ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4318 SRES HB 93 - HB 103

1197

in late winter and early spring and near Whittier in early summer. Saltwater fishing for kings is available in lower Cook Inlet from mid-May through late July. On Kodiak Island, kings start arriving in the Karluk River in early June.

Silver salmon arrive in Prince William Sound in late July and remain through mid-September; they also occur in rivers in the Cordova area in the fall. These flashy fighters can be found in waters off the lower Kenai Peninsula in July and August; and in rivers draining into upper Cook Inlet from mid-July to September. Silvers can be taken from Kodiak Island waters in late August and early September. Silver salmon range from eight to 20 pounds, and can attain 25 pounds.

Fishing for pink salmon is excellent in Prince William Sound from mid-June through mid-August. In the Cook Inlet area, fishing for pinks ranges from poor to fair from mid-July through mid-August. In waters of the Kenai Peninsula, fishing for pinks is best from mid-July to mid-August. These small salmon, which average three or four pounds, but occasionally attain 10 pounds, start arriving in Kodiak waters in late June.

Chum salmon, which commonly weigh about 10 pounds, but occasionally reach 30 pounds, are available in Prince William Sound during July and August and often are caught while fishing for silvers or pinks. These fish are scattered sparingly throughout Cook Inlet streams from mid-July through mid-August and they usually arrive in Kodiak waters in late July and early August.

Ruby-fleshed red salmon are much prized for food; they commonly weigh six to 10 pounds, although they occasionally weigh up to 15 pounds. In some rivers they apparently will not hit a lure, but there is excellent fly-fishing for reds in the Gulkana and Klutina rivers in the Copper River area in late June and July, in the Russian River on the Kenai Peninsula from early June to late August and in the Kenai River from mid-July through early August. Reds also are available in several rivers in the Kodiak area from June to the first of September.

Other fish encountered in this region are halibut that can tip the scales at 300 pounds; rainbow trout, which may weigh 10 pounds and occasionally reach 20 pounds; char and Dolly Varden, which usually weigh one to three pounds, but occasionally reach the nine- to 12-pound mark; lake trout can reach 30 pounds; grayling; burbot (also called lush or lingcod) average two to five pounds, but can attain 20 pounds.

There is easy access to good sportfishing in the Southcentral/Gulf Coast region by car, but the majority of the best fishing locations are reached only by plane or boat. Many communities have charter operators that offer fishing trips or simply transportation to fishing spots.

Columbia Glacier

A floatplane taxis in front of Columbia Glacier, star attraction of Prince William Sound and one of the largest tidewater glaciers on the Alaska coast. The glacier covers more than 440 square miles. Its terminus measures more than six miles across and 164 to 262 feet above sea level. It is expected to recede 22 miles in the next 20 to 50 years, leaving behind a deep fjord. Scientists are studying its retreat and increased iceberg production, which could pose a hazard to oil tankers from Valdez. Plankton-rich waters attract great numbers of fish, which in turn attract bald eagles, kittiwakes, gulls and harbor seals. The glacier can be viewed from the state ferries; boat and flightseeing tours are available in Whittier, Valdez and Cordova. (Staff, reprinted from The MILEPOST® *)*

POOR COPY

Camp 1. At one time there was a crude bridge at Camp 1 across Lake Creek which provided an overland route northwest to the Fairview Mountain area. From Camp 1, the wagon road continued to a crossing of Kahiltna River at Camp 2, also called Kahiltna City. From there it followed the Kahiltna River along the lower reaches of Little Peters Hills to Cache Creek and Peters Creek, the heart of the Peters Hills mining area.

The trail to Camp 2 was a summer and winter freighting trail. From Camp 2 north, it was a winter trail only.

This was the preferred route in the Cache Creek-Peters Hills area until the Alaska Railroad reached Talkeetna in 1923. After 1923, the trail declined rapidly in importance.

After 1923, an alternate trail came into existence from the Fork Roadhouse on Petersville Road. It ran south between Bear Creek and Peters Creek, crossed the Kahiltna River just north of Bear Creek to reach Camp 2, and then headed south and southwest to cross Lake Creek, and then west to Skwentna. For several years, there was a bridge across the Kahiltna River, but it washed out almost every year. The trail is lightly used today for dog mushing, snow machining, winter access to cabins, hunting and fishing.

Skwentna area winter trails were identified by longtime Skwentna residents, Joe Delia and Carl Nivers.

2. RECREATION RIVERS

Because of the high recreation potential of the rivers in the area the State Division of Parks has proposed them for designation as "State Recreation Rivers" or as "State Recreation Sites".

The following are more detailed accounts of the streams:

a. MOOSE CREEK with access from the Oilwell Road south of Petersville Road is one of five clearwater streams west of the Susitna River. For that reason and its easy accessibility, it is a popular fishing river. Moose Creek is excellent for silver salmon, pink salmon, rainbow trout, and grayling fishing.

Moose Creek is also known as the east fork of the Deshka (Kroto Creek). Moose Creek enters the Deshka north of Neil Lake about four map miles. There is a good camping spot at the confluence.

Neil Lake is a heavily used access point because it serves two branches of the Deshka. It is a two-day float from Neil Lake to the mouth. From Petersville Road to Neil Lake is a three-day float. If floaters put in at Neil Lake, they can take out via float plane or boat at the confluence of the Deshka with the Susitna. A river-boat return up Willow Creek to the Parks Highway is common.

Jetboat travel is common the length of Moose Creek. Access for jetboats is via the Susitna River and then up the Deshka to Moose Creek.

Fishermen generally spend several days floating the river. It is relatively remote, and trips take at least two to three days.

b. KROTO CREEK. The Deshka or Kroto Creek is a popular river, affording excellent salmon fishing because it is a clearwater stream. It is one of five such rivers west of the Susitna River. The Deshka offers silver fishing from mid-July through September peaking in August. Pink salmon are present from mid-July to mid-August although on odd-numbered years pink salmon fishing is generally poor to fair. Rainbow trout fishing is excellent on the Deshka during late May to September. Grayling fishing occurs from late May to early June. King salmon are present in early June.

Fishing effort is intense from the mouth to Neil Lake. Above Neil Lake to Amber Lake, effort is moderate. The mouth receives an intense level of fishing at the confluence with the Susitna River. Boat traffic on the Deshka has increased sharply. Riverboats and jetboats enter the Deshka from the Susitna River and run the entire length of the river. The use of jetboats has made the Deshka more accessible from places such as Susitna Landing off of the Parks Highway.

Fishermen typically float the Deshka from Amber Lake to Neil Lake by raft. Access is by float plane at both ends of this two-day trip. It is possible to float from Amber Lake to the mouth where take-out is by air or boat.

Potential float trips are also possible from Petersville Road to Amber Lake and on the west fork of the Deshka.

There is a large concentration of Class 2 and 3 agricultural soil--up to 30,000 acres--between the Yentna River and the lower reaches of Kroto Creek.

c. KAHILTNA RIVER is raftable from its headwaters at the Kahiltna Glacier to its confluence with the Yentna or the Susitna River. The distance to the Yentna is 74 miles. The extremely cold and silty water makes this a challenge for skillful paddlers. The river is Class II white water. Access is by air at the headwaters and by air or boat at the Yentna or Susitna Rivers. Riverboat traffic is limited on the Kahiltna just above the confluence with the Yentna.

d. LAKE CREEK is a popular clearwater fishing river, but is not fished as intensively as Kroto Creek. Lake Creek offers silver, king, and pink salmon fishing as well as rainbow trout and grayling in the lower stretches.

Fishing float trips are popular and have been increasing.

There is a popular stretch of white water about three to four miles long just south of Shovel Lake. There is another fly-in lake which provides access to the river via a walkover.

The most intense fishing effort on Lake Creek occurs at the mouth and about four miles upstream. Fish Lakes and a walkover provide access to this stretch north of the mouth. Bulchitna Lake is a heavily used access for the upstream portion. The lake is within 100 yards of the streams. Take-out is via float plane and riverboat. Fishermen not involved in float trips generally fly into the Mc Dougal area and are taken upstream by residents in riverboats.

There are potential float trips on Sunflower Creek and Camp Creek with put-in off the Collinsville Trail southwest of Chelatna Lake. Both creeks flow into Lake Creek.

Lake Creek is a Class III river which receives a high level of use. White water rafting and kayaking, as well as canoeing, occur on Lake Creek. The river runners use the same access points as the fishermen. River enthusiasts generally spend two or more days on the river during the summer months.

At Chelatna Lake there is no public access. Private access is afforded to some flight operators and not to others. Generally speaking, legal access is a problem for much of the stream.

e. YENTNA RIVER is large. It has a larger annual stream flow than does the Susitna River upstream of Talkeetna.

During summer months the Yentna River is heavily traveled by jetboats and riverboats. Increase in population along the river has increased boat travel and float plane traffic. White-water rafting, kayaking and canoeing occur on an 80-mile stretch of the Yentna. The river offers Class II flat water with sweepers, log jams, and floating trees. This is a glacial river which runs a large volume of water. River access is by boat or air at both ends.

The Yentna River receives snow machine and dog sled traffic during the winter. In some years the Iditarod Dog Sled Race is run up the Yentna River to Skwentna. Hunting occurs along the length of the river at a moderate level.

This is a popular recreation spot for fishermen, boaters, and snow machiners. Fish Lakes offer red salmon and pike fishing and receive a moderate level of fishing effort. Bulchitna Lake is a primary access to Lake Creek and is lightly fished.

f. SKWENTNA is a very popular recreation area west of the Susitna River. Skwentna is about 40 miles due west of the Caswell and Trapper Lake area.

The area described here extends west of Skwentna to Porcupine Butte, south of Judd Lake, east to Lake Creek, and north to the Yenlo Hills. It is accessible by air and by boat before freeze-up and then during winter months by dog sled or snow machine.

Recreational activities during the summer/autumn months occur mostly on the river corridors. These activities include: big and small game hunting, waterfowl hunting, fishing, white-water rafting, kayaking, and berry picking. Riverboat traffic is heavy on the Yentna River from the Susitna to the confluence of the Kichatna River. Hunting from riverboats for moose and black bear is very popular along the Yentna River. On the Skwentna there is a moderate level of boat traffic as far as Skwentna. Spring waterfowl hunting occurs in the swamps and sloughts south of Whiskey Lake. Access to this area is by boat or plane.

Both the Yentna and the Skwentna Rivers afford white-water rafting opportunities during the summer months. White water and fishing raft trips are also popular on the Talachulitna, a tributary of the Skwentna. Berry picking occurs at every water access point.

Fishing is the primary water associated activity of the Skwentna area. A moderate level of fishing effort for silver salmon occurs on Hewitt and Whiskey Lakes throughout the summer. Shell Lake, further to the west, provides excellent lake trout fishing.

Despite the inaccessibility by road, the area receives a high level of activity, supported by air taxi and guiding services.

Since the terrain is marshy, summer activity is limited to the river corridors. Dog mushing and snow machining become popular recreational activities of the residents during winter months of use from late January to April.

Non-local dog mushers run from Trapper Lake, Petersville Road, Nancy Lake, and Big Lake areas to Skwentna for long distance training. Skwentna is a checkpoint for the Iditarod Dog Sled Race, held in February each year.

g. TALACHULITNA RIVER is intensely fished its entire length. Like the Deshka, it is one of the five major clearwater streams west of the Susitna River.

The Talachulitna is an excellent salmon fishery, and the season extends from mid-July to September with a peak occurring in August. Pink salmon occur mid-July to mid-August. Pink salmon fishing is generally poor to fair on odd-numbered years. Throughout the summer, May through September, the Talachulitna is an excellent grayling stream.

4/15

The Talachulitna emerges from Talachulitna Lake and flows into creek is intensely fished for red salmon, but receives light fishing effort in general.

From Judd Lake to its mouth the Skwentna River, the Talachulitna is heavily rafted by fishermen, river rafters, and kayakers. Riverboat traffic ie also heavy.

Put-in point is at Judd Lake. There is a public access on the lake and a walk over to a tributary to the north. Physical access is also possible at the point where the Talachulitna flows out of Judd Lake.

There is a float plane take-out halfway downstream. It is a popular float downstream to the mouth. White water is present at the lower stretch of the river.

Float plane or boat access is available. Planes land on the Skwentna River for pickup.

