for the appointment of such second arbitrator for and on behalf of the other party, and in such case the arbitrator

appointed by the person who is such Judge shall act as if named by the other party. The two (2) arbitrators chosen as above provided shall, within ten (10) days after the appointment of the second arbitrator, choose the third arbitrator, and in the event of their failure so to do within said ten (10) days, either of the parties hereby may in like manner, on reasonable notice to the other party, apply to the person who is such Judge for the appointment of a third arbitrator and in such case the arbitrator appointed by the person who is such Judge shall act as the third arbitrator. The arbitrators selected to act hereunder shall be qualified by education, experience and training to pass upon the particular question in dispute. The board so constituted shall fix a reasonable time and place for the hearing, at which time each of the parties hereto may submit such evidence as it may see fit. The action of a majority of the members of such board shall govern and their decisions in writing shall be final and binding on the parties hereto. Each party shall pay the expense of the arbitrator selected by or for it and all other costs of the arbitration shall be equally divided between the parties hereto.

#### XVIII. REGULATORY BODIES

This Agreement is subject to all present and future valid orders, rules and regulations of any regulatory body having jurisdiction. Seller shall furnish Buyer with a complete copy of all material filed with or submitted to any regulatory body and a copy of any order, certificate, price determination (including orders reversing or remanding such price determination), rate increase letter, letter of deficiency, petition for price determination, application for abandonment (total or partial), applications to delete acreage from a certificate, abandonment authorization orders, and orders allowing deletion of acreage from certificates, or other relevant correspondence or directives issued in reference to such filings. Seller

shall furnish Buyer with copies of all production, well test, completion and recompletion reports filed by Seller with the appropriate regulatory body having jurisdiction over the leases contracted hereunder.

XIX. ADDRESSES

Until Buyer is otherwise notified in writing by Seller, the address of Seller is and shall remain Post Office Box 2380, Anchorage, Alaska 99501, Attention Division Operations Manager, and unless Seller is otherwise notified in writing by Buyer the address of Buyer is and shall remain Post Office Box 6288, Anchorage, Alaska 99502. All notices required to be given in writing hereunder shall be given to the respective parties at such addresses or such other addresses as the parties respectively shall designate by written notice, and such notice, required to be given in writing, shall not be deemed to have been given until actual receipt thereof by Buyer or Seller at the address herein provided.

XX. MISCELLANEOUS

1. No waiver by either party hereto of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

2. This Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and assigns of the respective parties hereto and shall constitute a real right and covenant running with the lands and leasehold estates covered hereby, and shall be binding upon any purchaser of Buyer's transmission system and upon any purchaser of the properties of Seller which are subject to this Agreement; and Seller and Buyer both agree that no sale of said properties of Seller or any part thereof or of all or substantially all of Buyer's said system shall be made unless the purchaser

thereof shall assume and agree to be bound by this Agreement insofar as the same shall affect and relate to the property or interest sold or conveyed. It is agreed, however, that nothing contained in this Paragraph shall in any way prevent either party hereto from pledging or mortgaging its rights hereunder for security of its indebtedness.

3. Seller shall not assign or sub-lease any lease dedicated hereto or any gas rights thereunder unless such assignee or lessee ratifies and joins in this Agreement as a party Seller by executing an instrument describing such leases and dedicating such party's gas and leasehold or other estate therein to the performance of this Agreement.

4. Seller hereby, and at no expense to Buyer, grants and assigns to Buyer, insofar as Seller has the right to do so, all necessary easements and rights-of-way for the construction of pipelines and/or facilities necessary or convenient to the delivery or taking of gas covered by this Agreement.

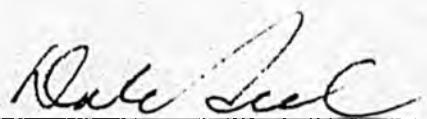
5. The parties mutually agree that the laws of the State of Alaska shall apply to the terms of this Agreement.

6. Subject to Paragraph 2 of Article II hereof, Buyer and Seller expressly understand that enforcement of this Agreement is subject to an initial determination by the Alaska Public Utilities Commission that the cost incurred by Buyer hereunder constitutes reasonable and recoverable cost of Buyer's public utility business.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in two (2) originals on the day and year first above written.

ALASKA PIPELINE COMPANY

MARATHON OIL COMPANY

By   
President

BUYER


By   
SELLER *JCS*

EXHIBIT "A"

Attached to and forming part of Gas Purchase Contract dated Dec 16, 1982, between MARATHON OIL COMPANY, as Seller, and ALASKA PIPELINE COMPANY, as Buyer.

KENAI UNIT AREA

TOWNSHIP 4 NORTH, RANGE 11 WEST, S.M.:

Section 3: Lot 4, SW 1/4 NW 1/4, W 1/2 SW 1/4  
Protracted Survey

Section 4: All

Section 9: N 1/2, SW 1/4, W 1/2 SE 1/4

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 10/1/55 bearing serial number A-028047, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 1,359.52 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 31: Lots 3, 4, 5, 7, 8, 10, E 1/2

Section 32: All

Section 33: All

Section 34: NW 1/4 NW 1/4, S 1/2 NW 1/4, SW 1/4,  
W 1/2 SE 1/4

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 10/1/55 bearing serial number A-028055, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 2,044.67 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

- Section 28: NW 1/4 NW 1/4, S 1/2 NW 1/4, SW 1/4,  
W 1/2 SE 1/4, SE 1/4 SE 1/4
- Section 29: All
- Section 30: Lots 5, 6, 7, 8, 9, 11, 12, 13, 14,  
15, E 1/2

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 10/1/55 bearing serial number A-028056, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 1,412.23 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 4 NORTH, RANGE 11 WEST, S.M.:

- Section 17: All
- Section 18: Lots 1, 2, 3, 4, E 1/2 W 1/2, E 1/2
- Section 19: Lot 1, NE 1/4 NW 1/4, NE 1/4
- Section 20: N 1/2 NW 1/4, SW 1/4 NW 1/4

The above described parcel of land being covered by that certain State of Alaska Oil and Gas Lease issued effective 9/1/58 bearing serial number ADL-22330, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 1,598.90 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

- Section 18: SE 1/4 SE 1/4

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 11/1/58 bearing serial number A-028103, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 40.00 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11, WEST, S.M.:

- Section 19: Lots 7, 8, 9, 11, 13, SE 1/4, E 1/2  
E 1/2 SE 1/4 SW 1/4, SE 1/4 NE 1/4
- Section 20: S 1/2, NW 1/4, SW 1/4 NE 1/4

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 11/1/58 bearing serial number A-028140, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 749.63 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 4 NORTH, RANGE 11 WEST, S.M.:

Protracted Survey

Section 5: All  
Section 6: All  
Section 7: All  
Section 8: All

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 10/1/58 bearing serial number A-028142, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 2,560.00 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 4 NORTH, RANGE 12 WEST, S.M.:

Section 1: Lots 1, 2, 4, 5, E 1/2 E 1/2  
Section 12: Lots 5 through 18 inclusive, Lot 20,  
E 1/2 W 1/2 SE 1/4, E 1/2 E 1/2, E 1/2  
W 1/2 NE 1/4  
Section 13: Lots 5 through 12 inclusive,  
Easterly 2.50 acres of Lot 15,  
Easterly 2.50 acres of Lot 16,  
E 1/2 NW 1/4 NE 1/4, E 1/2 E 1/2,  
E 1/2 W 1/2 SW 1/4 NE 1/4, E 1/2 W 1/2  
NW 1/4 SE 1/4, E 1/2 SW 1/4 NE 1/4,  
E 1/2 NW 1/4 SE 1/4

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 11/1/58 bearing serial number A-028143, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 785.09 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 4 NORTH, RANGE 12 WEST, S.M.:

Section 12: Lot 19

The above described parcel of land being covered by that certain Oil and Gas Lease dated 3/4/59 (Lessor: Joseph R. Fribrock) which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 2.49 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 4 NORTH, RANGE 12 WEST, S.M.:

Section 13: Easterly 2.50 acres of Lot 13,  
Easterly 2.50 acres of Lot 14

The above described parcel of land being covered by that certain Oil and Gas Lease dated 2/25/59 (Lessor: Paul P. Shadura, Jr.) which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 5.00 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 17: Lot 8, NW 1/4 SW 1/4, S 1/2 SW 1/4

The above described parcel of land being covered by that certain Oil and Gas Lease dated 10/29/58 (Lessor: Leo Patrick McCanna and Daisy K. McCanna) which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 159.93 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 19: Lot 2, N 1/2 NE 1/4, SW 1/4 NE 1/4

The above described parcel of land being covered by that certain Oil and Gas Lease dated 11/13/58 (Lessor: Charles Steelman) which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 139.31 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 19: Lots 10 and 12

The above described parcel of land being covered by that certain Oil and Gas Lease dated 2/18/59 (Lessor: Robert E. Jacobs and Carol K. Jacobs) which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 5.14 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 19: Lot 6

The above described parcel of land being covered by that certain Oil and Gas Lease dated 8/11/59 (Lessor: Charles E. Miller and Marjorie L. Miller) which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 5.20 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 30: Lot 3

The above described parcel of land being covered by that certain Oil and Gas Lease dated 2/28/59 (Lessor: Lottie B. Edelman and Edwin Edelman) which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 20.96 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 30: Lot 10

The above described parcel of land being covered by that certain Oil and Gas Lease dated 2/28/59 (Lessor: Edwin Edelman and Lottie B. Edelman) which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 5.75 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 30: Lot 16

The above described parcel of land being covered by that certain Oil and Gas Lease dated 3/21/59 (Lessor: Carl E. Johnson and Karin W. Johnson) which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 5.09 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 31: Lot 6

The above described parcel of land being covered by that certain Oil and Gas Lease dated 3/20/59 (Lessor: Robert Lee Schmidt and Ruth M. Schmidt) which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 5.19 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 4 NORTH, RANGE 11 WEST, S.M.:

Section 16: N 1/2 NW 1/4, SW 1/4 NW 1/4, NW 1/4  
SW 1/4

The above described parcel of land being covered by that certain State of Alaska Oil and Gas Lease issued effective 10/1/55 bearing serial number ADL-00460, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 160.00 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 17: That portion of Kenai River lying  
within SW 1/4 and SW 1/4 SE 1/4

