

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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(formulation for Canadian text)

AGREEMENT
BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
ON THE CONSERVATION OF THE PORCUPINE CARIBOU HERD

The Government of Canada and the Government of the United States of America, hereinafter called the "Parties":

(formulation for U.S. text)

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF CANADA
ON THE CONSERVATION OF THE PORCUPINE CARIBOU HERD

The Government of the United States of America and the Government of Canada, hereinafter called the "Parties":

Recognizing that the Porcupine Caribou Herd regularly migrates across the international boundary between Canada and the United States of America and that caribou in their large free-roaming herds comprise a unique and irreplaceable natural resource of great value which each generation should maintain and make use of so as to conserve them for future generations;

Acknowledging that there are various human uses of caribou and that for generations certain people of Yukon Territory and the Northwest Territories in Canada have customarily and traditionally harvested Porcupine Caribou to meet their nutritional, cultural and other essential needs and will continue to do so in the future, and certain rural residents of the State of Alaska in the United States of America have harvested Porcupine Caribou for customary and traditional uses and will continue to do so in the future; and that these people should participate in the conservation of the Porcupine Caribou Herd and its habitat;

Recognizing the importance of conserving the habitat of the Porcupine Caribou Herd, including such areas as calving, post-calving, migration, wintering and insect relief habitat;

Understanding that the conservation of the Porcupine Caribou Herd and its habitat requires goodwill among landowners, wildlife managers, users of the caribou and other users of the area;

Recognizing that the Porcupine Caribou Herd should be conserved according to ecological principles and that actions for the conservation of the Porcupine Caribou Herd that result in the long-term detriment of other indigenous species of wild fauna and flora should be avoided;

Recognizing that the Parties wish to establish co-operative bilateral mechanisms to co-ordinate their activities for the long-term conservation of the Porcupine Caribou Herd and its habitat;

Recognizing that co-operation and co-ordination under this Agreement should not alter domestic authorities regarding management of the Porcupine Caribou Herd and its habitat and should be implemented by existing rather than new management structures;

Have agreed as follows:

1. Definitions

For the purpose of this Agreement only:

- a. "Porcupine Caribou Herd" means those migratory barren ground caribou found north of 64 degrees, 30 minutes north latitude and north of the Yukon River which usually share common and traditional calving and post-calving aggregation grounds between the Canning River in the State of Alaska and the Babbage River in Yukon Territory and which historically migrate within the State of Alaska, Yukon Territory, and the Northwest Territories.
- b. "Conservation" means the management and use of the Porcupine Caribou Herd and its habitat utilizing methods and procedures which ensure the long-term productivity and usefulness of the Porcupine Caribou Herd. Such methods and procedures include, but are not limited to, activities associated with scientific resources management such as research, law enforcement, census taking, habitat maintenance, monitoring and public information and education.

- c. "Habitat" means the whole or any part of the ecosystem, including summer, winter and migration range, used by the Porcupine Caribou Herd during the course of its long-term movement patterns, as generally outlined on the map attached as an Annex.

2. Objectives

The objectives of the Parties are:

- a. To conserve the Porcupine Caribou Herd and its habitat through international co-operation and co-ordination so that the risk of irreversible damage or long-term adverse effects as a result of use of caribou or their habitat is minimized;
- b. To ensure opportunities for customary and traditional uses of the Porcupine Caribou Herd by:
 - (1) in Alaska, rural Alaska residents in accordance with 16 U.S.C. 3113 and 3114, AS 16.05.940(23), (28) and (32), and AS 16.05.258(c); and
 - (2) in Yukon and the Northwest Territories, Native users as defined by sections A8 and A9 of the Porcupine Caribou Management Agreement (signed on October 26, 1985) and those other users identified pursuant to the process described in section E2(e) of the said Agreement;
- c. To enable users of Porcupine Caribou to participate in the international co-ordination of the conservation of the Porcupine Caribou Herd and its habitat;
- d. To encourage co-operation and communication among governments, users of Porcupine Caribou and others to achieve these objectives.

3. Conservation

- a. The Parties will take appropriate action to conserve the Porcupine Caribou Herd and its habitat.
- b. The Parties will ensure that the Porcupine Caribou Herd, its habitat and the interests of users of Porcupine Caribou are given effective consideration in evaluating proposed activities within the range of the Herd.

- c. Activities requiring a Party's approval having a potential impact on the conservation of the Porcupine Caribou Herd or its habitat will be subject to impact assessment and review consistent with domestic laws, regulations and processes.
- d. Where an activity in one country is determined to be likely to cause significant long-term adverse impact on the Porcupine Caribou Herd or its habitat, the other Party will be notified and given an opportunity to consult prior to final decision.
- e. Activities requiring a Party's approval having a potential significant impact on the conservation or use of the Porcupine Caribou Herd or its habitat may require mitigation.
- f. The Parties should avoid or minimize activities that would significantly disrupt migration or other important behavior patterns of the Porcupine Caribou Herd or that would otherwise lessen the ability of users of Porcupine Caribou to use the Herd.
- g. When evaluating the environmental consequences of a proposed activity, the Parties will consider and analyse potential impacts, including cumulative impacts, to the Porcupine Caribou Herd, its habitat and affected users of Porcupine Caribou.
- h. The Parties will prohibit the commercial sale of meat from the Porcupine Caribou Herd.