Flight operators have developed an alternate access point to the lower portion of the river on a lake approximately three miles upstream and to the east of the river. There is a one-half mile trail from the lake to the river. Flight operators feel that it is necessary to preserve access on this lake and the trail.

There are public access problems at the mouth of the river.

The area is scenic with abundant recreational opportunities. The area is not accessible by road. An extensive trail network has been established by area residents to traverse the marshy terrain. Although summer trails do exist, winter trails are easier to travel and thus are more extensive and more widely used.

Existing trails are used for hiking, skiing, snowshoeing, dog sledding, and snow machining. Winter use of the trails is heavier than summer use.

h. ALEXANDER CREEK is an excellent fishing river. As one of the five clear water streams west of the Susitna River, it is intensely fished its entire length. Silver salmon fishing peaks in August on Alexander Creek, with the season running from mid-July to September. Mid-July to mid-August chum salmon are present. During the same period pink salmon are fished. In odd years pink salmon fishing is poor to fair. Rainbow trout fishing occurs throughout the summer. Grayling fishing is best in early summer. King salmon run up the creek early May through July. Kings are subject to strict management regulations.

Fishermen float the river or use jetboats or riverboats. In recent years there has been a change in the type of boats used on Alexander Creek. Riverboats are being replaced by cruisers as the most popular craft.

A popular floater put-in point is just downstream from Alexander Lake. Access is by air. Another put-in point downstream is at Trail Lake. Float plane access is on the lake with a walk over to Lower Sucker Creek. Lower Sucker Creek is raftable and receives a heavy level of use. Fishing effort is light on the creek, however. Fishermen spend a day or two from there floating Alexander Creek. Primary take-out point is at the mouth where float plane pickup is available. Riverboat take-out is also available.

The operators of the Alexander Lake Lodge have been encouraging cross-country skiing in their area.

i. SUSITNA RIVER. The lower Susitna River from Talkeetna to the mouth is a major transportation corridor for sportsmen. It receives heavy boat traffic from fishermen heading up the Susitna's clearwater tributaries such as the Deshka and Yentna Rivers, Alexander and Willow Creeks. Hunting effort along the river is intense from the mouth to north of Talkeetna.

The Susitna River is a popular flat water river. It offers Class III flat water. The water is multi-channeled and silty, and demands water reading skill from paddlers. A popular raft, kayak, or canoe trip is to float from Gold Creek to the mouth, a distance of 120 miles. Gold Creek is accessible by rail. Other put-in and take-out points are available on the Parks Highway at Talkeetna and at Susitna Landing. Power boats also put into Willow Creek west of the Parks Highway. One of the primary reasons for a Willow Creek State Recreational Area is to provide access to the mouth of Willow Creek so that power boats can put in at the Susitna River and not interfere with fishing at Willow Creek.

j. COAL CREEK is a clear water stream which flows into Beluga Lake in the southwest region of the Matanuska-Susitna Borough. Upper Coal Creek has excellent grayling and dolly varden fishing but receives a very light use level above Coal Creek Lake because it is inaccessible.

Air access is available on Coal Creek Lake. The lake itself receives light fishing effort. There are two walk over trails to the creek. Downstream to the mouth of Beluga Lake, fishing effort is light.

Beluga Lake is a hunter access point, which receives moderate hunting effort.

k. TOKOSITNA RIVER is a rafting and canoeing river north of Trapper Creek. Home, Bunco, and Swan Lakes provide float plane access for rafters.

The Tokositna River provides a spectacular scenic route with Class II flat water. It is an easy river,

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

100

Alaska State Legislature

POUCH V
JUNEAU, ALASKA, 99811
(907) 465-4907

Senate
Committee on Resources

TO: Senate Resource Committee Members February 5, 1986

FROM: Senate Resource Committee Staff MEC

RE: HB 100 "An Act relating to detention of vessels as security for oil-pollution damages; and clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

The material in this packet explains this bill. The bill passed the House unanimously and was passed out of Senate Transportation with five "Do Pass" recommendations. The enclosed Resources CS make no policy changes but only corrects a drafting error which referenced a repealed statute.

HOUSE BILL 100

DETENTION OF VESSELS FOR OIL SPILL VIOLATIONS

BEFORE THE ALASKA SENATE
February 27, 1986
11:00 a.m.

PURPOSE

HB 100 makes AS 46.03.770 consistent with itself, and with AS 46.03.760, to assure that the State will have enough "money in hand" to cover any damage done in the event of an oil spill.

BACKGROUND

When enacted, AS 46.03.760 provided for penalties not to exceed $100,000. In 1976, that statute was amended to remove any ceiling on assessed damages, but AS 46.03.770 retains an outdated reference to AS 46.03.760 and limits to $100,000 any bond posted in lieu of vessel detention.

This renders § 770 inconsistent with itself, and the reference to 760(b) no longer makes sense.

Under the current law, the State could hold a vessel to secure $30 million in oil spill damages, but that vessel could leave Alaska after posting a $100,000 bond. Such a scenario does not provide the type of cost recovery guarantee that adequately protects state interests.

IMPETUS FOR HB 100

This serious discrepancy was discovered when the Greek vessel M/V CEPHEUS went aground near Anchorage, spilling in excess of 300,000 gallons of oil into Alaska waters.

The judge in that matter ruled that a $20 million bond was necessary (based on the $20 million financial responsibility requirement elsewhere in the law) because the vessel planned to continue offloading in Alaska waters. Had the vessel planned to simply leave Alaska, he would probably have allowed it to do so after posting the $100,000 bond.

AS 46.03.770 should have been contemporaneously repealed and reenated with § 760(b) to provide for a bond not to exceed the maximum amount of damages available under newly enacted 46.03.760 and 46.03.822.

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*Sec. 2, amending AS 46.03.826(5), merely restores the original, common sense meaning of the term "owner."

BILL SHEFFIELD
GOVERNOR

HB106

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the detention of vessels as security for oil-pollution damages and clarification of a definition relating to discharge of hazardous substances. This bill is intended to correct two statutory oversights brought to light as a result of the January 21, 1984 oil spill from the M/V Cepheus.

AS 46.03.760, providing for civil actions for pollution, and AS 46.03.770, providing for detention of vessels as security for oil-pollution damages, were both enacted by ch. 120, SLA 1971. As enacted, AS 46.03.760(b) set a maximum of $100,000 for liquidated damages to be assessed by the court in an oil-pollution case. And, as enacted, AS 46.03.770 provided for the court to release a detained vessel upon posting of a bond set by the court in an amount not to exceed $100,000. AS 46.03.770 referred to AS 46.03.760(b), and the two $100,000 provisions were compatible with each other.

However, in 1976, along with other amendments, AS 46.03.760(b) was amended to remove the $100,000 liquidated damages maximum, but AS 46.03.770 was not correspondingly amended. It has never been amended. This bill seeks to correct that oversight. It removes the reference to $100,000 and inserts a reference (in two places) to the relevant civil penalty and damages statutes that were enacted and amended after AS 46.03.770 was enacted.

Second, AS 46.03.822 provides for strict liability for the discharge of hazardous substances, including oil, for a person owning or having control over the hazardous substance prior to its discharge. "Owning or having

control over a hazardous substance" is presently defined in AS 46.03.826(5) in a manner which arguably negates the common sense definition of an owner. Section 2 of this bill corrects that problem by eliminating the word "owner" from the statutory definition section, thereby restoring the original meaning of that word.

Sincerely,

Bill Sheffield
Governor

~~The bill was originally referred to AS 46.03.760(b)~~ ~~(originally printed)~~ The S.R.C. Com. Sub. corrects a technical drafting error ~~and~~ (marked in yellow) to make the statutory reference in the bill internally consistent with the other references in the bill (marked in pink) and the same in both versions.

Introduced: 1/23/85
Referred: Transportation and Resources

IN THE HOUSE BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 100

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

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

* Section 1. AS 46.03.770 is amended to read:

Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES. A vessel which is used in or in aid of a violation of AS 46.03.740 -- 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in or the cause of a violation of AS 46.03.740 -- 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under AS 46.03.760(b), and if the damages so assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed the maximum amount of damages available under AS 46.03.758, 46.03.760, and

[46.03.822] [$100,000]. The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS [46.03.758, 46.03.760, or 46.03.822] [46.03.760(b)].

* Sec. 2. AS 46.03.826(5) is amended to read:

(5) "[OWNING OR] having control over a hazardous substance" means producing, handling, storing, transporting or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the waters, surface or subsurface lands of the state, and specifically includes bailees and carriers of a hazardous substance;

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Alaska State Legislature

POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate
Committee on Resources

TO: Senate Resource Committee Members February 5, 1986

FROM: Senate Resource Committee Staff

RE: "An Act relating to detention of vessels as security for oil-pollution damages; and clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

The material in this packet explains this bill. The bill passed the House unanimously and was passed out of Senate Transportation with five "Do Pass" recommendations. The enclosed Resources CS make no policy changes but only corrects a drafting error which referenced a repealed statute.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/27/86

REQUEST

Bill/Resolution No. : SCS HB 100 (Res)
Title : Detention of vessels as security for oil pollution damages

Sponsor : House Rules for Governor
Requestor : Senate Resources
Date of Request : 2/27/86

FISCAL DETAIL

Agency Affected : ADEC
BRU : Environmental Quality

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

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

POSITIONS : NONE

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Billie Trent
Phone : 465-2600
Division : Office of the Commissioner
Date : 2/27/86

Approved by Commissioner : Bill Ross
Date : 2/27/86
Agency : Department of Environmental Conservation

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

10/25/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: 12/10/84

REQUEST

Bill/Resolution No.: HB 100

Title: Detention of vessels as security for oil pollution damages

Sponsor: House Rules/Governor

Requestor: Governor

Date of Request: 12/6/84

FISCAL DETAIL

Agency Affected: ADEC

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Billie Trent Phone: 465-2600

Division: Office of the Commissioner Date: 12/10/84

Approved by Commissioner: Richard A. Neve Date: 12/10/84

Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

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

7/1/84

Offered: 2/24/86
Referred: Rules

Original sponsor: Rules/Governor

IN THE HOUSE BY THE RESOURCES COMMITTEE

SENATE CS FOR HOUSE BILL NO. 100 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

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

* Section 1. AS 46.03.770 is amended to read:

Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES. A vessel <u>that</u> [WHICH] is used in or in aid of a violation of AS 46.03.740 - 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in, or <u>was</u> the cause of, a violation of AS 46.03.-740 - 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under <u>AS 46.03.758, 46.03.760, and 46.03.822. If</u> [AS 46.03.760(b), AND IF] the damages [SO] assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the own · of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed <u>the maximum</u>

amount of damages available under AS 46.03.758, 46.03.760, and 46.03.822. [$100,000]. The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under [illegible] 46.03.760, or 46.03.822 [AS 46.03.760(b)].

* Sec. 2. AS 46.03.826(5) is amended to read:

(5) "[OWNING OR] having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the waters, surface, or subsurface lands of the state, and specifically includes bailees and carriers of a hazardous substance;

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Original sponsor: Rules/Governor

IN THE HOUSE BY THE RESOURCES COMMITTEE

SENATE CS FOR HOUSE BILL NO. 100 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

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

* Section 1. AS 46.03.770 is amended to read:

Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES. A vessel <u>that</u> [WHICH] is used in or in aid of a violation of AS 46.03.740 - 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in<u>,</u> or <u>was</u> the cause of<u>,</u> a violation of AS 46.03.-740 - 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under <u>AS 46.03.758, 46.03.760, and 46.03.822. If</u> [AS 46.03.760(b), AND IF] the damages [SO] assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed <u>the maximum</u>

amount of damages available under AS 46.03.758, 46.03.760, and 46.03.822 [$100,000]. The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS 46.03.758, 46.03.-760, or 46.03.822 [AS 46.03.760(b)].

* Sec. 2. AS 46.03.826(5) is amended to read:

(5) "[OWNING OR] having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the waters, surface, or subsurface lands of the state, and specifically includes bailees and carriers of a hazardous substance;

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone:(907)
Address:
(907) 465-2600

OFFICE OF THE COMMISSIONER
POUCH O - JUNEAU, ALASKA 99811

January 27, 1986

JAN 28

The Honorable Arliss Sturgulewski
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

I would like to take this opportunity to thank you and your committee for your consideration and approval of SB 194 on January 17. Your prompt action on our behalf is very much appreciated.