The above described parcel of land being covered by that certain Oil and Gas Lease issued effective 11/1/58 (Lessor: Ownership Undetermined) bearing serial number ADL-02397 which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 1.10 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

Section 30: All lying westerly of coastline  
Section 31: All lying westerly of coastline

and

TOWNSHIP 5 NORTH, RANGE 12 WEST, S.M.:

Section 25: SE 1/4 NE 1/4, E 1/2 SE 1/4  
Section 36: E 1/2

The above described parcel of land being covered by that certain State of Alaska Oil and Gas Lease issued effective 1/1/60 bearing serial number ADL-00588, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 895.01 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 4 NORTH, RANGE 12 WEST, S.M.:

- Section 1: All lying westerly of coastline
- Section 2: E 1/2 E 1/2
- Section 11: E 1/2 NE 1/4
- Section 12: All lying westerly of coastline

The above described parcel of land being covered by that certain State of Alaska Oil and Gas Lease issued effective 1/1/60 bearing serial number ADL-00593, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 985.33 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 4 NORTH, RANGE 12 WEST, S.M.:

- Section 13: All of W 1/2 NE 1/4, E 1/2 NW 1/4 lying westerly of coastline

The above described parcel of land being covered by that certain State of Alaska Oil and Gas Lease issued effective 1/1/60 bearing serial number ADL-00594, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 88.92 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 5 NORTH, RANGE 11 WEST, S.M.:

- Section 19: All of the SE 1/4 NW 1/4, NE 1/4 SW 1/4, S 1/2 SW 1/4 lying westerly of coastline

The above described parcel of land being covered by that certain State of Alaska Oil and Gas Lease issued effective 3/1/61 bearing serial number ADL-02411, and which is included in the Kenai Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 100.72 acres, more or less. Marathon gross interest is 50%.

TRADING BAY UNIT AREA

TOWNSHIP 9 NORTH, RANGE 13 WEST, S.M.:

Section 16: A11  
Section 17: S 1/2, NE 1/4  
Section 20: A11  
Section 21: A11  
Section 29: A11  
Section 30: A11  
Section 31: A11  
Section 32: A11

The above described parcel of land being covered by that certain State of Alaska Oil and Gas Lease issued effective 3/1/62 and bearing serial number ADL-17594, and which is included in the Trading Bay Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 4.956.00 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 8 NORTH, RANGE 13 WEST, S.M.:

Section 5: A11  
Section 6: A11  
Section 7: A11  
Section 8: A11  
Section 18: A11

The above described parcel of land being covered by that certain State of Alaska Oil and Gas Lease issued effective 10/1/62 and bearing serial number ADL-18729, and which is included in the Trading Bay Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 3,085.00 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 9 NORTH, RANGE 13 WEST, S.M.:

Section 26: W 1/2  
Section 27: A11  
Section 28: A11  
Section 33: A11  
Section 34: A11

The above described parcel of land being covered by that certain State of Alaska Oil and Gas Lease issued effective 10/1/62 and bearing serial number ADL-18730, and which is included in the Trading Bay Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 2,880.00 acres, more or less. Marathon gross interest is 50%.

BEAVER CREEK UNIT AREA

TOWNSHIP 6 NORTH, RANGE 10 WEST, S.M.:

Section 5: E 1/2 NE 1/4, SE 1/4  
Section 8: NE 1/4

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 9/1/58 and bearing serial number A-028078, and which is included in the Beaver Creek Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 400.00 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 7 NORTH, RANGE 10 WEST, S.M.:

Section 27: All  
Section 28: S 1/2, S 1/2 NE 1/4, NE 1/4 NE 1/4,  
SE 1/4 NW 1/4  
Section 33: All  
Section 34: All

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 9/1/58 and bearing serial number A-028083, and which is included in the Beaver Creek Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 2,400.00 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 6 NORTH, RANGE 10 WEST, S.M.:

Section 3: N 1/2, SW 1/4, W 1/2 SE 1/4  
Section 4: All  
Section 9: N 1/2 N 1/2, S 1/2 NW 1/4, SW 1/4  
NE 1/4  
Section 10: N 1/2 NW 1/4

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 9/1/58 and bearing serial number A-028118, and which is included in the Beaver Creek Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 1,560.00 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 7 NORTH, RANGE 10 WEST, S.M.:

Section 32: E 1/2 E 1/2

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 9/1/58 and bearing serial number A-028120, and which is included in the Beaver Creek Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 160.00 acres, more or less. Marathon gross interest is 50%.

TOWNSHIP 7 NORTH, RANGE 10 WEST, S.M.:

Section 26: W 1/2 SW 1/4, SE 1/4 SW 1/4

Section 35: NW 1/4, W 1/2 SW 1/4, NE 1/4 SW 1/4

The above described parcel of land being covered by that certain United States Oil and Gas Lease issued effective 11/1/82 and bearing serial number AA-50293, and which is included in the Beaver Creek Unit Area, Third Judicial Division, State of Alaska, and containing in the aggregate, 400.00 acres, more or less. Marathon gross interest is 100%.

EXHIBIT "B"

Attached to and forming part of Gas Purchase Contract dated Dec. 16, 1982, between MARATHON OIL COMPANY, as Seller, and ALASKA PIPELINE COMPANY, as Buyer.

Gas sales and rental obligations of Marathon Oil Company which are in effect and outstanding prior to the date of this Agreement:

1. Gas Purchase Contract, dated May 13, 1960, between Union Oil Company of California and Marathon Oil Company, Seller, and Alaska Pipeline Company, Buyer, as heretofore amended and supplemented.
2. Natural Gas Rental Agreement entered into as of the 1st day of January, 1966, by and between Union Oil Company of California and Marathon Oil Company (Union-Marathon), and Standard Oil Company of California and Arco Alaska, Inc. (Standard-Arco), as heretofore amended and supplemented.
3. Gas Sales Agreement, dated May 17, 1966, by and between Union Oil Company of California and Marathon Oil Company, Seller, and City of Kenai, Alaska, Buyer, as heretofore amended and supplemented.
4. Liquefied Natural Gas Sales Agreement, dated March 6, 1967, by and between: The Tokyo Electric Power Company, Inc. and Tokyo Gas Company, Limited, Buyers; and Marathon Oil Company and Phillips Petroleum Company, Sellers, as heretofore amended and supplemented.

S B

68-71

(FILE 10)

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SR 70 Date on Bill: 1/25/83  
 Title: An act establishing the Alaska Energy Dividend Fund  
 Sponsor: Halford  
 Requestor: Senate State Affairs

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total								

b. Revenues: Please see below.

Revenue								
---------	--	--	--	--	--	--	--	--

2. Source of funds to offset fiscal impact of bill:

The Permanent Fund Dividend Fund

3. Assumptions:

This would be an appropriation transfer of monies from the Permanent Fund Dividend Fund to the Alaska Energy Dividend Fund.

	FY 83	FY 84	FY 85
PF Dividend Fund	(170.0 mill)	(122.0 mill)	(169.0 mill)
Ak. Energy Fund	170.0 mill	122.0 mill	169.0 mill

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Marcy Reubel Phone: 465-2300  
 Division: Senate Office Date: 2/28/83  
 Approved by Commissioner: Rick D. Heath Date: 2/28/83  
 Department: Revenue

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION  
POUCH WF-STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3795

February 23, 1983

### MEMORANDUM

TO: Honorable Vic Fischer, Chairman  
Senate State Affairs Committee

FROM: Milt Barker <sup>MB</sup>  
Fiscal Analyst

SUBJECT: SB 70

As requested by you, I have prepared the attached tables which show:

1. the annual contributions to the Alaska Energy Dividend Fund, in both actual and FY 1984 dollars (Table I);
2. the number of per capita grants those amounts would fund, taking account of annual escalation of grant amounts for inflation though not taking account of variation in grant amounts for regional cost differences (Table I);
3. state funding for Susitna under "Option D" of the January 1983 Acres financing plan, in both actual and FY 1984 dollars (Table I);
4. the amount that would be available for capital projects that have been proposed excluding power projects (Table II and graph).

The attached Legislative Finance computer runs labelled SB 70 show the entire fiscal picture for the State under SB 70 in both actual and FY 1984 dollars. It should be noted that under the assumptions used, general fund deficits would be incurred in FY 1990 and all subsequent years even without any capital budget. Should these conditions prevail, it might be difficult to maintain funding for the Alaska Energy Dividend Program.

If the Alaska Energy Dividend Program were discontinued after FY 1989, the amount of funding that would have accrued for the program would be \$1,965.0 million (or \$1,635 in FY 1984 dollars). These amounts are less than the State funding called for under "Option D" of Acres for Susitna.

All of the above analysis is based on the January 1983 revenue estimates of the Department of Revenue and could be subject to major revision depending on oil price developments.

### SB 70

You have also requested an estimate of the impact of Section 2 of SB 70.

It is impossible to project the impact, not knowing what "energy project service districts" will be formed, what projects undertaken, their scale, their financing, the residential share of power consumption, the retail price of electricity and its effect on monthly residential consumption, etc. However, as an example of how Sec. 2 might work, the Sitka utility district and their Green Lake project are analyzed.

If one assumes that in the absence of SB 70, Green Lake would have been financed 90% with 35 year debt at 10% interest and 10% with equity which earned 12%, then the capital charges for Green Lake would have been \$6.2 million per year. <sup>1</sup> With sales from Green Lake estimated at 59 million kwh annually, <sup>2</sup> the capital charges would have been 10.5¢ per kwh for Green Lake at the busbar.

It is implicitly the intent of SB 70 that no charges for recovery of Energy Dividend Fund grants be included in electricity rates. This should probably be stated in the bill.

It is also the intent of SB 70 that no charges for recovery of any other invested funds or return thereon be allowed in the residential rate for the first 1,000 kilowatt hours. The legislation needs to clarify that neither return of nor return on invested funds will be allowed.