4. International Porcupine Caribou Board

- a. The Parties will establish an advisory board to be known as the International Porcupine Caribou Board, hereinafter called the Board.
- b. The Parties will each appoint four members of the Board within a reasonable period following the entry into force of the present Agreement.
- c. The Board will:
 - (1) adopt rules and procedures for its operation, including those related to the chairmanship of the Board; and

- (2) give advice or make recommendations to the Parties, subject to concurrence by a majority of each Party's appointees.
- d. The Board, seeking, where appropriate, information available from management agencies, local communities, users of Porcupine Caribou, scientific and other interests, will make recommendations and provide advice on those aspects of the conservation of the Porcupine Caribou Herd and its habitat that require international co-ordination, including but not limited to the following:
- (1) the sharing of information and consideration of actions to further the objectives of this Agreement at the international level;
 - (2) the actions that are necessary or advisable to conserve the Porcupine Caribou Herd and its habitat;
 - (3) co-operative conservation planning for the Porcupine Caribou Herd throughout its range;
 - (4) when advisable to conserve the Porcupine Caribou Herd, recommendations on overall harvest and appropriate harvest limits for each of Canada and the United States of America taking into account the Board's review of available data, patterns of customary and traditional uses and other factors the Board deems appropriate;
 - (5) the identification of sensitive habitat deserving special consideration; and
 - (6) recommendations, where necessary, through the Parties as required, to other boards and agencies in Canada and the United States of America on matters affecting the Porcupine Caribou Herd or its habitat.
- e. It is understood that the advice and recommendations of the Board are not binding on the Parties; however, by virtue of this Agreement, it has been accepted that the Parties will support and participate in the operation of the Board. In particular they will:
- (1) provide the Board with information regarding the conservation and use of the Porcupine Caribou Herd and its habitat;

- (2) promptly notify the Board of proposed activities that could significantly affect the conservation of the Porcupine Caribou Herd or its habitat and provide an opportunity to the Board to make recommendations;
- (3) consider the advice and respond to the recommendations of the Board; and
- (4) provide written reasons for the rejection in whole or in part of conservation recommendations made by the Board.

5. International Responsibility

The Parties will consult promptly to consider appropriate action in the event of:

- a. significant damage to the Porcupine Caribou Herd or its habitat for which there is responsibility, if any, under international law; or
- b. significant disruption of migration or other important behavior patterns of the Porcupine Caribou Herd that would significantly lessen the ability of users of Porcupine Caribou to use the Herd.

6. Implementation

Co-operation and co-ordination under and other implementation of this Agreement shall be consistent with the laws, regulations and other national policies of the Parties and is subject to the availability of funding.

7. Interpretation and Application

All questions related to the interpretation or application of the Agreement will be settled by consultation between the Parties.

8. Entry into Force; Amendments

- a. This Agreement which is authentic in English and French shall enter into force on signature and shall remain in force until terminated by either Party upon twelve months' written notice to the other.

- b. At the request of either Party, consultations will be held with a view to convening a meeting of the representatives of the Parties to amend this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at _____, in duplicate, this _____ day of _____, 1987 in the English and French languages, both texts being equally authentic.

(formulation for the Canadian text)

FOR THE GOVERNMENT OF
CANADA

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

(formulation for the U.S. text)

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF
CANADA

5470T: 6/17/87

final 6/18/87

ANWR
REPORT,
5-19-87,
DNR

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES

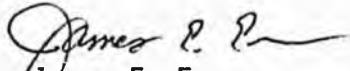
State of Alaska
DIVISION OF OIL AND GAS

TO: See Distribution

DATE: May 19, 1987

FILE NO:

FROM:


James E. Eason
Director

TELEPHONE NO: 762-4241

SUBJECT: ASRC ANWR Exchange

Enclosed for your review are several documents compiled by the division which relate to the 1983 exchange agreement between the Arctic Slope Regional Corporation and the Department of the Interior. Depending upon your background, training and familiarity with the 1983 exchange and the current proposed exchanges in ANWR, I believe these documents will offer something of interest to each of you.

The sparse details of the "Kaktovik Subsurface Valuation Report" (Tab 6) will be particularly interesting to anyone who has lingering doubts about whether Interior's subsurface valuation procedures are technically deficient.