This letter is in reference to HB 100 (detention of vessels for oil spill violations) which is now before your committee for consideration. A copy of that bill is enclosed.

This legislation corrects an oversight which occurred when AS 46.03.760(b) was amended in 1976 to remove any ceiling for assessed oil spill damages. A simultaneous amendment should have been made to AS 46.03.770, removing the ceiling on bond limitations pending damage judgments, but that did not happen.

The effect of that oversight is that, while we could detain a vessel to secure adequate payment for oil spill damages, that vessel could be released after posting the $100,000 maximum bond now required under § 770.

This serious discrepancy was discovered in January 1984 when the Greek vessel M/V CEPHEUS went aground near Anchorage, spilling in excess of 300,000 gallons of oil into Alaska waters. The State then sought a temporary restraining order and a $20 million bond under AS 46.04.040. Judge Shortell awarded the requested bond only because the vessel was planning to offload in Alaska waters. Had the vessel planned to simply leave Alaska, he would probably have allowed it to do so after posting the $100,000 bond.

After that decision, the Attorney General's office suggested immediate amendment to § 770. It was stated that:

> Section 770 should have been contemporaneously repealed and reenacted [with § 760(b)] to provide for a bond not to exceed the maximum amount of damages available under newly enacted 46.03.760 and 46.03.822. Unfortunately, section 770 was left untouched, but not unaffected, by the 1976 legislative changes.

I trust this summary conveys the importance of this legislation, but please let me know whether you require anything further.

I would greatly appreciate your using your good offices to see that this bill receives a hearing in your committee early enough in the session to help assure that it becomes law this year.

Sincerely,

Bill Ross

Bill Ross
Commissioner

Enclosure
cc: Douglas K. Mertz, Esq.
Assistant Attorney General

Mr. James R. Ayers
Director, Legislative Relations
Office of the Governor

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the detention of vessels as security for oil-pollution damages and clarification of a definition relating to discharge of hazardous substances. This bill is intended to correct two statutory oversights brought to light as a result of the January 21, 1984 oil spill from the M/V Cepheus.

AS 46.03.760, providing for civil actions for pollution, and AS 46.03.770, providing for detention of vessels as security for oil-pollution damages, were both enacted by ch. 120, SLA 1971. As enacted, AS 46.03.760(b) set a maximum of $100,000 for liquidated damages to be assessed by the court in an oil-pollution case. And, as enacted, AS 46.03.770 provided for the court to release a detained vessel upon posting of a bond set by the court in an amount not to exceed $100,000. AS 46.03.770 referred to AS 46.03.760(b), and the two $100,000 provisions were compatible with each other.

However, in 1976, along with other amendments, AS 46.03.760(b) was amended to remove the $100,000 liquidated damages maximum, but AS 46.03.770 was not correspondingly amended. It has never been amended. This bill seeks to correct that oversight. It removes the reference to $100,000 and inserts a reference (in two places) to the relevant civil penalty and damages statutes that were enacted and amended after AS 46.03.770 was enacted.

Second, AS 46.03.822 provides for strict liability for the discharge of hazardous substances, including oil, for a person owning or having control over the hazardous substance prior to its discharge. "Owning or having

control over a hazardous substance" is presently defined in AS 46.03.826(5) in a manner which arguably negates the common sense definition of an owner. Section 2 of this bill corrects that problem by eliminating the word "owner" from the statutory definition section, thereby restoring the original meaning of that word.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: 12/10/84

REQUEST

Bill/Resolution No.: HB 100

Title: Detention of vessels as security for oil pollution damages

Sponsor: House Rules/Governor

Requestor: Governor

Date of Request: 12/6/84

FISCAL DETAIL

Agency Affected: ADEC

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Billie Trent Phone: 465-2600

Division: Office of the Commissioner Date: 12/10/84

Approved by Commissioner: Richard A. Neve Date: 12/10/84

Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

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

7/1/84

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB 102

HB102 APR 19 1985

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

April 18, 1985

The Honorable Arliss Sturgulewski
Chairman, Committee on Resources
Pouch V
Juneau, AK 99811

Dear Senator Sturgulewski:

This letter is in response to your recent communication respecting the relationship between the Alaska Resources Corporation (ARC) and Salamatof Seafoods, Inc. (SSI). Your inquiry was prompted by Mr. Paul Seaton, an Anchor Point fisherman and shareholder in SSI, who has objected to what he asserts is an "unfair subsidy" and a "give away" to SSI.

Mr. Seaton fairly accurately reports the terms of a proposal of ARC staff to divest itself of SSI shares and to restructure the latter's debt. The basic elements of the restructuring proposal by ARC staff are as follows:

1. ARC and SSI convert an existing $3,065,000 note due ARC to a new debt instrument with no annual payments through 1988.

2. SSI is required to apply all funds available above start-up needs (which shall not exceed $150,000) to prepayment of existing notes to Alaska Pacific Bank.

3. SSI shall remain current on all term debt during the period.

4. In 1989, SSI will retire the ARC note in its entirety through refinancing.

5. The amount required to retire the ARC note shall be the greater of: 1) $1,900,000 or 2) 50% of the then-current fair market value appraisal of the leasehold interest and the plant and equipment ARC holds as collateral.

6. During 1985, SSI will leave Chapter 11 protection and will pay ARC $50,000 cash for all the shares ARC now holds in the corporation.

On October 10, 1984 the ARC board of directors authorized its staff to proceed with negotiations, "understanding that the board retains final authority to approve the final agreement." An agreement incorporating most of the terms above will be presented to the board at its May 1985 meeting. While I cannot predict the board's ultimate disposition regarding this matter, I do not believe that such an agreement exceeds the authority of the board or that it is an "unfair subsidy."

The Alaska Resource Corporation (formerly the Alaska Renewable Resources Corporation) has had a troublesome history. Created by Chapter 179, SLA 1978, it was established to:

1. Facilitate the rehabilitation, enhancement and development of the State's renewable resources to strengthen the self-sustaining sectors of the State economy.

2. Sponsor research and development of technologies and innovations for the rehabilitation and enhancement of the State's renewable resources to achieve an appropriate use of the resources.

3. Identify new products, markets and technologies for renewable resource industries in the State which will constitute an appropriate use of the resources; stimulate the research and development of these products, markets and technologies; assist in the demonstration of their technical and economic feasibility; and assist in their introduction into commercial markets.

(AS 37.12.015)

ARRC, armed with its purposes and hefty appropriations from the legislature, invested in many enterprises, most of which have proven to be unsuccessful. After attempts to improve its track record, the 1984 Legislature directed the corporation to wind-up its affairs by July 1, 1989. Ch. 161, SLA 1984. In particular, the corporation was directed to divest itself of all equity investments and all other remaining assets, with the exception of the outstanding loan portfolio, by July 1, 1989. § 18 Ch. 161, SLA 1984 (codified as AS 37.12.075).

This brings us to Salamatof Seafoods, Inc. (SSI). ARC has been involved with SSI since 1980. Its early dealings are thoroughly detailed in a 1981 review conducted by the Division of Legislative Audit (audit control no. 04-101-1045-5). An internal memorandum of our corporation staff summarizes the connection.

> In June of 1980, the ARC Trustees saw fit to advance $2,000,000 to [SSI] to assist it in refinancing its business. This note was to be repaid monthly at $100,000 principal plus accrued interest per annum over a 9-year period, with the principal balance of approximately $1,100,000 due at the end of the ninth year. A "forgiveness" of $700,000 of this principal amount was provided in exchange for 49% of the company's shares, to be exercised at the 1989 maturity date.

With this refinancing in hand, the company attempted to expand even further, setting up buying stations in other areas of the State. This resulted in payroll costs of nearly $1.6 million and transportation/tendering obligations of almost $1.7 million, along with interest obligations of nearly $540,000. Funds borrowed to expand the plant facility were used as working capital, payables outstripped receivables at a breathtaking rate, and a loss of $2.7 million was incurred.

In late 1980, ARC moved against the company's assets and took control of all equity and assets of the company. ARC replaced all management and was the primary player in the resulting Chapter 11 Plan of Reorganization. At the end of 1981, a Plan of Reorganization was authored by ARC, which created the present debt-equity structure. In effect, all unsecured debt was converted to equity at the theoretical rate of 50 cents on the dollar, resulting in 62% common equity being held by several hundred fishermen,suppliers, and service providers. ARC's secured debt of $2.277 million was converted to a term note, and ARC's $479,000 of accrued interest was converted to common shares at the rate of 100 cents on the dollar. Debt in the amount of $570,000 due Alaska Pacific Bank (APB) and NBA was purchased by ARC, with ARC converting the associated accrued interest to shares at the same rate. Thus, under the Reorganization Plan, ARC held $3.065 million in debt and 38% of SSI's common equity. Two notes in the aggregate principal amount of $1,000,000, issued by APB in 1979, remained in effect, with a first collateral position on SSI's plant and equipment assets held by the bank. Other debt, in the approximate amount of $990,000, was restructured by the companies and government agencies holding it, according to estimates of Salamatof's future ability to pay.

During 1982 and 1983 SSI fully complied with the reorganization plan. In 1984 it was unable to meet the long-term debt repayment schedule, though it did show a healthy operating profit. It was in this context that SSI requested that ARC restructure its present loan and sale of ARC's equity position back to SSI.

There are obvious advantages and disadvantages to the current plan. ARC could refuse to restructure and force SSI into liquidation, with the risk that it would get little return on its investment. That risk is also present if we opt for some variant of the proposed restructuring. In either case, the ARC board's primary concern is not whether SSI is being subsidized (though the characterization is no less accurate than it would be for any other creditor who is prepared to forego certain present benefits and assume the risk of future benefits). Instead, when the board

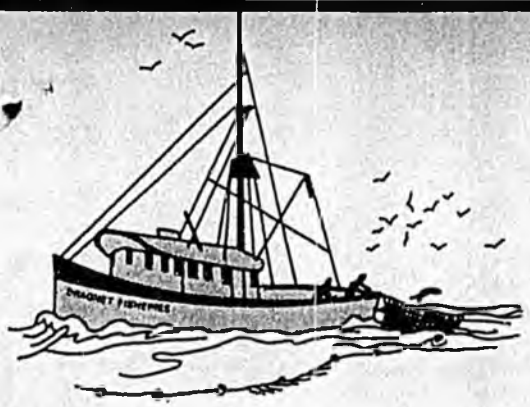
meets in May its purpose will be to evaluate a plan or plans that will ensure the best return on equity that ARC can reasonably hope to achieve in light of its mandate to wind up its affairs by July 1, 1989.

I hope this lengthy missive has provided an adequate context within which to evaluate our actions. Please do not hesitate to contact me if you have any further questions or concerns.

Sincerely,

Bruce M. Botelho
Deputy Commissioner, Taxation

BMB:bv
85-82



Dragnet Fisheries

FISHING, PROCESSING, COLD STORAGE & SHIPPING
FRESH AND FROZEN

APR 19 1985

KENAI PLANT - SUMMER SALES
P.O. BOX 3992
KENAI, ALASKA 99611
TELEPHONE # (907) 283-4069
TELEX 26-440

NAKNEK-KING SALMON PLANT
GENERAL DELIVERY
KING SALMON, ALASKA 99613
TELEPHONE # (907) 246-3364

CORPORATE OFFICE - FALL/WINTER SALES
1833 POST ROAD
ANCHORAGE, ALASKA 99501
TELEPHONE # (907) 274-1551
TELEX 26-428

DILLINGHAM-WOOD RIVER PLANT
GENERAL DELIVERY
DILLINGHAM, ALASKA 99576
TELEPHONE #(907) 842-2242
(907) 842-1041

HB102

April 16. 1985

Senator Arlis Sturgulewski
Pouch V
Juneau, Ak. 99811

It has come to the attention of Dragnet Fisheries that Salamantoff Seafoods Inc. is currently seeking a loan modification agreement with the Dept. of Revenue to their existing 3 million dollar loan. We are concerned with the impact and ramifications that passage of House Bill No. 102 will ultimately have on the local privately financed competing companies.