- 
1. \$59 million cost for Green Lake excluding any transmission costs multiplied by  $(.9 \times .10369)$ , the debt service per dollar borrowed at 10% for 35 years +  $.1 \times .12$ .
  2. 37.5 million kwh generated from Green Lake for first seven months at FY 83 extrapolated to 12 months and multiplied by 91% for line losses, utility's consumption, etc.

The effect of these two elements of intent would be that the residential customer pays no charges for the capital cost of a project if there is any grant money at all in the project. Other customers would pay the entire charges for invested funds (though nothing for grant funds).

Assuming residential customers would have borne their pro-rata share of capital charges in the absence of SB 70,<sup>3</sup> SB 70 in this case would result in a 10.5¢ per kwh savings to residential customers on their first 1,000 kwh's. With current average monthly consumption in Sitka of 783 kwh per residential customer, the average customer's benefit would be \$82 per month or \$986 per year. Sitka has 2,480 residential customers and a population of 8,221. Thus, the average benefit per person would be \$297 per year.

For commercial and industrial customers, there could be either an increase or a decrease in rates depending on the amount of grant funds in a project. Commercial and industrial consumption in Sitka is currently 71.8% of total consumption. If these customers picked up all Green Lake capital charges (in the absence of any SB 70 grants), their cost per kwh would increase from 10.5¢ to 14.6¢. A grant of \$16.6 million would keep commercial and industrial charges at 10.5¢. If Sitka got \$5,000 for each of its 8,221 persons it would have received a grant of \$41 million which would have lowered commercial and industrial charges for Green Lake to 4.5¢ per kwh. Of course, a grant covering 100% of project costs results in a 10.5¢ per kwh saving for all customers, commercial and industrial as well as residential.

If Sec. 2 should result in an increase in commercial rates, businesses may well pass on the cost increase through price hikes. Should this occur, it would mean some dilution of the direct benefits to residential customers.

You have asked for an assessment of the efficiency of SB 70 as a mechanism for distribution of state wealth to residents. With a grant of \$16.6 million which would keep commercial and industrial users at their existing rate, SB 70 provides a benefit estimated above at \$297 per person. This benefit can be compared to the possible earnings on \$16.6 million divided among the 8,221 people. This would be \$202 per person if the funds earned 10% interest. SB 70 provides a greater benefit to residential customers for the money because of the subsidy from commercial and industrial customers paying the project costs not funded by grants.

- 
3. Some utilities, of which Sitka is one, provide a rate break to residential customers vis-a-vis commercial and industrial customers. Others may give a better rate to commercial and industrial users often through declining block rates.

If keeping commercial and residential rates constant while letting residential customers off the hook is the test, then this example would argue for \$2,000 per capita grants. Of course, one can be even more efficient by giving even smaller grants, still letting residential customers off under Sec. 2 and hitting commercial and industrial users for the capital costs. Or one could just pass a bill forbidding residential charges for capital costs under any circumstances for the first 1,000 kwh per month.

At the \$5,000 per capital level, the Green Lake example would suggest that individuals could receive more if the grants were invested. They would then receive \$500 at 10%. At the \$5,000 grant level in the Green Lake example much of the benefit goes to reduce commercial and industrial rates as shown above.

If the benefit under SB 70 is compared to the amount that individuals would receive under the Permanent Fund dividend program, the SB 70 benefits would look more favorable because individuals only receive 50% of the five year average income. But that is a matter of policy; individuals could be given the entire earnings off amounts deposited in the Permanent Fund. The full amount of earnings represents the opportunity cost of using funds for other purposes, such as SB 70 grants. Note too, that because of inflation-proofing, Permanent Fund dividends increase over time in nominal terms while the capital charges the electricity customer forgoes under SB 70 are a fixed amount for the life of the project.

attachments

cc: Senator Halford

MB:ro

TABLE I  
ALASKA ENERGY DIVIDEND FUND (SB 70)

<u>Fiscal Year</u>	(1) Annual Contribution to Energy Dividend Fund (50% of Permanent Fund Income) (\$ Millions)	(2) Thousands of Per Capita \$5000 Grants	(3) State Funding for Susitna "Option D" (\$ Millions)	(4) Annual Contribution to Energy Dividend Fund (Millions FY 84 \$)	(5) State Funding for Susitna "Option D" (Millions FY 84 \$)
1984	236	47.2	--	236	--
1985	268	50.1	806.8	251	658.0
1986	304	53.1	413.3	265	318.0
1987	342	55.8	475.3	279	345.0
1988	385	58.7	552.1	294	378.0
1989	430	61.3	156.4	310	101.0
1990	480	64.0	--	320	--
1991	540	67.3	--	330	--
1992	590	68.7	--	340	--
1993	650	70.7	--	350	--
1994	700	71.2	--	360	--
1995	760	72.2	--	360	--
1996	830	73.7	--	370	--
1997	890	73.9	--	370	--
1998	970	75.2	--	370	--
1999	1040	75.3	--	380	--
2000	<u>1120</u>	<u>75.9</u>	<u>--</u>	<u>380</u>	<u>--</u>
	10535	1114.3	2403.9	5565.0	1800.0

Notes: 1 & 4. From attached Legislative Finance computer runs labelled "SB 70";  
2. Col. 1 ÷ (5 x 1.07<sup>N</sup>) where N = Fiscal Year - 1984; grants increased 7% per annum for inflation;  
3 & 5. "Option D" from Susitna Hydroelectric Financing, Task 11: Financing Options, Acres, January 1983; from Table 4 and Table 3 respectively; FY 83-85 summed and shown as FY 85.

PREPARED BY:  
LEGISLATIVE FINANCE  
2-22-83

TABLE II  
FUNDS AVAILABLE FOR CAPITAL PROJECTS  
UNDER SB 70  
(\$ Millions)

FISCAL YEAR	(1)	(2)	(3)	(4)	(5)	(6)
	General Funds	GO Bonds	Funds Available for Capital Projects Total	Loan Program Appropriations	Governor's Six Year Capital Budget	Total Capital Projects
<u>Actual Dollars</u>						
1985	546.0	--	546.0	300.0	2035.0	2335.0
1986	580.0	300.0	880.0	300.0	742.9	1042.9
1987	415.0	90.0	505.0	300.0	961.2	1261.2
1988	481.0	125.0	606.0	300.0	1066.2	1366.2
1989	250.0	--	250.0	300.0	?	300.0+
1990	--	50.0	50.0	300.0	?	300.0+
1991	--	140.0	140.0	300.0	?	300.0+
1992	--	--	--	300.0	?	300.0+
1993	--	--	--	300.0	?	300.0+
<b>Total</b>	<b>2272.0</b>	<b>705.0</b>	<b>2977.0</b>	<b>2700.0</b>	<b>4805.3</b>	<b>7505.3+</b>
<u>FY 1984 Dollars</u>						
1985	511.0	--	511.0	280.0	1901.9	2181.9
1986	507.0	262.0	769.0	262.0	648.9	910.9
1987	339.0	73.0	412.0	245.0	784.7	1029.7
1988	367.0	95.0	462.0	229.0	813.4	1042.4
1989	180.0	--	180.0	214.0	?	214.0+
1990	--	33.0	33.0	200.0	?	200.0+
1991	--	87.0	87.0	187.0	?	187.0+
1992	--	--	--	175.0	?	175.0+
1993	--	--	--	163.0	?	163.0+
<b>Total</b>	<b>1904.0</b>	<b>550.0</b>	<b>2454.0</b>	<b>1955.0</b>	<b>4148.9</b>	<b>6103.9+</b>