I suspect that everyone (but particularly the attorneys) will enjoy reading the "Process" section of the Valuation report, wherein Interior's appraiser speculates that there is an 85% chance that Congress will honor the commitment to share revenues from ANWR at the 10/90 split defined by the Mineral Leasing Act. After adjusting the "value" of the Kaktovik subsurface lands to reflect the likelihood of this outcome, and the consequent effect on federal retained revenues, Interior determined that the income value of the ANWR subsurface to the United States was \$5.9 million! (emphasis added) That's right--93,360 acres overlying portions of the three largest and most prospective subsurface anomalies in the Coastal Plain of ANWR were valued by Interior for exchange purposes at less than \$6.0 million.

The letter from BLM's former Alaska Branch Chief Jim Callahan (Tab Number 7) provides independent documentation that technical staff other than those within the Department of Natural Resources have concerns about the subsurface valuation methods, and whether they are defensible. It appears from the record that, at least in 1983, others within Interior, including Bill Horn himself, may have shared those concerns.

In his August 9, 1983 recommendation to Secretary Watt (Tab 1, at page 8), then Deputy Undersecretary Bill Horn concluded "...It is difficult to evaluate the value to ASRC of the exclusive right to the seismic and exploratory well data, but this information is significant and will provide ASRC with a competitive edge in oil and gas activities in the general area. Although this value is speculative, it may be substantial. Due to the considerable difficulty, if not impossibility, of accurately appraising the fair market value of the benefits to be received by ASRC from the interests to be conveyed to it, BLM did an appraisal of the transaction in terms of the federal interest in the subsurface lands." (emphasis added)

ASRC AWRW Exchange
May 19, 1987
Page 2

There is more than a little smoke and plenty of mirrors contained within the pages of the enclosed materials. I believe they confirm many of the flaws which we have maintained were inherent in the procedures used to value and justify the earlier exchange, and they provide excellent examples to document the bases for the state's continuing concerns over the proposed land exchanges.

Distribution: Judith Brady
Lennie Boston Gorsuch
John Katz
Tom Koester
Mark Worcester
Martha Fox

Enclosure

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Referenced to Tabs

Tab Number 1:

Memo from William Horn to James Watt detailing the land exchange between ASRC and the U.S. DOI. Executed and signed 8/9/83.

Tab Number 2:

Letters of recommendation from the National Park Service and Fish and Wildlife.

Tab Number 3:

Agreement between ASRC and U.S. government. Executed and signed.

Tab Number 4:

Appendices 1 through 4 of Agreement and Warranty Deed executed 8/5/83 by ASRC President Jacob Adams.

Tab Number 5:

Surface Appraisal of ASRC lands. Includes Analysis and Conclusions, Addenda, and Qualifications of Appraiser.

Tab Number 6:

Subsurface Valuation Report of oil, gas and gravel.

Tab Number 7:

Letter listing questions of former BLM Branch Chief Jim Callahan. February, 1987. Questions refer to current Horn trade proposal.

Tab Number 8:

National Wildlife Federation Report and Recommendations to Congress regarding ANWR. March, 1987. Includes geologic report by Tom Marshall.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 9 1983

Memorandum

To: Secretary

From: Deputy Under Secretary

Subject: Proposed Acquisition of Chandler Lake Through Land Exchange with Arctic Slope Regional Corporation (ASRC)

In recognition of the goal of four Administrations to include the lands in and around Chandler Lake as parklands within Gates of the Arctic National Park, early this year ASRC proposed to convey to the United States approximately 92,160 acres of surface estate which it owns within the park. In exchange for these lands, ASRC sought to acquire approximately 92,160 acres of subsurface estate underlying the surface estate conveyed or to be conveyed to the Kaktovik Inupiat Corporation (KIC), the village corporation for the Village of Kaktovik, Alaska. As a result of negotiations between ASRC and departmental representatives, the interests in lands to be conveyed by ASRC have been increased to approximately 101,272 acres plus access and recreation easements on the Killik River, Lake Udrivik, Imiaknikpak Lake, and Shainin Lake for the benefit of the general public. The interests in lands to be conveyed by the United States have been expanded to cover its remainder interests in the subsurface beneath the townsite of Kaktovik and approved Native allotments within the exterior boundaries of the subsurface estate to be conveyed to ASRC (up to 1800 additional acres). The exchange of the subsurface under the village townsite is the sole consideration for the easements on the Killik River, Lake Udrivik, Imiaknikpak Lake, and this part of the exchange is severable from the remainder of the exchange.

The subsurface estate to be conveyed to ASRC under the proposed exchange lies within the Arctic National Wildlife Refuge (ANWR). Section 22(f) of the Alaska Native Claims Settlement Act (ANCSA) and § 1302(h) of the Alaska National Interest Lands Conservation Act (ANILCA) authorize you to make exchanges on the basis of equal value or the public interest or both.

Description of Proposal

The terms and conditions of the proposed exchange are set forth in the attached "Agreement Between Arctic Slope Regional Corporation and the United States of America" and its four appendices.