Dragnet Fisheries Co., Inc. located in Kenai. Ak. has been in operation since 1978. It is an independently owned and operated enterprise which relies upon conventional financing. Ours and other Cook Inlet processors' economic security is based upon being able to compete on even grounds within the industry. We feel that State funding of Salamantoff Seafoods both disrupts fair competition and is a poor use of the State of Alaska's money.

Salamantoff Seafoods has been given 1.2 million dollars free and clear with an additional 1.9 million dollar interest free loan by the Alaska Resource Corporation. According to the Proposal to Divest Shares and Restructure Shares written by LeResch and Co. in Juneau. Salamantoff's ability to repay this loan lies in their securing a greater market share of forth coming salmon stocks providing record Cook Inlet runs are established as in 1982 and 1983. The chances of record salmon runs equalling 1982 and 1983 are historically improbable due to the cyclic nature of the industry.

To our understanding originally the loan was based upon the idea that keeping Salamantoff Seafoods solvent was to the benefit of the local community and industry. Using interest free State aquired financing to obtain a greater market share puts Salamantoff Seafoods at an unfair advantage which will ultimately force other area processors into bankruptcy. Cook Inlet simply cannot sustain all facilities.

The financial soundness of Salamantoff Seafoods comes into question also. With all local operations feeling the impact of poor market conditions, high overhead and intense competition a close look into how Salamantoff has been dealing with these problems is needed. Should the State continue supporting an enterprise which wishes to postpone payments of an interest free loan and yet finds it possible to give out escalating salaries and bonuses to it's management? Upon examination of the 1984 balance sheet administrative expenses were up 20 percent. This administrative expense was 30 percent greater than the amount by which long term debt was decreased. All management personal were given significant raises for the 1985 year. According to the Loan Modification Agreement the general manager will be paid a $73.000.00 salary plus a $6.000.00 cost of living allowance. Is this a justifiable sum for a company whos production capacity is limited to such a short season? Is this structure to the benefit of the community, the industry, or a few select individuals?

Our concern focuses on what is best for the individuals and enterprises of the region in the long run. At a time in which decreasing oil revenues are causing lawmakers to think about phasing out state-subsidized loans by raising interest rates in various programs, we do not feel the loan agreement between Salamantoff and the Dept. of Revenue benefits the people of Alaska. Nor do we feel any beneficial effects will result for the Cook Inlet fishing industry which has more buyers than production warrents.

We would appreciate further investigation into House Bill No. 102. Your efforts are greatly appreciated.

Sincerely,

R.J. Cherrier
President
Dragnet Fisheries Co., Inc.

MAR 25 1985

Arliss Sturgulewski, Chairman
Senate Committee on Resources

March 19, 1985

Dear Senator,

Re: ARC-Salamatof Seafoods subsdidy

Thank you for your consideration of my letter. I believe that a bill is currently in the Senate which is meant to accomplish the transfer of funds to Salamatof Seafoods, Inc. from ARC. It is HB-102 and I am not sure where it is in the Senate. From the context of a letter from Rep. Peter Goll, I do not believe that the House anticipated the scope or extent to which ARC intends to use this innouxous sounding bill. I have this day sent a responce to the Dept of Revenue to a very misleading letter written by Mr. Scott for Salamatof Seafoods which I recently recieved from the Commissioner of Revenue. I have inclosed a copy of my letter because of the time delay which you might experience if you are to recieve this through that Dept. although you have probably already recieved the Scott letter.

Again Thank You for your investigation into this matter and any appropriate action that you may be able to take.

Sincerely,

Paul K Seaton

Paul K. Seaton
SRBox 1253
Anchor Point, Ak
99556
(907)235-6342

Mary A. Nordale
Commissioner of Revenue and
Director ARC

March 19, 1985

Dear Commissioner,

Thank you for your response to my letter and the response of Salamatof Seafoods Inc.(SSI). I feel obligated to respond to Mr. Scott's letter since it contains many misleading statements but more especially since it appears to be an attack on me personally and attempts to disparage my Tendering operation and questions the ability of the F/V Georgia Straits to function in a quality Salmon operation. This has not been the experience of Fishermens Packing Co. for whom we now tender with basically the same operation as with SSI. In the interest of fairness and equity I ask that you distribute this answer to anyone to whom you gave Mr. Scott's letter.

I will not comment on every point made by Mr. Scott but must say that his letter missed **the point** of my letter which was that the State should not proceed with such a plan as proposed unless there is a clear public necessity. No such need has been established, and there is a strong probability of damage to the fishing industry in Cook Inlet.

Stock Valuation Issue

Mr. Scott states that " the value ($5/share) is not inflated " and that "the stock may be offered to the company for repurchase". I will do so concurrent with this letter. He also states that we may sell our shares and that what we receive will determine our gain or loss. The Loan Modification Agreement(LMA) page 12 sec.(k) says ..."shareholders may not sell or otherwise dispose of their shares prior to June,1 1990". If at that time we take the same tax loss available now we would have lost 5 years use of the money and the amount would be reduced by another 5 years of inflation.

Japanese Contract

Salamatof's contract with the Japanese may have "emphasized a conservative approach designed to reduce risk" which is fine, but now we are at a position of granting a State "subsidy" because this approach has not worked as projected or the projections were unrealistic. Some people object to calling the LMA a subsidy to SSI. In one sense they are correct as it should be considered a subsidy of the Japanese fish company which purchases and process their fish through SSI and it is that Japanese company to which material benefit accrues. However as I am sure the Commissioner of Commerce can relate, the Federal Trade Commission has recently ruled that like expenditures by foreign countries are subsidies and it will impose trade sanctions against Canada for their subsidy and

"dumping" of cod on American markets. Though Mr. Scott acknowledges that fishermen are not paid the higher prices in many cases, he misleads you into thinking that it is only the cash buyers with whom SSI is not competing. Large processors such as Royal Pacific, Fisherman's Packing, and Dragnet Fisheries provide all the services but are excluded from the price competion structure agreement with the Japanese.

1984 Salmon Season

Mr. Scott offers no substantiation for his statement "that 1984 was the 5th best season since 1954 ... is a very narrow interpretation of the statistics." I would agree if I had used total run figures, as closures could have allowed a greater proportion of escapement than normal, but I used actual catch figures. How could this be "a narrow interpretation"? In fact SSI had a greater percentage than "normal" of the Inlet total since its fleet was one of the few fishing and took about 250,000 lbs before the others started fishing.

Mr. Scott states that SSI is very efficient and implies that the other processors are not. He then gives you statistics about the wages paid and seems to imply that that money would not be paid if other processors processed this same product. Of course if they are less efficient, more money would be paid by the other processors handling this same product. The same is true for the amount of money paid to fishermen for their product, as he admitted earlier.

I am rather surprised that Mr. Scott would say that this is "an eleventh hour attack". It may seem like the eleventh hour to Mr.Scott, but to all the stockholders and residents of Alaska it is the first minute. There has been no public comment period or even a news release that this restructuring which involves large expenditures(write-offs) of State funds was being considered. Indeed Mr. Scott was correct that I was "uninformed" but if you will check with Marty Lentz he will tell you that I attempted at the annual shareholders meeting to get information. Mr. Scott would give us very little. In fact, even the board of directors of SSI have not been provided either the LeResche study or the draft LMA.

Mr. Scott states that he does "not agree (with me) that one or more plants will have to close before the remaining plants will be" financially healthy. Apparently he does not agree with one of the major tenets of the LeResche Study that acknowledges SSI must increase its market share of Cook Inlet production. Page 15 says that for this plan to work;

> ". a combination of 1) at least two Salmon runs approximating those of 1982 and 1983, 2) an increase of the share of the Cook Inlet runs SSI is able to secure for

processing, and 3) an improvement in the operating margins either through increased efficiencies or enhanced per-pound revenues from custom processing."

Since Mr. Scott has already stated how efficient he has made SSI and the LMA requires the same Japanese contract, this only leaves #1 and#2.

Number 1) requires at least two of the next four years be historic high salmon runs [see original letter table or page 10 LeResche study]. Please check with ADFG or any fisherman on the probability of this occurance. Fishermen and farmers are notorious optomists but nobody I know would put fifty cents on that bet!

Number 2) requires that the fish come from some other Cook Inlet processor. On page 16 the study states "...if any other processors in the area experience problems (some have been) this proportion could be expected to increase, at least modestly." Thus only if SSI can be "carried" and "forgiven"long enough and continue to keep this product away from the privately owned processors so that they continue to "experience problems" and go bankrupt, then maybe SSI will get enough market share to let this plan work.

Tenders, West Side Fishermen and Salmon Quality

Mr. Scott's retrospective arguement as to his reasons for not using the tender Georgia Straits(GS) and West Side set net fish based on their quality makes a provocative proposition, but it simply does not fit the facts as they occured. Mr. Scott apparently did not recall that SSI attempted to hire the former captain of the Georgia Straits to run a tender to compete with the Georgia Straits for the same fish from the same area for the next season. He also apparently does not recall that he had SSI contact numerous fishermen on the West Side to try to get them to stay with SSI instead of going with the Georgia Straits to another processor. The names, addresses and phone numbers of that captain and some of the fishermen are included on the back page if you wish to contact them to verify this. Mr. Scott did manage to convince one fisherman's group to stay with SSI and it is ironic that this was the fisherman with whom we had consistantly had the largest problem in the maintainance of good quality.

Mr. Scott alleges that the Georgia Straits was responsible for poor quality of fish and submits an entire packet labled Exhibit #1 in an apparent attempt to support his claim. He obviously either did not read the exhibits or counted on you being too busy to read them and simply accept that they supported his proposition. Please do look at Exhibit #1 and I thank him for making them available to you since I do not have access

to such resource material. I quote some relevant passages:

> (p1-7/20/80) "good for the amount of ice available"; (p3-7/8) "Butchering errors [at SSI] still the leading cause of downgrade"; (p6-7/5) "Tender had little ice"; (p7-7/22) "Insufficient ice of poor quality provided to tender (many days of fish, hot & sunny, no ice exept as it is being made and it seems to melt fairly quickly)"; (p2 of QC report of 7/9/80) "With an adaquate supply of ice...the tender is faced with only one major problem in getting top quality fish to the plant and that is a problem of timing." "The major problems with this are 1. Shortage of ice at the plant....";

As you can see from these Exhibits the major problem in 1980 before we were champagne refrigerated was the plants lack of ice availability. If you fully read the quality control report of 7/9/80 you will have a fair representation of Georgia Straits' operation although some unusual problems did occur on that trip. It should be noted that during all years SSI was contractually obligated to supply the ice.

Almost the entire remaining documents deal with a single trip (although two dates appear on the documents 7/17 and 7/18/82, you can see the figures are the same). This is the load of fish that: was rejected by the Japanese; most dumped; insurance claimed with the GS tender fee listed as a cost; a settlement proposed by Mr. Scott to the insurance company included the tender fee but reduced SSI lost revenue claim by 1/2; the insurance company paid on that settlement invoice; Mr. Scott decided to keep the tender fee as additional "lost profit"; our lawsuit for recovery of those fees proceeded. SSI countersued for the cost of the fish, sue labor, and all associated expenses although they had already recovered these from the insurance company. Unfortunately the presiding judge had, early on, ruled on a case of contolling law which put the GS in the same catagory as a common carrier such as SEA-LAND. This obviously was inappropriate and would have been overturned on appeal. Since my claim was relatively small, the chances of any real recovery after one subtracted the large attorney fees applicable to appeals and retrial was negligible. Therefore, I dropped my claim since the purpose of my suit was only to recover the money I had lost, and to that point in time I had relatively little invested since my legal fees were on a contingency basis. Mr. Scott omitted in his letter that SSI also dropped their large claims concurrently, even though they had already expended over $30,000 to keep from paying the Georgia Straits it's $20,000 claim. I would have voiced my concerns on this matter earlier if it had not been for my lawyer's

request not to muddy the question in my lawsuit before the court. I would have taken this same position reguardless of the outcome of that legal action. All of this is superfluous and irrelevant to the basic question of whether SSI should receive what will amount to a State Subsidy, but I found it necessary since Mr. Scott continually attacked my motives in questioning the State's position and since he has attempted to impugn the reputation of the quality of the tender service that I provide to the West Side of Cook Inlet.