PREPARED BY:  
LEGISLATIVE FINANCE  
2-22-83

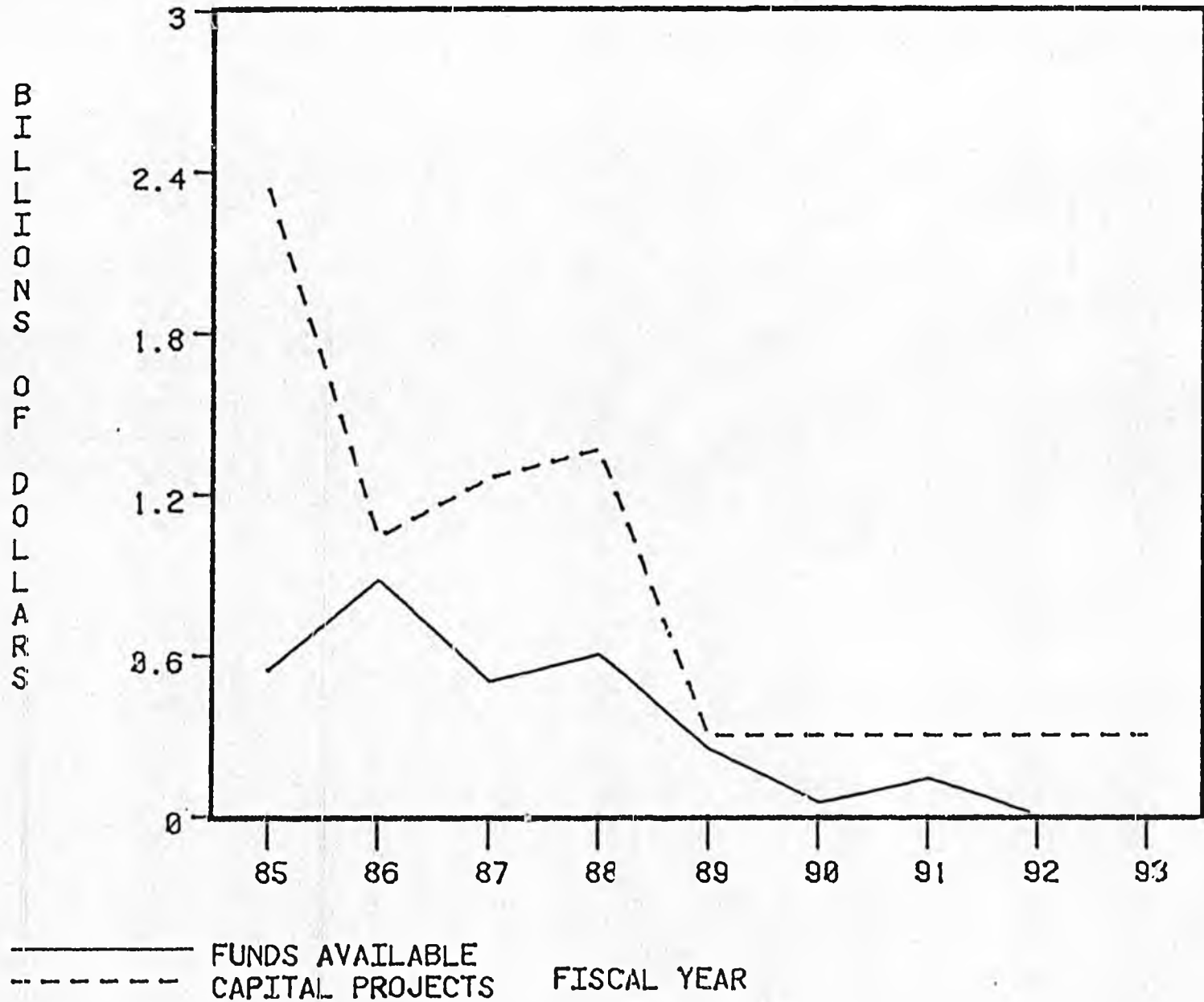
TABLE II

- Notes:
1. From attached Legislative Finance computer run labelled "SB 70";
  2. From Table 1, Susitna Hydroelectric Project, Task 11; Financing Options, Acres, January 1983;
  4. Assumes loan appropriations at roughly the Governor's FY 84 budget level, \$294.5 million;
  5. Total of general fund capital projects (including voter approval) contained in Executive Budget, Book 2, Capital Budget and Six Year Capital Program, FY 83, Jay Hammond, Governor; FY 85 amount is sum of FY 83-85 amounts less amounts appropriated for capital and loans for FY 83 and less the amount of capital projects proposed by Governor Sheffield for FY 84.

FY 84 \$ amounts are based on a 7% inflation factor: the Acres Susitna numbers appear to be on a calendar year basis and are thus adjusted for an extra 1/2 year.

PREPARED BY:  
LEGISLATIVE FINANCE  
2-22-83

FUNDS AVAILABLE FOR CAPITAL PROJECTS  
UNDER SB 70



STATE OF ALASKA  
 LEGISLATIVE FINANCE WORKING DOCUMENT  
 BUDGET FORECASTING MODEL

\*\*\* ACTUAL DOLLARS IN MILLIONS \*\*\*

JAN 83 DEPT OF REVENUE ESTIMATES  
 OPERATING BUDGET AT SPENDING LIMIT  
 SPENDING LIMIT INCREASES 10% PER ANNUM  
 SURPLUS SPENT ON CAPITAL  
 INFLATION 7% PER ANNUM  
 DIVIDENDS GO TO ALASKA ENERGY DIVIDEND FUND  
 PERMANENT FUND INFLATION-PROOFED  
 PERMANENT FUND EARNS 12% PER ANNUM  
 GO BONDS PER ACRES JAN 83 SUSITNA FINANCING PLAN

FISCAL YEAR	REVENUE	INTEREST	TOTAL REVENUE	OPERATING BUDGET	CAPITAL BUDGET	DEBT SERVICE	PERMANENT FUND DIVIDENDS	TOTAL BUDGET	SURPLUS OR DEFICIT	PERMANENT FUND	GENERAL FUND END OF YEAR	REVENUE REQ FOR GF BAL OF \$ 0 MIL
1983										3790	88	
1984	2703	370	3072	1987	770	167	236	3161	-88	4321	0	0
1985	2775	389	3164	2185	546	164	268	3164	0	4892	0	0
1986	3029	422	3451	2404	580	163	304	3451	0	5532	0	0
1987	3112	456	3568	2644	415	166	342	3568	0	6222	0	0
1988	3456	499	3954	2909	481	179	385	3954	0	6998	0	0
1989	3540	540	4080	3200	250	190	430	4080	00	7860	00	00
1990	3300	580	3870	3520	00	190	480	4190	-320	8750	00	320
1991	3000	620	3620	3870	00	180	540	4580	-960	9650	00	960
1992	2890	670	3560	4260	00	160	590	5000	-1440	10600	00	1440
1993	2700	740	3430	4680	00	160	650	5490	-2050	11570	00	2050
1994	2610	810	3420	5150	00	130	700	5990	-2560	12590	00	2560
1995	2520	880	3390	5670	00	130	760	6560	-3170	13650	00	3170
1996	2380	950	3330	6240	00	120	830	7190	-3850	14760	00	3850
1997	2440	1030	3470	6860	00	80	890	7830	-4360	15950	00	4360
1998	2510	1120	3630	7540	00	60	970	8570	-440	17210	00	4940
1999	2660	1210	3870	8300	00	40	1040	9300	-5510	18570	00	5510
2000	2800	1310	4110	9130	00	30	1120	10280	-6170	20040	00	6170
TOTAL	48410	12590	61000	80550	3050	2300	10550	96440	-35440			35350

STATE OF ALASKA  
 LEGISLATIVE FINANCE WORKING DOCUMENT  
 BUDGET FORECASTING MODEL

\*\*\* FY 1984 DOLLARS IN MILLIONS\*\*\*

JAN 83 DEPT OF REVENUE ESTIMATES  
 OPERATING BUDGET AT SPENDING LIMIT  
 SPENDING LIMIT INCREASES 10% PER ANNUM  
 SURPLUS SPENT ON CAPITAL  
 INFLATION 7% PER ANNUM  
 DIVIDENDS GO TO ALASKA ENERGY DIVIDEND FUND  
 PERMANENT FUND INFLATION-PROOFED  
 PERMANENT FUND EARNS 12% PER ANNUM  
 GO BONDS PER ACRES JAN 83 SUSITNA FINANCING PLAN

FISCAL YEAR	REVENUE	INTEREST	TOTAL REVENUE	OPERATING BUDGET	CAPITAL BUDGET	DEBT SERVICE	PERMANENT FUND DIVIDENDS	TOTAL BUDGET	SURPLUS OR DEFICIT	PERMANENT FUND	GENERAL FUND END OF YEAR	REVENUE REQ FOR GF BAL OF \$ 0 MIL
1983										3790	88	
1984	2703	370	3072	1987	770	167	236	3161	-88	4321	0	0
1985	2594	364	2957	2042	511	154	251	2957	0	4572	0	0
1986	2645	369	3014	2100	507	143	265	3014	0	4832	0	0
1987	2540	372	2913	2159	339	136	279	2913	0	5079	0	0
1988	2636	380	3017	2219	367	137	294	3017	0	5338	0	0
1989	2520	390	2910	2280	180	140	310	2910	00	5610	00	00
1990	2200	380	2580	2350	00	130	320	2790	-210	5830	00	210
1991	1870	380	2260	2410	00	110	330	2850	-600	6010	00	600
1992	1680	390	2070	2480	00	90	340	2910	-840	6170	00	840
1993	1470	400	1870	2550	00	90	350	2990	-1120	6290	00	1120
1994	1330	410	1740	2620	00	70	360	3040	-1300	6400	00	1300
1995	1190	420	1610	2690	00	60	360	3120	-1500	6490	00	1500
1996	1060	420	1480	2770	00	60	370	3190	-1710	6560	00	1710
1997	1010	430	1440	2850	00	30	370	3250	-1810	6620	00	1810
1998	970	430	1410	2930	00	20	370	3320	-1920	6670	00	1920
1999	960	440	1400	3010	00	10	380	3400	-2000	6730	00	2000
2000	950	440	1390	3090	00	10	380	3480	-2090	6790	00	2090
TOTAL	30330	6300	37130	42520	2680	1550	5580	52320	-15190			15100

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# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF STRATEGIC PLANNING

BILL SHEFFIELD, GOVERNOR

POUCH AD  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3568

March 11, 1983

The Honorable Vic Fischer  
Chair, Senate State  
Affairs Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fischer:

SB 75 was introduced by the Rules Committee at the request of the Alaska Statehood Commission. Four special appropriations to the Governor's Office are offered in the bill, implementing four of the twenty recommendations of the final report of the Alaska Statehood Commission, "More Perfect Union, A Plan for Action." Section 1 proposes \$10,000 for a study of funding flows between the federal government and the State. This study encompasses Recommendation #16 of the final report of the Alaska Statehood Commission. Section 2 implements Recommendation #4 of the Statehood Commission's final report, calling for \$200,000 to fund an institute to perform research and to act as an advocate of resource states' interests. Section 3 implements Recommendation #7 of the final report, appropriating \$100,000 to establish a legal action fund. Section 4 requests \$30,000 to call a national convocation on federalism to be sponsored by the National Governors' Association. This request would implement Recommendation #8 of the Statehood Commission's final report.

Attached to this memorandum are copies of the relevant sections of the Alaska Statehood Commission's report, "More Perfect Union."

The approach taken by the Statehood Commission was to urge the State to take an aggressive, leadership role among the western resource producing states, especially to combat the current move to limit the taxation capability of the energy rich states. The northeastern states support research and public information campaigns to limit the taxation capability of western states. The recommendations which are selected by

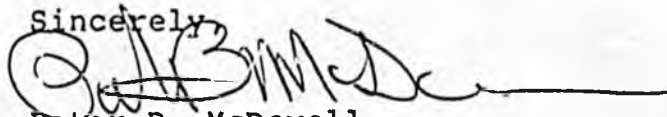
March 10, 1983

this bill for implementation through special studies are aimed at the accumulation and dissemination of information and at the use of State funds to set Alaska in a lead role among the western states.

The goals of the Alaska Statehood Commission deserve and will receive serious consideration by the Administration. The Governor is aware of the need for careful research and concerted action among the western states to combat Congressional initiatives that are not in the best interests of Alaska. Governor Sheffield joined Governor Hammond in discussions with western Governors about common problems. Approximately, \$125,000 (FY 83) supports preliminary work related to Section 2, specifically, the identification of energy production and resource issues of concern to Alaska and western states. If preliminary work warrants further efforts, Governor Sheffield intends to pursue this matter. It would be premature, however, to identify a specific approach, such as an "institute," at this time. Instead, sufficient funds should be available in the Governor's budget to address these further issues of coordination and agreement among western states and of what should be done by whom and at what cost.