1. Lands to be conveyed to the United States.

ASRC will convey to the United States, as its part of the exchange, the following described lands or interests in lands:

ASRC Parcel A: The surface estate in the following lands previously conveyed by the United States to ASRC, excepting therefrom certain access easements for the benefit of ASRC, its shareholders and invitees and subsistence use easements for the benefit of the local rural residents of the Village of Anaktuvuk Pass:

Umiat Meridian

Township 13 south, range 4 west, sections 1, 2, 11-14, 23-26, 35, 36;
Township 14 south, range 2 west, sections 29-32;
Township 14 south, range 3 west, sections 4, 19, 25-36;
Township 14 south, range 4 west, sections 2, 11, 13, 14, 21-28, 33-36;
Township 14 south, range 2 east, section 32;
Township 15 south, range 2 west, sections 1-5, 8-12;
Township 15 south, range 1 west, sections 7-10, 13-18, 21-26, 35, 36;
Township 15 south, range 1 east, sections 1-4, 9, 10, 15, 16, 21, 22, 29, 30, 31;
Township 16 south, range 2 east, sections 1-12, 16-21, 28-33;
Township 16 south, range 4 east, sections 5-8, 17, 18; and
Township 17 south, range 1 west, sections 3, 4 (partials);
aggregating approximately 75,150 acres.

ASRC Parcel B: By relinquishment, all right, title and interest which ASRC has under § 22(f) of ANCSA and § 1431(c)(1) of ANILCA to receive the surface estate of the following lands, but reserving the right to an interim conveyance of easements for the benefit of access by ASRC and subsistence uses by local rural residents of the Village of Anaktuvuk Pass:

Umiat Meridian

Township 16 south, range 3 east, sections 1-3, 6, 7, 9-16, 18-30; and
Township 15 south, range 4 east, sections 6, 7, 18, 21-28, 33-36;
aggregating approximately 26,122 acres.

ASRC Parcel C: Public access and recreation easements on Lake Udriulik and Imiaknikpak Lake and along the Killik River from the boundary of Gates of the Arctic National Park to its confluence with the Colville River, the boundary of the National Petroleum Reserve -

Alaska, in consideration for the subsurface under the Village of Kaktovik townsite patent.

ASRC Parcel D: By relinquishment, all right, title and interest which ASRC has under § 12(c) of ANCSA to receive the surface estate of any lands within the lands described in Parcel A in the event that any of such lands become available for conveyance to ASRC as the result of the denial of a native allotment application.

ASRC Parcel E: Public access and recreation easements on Shainin Lake will remain in place by ASRC waiving its right to have the existing easements vacated, modified, altered or relocated.

The interests in lands described in ASRC Parcel A are owned by ASRC and are located entirely within the boundaries of Gates of the Arctic National Park. The lands are surrounded by federally-owned parklands, other lands owned by ASRC and lands owned by Nunamiut Corporation, the village corporation for the Village of Anaktuvuk Pass. Following the exchange, the interests in lands conveyed by ASRC will automatically become a part of Gates of the Arctic National Park and administered by the National Park Service (NPS). Interests in lands described as ASRC parcel B are currently owned by the United States under a contractual and statutory obligation to convey the same to ASRC pursuant to § 22(f) of ANCSA and § 1431(c)(1) of ANILCA. These interests in lands will remain part of Gates of the Arctic National Park following relinquishment by ASRC of its rights.

Portions of the Chandler Lake subsurface estate retained by ASRC have been leased to an energy company. Upon termination of these leases, the United States may acquire the subsurface by condemnation (to which ASRC consents), or by an equal value exchange for public lands in the Arctic Slope Region.

Parcels C and E will assure that public recreational benefits in this area are increased, and access to the park and other public lands are significantly improved. These easements will be administered under the jurisdiction of BLM.

Parcel D is a technical provision to assure that ASRC relinquishes its selections in the subsurface of pending native allotment claims, should the claims be declared invalid.

2. Lands to be conveyed to ASRC.

The United States shall convey, subject to valid existing rights and the provisions of the stipulations and covenants in the agreement, to ASRC, as its part of the exchange, the subsurface estate of the following described lands:

U.S. Parcel A: All right, title and interest of the United States in the subsurface estate of the following lands:

Umiat Meridian

Township 7 north, range 32 east, section 1;
Township 8 north, range 32 east, sections 1-3, 7-16, 18-33, 36;
Township 8 north, range 33 east, sections 1-21, 29-32;
Township 8 north, range 34 east, sections 1-17;
Township 8 north, range 35 east, sections 1-18, 24, 25, 36;
Township 8 north, range 36 east, sections 1-13, 18, 19, 30;
Township 9 north, range 32 east, all;
Township 9 north, range 33 east, all, except lands within P.L.O. No. 715, as amended by P.L.O. No. 5448;
Township 9 north, range 34 east, all, except lands within P.L.O. No. 715, as amended by P.L.O. No. 5448;
Township 9 north, range 35 east, all; and
Township 9 north, range 36, all.