The only other document in Exhibit #1 is a telex from SSI's proposed 1985 Japanese fish buyer that was obviously solicited in Feb 1985 in an attempt to disparage my tendering operation. One must question the motives of this company in commenting at this time on the 1981 season since if the State "subsidy" does not occur, Mayco Fisheries would have to competitvely bid for Cook Inlet frozen salmon from the privately financed processors.

Balance Sheet Analysis

A study of the LMA shows the administrative cost increase problem to be worse than originally stated. Mr. Scott seem to dismiss the importance of "25% of all profits will be paid to employees as saleries and bonuses" because it is "old news". Since the draft LMA does address bonuses by name but does not set out a different plan, tacit approval of the current 25% program of the original bankruptcy plan must be assumed. My concern was not that additional administrative expenses "have resulted" but rather will result under the proposed plan, and that the board of directors hands may be tied since the plan is filed with the court. Mr. Scott's current request to have "profit" defined indicates that management intends to have some such provision apply even during this financial crisis.

The LMA compounds the problem by now incorporating an automatic COLA salary increase. It is quite unusual for COLA adjustments to be built into top level management salaries in this industry. The sentence on page 10 is quite confusing but if "annual salary reimbursement of expenses" means amount of salary, this 20% could mean that the automatic salary increase could be up to $20,000. (20% of 73,000 +6,000 +benefits+ stock ownership plan). If that means exclusive of salary it could still be an automatic increase of up to say $5,000 per year. I am guessing on the cost of the benefits outlined and may be high or low. Since I have not yet received a copy of appendix I, employees stock ownership plan, I can only assume that it is quite generous since other provisions(such as paying a $6,000 living allowance for the general manager to live in his own home less than three miles from the plant) are quite generous as well.

I must point out that Mr. Scott has changed the accounting period to attempt to make his points. The stockholders balance sheets always cover September 1 through August (end of season through end of next season), and are thus available and comparable by us, while we have not recieved his quarterly accounting period breakdown. This changes the accounting periods when "all-expense paid vacations" enter the books so they aren't reflected in his 1984. [Still, it would be interesting to know who sponsored the 1984 "four day conference in Hawaii" and what subject would be revelent to the attendence of a president/general manager, a comptroller, a secretary/bookkeeper, and a maintainance man. Does he mean by using the term "allowed to attend" that their expenses were not paid?]

Mr. Scott's entire rebuttal on the Administrative Cost Increase in 1984 verses 1983 (p 8) appears to be hogwash based on his own submitted exhibit #2. Ignoring the stockholders balance sheet on which he claims there was a mistake, please look at his exihibit #2. You will see that he has used a 1983 schedule that goes through the end of September and a 1984 schedule that goes through the end of August. This means that the in text figures are of course bogus. This is clearly seen in the YTD salary catagory, or is it the case that in comparable periods in 1984 SSI paid out $ 59,112 less than 1983? If there is indeed also a mistake here, it must either lower the 1983 figure or raise the 1984 figure by the appropriate amount and thus his in text arguement is reversed. (His comparison of combined administrative and maintainance expenses is irrelevant as a comparer of administrative costs anyway.)

Although there are nunerous other points which should be raised in any comprehensive analysis, I believe this is enough to lead back to the basic question of my original letter. **Is it a legitimate pursuit for the state to selectively subsidize one company by a plan which acknowledges for any hope of its success the necessity of having other local, privately owned, competing companies go out of business?**

Dean Shade, Ex-Captain GS
529 S.E. Grand Ave.
Portland Oregon 97214
(503) 230-1859
Larry Rozak, fisherman
3800 S. Decatur, Sp.288
Las Vegas, Nevada 89103
(702) 367-0309
Eric Beeman, fisherman
(907) 235-6901

Sincerely,

Paul K. Seaton

Paul K. Seaton
SRBox 1253
Anchor Point, Alaska 99556
(907) 235-6342

North Pacific Fisheries Association, Inc.

HEADQUARTERS:

BOX 796 • HOMER ALASKA 99603

MAR 19 1985

MAR 12 1985

RESOLUTION 85-1

A RESOLUTION OF NORTH PACIFIC FISHERIES ASSOCIATION REQUESTING CESSATION OF ALL SUBSIDIES TO SALAMATOF SEAFOODS, AND REQUIRING THAT ALL PAST AND CURRENT PAYMENTS BE MADE IMMEDIATELY TO THE STATE OF ALASKA.

WHEREAS, the State of Alaska is subsidizing the operation of a private company by contributing a large amount of money ($1,875,000.00) through the forgiveness of interest due on the ARC loans to Salamatof Seafoods, Inc. and;

WHEREAS, the State of Alaska is giving a large amount of money ($770,000.00) through equity transfer of stock to the same private company, and;

WHEREAS, the freezer processing capacity within Cook Inlet far exceeds the available salmon resource, and;

WHEREAS, Salamatof Seafoods is structured in such a manner that it does not add to the ex-vessel price competition for fish within the Inlet, and;

WHEREAS, Salamatof Seafoods' position with the Japanese actually reduces the wholesale competitive demand for Cook Inlet frozen salmon, and;

WHEREAS, the public interest is no longer served by this subsidy, and;

WHEREAS, similar subsidies are not available to any other local, privately financed processors, and;

WHEREAS the diversion of salmon to the subsidized company may lead to the bankruptcy of some of the privately financed processors;

NOW THEREFORE, THE NORTH PACIFIC FISHERIES ASSOCIATION REQUESTS THAT the Governor and the legislature of the State of Alaska cease all subsidies to Salamatof Seafoods and require all past and current due payments be made immediately, and, failing to receive the payment of those accounts, declare Salamatof Seafoods in default, and liquidate the assets of Salamatof Seafoods, Inc. as soon as legally possible, including in the liquidation whatever stipulations are possible to remove the facility from use as a frozen salmon processing plant.

DATED AT HOMER, ALASKA this 25th day of February, 1985.

NORTH PACIFIC FISHERIES ASSOCIATION

KEN CASTNER, President

ATTEST:

DELIVER TO: JPOM

ORIGINAL
SENT: 03/21/95 TIME: 11:36
FROM: TCHOM
SUBJECT: POM
PRINT DATE: 03/21/95 TIME: 11:37

TO: ALL SENATORS

FROM: KEN JONES, BOX 1044, HOMER, AK. 99603 235-6417

SUBJECT: SALAMATOF SEAFOODS

HOUSE BILL 102 IS POOR BUSINESS, UNJUSTIFYABLE EXPENSIVE TO THE STATE AND UNFAIR TO THE MAJORITY OF INDEPENDENT COOK INLET FISHERMEN. IF YOU STUDY SALAMATOF SEAFOODS' OWN DATA, ANY CONFIDENCE YOU HAVE IN THEM WILL DISOLVE. I RECOMMEND VOTING AGAINST HB 102.

TO: ALL SENATORS
ALL REPRESENTATIVES

FROM: PAUL K. SEATON, SR POX 1253, ANCHOR POINT, AK 99556
235-6342

SUBJECT: ARC AND SALAMATOF SEAFOODS

HB-102 (13-15) WILL BE USED TO PRIVATELY SELL STOCK ACQUIRED FOR $810,052 FOR $50,000 AND (16-17) TO PRIVATELY "GIVE AWAY" $1,122,422 OF ARC'S $3,022,442 OUTSTANDING LOAN TO SALAMATOF SEAFOODS. THIS GOES BEYOND THE HOUSE'S INTENT. PLEASE ALSO CLARIFY LINE 14 TO INDICATE PUBLIC WELFARE NOT JUST POSSIBLE FINANCIAL RETURN.

EOM**********

****

TO: ALL SENATORS
ALL REPRESENTATIVES

FROM: HARRY FORQUER, HC 41545 DEWBERRY PLACE, HOMER, AK. 99603
235-8317

SUBJECT: SALAMATOF SEAFOODS

IT HAS COME TO MY ATTENTION OVER THE PAST YEAR THAT THE STATE IS DOING A LOT TO FINANCIALLY SUBSIDIZE SALAMATOF SEAFOODS. I FEEL THIS GIVES SALAMATOF UNFAIR ADVANTAGE OVER PRIVATE PROCESSORS. I WOULD LIKE TO SEE YOU CUT THEIR SUPPORT AND LET THEM MAKE IT ON THEIR OWN MERIT.

EOM**********

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

HB

103

NO - PROPOSED Amendment to ~~SB~~ HB 103 -
VERY SIMILAR TO SB 309

* Sec. 3. AS 38.05.180 is amended by adding a new subsection to read:

(aa) For the purpose of determining the value of the state's royalty share of gas taken in value and sold pursuant to a long term contract, the commissioner shall apply said contract price. ✓

* Sec. 4. This Act applies to leases issued before or after the effective date of this Act.

1) Would jerk bill from committee

2) BAD Public Policy - gas - would apply to Prudhoe Bay - undermines states positions in oil - Amerada Hess case - (hundreds of millions at stake)

3) Dept of LAW and DNR would both Recommend veto - Gov's Office (Ray Gillispie) confirmed they would veto.

Changing position from legal views will impact Prudhoe Bay gas

Changing of position

① legal issue not directly on point oil - value of oil not direct

Fisher/Kemp opposed

State has taken consistent position re Amerada Hess - could undermine states case -

Tillinghast has been talking to people (Texans opposed) & has not found anyone who plans to support.

Larry Vaird [illegible] pushing

Julie [illegible] - Gordon Evans (Sloss) advised not supporting

NO - Proposed Amendment - SB 309. LANGUAGE

* Sec. 3. AS 38.05.180 is amended by adding a new subsection to read:

(aa) Notwithstanding other provisions of this section, if the royalty share of natural gas reserved to the state under a lease issued [under (f) of this section] or acquired by the state is taken in value, the value of production sold under a long-term sales contract may not be greater than the price received for the production under the long-term sales contract unless it is shown by clear and convincing evidence that the long-term contract price was unreasonably low at the time of contract.

* Sec. 4 This Act applies to leases issued before or after the effective date of this Act.

* Sec. 3. AS 38.05.180 is amended by adding a new subsection to read:

(aa) For the purpose of determining the value of the state's royalty share of gas taken in value and sold by the lessee as a first sale under the federal Natural Gas Policy Act pursuant to a long term contract entered into at arm's length and between unrelated parties, the Commissioner shall apply said contract price.

* Sec. 4. This Act applies to leases issued before or after the effective date of this Act.

This is Chugach's attempt to find acceptable language. It would cut out Union ~~and limit's settlement date~~. Chugach feels it would not have the same impact on Amerada Hess, but DNR feels it would. I haven't been able to find Maynard.

MEMORANDUM State of Alaska

TO: The Honorable Jay Kerttula
The Honorable Rick Halford

DATE: May 7, 1985

FILE NO:

TELEPHONE NO: 465-2400

FROM: Kay Brown
Director
Division of Oil and Gas

SUBJECT: Proposed Underlift Amendment

An amendment is needed to AS 38.05.180(l) to give more flexibility to resolve a dispute over the value of Cook Inlet royalty gas.

The Department of Natural Resources recently informed Cook Inlet gas lessees that it would no longer accept long-term contract prices as the value for royalty gas taken in-value. Under the leases, the State is entitled to get current market value for the royalties. The department took the action to fulfill its responsibility under the law and the leases to obtain full value for the State's resources.

One consequence of the lease enforcement action is that consumer prices for electricity and gas in Southcentral will go up by small amount (no more than 4 percent).

One lessee -- ARCO -- recently sued the State over the action, and the other lessees have indicated they will also fight the action in court.

A representative of one of the Beluga gas field lessees suggested a few days ago that the State consider an "underlift" of its royalty share as a possible way to resolve the dispute. Under this approach, the State's gas could be kept in the ground and recovered at a later date.

The current statute authorizes trades of current royalty production for future production, but provides that the traded royalty share must be recovered during the first half of the field life or within 15 years from the start of production, whichever is sooner.

Both the Kenai gas field and the Beluga gas field are more than 15 years into production. The Beluga field, which began production in 1968, has about 80 percent of its recoverable reserves remaining to be produced after 17 years of production. The Kenai field, which began production in 1962, has about 34 percent of its recoverable reserves remaining, but the State's effective royalty share is only about 2 percent in that field. To ensure that the State receives its share before the end of

Chevron } Unocal
Shell
Marathon
Union } ARCO } Unocal

the field life, gas from other nearby fields could be pledged as a backup mechanism.