While the Governor's Office appreciates the direction implied by SB 75, we do not support the expenditure of \$340,000 for the projects listed above.

Sincerely,



Peter B. McDowell  
Director, OMB

Enclosure

Our research<sup>22</sup> indicates that a state can, by rejecting a grant it accepted in prior years, embarrass the federal bureaucracy into reforming the grant and pruning the tendrils of conditions which have sprouted from it.

Section 16  
1 16 The Legislature should fund the Department of Revenue or other appropriate agency to make an annual study of and report on the flow of federal spending and revenues in Alaska.

Basic data about the federal government's economic relationship with Alaska has been difficult to obtain in coherent form from either federal or state agencies, though this information is critical for defending against congressional efforts to confiscate or limit state oil and other resource revenues.

The information is also critical for showing our fellow Americans through the national media that Alaska contributes more to the national treasury than it withdraws.

Because of the lack of available data, the Statehood Commission commissioned two studies on federal revenue and spending in Alaska from the University of Alaska's Institute of Social and Economic Research (ISER, 1981, 1982).

The first study, covering federal fiscal year 1980, showed that the federal government was earning \$2 from general economic activity in Alaska for every \$1 that it spent here. The second study, for fiscal year 1981, showed that by then the federal government was earning \$3 in Alaska for every \$1 that it spent.

The latter study showed that economic activity in Alaska accounted for one-sixth of all of the federal government's Windfall Profits Tax revenues in 1981 and one-twentieth of all of its revenues from corporate income taxes.

The studies also showed that the federal income tax lands unfairly on Alaskans, hurting families and businesses and distorting investment decisions in this state.

Put in the larger context of economic data about Alaska's high cost of living, its lack of transportation and of energy systems and its lack of adequate housing, the information from these economic studies can show the fair minded that Alaska not only is paying its way in the family of states but has urgent needs at home for its income from temporary oil supplies. Poor until recently, Alaska needs to catch up in supplying to its citizens the basic services that other states offer and most Americans take for granted.

A general theme in this final report from the Statehood Commission is that Alaska must collect more precise, reliable information about

itself and disperse it widely across the nation and the state.

Keeping up with how much the federal government earns from Alaska and how much it spends here is a key part of that effort.

17 The governor should establish an office of external relations on his staff, to be headed by a special assistant to coordinate Alaska's expanded relations with other states and with foreign nations.

Much of this report argues the necessity for Alaska to reach out to other states and its neighbors in Canada to establish new coalitions, working groups and conferences to deal with mutual needs.

This work is so important that the Statehood Commission feels that one high-ranking official reporting directly to the governor should have the responsibility of coordinating and directing these efforts with all parts of state government.

It is just as important, however, that this office also concern itself with Alaska's efforts to strengthen its relationships with many foreign nations, especially those with which it trades and those with which it hopes to increase trade.

It is not generally known that in 1981 "Alaska rated number one in the nation for exports as percentage of total shipments from the state. Furthermore, export-related employment in Alaska was 34.7 percent of jobs in Alaska's manufacturing sector, which includes seafood processing" (Hemphill, p. 2).

Alaska's exports to foreign markets in 1981 equalled \$1.2 billion; its imports from foreign countries totaled \$229 million, according to Hemphill. Alaska thus was one of the few U.S. states in 1981 with a positive trade balance and so made a significant contribution to the country's trade situation.

Japan bought most of Alaska's exports--\$935 million worth. Japan also was the largest exporter to Alaska--\$59 million in goods.

Four classes of goods made up the bulk of Alaska's 1981 exports: seafood products, at \$427 million; liquefied natural gas, at \$310 million; forest products, at \$278 million and fertilizers, at \$133 million. These figures do not include goods shipped from Alaska to other U.S. states for reprocessing and export.

The nation and Alaska need to expand markets for these products and to find markets for such other Alaska products as coal, other minerals and grains. Developing these markets demands con-

<sup>22</sup>See the Alaska Statehood Commission publication, *Shifting Power from the Federal Government to the State of Alaska*, by Harold Hovey, 1982.

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~~Alaska must act immediately to create in Washington, D.C., a research and advocacy institute and ask other resource states to join in supporting it. The institute would combat efforts in Congress to limit or tax state resource revenues.~~

Efforts to strip Alaska and other resource states of revenues from oil and other energy sources center around the Northeast-Midwest Congressional Coalition and its research arm, the Northeast-Midwest Institute.

The Institute has become the dominant source of detailed information about resource extraction and taxing available in Washington to the national press, members of Congress and other federal officials.

The Coalition and the 18 states it represents seek to have resource incomes of individual states pooled by federal law and redistributed to all states. Such federal action would be a major blow to one of the last pillars of state sovereignty: the power to raise and allocate revenues. The Coalition even wants the federal government to prescribe how individual states may spend resource revenues.

The Northeast-Midwest Institute is only too happy to provide facts, figures and research documents to bolster efforts in Congress to nationalize the incomes of what the Coalition has tagged the "United American Emirates," the oil-producing states.

A major political battle looms. It will be fought largely in the newspapers and on radio and television for the hearts and minds of the general public.

The need for a counterbalancing institute of resource states seems obvious and may be critical. Such an organization would perform and publish scholarly research on matters of special interest to the resource states. The institute must be located in Washington, D.C., for maximum accessibility, effect and credibility. It is very important for reporters, the administration, members of Congress and their staff to have personal access to the institute's researchers as well as to its publications.

Alaska must lead in starting such a research and advocacy institute and keeping it funded. The Legislature should provide the governor with money enough to fund the institute's first years and convince other states to join the effort. To do nothing or to delay too long in face of an obvious threat to Alaska's financial well-being will only turn the threat into an impoverishing reality.

5

The state Board of Education and Alaska school districts should require the teaching of Alaska history, citizenship and culture.

The Statehood Commission worries that in our oil-propelled rush into the mainstream of the nation's economy, we may be cutting our ties with what is special about Alaska. Further, by failing to attend to our history we risk repeating mistakes made during Alaska's early days of copper, gold and fishing booms and busts.

*We have a system of public and private education second to none, and yet we do not require education about our state's history.*

Alaska's long isolation from the other states has ended. Arctic villages once accustomed to occasional newspapers by barge and dogsled now receive their baseball games televised live via satellite. One out of three Alaskans has lived in the state less than five years.

It is not easy to preserve our heritage with such turnover and in the face of a mass culture tuned to a common denominator, but we must try. We have a system of public and private education second to none, and yet we do not require education about our state's history. We do not require instruction on our rich and varied regional and statewide cultures.

We should also teach every student—from elementary through post-secondary schooling—the reciprocal duties between citizen and state, and between citizen and national government. A citizenship program should teach respect for the dignity of every individual; the observance of rules written for the common good; respect for private and public property; strong ethical values; development of a social conscience; and democratic ideals.<sup>18</sup> If Alaska needs a model it need look only as far as the education required of aliens requesting U.S. citizenship. It is paradoxical that naturalized citizens often have a better knowledge about America than those born here.

The Legislature should speed development of the classroom material required, and make the materials available to all public and private school systems.

Education is Alaska's opportunity to invest in the next generation of voters and leaders. It is our preventive medicine against the repetition of past mistakes. It can be our way of preserving and

<sup>18</sup>In 1980 the Anchorage School Board approved a similar list of goals for a citizenship education program.

a state-called convention to propose amendments.

The rules are long overdue, but we doubt that Congress will write them.<sup>19</sup> It prefers to hold up the specter of a runaway convention to discourage the states ever asking for one. In this way Congress keeps complete control over which amendments are submitted for ratification.

The states must force the issue under Article V by calling for a convention to amend Article V. Rules must set out how convention votes would be apportioned and should define the scope of a convention's proposing powers. We believe a convention should be limited to the consideration of subjects named in the state resolutions asking for a convention. It should not have blanket authority to propose other amendments.

For Alaska, a federal convention has both danger and opportunity. Much depends on how votes are apportioned at the convention. We recommend the Alaska Legislature, in its resolution, call for equal votes by state. Under this plan, if there were 500 votes to go around, Alaska would have 10 votes, or 2 percent.

Were apportionment to follow a congressional model (votes according to the size of a state's congressional delegation), Alaska would have only 3 out of 500, or 0.6 percent of the votes. If votes are apportioned strictly by population, Alaska would have still fewer: 1 out of 500, or 0.17 percent of the votes.

Equal votes among the states would be true to the plan of the Constitutional Convention of 1787. That convention was "first and foremost a gathering of states" (Rossiter, p. 68). We suggest emulating the U.S. Senate: two delegates per state in a constitutional convention, for a total of 100 votes.

up in court--questions such as, "What does the Constitution say about this conflict between state and federal government?"

The federal government has the Office of the Solicitor General. Special-interest groups--often at odds with state and local governments--have

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*In short, state and local governments must start working together to oppose creeping federal intrusions.*

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their legal defense funds.

But lawyers for state and local governments find themselves outgunned in the higher courts on complex federalism questions. They speak only for their employer, but the court decisions handed down will infuse the internal workings of all state and local governments, rewriting charters and constitutions and increasing liability to civil lawsuits.

In short, state and local governments must start working together to oppose creeping federal intrusions.

They triumphed on one of the few occasions they did work together--in the mid 1970s, challenging federal power to impose minimum wage and overtime laws on state and local governments. The National League of Cities, the National Governors' Conference, 19 states, and three municipal governments joined in a lawsuit to defend their authority to set wages and hours. The outcome was a landmark victory for state and local powers: the Supreme Court decision in *National League of Cities v. Usery*, 426 U.S. 833 (1976). It was one of few times in which the Court has held that the 10th Amendment (reserving powers to the states) is a limit on federal action.

Alaska should take the lead to get a legal action fund for state and local governments underway. It should put up money to operate the fund for one year. Lawyers for this fund would file lawsuits and intervene in others as advocates for all state and local governments, at all levels of court.<sup>20</sup>

A century ago the fundamental questions of union and disunion, of federal and state powers, were debated on the floors of Congress and bloodied the fields of Shiloh and Antietam. Today the arena is not Congress, not the battlefield, not even the halls of bureaucracy. The deepest inquiries of our union now pivot on what judges say. States have ignored this fact too long. They should pool their energies and channel them accordingly.