U.S. Parcel B: All right, title and interest of the United States in the subsurface estate of the following lands:

Township 8 north, range 33 east, sections 22-24; and
Township 8 north, range 34 east, sections 18-20.

U.S. Parcel C: All right, title and interest of the United States in the subsurface estate beneath all lands conveyed to KIC pursuant to the provisions of § 1431(g)(3) of ANILCA.

U.S. Parcels A, B and C aggregate approximately 92,160 acres.

U.S. Parcel D: All right, title and interest of the United States in the subsurface estate beneath all lands conveyed to KIC to satisfy its entitlement under §§ 12 and 14 of ANCSA and § 1431(g) of ANILCA, provided that if the gross acreage conveyed to ASRC exceeds 92,160 acres, then ASRC shall convey an amount of surface acreage within Gates of the Arctic National Park equal to the excess above 92,160 acres.

U.S. Parcel E: All right, title and interest of the United States in the subsurface estate beneath the Kaktovik townsite patent and under any valid Native Allotments which are surrounded by KIC conveyances.

Parcel E aggregates up to approximately 1800 acres.

U.S. Parcel F: An easement on certain lands in Gates of the Arctic National Park, identical in effect to the easements reserved by ASRC in ASRC Parcel A, to assure access for continued subsistence uses by local rural residents of the Village of Anaktuvuk Pass.

The subsurface estates in lands described as U.S. Parcel A, B, C, D, and E are within ANWR. The surface overlying U.S. Parcel A subsurface is currently owned by KIC and is subject to ANCSA § 22(g) concerning application of laws and regulations on use and development of refuge lands. The surface estate overlying U.S. Parcels B, C, and D are to be conveyed to KIC pursuant to §§ 12 and 14 of ANCSA and ANILCA § 1431(g). KIC is entitled to select an additional township of surface estate within the original area withdrawn for selection by KIC under § 11(a)(1) of ANCSA, or within one township east or west of that area. The location of these lands is the subject of ongoing negotiations between KIC and the Fish and Wildlife Service (FWS). Upon conveyance of the surface estate to KIC, the subsurface will be conveyed to ASRC as part of this exchange. The surface estate in U.S. Parcel E consists of lands conveyed under a townsite patent and lands conveyed or to be conveyed to individual Natives pursuant to the Native Allotment Act. The remaining interest of the United States in the subsurface estate beneath these lands would be conveyed to ASRC under this agreement.

3. Stipulations and covenants applicable to lands to be conveyed to ASRC.

As a condition of the proposed exchange, the Department has negotiated detailed stipulations, modeled in part on the ANILCA § 1002 regulations, and other covenants that will run with the lands to be conveyed to ASRC, designed to ensure that any activities undertaken by ASRC will not significantly adversely affect the fish and wildlife, their habitats, or the environment of either the lands conveyed to ASRC or ANWR lands. Stipulations and covenants are also included in the agreement that will protect cultural resources and subsistence uses and resources.

Basis for Exchange

Under the provisions of §§ 22(f) of ANCSA and 1302(h) of ANILCA, exchanges of lands may be for other than equal value, if it is determined that the exchange is in the public interest. Considering the interests being exchanged, the estimated and speculative value of those interests, and the beneficial purposes achieved by this exchange, I recommend that you base the exchange on a determination that it is in the public interest, for the reasons set forth in this memorandum and in the supporting administrative record. Stated summarily, the exchange clearly benefits and protects the interests of the United States and is, therefore, in the public interest because it accomplishes the acquisition of invaluable and integral private holdings in Gates of the Arctic National Park; ensures that the disposition of ANWR subsurface interests does not undermine the essential integrity of refuge values or frustrate refuge purposes; preserves the integrity of the ANILCA § 1002 program; provides easements benefiting the general public for access to and recreational use of public lands and waters and easements aiding the administration of federal lands and interests; puts FWS in a position comparable to what it would be in if ASRC were to acquire the ANWR subsurface estate under § 1431(o) of ANILCA rather than this exchange; and plans for future contingencies.

The basic rationale for proceeding with the agreement is that it gives the United States the opportunity to acquire now lands which the Department has long sought. If we do not take this opportunity and the conditions precedent occur that entitle ASRC to acquire the ANWR subsurface lands under § 1431(o) of ANILCA, we will not be able to acquire a surface estate in and around Chandler Lake under that exchange. Because § 1431(o) requires the lands traded for the ANWR subsurface to be in-lieu subsurface lands selected by ASRC under § 12(a)(1) of ANCSA, the Chandler Lake lands would not be eligible for a § 1431(o) exchange. We cannot acquire the surface in Lake Chandler and adjacent lands through condemnation because § 1302(b) precludes the acquisition of a native corporation's inholdings without the corporation's consent. Moreover, the public interest is served by the proposed exchange because § 1431(o) entitles ASRC to acquire the ANWR subsurface lands on the basis of equal acreage, rather than equal value. We must presume that ASRC will choose its least valuable acreage for trading stock in the exercise of its ANILCA § 1431(o) option. The BLM has estimated the value of these substitute lands at approximately \$10,800. In addition, there is no certainty that they would be in or adjacent to a conservation system unit, as their identification would be at ASRC's discretion. Simply, we do not know when we will again have an opportunity to acquire the Chandler Lake lands.