The possibility of arranging a trade of current production for future production holds promise as a way to resolve the current dispute without compromising the state's position in other royalty litigation or the lease enforcement process. However, we cannot pursue this possibility unless the statute is amended.

We think the underlift approach could be attractive to all parties because:

- o Consumer rates in Southcentral would not be affected;
- o Lengthy litigation could be avoided;
- o All future options for disposition of the gas would remain open;
- o The Legislature would have more time to consider the issue of using royalties to provide consumer energy subsidies;
- o The state would be banking the resources until a local or foreign export market develops for the gas; and
- o If the Legislature does desire to subsidize Southcentral utility rates through in-kind royalty sales in the future, more gas would be available to offset large price increases that will occur in the early 1990s when long-term contracts expire.

The expected fiscal impact of an underlift in the Beluga and Kenai fields, if they could be negotiated, would be a loss of about $1.5 million in FY 86.

A suggested amendment is attached. Thanks very much for your consideration.

KB/bb

Attachment

Proposed amendment to AS 38.05.180(1).

(1) Subject to the provisions of AS 31.05, the commissioner has discretion to enter into an agreement whereby, with the consent of the lessee, all or part of the state's royalty share of oil and gas production may be stored or retained in storage by the lessee, or the commissioner may enter into an agreement with one or more of the affected field lease holders to trade all or part of current royalty production from a field for a like amount, kind, and quality of future production, [ON THE CONDITION] if the commissioner makes a written finding that the state will receive[S] back its stored or traded royalty share [DURING THE FIRST HALF OF THE ESTIMATED FIELD LIFE OR NO LATER THAN 15 YEARS AFTER THE START OF PRODUCTION, WHICHEVER IS SOONER.] before the end of the estimated field life, considering engineering constraints, whether reserves from other fields are pledged to protect the royalty amount, and other relevant factors.

funds which are appropriated annually and not to earmarked funds that have been appropriated.

I respectfully dissent.

DOOLIN, Justice, dissenting in part:

I dissent in part to the prospective application in the majority opinion of the *Sunburst Doctrine*, 287 U.S. 358, 53 S.Ct. 145, 77 L.Ed. 360 (1932).

The duty to certify by the Board of Equalization is applicable, yesterday, today and tomorrow; for so long as the Constitution remains unchanged.

I am authorized to state that WILLIAMS and SIMMS, JJ., support this dissenting position.

TARA PETROLEUM CORPORATION, Jarrett Oil Company, Appellants,

v.

Chester HUGHEY, Individually and as Administrator of the Estate of William F. Hughey, Deceased, Coy Brown, W. E. Pugh, James D. Howard, Dick Steelman, and Wilcoy Petroleum Company, Appellees.

No. 53585.

Supreme Court of Oklahoma.

June 9, 1981.

Rehearing Denied July 28, 1981.

Lessee of gas production rights and purchaser of gas appealed from judgment of the District Court, Greer County, Charles M. Wilson, J., awarding additional royalties under oil and gas lease to lessors. The Supreme Court, Lavender, J., held that: (1) when gas producer's lease calls for royalties to be paid to lessor based on market price at well and producer enters into arm's length, good-faith gas purchase contract with best price and term available to producer at the time, such price is the "market price" and payment of royalties based on such price will discharge the producer's gas royalty obligation; (2) since producers made best deal they could to market gas, "market price" in gas royalty clause of lease was same as "contract price" of gas purchase contract, and therefore lessors were not entitled to additional royalties from producers; (3) lessors failed to show common control of lessee and purchaser so as to be entitled to royalty share of higher resale price; and (4) since producers appeared from record to be completely independent of original lessee and of purchaser, and since there was no indication that producers ever acted under direction or influence of either original lessee or purchaser, original lessee and purchaser were not liable for any additional royalties.

Reversed.

Irwin, C. J., and Williams, J., dissented.

1. Mines and Minerals ⇐78.1(8)

Once producing gas well is drilled, producer has duty to market the gas.

2. Mines and Minerals ⇐79.3

When gas producer's lease calls for royalties to be paid to lessor based on market price at well and producer enters into arm's length, good-faith gas purchase contract with best price and term available to producer at the time, such price is the "market price" and payment of royalties based on such price will discharge the producer's gas royalty obligation.

See publication Words and Phrases for other judicial constructions and definitions.

3. Mines and Minerals ⇐78.1(8)

If gas purchase contract is not reasonable when entered into, if it is not at a minimum fair and representative of other contracts negotiated at time in the field, then lessee of gas production rights has not protected his lessor in discharging his duty

to market gas, and courts are not required to protect lessee in interpreting the lease.

4. Mines and Minerals ⇐79.7

Burden of proving that gas purchase contract between producer and purchaser was unfair or unreasonable at time it was entered into is on lessor of gas production rights seeking additional royalty from producer.

5. Mines and Minerals ⇐79.3

Where gas producers who had leased production rights made best deal they could to market gas, negotiated highest price being paid in field at the time, negotiated escalator clause, obtained short-term contract, acted in good faith and represented their lessors well, dealt at arm's length with purchaser, terminated contract after two years when gas prices had increased and did not themselves profit in any way from increases in gas prices, "market price" in gas royalty clause of lease was same as "contract price" of gas purchase contract.

6. Mines and Minerals ⇐79.1(1)

In ordinary circumstances, when lessors of gas production rights are not entitled to additional royalties from producers, they will not be entitled to additional royalties from any other party.

7. Mines and Minerals ⇐79.3

Courts should take care not to allow lessors of gas production rights to be deprived or defrauded of royalties by their lessees entering into illusory or collusive assignments or gas purchase contracts.

8. Mines and Minerals ⇐79.3

Whenever a lessee of gas production rights or assignee of such rights is paying royalty on one price, but on resale a related entity is obtaining higher price, lessors are entitled, to their royalty share of the higher price.

9. Mines and Minerals ⇐79.7

Lessors of gas production rights in action for additional royalties under lease failed to demonstrate common control of lessee and purchaser of gas so as to be entitled to royalty share of price obtained by purchaser on resale of gas.

10. Corporations ⇐171

Speculation on ownership of corporation is not function of court.

11. Corporations ⇐1.6(8)

In order for court to ignore separate legal existence of corporate lessee or assignee of gas production rights and of corporate purchaser of gas, so as to entitle lessor to additional royalties on purchaser's resale of gas, it must appear from examination of entire facts either that the separate corporate existence is a design or scheme to perpetrate fraud, or that one corporation is so organized and controlled and its affairs so conducted that it is merely an instrument or adjunct of the other corporation, i. e., it must appear that one corporation is merely a dummy or sham.

12. Mines and Minerals ⇐79.1(1)

Where assignees of lease of gas production rights appeared from record to be completely independent of original lessee and of purchaser of gas, and where assignees did not act under direction or influence of either original lessee or purchaser, original lessee and purchaser should not have been held liable to lessors for additional royalties on resale of gas by purchaser.

13. Mines and Minerals ⇐79.1(1)

Fact that purchaser of natural gas made royalty payments for producers, following common practice in the industry, had no effect on whether purchaser and producers were under common control so as to entitle lessors of gas production rights to additional royalties on resale of gas by purchaser.

Appeal from the District Court of Greer County; Charles M. Wilson, Trial Judge.

The assignee-producers under a 1973 oil and gas lease sold natural gas pursuant to a two-year gas purchase contract from 1976 to 1978. During that time the purchaser of the gas, a middleman with a contract to resell the gas at the ceiling price allowed by the Federal Power Commission, received

substantially more for the gas than it paid the producers. The royalty owners' royalties were based on the lower price. They sued the original lessee, the first purchaser of the gas, and the producers for additional royalties. Judgment was taken against the original lessee and the first purchaser, who appeal.

REVERSED.

Sparks & Sparks, Tulsa, for appellants.

Yonne P. McDaniel, Mangum, for appellee, Chester Hughey, Individually and as Administrator of the Estate of William F. Hughey, Deceased.

John C. Buckingham, Oklahoma City, for appellees, Coy Brown, W. E. Pugh, James D. Howard, Dick Steelman, and Wilcoy Petroleum Company.

LAVENDER, Justice:

This appeal is from a judgment of the District Court of Greer County, Oklahoma, awarding $18,000 in additional royalties under an oil and gas lease to the plaintiff-lessor.

The property involved is described as lots 3 and 4 and the south half of the northwest quarter of section 5, township 5 north, range 23 west of the Indian Meridian, Greer County, Oklahoma. It contains some 161 acres.

In 1973 the four lessors, as the sole heirs of William F. Hughey, deceased, executed the lease to Tara Petroleum Corporation ("Tara"). Six months later Tara assigned the lease to an individual, Coy Brown, reserving an overriding royalty of ⅛ of the ⅞ working interest and reserving the right to purchase any gas produced at 31¢ per mcf.

In 1974 Coy Brown drilled a well on the property,[1] but it was not a producer. Then in February of 1976 he assigned the lease to Wilcoy Petroleum Company ("Wilcoy"), a corporation owned by him, his wife Wilma, his brother-in-law W. E. Pugh, and Pugh's wife Maudine. In addition to the one to Wilcoy, there also appears of record another assignment of the lease from Coy Brown, this one dated and filed May 19, 1976, in which Brown reserved an interest in the lease and assigned decimal interests to W. E. Pugh, Dick Steelman, and James D. Howard.[2]

Wilcoy—apparently with the financial help of Steelman and Howard—drilled a producing gas well on the property in February 1976. In that same month Wilcoy, as seller, entered into a gas purchase contract with Jarrett Oil Company ("Jarrett") as the buyer. The contract was for two years and extended automatically from year to year thereafter. It could be terminated at the end of the two-year period or on any anniversary of that date upon ninety days notice by either party.

Production from the Hughey well began in March of 1976. Although the gas purchase contract called for the seller, Wilcoy, to pay "all royalties, overrides and production payments," the buyer, Jarrett, made the actual payments. At the end of the two-year period, Wilcoy terminated the contract.

It is the royalties for those two years—March 1976 through February 1978—that concern us in this action. They were based on the contract price Jarrett paid Wilcoy for the gas: 32¢ per mcf the first year, 33¢ the second, adjusted for BTU content. During that time Jarrett sold the gas from the Hughey well, and other gas it purchased in the field to El Paso Natural Gas Company. Jarrett's contract with El Paso Natural Gas provided for Jarrett to receive for its gas the ceiling price permitted by the Federal Power Commission. Nearly five months after Jarrett began purchasing gas from the Hughey well, the Federal Power Commission substantially raised the ceiling price. Thereafter Jarrett received much more from El Paso Natural Gas than the 32¢ or 33¢ it paid Wilcoy for the gas from the Hughey well. The price went as high as nearly $1.10 per mcf.

1. There is an indication in the record that Brown was joined in this drilling venture by his brother-in-law, W. E. Pugh.

2. These conflicting assignments are not explained, but they evidently have not caused any confusion or problems for the parties.

The lessors felt that they were owed additional royalties for this two-year period. Their lease has a more or less standard "market price" royalty clause for gas. It reads:

> In consideration of the premises the said lessee covenants and agrees:
>
> . . . . .
>
> 2nd. To pay lessor for gas of whatsoever nature and kind produced and sold or used off the premises, or used in the manufacture of any products therefrom, one-eighth (⅛) *at the market price at the well* for the gas sold, used off the premises, or in the manufacture of products therefrom, said payments to be made monthly.... [Emphasis added.]

Under this clause the lessors asserted that they were entitled to have their royalties measured by the price El Paso Natural Gas paid Jarrett, rather than the contract price Jarrett paid Wilcoy.

The lessors sued the original lessee (Tara), the first purchaser of the gas (Jarrett), and Wilcoy, Brown, Pugh, Steelman, and Howard (collectively referred to as the "producers"). Another defendant, Falcon Oil and Gas Company, was let out of the suit, and all but one of the original plaintiff-lessors dismissed their actions. The trial court held for the remaining plaintiff against Tara and Jarrett, awarding a joint and several judgment for $18,000 for additional royalties. The court held for the producers on the plaintiff's actions against them. Tara and Jarrett appeal.

I.