Section 3. 7

Alaska should take the initiative to establish a legal action fund for the states.

~~This fund would oppose illegal and coercive federal restrictions, regulations burdensome to state and local government, and excessive use by Congress of its commerce powers to override state and local laws.~~

At present no one adequately represents state and local views when federalism questions come

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<sup>19</sup>The weight of academic opinion is that Congress does have the power to pass laws defining convention procedures.

<sup>20</sup>A pilot project underway is a move in the right direction. A private foundation and several nationwide state and local government organizations have brought to being the State and Local Legal Center. Two attorneys will monitor the Supreme Court and will research and help prepare arguments for these governments. However, current plans aim only at the Supreme Court and providing assistance there. We believe active intervention at all levels is needed.

8

~~Alaska should provide seed money to the National Governors' Association or like organization to sponsor a national convocation on federalism in the United States.~~

Not since 1787 have the leaders of the nation met to talk over the health of the relationship between the central government and the states. In that time the federal government has grown in power far beyond that envisioned by the nation's founders, for reasons good and bad. In

*We think other Americans feel it is time to take a good look at what their governments have become...*

the past year, we have discovered no evidence to make us retreat from our statement in our preliminary report that:

"By anyone's standards, the system of government in the United States has become greatly centralized, highly bureaucratized, frighteningly intergovernmentalized and often so complicated that it seems to be paralyzed..."  
(*More Perfect Union*, p. 26)

On the national level, recent discussions about federalism have failed to center on a fundamental restructuring of the relations between Washington, D.C., and the 50 states. Instead they have dealt with the more superficial matter of swapping responsibilities for who pays for certain health and welfare programs.

There is no doubt that since the founding, and especially in the two decades just past, federal powers have waxed, while the powers of the states have waned. The question is whether this process should continue without examination by the president, the governors, and other chief appointed and elected officials of the nation and the states.

We think not. We think other Americans feel it is time to take a good look at what their governments have become, to determine what is the proper role of the central government and the sovereign states in our federal system.

There has long been talk about having a national meeting to raise national consciousness about the respective roles of the central government and of the states. But no one has taken the first

step to make such a convocation happen. Alaskans, if they are serious about staking out federal powers, can take that first step by putting down the seed money to have the nation's governors organize the convocation. Alaska can even offer to host the convocation in Alaska, in 1984 during the 25th anniversary celebration of Alaska's accession to statehood.

But whatever the place, Alaska should do what it can to stir the nation and get this convocation underway.

9

Alaska and other states should consider amending the U.S. Constitution to strengthen the role of the states.

Since the ratification of the 17th Amendment,<sup>21</sup> which took the duty of electing U.S. senators from the legislatures and replaced it with direct election by the people, the states have lacked a collective voice in setting national policy. The states should contemplate proposing substantive amendments to the Constitution which would strengthen state roles, protect proper state powers, and counter federal growth.

The topic of possible amendments is perfectly suited to the agenda of a national convocation on federalism (Recommendation 8).

Over the years a variety of amendments have been proposed to alter the relationship between federal and state governments. Among them:

- a "state veto" of federal legislation (except for federal laws dealing with defense, foreign affairs or civil rights) by a vote of two-thirds of the state legislatures;
- a measure prohibiting the federal government from imposing any condition upon the states by grant requirements that it could not impose constitutionally by statute or regulation; and
- a "court of the union" composed of the chief justices of every state's supreme court. Assembled at the request of five states, this court would have the power to overrule any U.S. Supreme Court decision.

We are not prepared to endorse any of these proposals. We offer them for scrutiny as ways in which states might assert more control over national decision-making.

Critics have pointed to the states' poor record in championing civil rights during the 1950s and 1960s. They argue that any amendment strengthening state powers will reverse the progress of the last 30 years.

State officials reply that states have come a

<sup>21</sup>Under the original Constitution state legislatures named senators for each state. Alexander Hamilton said this power was an "absolute safeguard" to the states, and one which could not be dropped without "an entire dereliction of the federal principle" (*The Federalist Papers*, No. 59). Towards the end of the 19th Century, though, this duty was causing many deadlocks and much hard feelings in the legislatures. By 1912 two-thirds of the states called for a national convention to propose an amendment providing for direct election of U.S. senators. Congress forestalled this convention by proposing a similar amendment. The states ratified the amendment in 1913.

Introduced: 1/26/83  
Referred: State Affairs and  
Finance

Funding Information  
General Fund \$340,000  
Other Funds -0-  
\$340,000

BY THE RULES COMMITTEE  
BY REQUEST OF THE ALASKA  
STATEHOOD COMMISSION

1 IN THE SENATE

2

SENATE BILL NO. 75

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act making special appropriations to the Office

7

of the Governor; and providing for an effective

8

date."

9

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

10

\* Section 1. The sum of \$10,000 is appropriated from the general fund

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to the Office of the Governor for a study of funding flows between the

12

federal government and the state.

13

\* Sec. 2. The sum of \$200,000 is appropriated from the general fund to

14

the Office of the Governor to fund an institute to perform research and act

15

as an advocate of resource states' interests.

16

\* Sec. 3. The sum of \$100,000 is appropriated from the general fund to

17

the Office of the Governor for the share of the State of Alaska of a legal

18

action fund for all states.

19

\* Sec. 4. The sum of \$30,000 is appropriated from the general fund to

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the Office of the Governor for the share of the State of Alaska of a

21

national convocation on federalism sponsored by the National Governor's

22

Association.

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\* Sec. 5. The unexpended and unobligated portion of the appropriation

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made by this Act lapses into the general fund June 30, 1984.

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\* Sec. 6. This Act takes effect immediately in accordance with AS 01.-

26

10.070(c).

# ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



## MEMORANDUM

TO: Senate State Affairs  
Committee Members

FROM: Senator Vic Fischer, Chair  
Senate State Affairs Committee

DATE: March 20, 1983

R : Senate Bill 75

I have asked the Governor's Office to give its opinion on Senate Bill 75, a special appropriation to the Office of the Governor as requested by the Statehood Commission. Attached is Peter McDowell's response to my inquiry.

I would like to discuss the possibility of committee action on this bill at our next regularly scheduled meeting.

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

### OFFICE OF MANAGEMENT AND BUDGET

#### DIVISION OF STRATEGIC PLANNING

BILL SHEFFIELD, GOVERNOR

POUCH AD  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3568

March 11, 1983

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Alaska State Legislature  
Pouch V  
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The approach taken by the Statehood Commission was to urge the State to take an aggressive, leadership role among the western resource producing states, especially to combat the current move to limit the taxation capability of the energy rich states. The northeastern states support research and public information campaigns to limit the taxation capability of western states. The recommendations which are selected by


March 10, 1983

this bill for implementation through special studies are aimed at the accumulation and dissemination of information and at the use of State funds to set Alaska in a lead role among the western states.

The goals of the Alaska Statehood Commission deserve and will receive serious consideration by the Administration. The Governor is aware of the need for careful research and concerted action among the western states to combat Congressional initiatives that are not in the best interests of Alaska. Governor Sheffield joined Governor Hammond in discussions with western Governors about common problems. Approximately, \$125,000 (FY 83) supports preliminary work related to Section 2, specifically, the identification of energy production and resource issues of concern to Alaska and western states. If preliminary work warrants further efforts, Governor Sheffield intends to pursue this matter. It would be premature, however, to identify a specific approach, such as an "institute," at this time. Instead, sufficient funds should be available in the Governor's budget to address these further issues of coordination and agreement among western states and of what should be done by whom and at what cost.

While the Governor's Office appreciates the direction implied by SB 75, we do not support the expenditure of \$340,000 for the projects listed above.

Sincerely,



Peter B. McDowell  
Director, OMB

Enclosure

Our research<sup>32</sup> indicates that a state can, by rejecting a grant it accepted in prior years, embarrass the federal bureaucracy into reforming the grant and pruning the tendrils of conditions which have sprouted from it.

itself and disperse it widely across the nation and the state.

Keeping up with how much the federal government earns from Alaska and how much it spends here is a key part of that effort.

Section 1-16

Basic data about the federal government's economic relationship with Alaska has been difficult to obtain in coherent form from either federal or state agencies, though this information is critical for defending against congressional efforts to confiscate or limit state oil and other resource revenues.

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Because of the lack of available data, the Statehood Commission commissioned two studies on federal revenue and spending in Alaska from the University of Alaska's Institute of Social and Economic Research (ISER, 1981, 1982).

The first study, covering federal fiscal year 1980, showed that the federal government was earning \$2 from general economic activity in Alaska for every \$1 that it spent here. The second study, for fiscal year 1981, showed that by then the federal government was earning \$3 in Alaska for every \$1 that it spent.

The latter study showed that economic activity in Alaska accounted for one-sixth of all of the federal government's Windfall Profits Tax revenues in 1981 and one-twentieth of all of its revenues from corporate income taxes.

The studies also showed that the federal income tax lands unfairly on Alaskans, hurting families and businesses and distorting investment decisions in this state.

Put in the larger context of economic data about Alaska's high cost of living, its lack of transportation and of energy systems and its lack of adequate housing, the information from these economic studies can show the fair minded that Alaska not only is paying its way in the family of states but has urgent needs at home for its income from temporary oil supplies. Poor until recently, Alaska needs to catch up in supplying to its citizens the basic services that other states offer and most Americans take for granted.

A general theme in this final report from the Statehood Commission is that Alaska must collect more precise, reliable information about

**17** The governor should establish an office of external relations on his staff, to be headed by a special assistant to coordinate Alaska's expanded relations with other states and with foreign nations.

Much of this report argues the necessity for Alaska to reach out to other states and its neighbors in Canada to establish new coalitions, working groups and conferences to deal with mutual needs.

This work is so important that the Statehood Commission feels that one high-ranking official reporting directly to the governor should have the responsibility of coordinating and directing these efforts with all parts of state government.