The precise determination of the market value of lands and interests therein for the remote areas of the Arctic Region is difficult. The appraisal information provided by BLM and NPS represents their best professional estimates of fair market value. As a result of reviewing the appraisal information and the hybrid nature of the estates being exchanged, it can be concluded that the values are nearly equal.

The values involved in the exchange are as follows:

The NPS will receive approximately 101,272 acres of recreational land (the subsurface is retained by ASRC) in and around Chandler Lake within Gates of the Arctic National Park, the value of which is discounted by the retained access easements for ASRC and the local rural residents of the Village of Anaktuvuk Pass. The value of the interests in land in the park that ASRC is giving up and the government is receiving is appraised at approximately \$5,001,500.

BLM will receive access and recreational easements along the Killik River, Lake Udrivik, and Imiaknikpak Lake to provide greater recreational opportunities for Alaska residents and recreational users. In addition, these easements will greatly facilitate access to Gates of the Arctic National Park and the National Petroleum Reserve - Alaska and serve other public purposes. The value of these easements is informally estimated by NPS at between \$60,000 and \$100,000.

ASRC will waive its right to enforce the revocation of the easements contained in its interim conveyance for Shainin Lake, and therefore BLM will retain the public use easements originally impressed upon the land. This waiver has a nominal value.

Accordingly, the estimated value of the combined interests that ASRC is conveying or waiving is approximately \$5.1 million.

ASRC will receive in exchange for the above lands and interests up to approximately 93,960 acres of subsurface lands and remainder interests located under the surface ownerships of KIC, the townsite of Kaktovik and valid Alaska Native allotments. The major benefits to be received by ASRC from the exchange are (1) the right to develop sand and gravel, discounted by the stipulations to protect ANWR and the right of FWS to use sand and gravel for its public use and access easements, and (2) the exclusive right to gather, use and control data about the oil and gas potential of the lands outside of the ANILCA § 1002(b)(1) coastal plain study area, to be developed

from seismic surveys and the drilling of exploratory wells, again discounted by the stipulations, easements, and covenants to protect and preserve ANWR, if ASRC obtains the necessary federal, state and local permits.

It is difficult to evaluate the value to ASRC of the exclusive right to the seismic and exploratory well data, but this information is significant and will provide ASRC with a competitive edge in oil and gas activities in the general area. Although this value is highly speculative, it may be substantial. Due to the considerable difficulty, if not impossibility, of accurately appraising the fair market value of the benefits to be received by ASRC from the interests to be conveyed to it, BLM did an appraisal of the transaction in terms of the federal interest in the subsurface lands. BLM's income approach was used for analytical purposes, with the understanding that commercial oil and gas development cannot occur in ANWR as a matter of law, unless Congress passes legislation authorizing that activity. Nevertheless, the income value of these lands to the United States is estimated to be about \$5.9 million after discounting for various factors.

On the basis of this information, which establishes that the values are of the same magnitude, and the broad public benefits which will be achieved by this exchange, I recommend that you conclude that the exchange is in the public interest. Although ASRC may in the future receive a greater financial benefit from the transaction, should its subsurface lands contain oil and gas in paying quantities and Congress decide to open its lands to production, these benefits would not exceed the benefits ASRC would receive under § 1431(o). The potential income value of these lands to ASRC is not an accurate measure of the potential income value of these lands to the United States, because of ASRC's option under § 1431(o) of ANILCA to exchange its in-lieu subsurface lands outside of ANWR for the subsurface below the KIC's lands if Congress opens nearby ANWR lands to commercial oil and gas development. Although the NPS and BLM analyses lead to the conclusion that the values given up by the parties to the exchange are comparable, I am recommending that you base the exchange on the "public interest" criterion for the reason that this criterion is clearly satisfied.

Effects on Subsistence

Section 810 of ANILCA requires (1) that in determining whether to dispose of public lands under his jurisdiction, the agency head or his designee shall evaluate the effect of such action on subsistence

uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the disposition of public lands needed for subsistence purposes, and (2) that no disposition which would significantly restrict subsistence uses shall be effected until certain procedural requirements are met. Pursuant to § 810, a subsistence evaluation has been prepared and is attached. It leads to the conclusion that the exchange will not significantly restrict subsistence uses. ASRC's potential developmental activities will be primarily localized in nature and subject to strict environmental safeguards and restrictions; significant displacement of fish and wildlife is, therefore, not expected to occur, and any relocation of resources utilized for subsistence purposes will not result in those resources becoming unavailable to the residents of Kaktovik. In view of this conclusion, the exchange is therefore excluded from the procedural requirements of § 810(a)(1)-(3).