Disputes between lessors and lessees over the amount of royalty to be paid on gas production have become relatively common. The kind of dispute we have before us today arises because lessees, in order to market the gas, must ordinarily enter into long-term gas purchase contracts. As the current price of gas increases, lessors with more recent leases, more recent wells, and more recent gas purchase contracts receive royalty on higher prices than their counterparts with older production. Understandably, this seems unfair to the lessors.

Here the plaintiff did not ask for additional royalties based on a price that other lessors received for their gas, he asked for additional royalties based on what was actually paid for his gas. A middleman—Jarrett Oil Company—is present here. Nevertheless, the question is the same: Is a lessor with a "market price" gas royalty clause[3] entitled to have his royalty calculated on the highest current price in the field? Put another way, is the "contract price"—the price the producer gets according to the gas purchase contract—the "market price" under the lease?

We hold that it is. In doing so, we recognize at the outset that some other jurisdictions have held otherwise. They are the Fifth Circuit,[4] Texas,[5] Kansas,[6] and Montana.[7] The cases from these jurisdictions

3. Other typical gas royalty clause types are "market value," "proceeds" ("gross" and "net"), and "in kind" clauses. *See generally* R. Hemingway, Oil and Gas § 7.4, at 316–21 (1971); Ashabranner, *The Oil and Gas Lease Royalty Clause—One-Eighth of What?*, 20 Rocky Mtn.Min.L.Inst. 163, 168–88 (1975); Fischl, *Ascertaining the Value or Price of Gas for Purposes of the Royalty Clause*, 21 Okl.L. Rev. 22, 22–32 (1968); Morris, *Taking Royalty Gas in Kind*, 22 Rocky Mtn.Min.L.Inst. 993, 994–97 (1976); Comment, *Vela: Legacy of Conflict Over Determination of Market Value for Royalties on Intrastate and Interstate Gas and Continued Controversy With the Natural Gas Policy Act of 1978*, 11 St. Mary's L.J. 502, 502 n.4 (1979). We limit our decision today to the effect of a "market price" gas royalty clause.

4. *Foster v. Atlantic Refining Co.*, 329 F.2d 485 (5th Cir. 1964); *J. M. Huber Corp. v. Denman*, 367 F.2d 104 (5th Cir. 1966). These are the seminal cases.

5. *Texas Oil & Gas Corp. v. Vela*, 429 S.W.2d 866 (Tex.1968). This is the original Texas case. It spawned a number of later Texas state and federal cases.

6. *Lightcap v. Mobil Oil Corp.*, 221 Kan. 448, 562 P.2d 1, *cert. denied*, 434 U.S. 876, 98 S.Ct. 228, 54 L.Ed.2d 156 (1977).

7. *Montana Power Co. v. Kravik*, 586 P.2d 298 (Mont.1978).

have generated a fair amount of comment,[8] including comment by Oklahoma authors.[9] By and large, the results in those cases have been criticized.[10]

[1] Once a producing well is drilled, a producer has a duty to market the gas.[11] In order to market gas it is usually necessary to enter into a gas purchase contract—frequently a long-term one, much longer than the term of the contract involved in this case. We have recognized this necessity of the market,[12] and we believe that lessors and lessees know and consider it when they negotiate oil and gas leases. Lessors and lessees also know that during the term of a gas purchase contract gas prices may increase, perhaps substantially. During the term a producer's revenues, fluctuations in production aside, will not increase. Yet if royalty must be paid on the basis of a "current," steadily-increasing "prevailing" price, then the lesso 's share will take an ever larger and larger proportion of the producer's revenues. Consider for example the situation in this case: Under their contract the producers received 32¢ per mcf the first year. The royalty share of that amount, one eighth, is 4¢. Yet by the end of the first year the first purchaser, Jarrett, was receiving nearly $1.28 for the gas. One eighth of $1.28 is 16¢. So if royalty were measured by the price El Paso Natural Gas paid Jarrett, the lessors' royalty would have quadrupled in one year—to one half of the producers' revenues. And all the while, of course, the producers' revenue per mcf remained constant.

[2] This would not be fair to the producers. We do not believe that the lessors in this case, the original lessee, or the assignee-producers ever contemplated that the lessors' royalty could be half of what the producers received for the gas. The better rule—and the one we adopt—is that when a producer's lease calls for royalty on gas based on the market price at the well and the producer enters into an arm's-length, good faith gas purchase contract with the best price and term available to the producer at the time, that price is the "market price" and will discharge the producer's gas royalty obligation.[13] As one respected author has said:

> Conceding that competent parties should be held to their agreements even though improvident, the typical clause, as a minimum, seems to be freighted with inherent ambiguity when it is remembered that gas must be sold by long term contracts in which buyers have been able to obtain schedules of prices almost certain to get out of line with contemporary contracts being negotiated. It was this consideration which caused gas sellers, where they were able, to insist on the "most favored nations" clauses now outlawed by the Federal Power Commission

8. Hamilton, J., dissenting in *Texas Oil & Gas Corp. v. Vela*, 429 S.W.2d 866, 879–80 (Tex. 1968); Preslar, C. J., dissenting in *Butler v. Exxon Corp.*, 559 S.W.2d 410, 418–20 (Tex.Civ. App.1977); 3A W. Summers, Oil and Gas § 589 (2d ed. W. Flittie Supp. 1980); 3 H. Williams, Oil and Gas Law § 650.4 (1977); Harmon, *Vela Today: Market Value Royalty Problems*, 27 Oil & Gas Tax Q. 185, 189–204 (1978).

9. Ashabranner, *The Oil and Gas Lease Royalty Clause—One-Eighth of What?*, 20 Rocky Mtn. Min.L.Inst. 163, 175–85 (1975); Fischl, *Ascertaining the Value or Price of Gas for Purposes of the Royalty Clause*, 21 Okl.L.Rev. 22, 30–32 (1968); Morris, *The Gas Royalty Clause—What Is Market Value?*, Sw. Legal Foundation 25th Ann. Inst. on Oil & Gas L. & Tax. 63, 66–79 (1974).

10. Hamilton, J., *supra* note 8; Preslar, C. J., *supra* note 8; 3A W. Summers, *supra* note 8; Fischl, *supra* note 9, at 34–36; Harmon, *supra* note 8, at 205–08; Morris, *supra* note 9, at 75–83.

11. *McVicker v. Horn, Robinson & Nathan*, 322 P.2d 410, 414 (Okl.1958). *See generally* Annot., 71 A.L.R.2d 1219 (1960).

12. *Apache Gas Products Corp. v. Oklahoma Tax Commission*, 509 P.2d 109, 113 (Okl.1973). Texas courts have as well. *Gex v. Texas Co.*, 337 S.W.2d 820, 828 (Tex.Civ.App.1960); *Texas Oil & Gas Corp. v. Vela*, 405 S.W.2d 68, 73 (Tex.Civ.App.1966), *quoted in Texas Oil & Gas Corp. v. Vela*, 429 S.W.2d 866, 878–79 (Tex. 1968) (Hamilton, J., dissenting).

13. Fischl, *Ascertaining the Value or Price of Gas for Purposes of the Royalty Clause*, 21 Okl.L.Rev. 22, 29 (1968).

in current contracting of jurisdictional sales by the device of refusing filing to such contracts. (In *Vela*, a life of the lease sales contract at 2.3¢ per MCF, conceded to be reasonable in the circumstances of 1935 when made, had gotten approximately 11¢ out of line by 1960.) Add to this well-known reality of the business the lessee's implied covenant obligation to market with dispatch, and in the opinion of the writer the ambiguity should be resolved in favor of the lessee as a matter of law, with inquiry restricted to whether the sale was a reasonable contract when made.[14]

[3] We believe that our interpretation of "market price" is consonant with the intent and understanding of parties to oil and gas leases. And it is the only interpretation that would operate fairly for producers. Moreover, it is not unfair to lessors. Quite naturally lessors want to receive as much royalty as possible, but lessees in their own interest seek as good a price as they can get for gas. As long as the contract was reasonable when entered into, and as long as our law recognizes long-term gas purchase contracts as binding . . . the face of escalating prices, the law should not penalize the producer who was forced into the contract in large measure by his duty to the lessor. Now if the contract was not reasonable when entered into, if it is not at a minimum fair and representative of other contracts negotiated at the time in the field, then a different result obtains. Then the lessee has not protected his lessor in discharging his duty to market the gas, and there is no policy in the law requiring the courts to protect the lessee in interpreting the lease.

[4, 5] The burden of proving that a gas purchase contract was unfair or unreasonable at the time it was entered into is on the lessor seeking additional royalty. In this case there is no hint that the contract was unfair or unreasonable. The gas from the Hughey well is low in BTU content. In 1976 there were three gas purchasers in the field, but only one—Jarrett—was buying low-BTU gas. The producers made the best deal they could to market the gas. The price they negotiated was the highest being paid in the field at the time. They negotiated an escalator clause, and they obtained a short contract term: two years, as opposed to the ten-year term that was standard with Jarrett's contracts at the time. Of course, the producers were themselves concerned with making the best deal possible, but they acted in good faith and represented their lessors well. They dealt at arm's length with Jarrett. They terminated the contract after two years, when gas prices had increased. And they did not themselves profit in any way from the increases in gas prices. Under these circumstances, we hold that the "market price" in the gas royalty clause of the lease is the same as the "contract price" of the gas purchase contract.

Our holding today is consistent with our holding in an earlier case, *Apache Gas Products Corp. v. Oklahoma Tax Commission*,[15] in which we were construing one of our gross production tax laws, 68 O.S. 1971 § 1009(f).[16] That statute allows the Tax Commission to assess gross production taxes on the "prevailing market price"[17] when the price of gas sold under a gas purchase contract does not represent "the cash price thereof prevailing for . . . gas . . . of like kind, character or quality in the field from which such product is produced . . . ." We held that when the contract price for gas "was the highest and best price obtainable for gas in the field producing it, under the circumstances prevailing at the time the

14. 3A W. Summers, Oil and Gas § 589 (2d ed. W. Flittie Supp. 1980, at 22-23).

15. 509 P.2d 109 (Okl.1973).

16. Section 1009 was amended in 1979, 1979 Okl.Sess.Laws ch. 88, § 2, but the language of subsection (f) was not changed.

17. That term, along with "prevailing field price," "prevailing price," and "gross value," was used throughout *Apache Gas* as shorthand for the statutory language in section 1009(f): "the prevailing price then being paid at the time of production thereof in said field for . . . gas . . . of like kind, quality and character."

contract was entered into," [18] for purposes of the gross production tax the contract price is the market price. *Apache Gas* was followed by the Tenth Circuit in a 1976 case, *Pierce v. Texas Pacific Oil Co.*[19]

[6] Since here the contract price is the market price, the lessors were not entitled to additional royalties from the producers. As we have said, the plaintiff did not get any additional royalties from them. His claim against them was denied, and he has not appealed that denial. The plaintiff did, however, get judgment against the producers' original assignor, the original lessee, Tara, and the first purchaser, Jarrett. In the ordinary circumstance, when the lessors are not entitled to additional royalties from the producers they will not be entitled to additional royalties from any other party. That brings us to the plaintiff's equitable argument.

II.

The plaintiff in this case and the producers have joined on appeal as appellees; they have filed one brief. In it they argue that "equity and fairness will not permit the enrichment of [Tara and Jarrett] to the detriment of the royalty owners ...." They assert that Tara and Jarrett are jointly owned by and subject to the common control of two men, Joe Bob Brown (no relation to Tara's assignee Coy Brown) and Dean McNaughton.

[7, 8] Courts should take care not to allow lessors to be deprived or defrauded of their royalties by their lessees entering into illusory or collusive assignments or gas purchase contracts. Whenever a lessee or assignee is paying royalty on one price, but on resale a related entity is obtaining a higher price, the lessors are entitled to their royalty share of the higher price. The key is common control of the two entities.

[9, 10] The problem in this case is that common control of Tara and Jarrett was not shown. The record before us shows only two things: (1) at the time Tara took the original lease (April 1973) and at the time Tara assigned the lease to Coy Brown (October 1973), Joe Bob Brown and Dean McNaughton each owned 50% of Tara, and (2) at the time of trial (March 1979) Brown owned 100% of Tara and was president of both Tara and Jarrett. There is no indication in the record of the ownership of Jarrett at any time. Obviously we can speculate on Jarrett's ownership, but that is not the function of a court.