It is just as important, however, that this office also concern itself with Alaska's efforts to strengthen its relationships with many foreign nations, especially those with which it trades and those with which it hopes to increase trade.

It is not generally known that in 1981 "Alaska rated number one in the nation for exports as percentage of total shipments from the state. Furthermore, export-related employment in Alaska was 34.7 percent of jobs in Alaska's manufacturing sector, which includes seafood processing" (Hemphill, p. 2).

Alaska's exports to foreign markets in 1981 equalled \$1.2 billion; its imports from foreign countries totaled \$229 million, according to Hemphill. Alaska thus was one of the few U.S. states in 1981 with a positive trade balance and so made a significant contribution to the country's trade situation.

Japan bought most of Alaska's exports--\$935 million worth. Japan also was the largest exporter to Alaska--\$59 million in goods.

Four classes of goods made up the bulk of Alaska's 1981 exports: seafood products, at \$427 million; liquefied natural gas, at \$310 million; forest products, at \$278 million and fertilizers, at \$133 million. These figures do not include goods shipped from Alaska to other U.S. states for reprocessing and export.

The nation and Alaska need to expand markets for these products and to find markets for such other Alaska products as coal, other minerals and grains. Developing these markets demands con-

<sup>32</sup>See the Alaska Statehood Commission publication, *Shifting Power from the Federal Government to the State of Alaska*, by Harold Hovey, 1982.

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Efforts to strip Alaska and other resource states of revenues from oil and other energy sources center around the Northeast-Midwest Congressional Coalition and its research arm, the Northeast-Midwest Institute.

The Institute has become the dominant source of detailed information about resource extraction and taxing available in Washington to the national press, members of Congress and other federal officials.

The Coalition and the 18 states it represents seek to have resource incomes of individual states pooled by federal law and redistributed to all states. Such federal action would be a major blow to one of the last pillars of state sovereignty: the power to raise and allocate revenues. The Coalition even wants the federal government to prescribe how individual states may spend resource revenues.

The Northeast-Midwest Institute is only too happy to provide facts, figures and research documents to bolster efforts in Congress to nationalize the incomes of what the Coalition has tagged the "United American Emirates," the oil-producing states.

A major political battle looms. It will be fought largely in the newspapers and on radio and television for the hearts and minds of the general public.

The need for a counterbalancing institute of resource states seems obvious and may be critical. Such an organization would perform and publish scholarly research on matters of special interest to the resource states. The institute must be located in Washington, D.C., for maximum accessibility, effect and credibility. It is very important for reporters, the administration, members of Congress and their staff to have personal access to the institute's researchers as well as to its publications.

Alaska must lead in starting such a research and advocacy institute and keeping it funded. The Legislature should provide the governor with money enough to fund the institute's first years and convince other states to join the effort. To do nothing or to delay too long in face of an obvious threat to Alaska's financial well-being will only turn the threat into an impoverishing reality.

The state Board of Education and Alaska school districts should require the teaching of Alaska history, citizenship and culture.

The Statehood Commission worries that in our oil-propelled rush into the mainstream of the nation's economy, we may be cutting our ties with what is special about Alaska. Further, by failing to attend to our history we risk repeating mistakes made during Alaska's early days of copper, gold and fishing booms and busts.

*We have a system of public and private education second to none, and yet we do not require education about our state's history.*

Alaska's long isolation from the other states has ended. Arctic villages once accustomed to occasional newspapers by barge and dogsled now receive their baseball games televised live via satellite. One out of three Alaskans has lived in the state less than five years.

It is not easy to preserve our heritage with such turnover and in the face of a mass culture tuned to a common denominator, but we must try. We have a system of public and private education second to none, and yet we do not require education about our state's history. We do not require instruction on our rich and varied regional and statewide cultures.

We should also teach every student--from elementary through post-secondary schooling--the reciprocal duties between citizen and state, and between citizen and national government. A citizenship program should teach respect for the dignity of every individual; the observance of rules written for the common good; respect for private and public property; strong ethical values; development of a social conscience; and democratic ideals.<sup>18</sup> If Alaska needs a model it need look only as far as the education required of aliens requesting U.S. citizenship. It is paradoxical that naturalized citizens often have a better knowledge about America than those born here.

The Legislature should speed development of the classroom material required, and make the materials available to all public and private school systems.

Education is Alaska's opportunity to invest in the next generation of voters and leaders. It is our preventive medicine against the repetition of past mistakes. It can be our way of preserving and

<sup>18</sup>In 1980 the Anchorage School Board approved a similar list of goals for a citizenship education program.

a state-called convention to propose amendments.

The rules are long overdue, but we doubt that Congress will write them.<sup>19</sup> It prefers to hold up the specter of a runaway convention to discourage the states ever asking for one. In this way Congress keeps complete control over which amendments are submitted for ratification.

The states must force the issue under Article V by calling for a convention to amend Article V. Rules must set out how convention votes would be apportioned and should define the scope of a convention's proposing powers. We believe a convention should be limited to the consideration of subjects named in the state resolutions asking for a convention. It should not have blanket authority to propose other amendments.

For Alaska, a federal convention has both danger and opportunity. Much depends on how votes are apportioned at the convention. We recommend the Alaska Legislature, in its resolution, call for equal votes by state. Under this plan, if there were 500 votes to go around, Alaska would have 10 votes, or 2 percent.

Were apportionment to follow a congressional model (votes according to the size of a state's congressional delegation), Alaska would have only 3 out of 500, or 0.6 percent of the votes. If votes are apportioned strictly by population, Alaska would have still fewer: 1 out of 500, or 0.17 percent of the votes.

Equal votes among the states would be true to the plan of the Constitutional Convention of 1787. That convention was "first and foremost a gathering of states" (Rossiter, p. 68). We suggest emulating the U.S. Senate: two delegates per state in a constitutional convention, for a total of 100 votes.

up in court--questions such as, "What does the Constitution say about this conflict between state and federal government?"

The federal government has the Office of the Solicitor General. Special-interest groups--often at odds with state and local governments--have

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*In short, state and local governments must start working together to oppose creeping federal intrusions.*

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their legal defense funds.

But lawyers for state and local governments find themselves outgunned in the higher courts on complex federalism questions. They speak only for their employer, but the court decisions handed down will infuse the internal workings of all state and local governments, rewriting charters and constitutions and increasing liability to civil lawsuits.

In short, state and local governments must start working together to oppose creeping federal intrusions.

They triumphed on one of the few occasions they did work together--in the mid 1970s, challenging federal power to impose minimum wage and overtime laws on state and local governments. The National League of Cities, the National Governors' Conference, 19 states, and three municipal governments joined in a lawsuit to defend their authority to set wages and hours. The outcome was a landmark victory for state and local powers: the Supreme Court decision in *National League of Cities v. Usery*, 426 U.S. 833 (1976). It was one of few times in which the Court has held that the 10th Amendment (reserving powers to the states) is a limit on federal action.

Alaska should take the lead to get a legal action fund for state and local governments underway. It should put up money to operate the fund for one year. Lawyers for this fund would file lawsuits and intervene in others as advocates for all state and local governments, at all levels of court.<sup>20</sup>

A century ago the fundamental questions of union and disunion, of federal and state powers, were debated on the floors of Congress and bloodied the fields of Shiloh and Antietam. Today the arena is not Congress, not the battlefield, not even the halls of bureaucracy. The deepest inquiries of our union now pivot on what judges say. States have ignored this fact too long. They should pool their energies and channel them accordingly.

Section 3

7

~~Alaska should take the initiative to establish a legal action fund for the state.~~

~~This fund would oppose illegal and coercive federal restrictions, regulations, burdens on state and local government and excessive use by Congress of its powers to override state and local laws.~~

At present no one adequately represents state and local views when federalism questions come

<sup>19</sup>The weight of academic opinion is that Congress does have the power to pass laws defining convention procedures.

<sup>20</sup>A pilot project underway is a move in the right direction. A private foundation and seven nationwide state and local government organizations have brought to being the State and Local Legal Center. Two attorneys will monitor the Supreme Court and will research and help prepare arguments for these governments. However, current plans aim only at the Supreme Court and providing assistance there. We believe active intervention at all levels is needed.

Section 4

8

~~Alaska should provide seed money to the National Governors' Association or like organization to sponsor a national convocation on federalism in the United States.~~

Not since 1787 have the leaders of the nation met to talk over the health of the relationship between the central government and the states. In that time the federal government has grown in power far beyond that envisioned by the nation's founders, for reasons good and bad. In

We think other Americans feel it is time to take a good look at what their governments have become....

In the past year, we have discovered no evidence to make us retreat from our statement in our preliminary report that:

"By anyone's standards, the system of government in the United States has become greatly centralized, highly bureaucratized, frighteningly intergovernmentalized and often so complicated that it seems to be paralyzed..."

(More Perfect Union, p. 26)

On the national level, recent discussions about federalism have failed to center on a fundamental restructuring of the relations between Washington, D.C., and the 50 states. Instead they have dealt with the more superficial matter of swapping responsibilities for who pays for certain health and welfare programs.

There is no doubt that since the founding, and especially in the two decades just past, federal powers have waxed, while the powers of the states have waned. The question is whether this process should continue without examination by the president, the governors, and other chief appointed and elected officials of the nation and the states.

We think not. We think other Americans feel it is time to take a good look at what their governments have become, to determine what is the proper role of the central government and the sovereign states in our federal system.

There has long been talk about having a national meeting to raise national consciousness about the respective roles of the central government and of the states. But no one has taken the first

step to make such a convocation happen.

Alaskans, if they are serious about staking out federal powers, can take that first step by putting down the seed money to have the nation's governors organize the convocation. Alaska can even offer to host the convocation in Alaska, in 1984 during the 25th anniversary celebration of Alaska's accession to statehood.

But whatever the place, Alaska should do what it can to stir the nation and get this convocation underway.

9

Alaska and other states should consider amending the U.S. Constitution to strengthen the role of the states.

Since the ratification of the 17th Amendment,<sup>21</sup> which took the duty of electing U.S. senators from the legislatures and replaced it with direct election by the people, the states have lacked a collective voice in setting national policy. The states should contemplate proposing substantive amendments to the Constitution which would strengthen state roles, protect proper state powers, and counter federal growth.