Other Considerations

1. Section 7 of the Endangered Species Act. Formal consultation was undertaken with the Alaska Regional Office of the FWS and a biological opinion was provided. The opinion concluded the Arctic peregrine falcon is the only endangered species in the area of the proposed exchange, and that the exchange is not likely to jeopardize the continued existence of the species. That office also concluded, after informal consultation with the National Marine Fisheries Service, that the exchange will not affect the endangered bowhead and gray whales occurring offshore of ANWR in the Beaufort Sea.

2. Section 106 of the National Historic Preservation Act. In order to assure that the exchange and the activities resulting from the exchange will not adversely affect properties on or eligible for inclusion on the National Register of Historic Places, consultation was initiated with the Alaska State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation. Because, among other reasons, of the significant restrictions on ASRC's exploration activities, including those covenants in the agreement (adopted from suggestions of the SHPO) designed to preclude damage to cultural sites, both the SHPO and the Advisory Council concluded that the exchange would have no adverse effect.

3. OMB Cir. A-95. In order to provide the State of Alaska with notice of the exchange and comply with the provisions of the OMB Cir. A-95, the State of Alaska was advised by the NPS of the proposed exchange and comments were solicited. No comments were addressed to the Department from the State through this process.

4. Section 307 of the Coastal Zone Management Act. As a matter of comity, the State was advised of the exchange and our conclusion that the exchange is consistent to the maximum extent practicable with the Alaska Coastal Management Program. Although the State did not agree that the exchange was consistent, it indicated that, if certain additional provisions were included in the exchange, it would be consistent with the state program and the exchange could proceed. These recommended changes have been adopted and included in the exchange. In addition, the North Slope Borough, in commenting to the State, supported the exchange as in the best interest of the Borough and its residents.

5. Section 910 of ANILCA. Because this exchange is governed by the procedural requirements of § 910, an environmental impact statement is not required. In addition, the Solicitor's Office has concluded that no other NEPA compliance is required. Nonetheless, as a matter of sound administrative practice and in order to understand fully the environmental impacts associated with this exchange, NPS and FWS prepared a biological ascertainment, which is the functional equivalent of an EIS. This document demonstrates that there are no significant environmental impacts associated with the land exchange and that the essential integrity of ANWR's resources and values will not be undermined by the exchange.

6. The Alaska Land Use Council. The Council was formally advised of the proposed exchange by the NPS and the president of ASRC, who is a member of the council, and was given an opportunity to comment. The Council had the proposed exchange under advisement for the 30-day waiting period. No formal comments were received from the Council. Comments were, however, received from another member of the Council, generally supportive of the exchange, provided that ASRC's subsequent uses and activities on the lands conveyed to it do not significantly adversely affect coastal resources and recommending that the exchange be explained at public hearings in the affected Alaska communities prior to our reaching a final decision on the exchange.

7. Public comments. Special consideration should be given to the fact that KIC, which owns the surface estate of most of the lands which ASRC will receive, and the Village of Kaktovik, the residence of the local subsistence users within ANWR, have expressed in writing their support of this exchange. Also, a town meeting was held with the people of the Village of Anaktuvuk Pass on July 19, 1983. As a result of the meeting, NPS agreed to the reservation of

access and subsistence easements by ASRC to Chandler Lake and nearby lands to assure continued access to subsistence use areas.

Recommendations

Both the Directors, NPS and FWS recommend that you execute the exchange agreement. Their separate recommendations are attached for your reference. Because this exchange will bring under NPS management significant recreational resources at Chandler Lake, one of the unique areas of Gates of the Arctic National Park, the exchange is strongly supported by NPS. In addition, NPS notes that the easements to be administered by ELM will greatly enhance access to the park and further the general public recreational needs of the State of Alaska. Because this exchange will bind ASRC's uses and activities to the no significant adverse effect standard that applies to oil and gas exploration on ANWR lands, require ASRC to submit its oil and gas exploration plans and its sand and gravel development plans to the FWS Regional Director for review, require ASRC to submit its plans for any other subsurface uses to the Regional Director for his approval, permit the Regional Director to close special caribou, snow goose and waterfowl areas during sensitive biological periods, and grant FWS free use of sand and gravel for certain easements crossing ASRC's lands, as well as result in the acquisition of the Chandler Lake lands, FWS also supports this exchange. I concur with the conclusions and recommendations of both Directors.

While taking advantage of this present opportunity to acquire the Chandler Lake lands and the access and recreation easements, it has also been our negotiating objective not to impair other program goals and responsibilities. As indicated earlier, ANWR's resources and values are protected by several independent covenants running with the land and binding on ASRC, its successors and assigns. These include detailed land use stipulations designed to preserve the integrity of the refuge, safeguard refuge purposes, and implement our responsibilities under the second sentence of § 22(g) of ANCSA. At the same time, the proposed agreement preserves our option of promulgating regulations and taking other administrative actions in the future to further extend and enforce refuge laws and regulations relating to use and development by ASRC of its subsurface estate, should the need arise.