[11] Besides the lack of proof of common control in this case, we believe that a different matter is presented when an assignment has been made to or a gas purchase contract negotiated with an independent third party. To be entitled to additional royalties in that instance, we hold that the plaintiff must meet a higher burden of proof. As is ordinarily required for a court to ignore the separate legal existence of two corporate entities, in that instance it must appear

> from an examination of the entire facts, either (1) that the separate corporate existence is a design or scheme to perpetrate fraud, or (2) that one corporation is so organized and controlled and its affairs so conducted that it is merely an instrumentality or adjunct of another corporation. In other words, it must appear that one corporation is merely a dummy or sham.[20]

[12, 13] Nothing of the sort appears in this case. Coy Brown, who took the original assignment from Tara, and the later assignees of Brown, the producers, appear from the record to be completely independent of Tara and Jarrett. Except that Brown was required to drill a well, the assignment was unconditional.[21] At the

18. 509 P.2d at 109 (syllabus ¶ 1).

19. 547 F.2d 519, 521 (10th Cir. 1976).

20. *Gulf Oil Corp. v. State*, 360 P.2d 933, 936 (Okl.1961); *Wallace v. Tulsa Yellow Cab Taxi & Baggage Co.*, 178 Okl. 15, 18, 61 P.2d 645, 648 (1936).

21. Tara did reserve a 1/8 of 7/8 override and an option to purchase any gas produced at 31¢ per mcf. The option was never exercised. We expressly decline to decide what the result would have been if Tara had exercised the option.

time of the assignment, there was no well on the property. Tara could not have known that a producing well would be drilled, and in fact Brown's first well was not a producer. There were three companies with pipelines purchasing gas in the field—Tara, Jarrett, and Rimrock Gas Company—and Brown would have been under no obligation to sell gas to any particular one of them. As it happened, however, when the Hughey well did come in the gas was of low BTU content, and only Jarrett had enough of a market to purchase all of the gas. But that appears to have been a matter of circumstance, not contrivance. There is no indication that the producers ever acted under the direction or influence of either Tara or Jarrett. And the fact that Jarrett made the royalty payments for the producers—a common practice in the industry—is not significant. Under these circumstances, Tara and Jarrett should not have been held liable for any additional royalties.

III.

We reverse the judgments against Tara Petroleum Corporation and Jarrett Oil Company. Several other issues were raised on appeal. They concern Tara and Jarrett's cross-claim against the producers for indemnity, which was denied by the trial court. Ruling as we have, we have not found it necessary to decide those questions.

Tara and Jarrett are awarded their costs.

REVERSED.

BARNES, V. C. J., and HODGES, SIMMS, DOOLIN, HARGRAVE and OPALA, JJ., concur.

IRWIN, C. J., and WILLIAMS, J., dissent.

Colleen MUGGENBORG and Letha Haynes, Petitioners,

v.

The Honorable William C. KESSLER, the District Judge of the Court, Oklahoma County, Seventh Judicial District, Respondent.

No. 56620.

Supreme Court of Oklahoma.

June 9, 1981.

Rehearing Denied July 28, 1981.

Maternal and paternal grandparents of two minors, both of whose parents were deceased, sought to prohibit judge from enforcing, by contempt, trial court decree which, without any prior notice of either of them, allowed divorced maternal grandfather to become adoptive parent of minors. The Supreme Court, Opala, J., held that: (1) maternal and paternal grandparents of minors were affected or interested parties who were entitled to notice of adoption proceeding brought by divorced maternal grandfather, and (2) prohibition was proper to arrest judicial enforcement, by contempt, of adoption proceeding found to be ineffective for want of advance notice to affected or interested parties.

Ordered accordingly.

1. Adoption ⇐12

Maternal and paternal grandparents of minors whose parents were deceased were affected or interested parties entitled to notice of adoption proceeding brought by divorced maternal grandfather. 10 O.S. Supp.1974, § 60.5(3)

2. Parent and Child ⇐2(7)

When both parents are either dead or their parental rights have been severed, a

STATE OF ALASKA
THE LEGISLATURE

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

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

SENATE RESOURCES COMMITTEE, 4/1/85, 1'35

AMENDMENT #2

OFFERED IN THE SENATE: BY: RAY

TO: _____ SENATE BILL No. _____

CS HOUSE BILL No. 103

PAGE: _____ LINE: _____

AMENDMENT TO AM) NO 1 BY KENTTULA

Delete last sentence of the Amendment

NO

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M May 12, 1985

SUBJECT: Constitutionality of amendment to CSHB 103 (Fin)

TO: Senator Arliss Sturgulewski

FROM: Randall J. Moen
Legislative Counsel

You have requested an opinion on whether two proposed amendments may be added to CSHB 103 (Finance), "An Act relating to the prerequisites for the disposal of royalty oil and gas". Under Article II, Section 13, Constitution of the State of Alaska, "The subject of each bill shall be expressed in the title".

The two proposed amendments relate to the value of the royalty share of gas reserved to the state under a gas lease located on state land. The title of CSHB 103 (Finance) relates to the requirements for the disposal of royalty oil and gas. The question is whether the language or subject matter of the amendments are expressed in the title.

In my opinion, the subject matter of the amendments to CSHB 103 (Finance) are not expressed in the title because there is a distinction between the requirements for an effective disposal of royalty and the value of royalty received from a disposal.

A prerequisite to disposal is a condition that must be met if the disposal is to be valid.

Since the value of royalty gas and the validity of a disposal of royalty gas and oil are two distinct subjects, I conclude that an adoption of the proposed amendments under CSHB 103 (Finance) would violate Article II, Section 13 of the Alaska Constitution because the subject of value of

royalty gas would not be expressed in the title of CSHB 103 (Finance) which relates to another subject, the requirements for the disposal of royalty oil and gas.

RJM:lmb
J15/009

Chugach ELECTRIC ASSOCIATION, INC.

5601 MINNESOTA DRIVE • P.O. BOX 6300 • ANCHORAGE, ALASKA 99502-0300 • PHONE 907-563-7494
TELEX: CHUGACH AHG
(090) 25 265
TELECOPIER:
907-564-0632

FOR IMMEDIATE RELEASE:
May 1, 1985

FOR FURTHER INFORMATION CONTACT:
Lana Johnson, 564-0736, or
Bonnie Jack, 564-0766

A state decision to collect higher royalty payments from Cook Inlet natural gas producers sets the stage for similar increases by the federal government and Cook Inlet Region, Inc. (CIRI).

If the two follow suit, Chugach Electric Association's gas bill could more than double, and electric bills in Southcentral Alaska could rise an average of 6.41 percent.

Chugach is Alaska's largest electric utility, serving approximately 60,000 consumers in Anchorage and the Upper Kenai Peninsula areas. In addition, it supplies the power needs of its wholesale customers -- Matanuska Electric Association (MEA), Homer Electric Association (HEA) and the City of Seward.

Last month the state Department of Natural Resources ordered Cook Inlet lessees to collect the state's one-eighth royalty gas share based on market value rather than contract price. In Cook Inlet, the state said, market value was set by a contract Enstar Natural Gas Co. signed in 1982. The Enstar contract ties the price of its gas to the price of No. 2 fuel oil delivered at Nikiski, a price that presently amounts to $2.05 per thousand cubic feet (mcf).

In the case of Chugach, that decision raises the price of royalty gas from about 25 cents per mcf to about 35 cents per mcf.

The state, however, owns only 60 percent of the Beluga River Field where Chugach purchases a major portion of its gas. The remaining 40 percent is owned by the federal government and CIRI.

Already CIRI and the federal government have raised their royalty share to market value in another Cook Inlet field, the Kenai gas field. Union Oil Co., the field's producer, has sued over the decision and the case is presently in federal district court.

If CIRI and the federal government decide to increase their royalty share throughout Cook Inlet, the price of Chugach's Beluga gas would rise to 44 cents per mcf.

Complicating the issue is the method by which the state Department of Revenue collects its production (severance) tax. State statute allows it the option of collecting a flat rate per mcf or 10 percent of value, whichever is higher.

Currently, the state collects a flat rate which averages 3.5 cents per mcf. Collecting the tax based on what the state calls market value would increase the tax to almost 10 cents per mcf.

When added together, these factors represent a substantial increase in the electric bills of the approximately 250,000 residents of Southcentral Alaska.

Bob Martin, Jr., Chugach's general manager, said Chugach "vigorously opposes these increases and is exploring all avenues to protect its customers -- both retail and wholesale -- against their impact."

The average Chugach consumer pays $57.34 per month for 805.4 kilowatt hours (kWh) of electricity. That bill could increase by 5.56 percent ($3.21) to $60.55 per month.

The average Homer Electric consumer pays $73.58 per month for 860 kWh of electricity. That bill could increase by 4.4 percent ($3.25) to $76.83.

The average Matanuska Electric consumer pays $107.80 per month for 1,200 kWh of electricity. That bill could increase by 4 percent ($3.90) to $111.70.

Collectively, these increases would amount to more than $56 million over the next decade, the remaining life of Chugach's gas contracts at Beluga.

-end-

#1

Moen ✓

Kerttula, Fuller

A M E N D M E N T

Offered in the SENATE

TO: CSHB 103 (Finance)

Page 1, after line 9 insert a new bill section to read:

"* Section 1. AS 38.05.180(1) is amended to read:

(1) Subject to the provisions of AS 31.05, the commissioner has discretion to enter into an agreement whereby, with the consent of the lessee, the state's royalty share of oil and gas production may be stored or retained in storage by the lessee, or the commissioner may enter into an agreement with one or more of the affected field lease holders to trade current royalty production from a field for a like amount, kind, and quality of future production. An agreement for storage may be made only [,] on the condition that the state receives back its stored [OR TRADED] royalty share during the first half of the estimated field life or no later than 15 years after start of production, whichever is sooner. An agreement to trade all or part of current royalty production for future production may be made only if the commissioner makes a written finding that the state will receive back its traded royalty share before 80 percent of the estimated field reserves are depleted, considering engineering constraints, whether reserves from other producing fields are pledged to protect the traded royalty share, and other relevant factors. An agreement to trade current production for future production entered into under this subsection must contain a provision holding the lessee harmless in the

event that, without the fault of the lessee, the state is unable to receive its traded royalty share because of unanticipated depletion of the field and any other pledged producing fields."

Page 1, line 10, delete "* Section 1." and insert "* Sec. 2."

Renumber remaining bill section accordingly.

UNDERLIFT LANGUAGE
OK

A M E N D M E N T

Offered in the SENATE

TO: CSHB 103 (Finance)

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Page 1, line 10, delete "* Section 1." and insert "* Sec. 2."

Renumber remaining bill section accordingly.

Moen

AMENDMENT #1

by Senator Kerttula

Offered in the SENATE

TO: CSHB 103 (Finance)

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Page 1, line 10, delete "* Section 1." and insert "* Sec. 2."

Renumber remaining bill section accordingly.

AMENDMENT #1

Offered in the SENATE BY KERTTULA

TO: CSHB 103 (Finance)

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Page 1, line 10: Delete "* Section 1" and insert "* Sec. 2"

Renumber remaining bill section accordingly

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

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

OFFICE OF THE COMMISSIONER

need on my desk for 10 3

May 8, 1985

MAY 09 1985

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Kerttula:

The Department of Natural Resources has proposed an amendment to AS 38.05.180(1) that I believe deserves your support. The proposed amendment is needed to give the State more flexibility to resolve a dispute over the value of Cook Inlet royalty gas.

The Department of Natural Resources recently informed Cook Inlet gas lessees that it would no longer accept long-term contract prices as the value for royalty gas taken in-value. Under the leases, the State is entitled to get current market value for the royalties. The department took the action to fulfill its responsibility under the law and the leases to obtain full value for the State's resources.

One consequence of the lease enforcement action is that consumer prices for electricity and gas in Southcentral will go up by a small amount (no more than 4 percent).

One lessee -- ARCO -- recently sued the State over the action, and the other lessees have indicated they also will fight the action in court.

A representative of one of the Beluga gas field lessees suggested a few days ago that the State consider an "underlift" of its royalty share as a possible way to resolve the dispute. Under this approach, the State's gas could be kept in the ground and recovered at a later date.

The current statute authorizes trades of current royalty production for future production, but provides that the traded royalty share must be recovered during the first half of the field life or within 15 years from the start of production, whichever is sooner.

10-J9LH