The topic of possible amendments is perfectly suited to the agenda of a national convocation on federalism (Recommendation 8).

Over the years a variety of amendments have been proposed to alter the relationship between federal and state governments. Among them:

• a "state veto" of federal legislation (except for federal laws dealing with defense, foreign affairs or civil rights) by a vote of two-thirds of the state legislatures;

• a measure prohibiting the federal government from imposing any condition upon the states by grant requirements that it could not impose constitutionally by statute or regulation; and

• a "court of the union" composed of the chief justices of every state's supreme court. Assembled at the request of five states, this court would have the power to overrule any U.S. Supreme Court decision.

We are not prepared to endorse any of these proposals. We offer them for scrutiny as ways in which states might assert more control over national decision-making.

Critics have pointed to the states' poor record in championing civil rights during the 1950s and 1960s. They argue that any amendment strengthening state powers will reverse the progress of the last 30 years.

State officials reply that states have come a

<sup>21</sup>Under the original Constitution state legislatures named senators for each state. Alexander Hamilton said this power was an "absolute safeguard" to the states, and one which could not be dropped without "an entire dereliction of the federal principle" (*The Federalist Papers*, No. 59). Towards the end of the 19th Century, though, this duty was causing many deadlocks and much hard feelings in the legislatures. By 1912 two-thirds of the states called for a national convention to propose an amendment providing for direct election of U.S. senators. Congress forestalled this convention by proposing a similar amendment. The states ratified the amendment in 1913.

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SB 83

Temporary, & nonpermanent employees  
deserve the same benefits w/ regard  
to court leave as permanent  
employees.

1)  
administrative leave w/ pay.

Introduced: 1/18/83  
Referred: State Affairs and  
Judiciary

BY THE RULES COMMITTEE BY  
REQUEST OF THE LEGISLATIVE  
COUNCIL (for the Blue  
Ribbon Commission on the  
State Personnel Act)

1 IN THE SENATE

2 SENATE BILL NO. 59 *(new)*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to government interests in intellec-  
7 tual work products developed at the expense of the  
8 state."

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

10 \* Section 1. AS 39 is amended by adding a new chapter to read:

11 CHAPTER 52. INTELLECTUAL PROPERTY DEVELOPED

12 AT THE EXPENSE OF THE STATE.

13 Sec. 39.52.010. RIGHT TO INTELLECTUAL WORK PRODUCT. (a) Except  
14 as provided in AS [39.52.040] and AS 14.40.345, all right, title, and  
15 interest in and to an intellectual work product of any kind that is  
16 subject to the trademark, copyright, or patent laws of the United  
17 States or this state or any foreign country that is developed by a  
18 public officer or employee or a person under contract with the state  
19 is the property of the state if developed

20 (1) during working hours;

21 (2) with the contribution of the state beyond what is  
22 available to the public in general in the form of facilities, equip-  
23 ment, materials, money, or information, or of time or services of  
24 another public officer or employee in the course of state employment  
25 or another person under contract with the state; or

26 (3) in connection with the official duties of the public  
27 officer or employee or the person under contract, including but not  
28 limited to circumstances in which the public officer or employee or  
29 the person is employed or assigned to

1 (A) produce or improve an intellectual work product;  
2 (B) conduct or perform research, development work, or  
3 both;

4 (C) supervise, direct, coordinate, or review state  
5 financed or conducted research, development work, or both; or

6 (D) act in a liaison capacity among governmental or  
7 nongovernmental agencies or individuals engaged in such work.

8 (b) If a public officer or employee or a person under contract  
9 with the state develops an intellectual work product that is the  
10 property of the state, the developer is obligated to

11 (1) fully and promptly disclose the intellectual work  
12 product to the Alaska Council on Science and Technology (AS 44.21.-  
13 241);

14 (2) assign to the state the entire right, title, and inter-  
15 est in and to the intellectual work product if not already waived by  
16 signing of a general waiver upon commencement of employment in accor-  
17 dance with AS 39.05.160 or as part of a contract for services; and

18 (3) upon request by the council, execute and reasonably  
19 assist in the prosecution of an application for a trademark, copy-  
20 right, or patent.

21 (c) If the state has a right to an intellectual work product  
22 under (a) of this section but the council decides that it is inadvis-  
23 able to prosecute an application for trademark, copyright, or patent,  
24 the council, on behalf of the state, may, after consultation with  
25 affected state agencies,

26 (1) waive all right, title, and interest in and to the  
27 intellectual work product; or

28 (2) waive all right, title, and interest in and to a trade-  
29 mark, copyright, or patent but reserve a nonexclusive, irrevocable,

1 royalty-free license in the intellectual work product with power to  
2 grant licenses for all governmental purposes.

3 Sec. 39.52.020. COUNCIL AUTHORIZED TO GRANT MONETARY RECOGNITION  
4 FOR CREATION OF INTELLECTUAL WORK PRODUCT. (a) The council is autho-  
5 rized to give monetary recognition to a [public officer or employee] who  
6 develops an intellectual work product that is the property of the  
7 state and who discharges the obligations set out in AS 39.52.010.

8 (b) The council shall determine the guidelines, terms, and  
9 conditions, as well as amount, source, distribution, and manner of  
10 payments under (a) of this section. [The council shall consider the  
11 actual or potential value of the intellectual work product in terms of  
12 revenue or reduced operating costs to the state.]

13 Sec. 39.52.030. ARBITRATION OF DISAGREEMENTS. (a) Disagree-  
14 ments between a public officer or employee or a person under contract  
15 with the state and the council pertaining to ownership of an intellec-  
16 tual work product or obligations of the respective parties shall be  
17 disposed of by

18 (1) voluntary arbitration of all relevant issues, if the  
19 disagreeing parties agree to be bound by the decision upon arbitra-  
20 tion;

21 (2) compulsory arbitration if that is provided for in any  
22 applicable contract between the disagreeing parties; or

23 (3) recourse to the court if arbitration cannot be resorted  
24 to.

25 (b) The council is authorized to make contracts for compulsory  
26 arbitration on behalf of the state.

27 (c) If arbitration is used to settle disagreements, the provi-  
28 sions of AS 09.43 (Uniform Arbitration Act) shall govern.

29 Sec. 39.52.040. EXCEPTIONS. The provisions of this chapter do

*see also section 39.52.010*

*definition*

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1 not apply to a public officer or employee associated with or a person  
2 under contract with the University of Alaska. Those persons shall be  
3 governed by the provisions of AS 14.40.345. The provisions of this  
4 chapter do not apply to a member of the legislature.

5 Sec. 39.52.050. ADOPTION OF RULES. The council may adopt rules  
6 implementing the provisions of this chapter in accordance with the  
7 Administrative Procedure Act (AS 44.62).

8 Sec. 39.52.099. DEFINITIONS. As used in this chapter, unless  
9 the context otherwise requires,

10 (1) "council" means the Alaska Council on Science and Tech-  
11 nology established in AS 44.21.241;

12 (2) "intellectual work product" means any product of the  
13 mind including but not limited to the following:

14 (A) discovery, invention, or idea;

15 (B) process, system, or method;

16 (C) machine, manufacture, or product;

17 (D) composition of matter;

18 (E) design or composition in letters, art, or graph-  
19 ics;

20 (F) literary, dramatic, musical, educational, or  
21 artistic work;

22 (G) certification mark, trademark, patent, or copy-  
23 right.

24 \* Sec. 2. AS 14.40 is amended by adding a new section to read:

25 Sec. 14.40.345. INTELLECTUAL PROPERTY DEVELOPED AT THE EXPENSE  
26 OF THE UNIVERSITY. All right, title, and interest in and to an intel-  
27 lectual work product developed by a public officer or employee asso-  
28 ciated with or a person under contract with the University of Alaska  
29 is the property of the university in accordance with a general policy

1 established by the university. The policy adopted by the University  
2 of Alaska may provide for ownership, control, management, and disposal  
3 of intellectual work products by an independent foundation created for  
4 the purpose of obtaining intellectual work products, receiving gifts,  
5 administering or disposing of interests in intellectual work products,  
6 and promoting research.

7 \* Sec. 3. AS 39.05 is amended by adding a new section to read:

8 ARTICLE 5. WAIVER OF RIGHT TO INTELLECTUAL PROPERTY.

9 Sec. 39.05.160. WAIVER OF RIGHT TO INTELLECTUAL PROPERTY. (a)

10 A public officer or employee of the state, before engaging in the  
11 duties of the office or employment, shall sign a waiver of all right,  
12 title, and interest in and to an intellectual work product that may be  
13 developed by the officer or employee at the expense of the state as  
14 set out in AS 39.52.

15 (b) Notwithstanding the requirement in (a) of this section, the  
16 state, in accordance with AS 39.52.020, may share a portion of the  
17 resulting revenue with or grant a cash award for resulting reductions  
18 in operating costs to a public officer or employee who develops an  
19 intellectual work product at the expense of the state.

20 (c) A public officer or employee may be required to sign, before  
21 engaging in the duties of the office or employment, an acknowledgement  
22 that the public officer or employee will not receive a share of the  
23 revenue or reduction in operating costs attributable to an intellec-  
24 tual work product developed as a duty of the office or employment.

25 (d) The waiver under (a) of this section and the acknowledgement  
26 under (c) of this section are not considered terms and conditions of  
27 employment that are subject to negotiation for purposes of collective  
28 bargaining under the Public Employment Relations Act (AS 23.40).

29 \* Sec. 4. AS 44.21.242(b) is amended by adding new paragraphs to read:

1           (9) consistent with the provisions of AS 39.52, retain,  
2 assign, license, transfer, sell, or otherwise dispose of, in whole or  
3 in part and upon terms that the council may direct, any and all rights  
4 to, interests in, or income from intellectual work products acquired  
5 by the council under AS 39.52;

6           (10) adopt rules implementing the provisions of AS 39.52.

7 \* Sec. 5. AS 37.12.070(9) and AS 46.12.110(10) are repealed.

NOI

1) I would like to see Person get  
some kind of percentage for amount  
The project saves the state in  
Revenue.