The "no significant adverse effect" standard of environmental protection reflected in the land use stipulations is derived from the standard of protection legislatively mandated for the adjacent, § 1002 refuge lands. The specific oil and gas exploration

stipulations found in paragraphs B.4(a)-(d) and B.5 of Appendix 2 to the proposed agreement are modeled after, but are in some respects more stringent than, the § 1002 guidelines governing exploratory activities on adjacent refuge lands.

The stipulations require oil and gas exploration and sand and gravel operations to be conducted in accordance with plans reviewed by the FWS Regional Director. They require ASRC and its operator to adopt the recommendations of the Regional Director unless certain good cause showings are made. Either party can require the other to enter into good faith negotiations to arrive at a plan mutually acceptable to the parties. In the event of a disagreement, the stipulations contain certain procedural delays giving us sufficient time to seek injunctive relief. Moreover, once field operations are commenced, the Regional Director can, by following certain procedures, cause ASRC's operator to correct plan violations and, if necessary, suspend operations. No uses of subsurface resources, other than those expressly contemplated by the stipulations, can be undertaken by ASRC or its operator without the Regional Director's prior written approval, and they will be subject to additional, specific stipulations negotiated by the parties to ensure no significant adverse environmental effects. In addition, the land use stipulations provide a level of protection to cultural resources comparable to the protections afforded to these resources on public lands.

Beyond these detailed stipulations, the proposed agreement contains a separate and unconditional covenant not to use the subsurface lands conveyed to ASRC, or their surface, in any manner that significantly adversely affects the fish and wildlife, their habitats, or the environment, as well as separate covenants to comply with applicable laws to protect floodplains and wetlands. Given all of these restrictions, we believe that ANWR's resources, values, and purposes are fully and adequately protected.

Moreover, in negotiating with ASRC, it has been our strategy to achieve, vis-a-vis the refuge, results comparable to what might be achieved if ASRC were to exercise its ANILCA § 1431(o) rights. The proposed agreement allows us to impose by contract the kinds of environmental safeguards that the FWS would seek to impose by regulation should ASRC exercise its rights under § 1431(o) of ANILCA, and it provides the added advantage that these safeguards are embodied in covenants running with the land and binding on ASRC, its successors and assigns.

We have also been careful to ensure that the proposed exchange does not negate or prejudice the outcome of the § 1002 program. ASRC has agreed to preserve for Congress the decision of whether or not oil and gas leasing and production will occur on the conveyed subsurface lands, even if oil and gas are found there in commercial quantities, and thereby to preserve the congressional scheme of deferring legislative action on the future use and development of ANWR until submission of the Department's findings and recommendations to the Congress pursuant to § 1002(h) of ANILCA. Moreover, ASRC's agreement to allow the Department to inspect seismic data acquired on its lands will enhance the quality of the § 1002(h) report. The bulk of the subsurface lands proposed for conveyance to ASRC lie outside of the § 1002 study area. The proposed agreement maintains the Regional Director's right to approve, under certain conditions, exploration of those subsurface lands to be conveyed to ASRC in the future, which are, however, within the boundaries established by § 1002(b)(1) of ANILCA. This provision preserves the value of such lands for the purpose of obtaining information needed for the § 1002(h) report. Furthermore, the agreement adheres to the intent of Congress that lands within the coastal plain study area be explored by means other than exploratory drilling by prohibiting exploratory drilling to be conducted on lands conveyed to ASRC within the study area until subsequently authorized by Congress.

If in the future Congress decides to enact legislation that has the effect of permitting leasing or production on ASRC's lands, or exploratory drilling on ASRC's lands within the § 1002(b)(1) study area, the proposed agreement provides that the land use stipulations on oil and gas exploration will continue in effect until superseded by self-executing provisions of such legislation or its implementing regulations. This provision guarantees the avoidance of any regulatory hiatus that might otherwise occur and thereby assures continuing control of further oil and gas exploration and development until any statutory and regulatory scheme intended by Congress is in place, should it decide to open ASRC's lands to such activities.

Lastly, whereas the oil and gas reserve estimates to be included in the § 1002(h) report are required to be made on the basis of data retrieved by means other than drilling, ASRC's opportunity to allow exploratory drilling on its lands, outside of the § 1002(b)(1) study area, may provide us with information and experience enhancing the quality of the report. The stipulations of Appendix 2 contain specific environmental safeguards for the conduct of exploratory drilling, where it is allowed. If ASRC decides to permit drilling and its operator obtains the necessary federal, state and local

authorizations to do so, the FWS' opportunity to evaluate the efficacy of such stipulations, through its access and monitoring rights, will help it in evaluating the potential adverse effects of further exploration and development and the need for additional authority to avoid or minimize such effects in preparing the § 1002(h) report to Congress.

In planning for future contingencies, thought has been given to what the positions of the parties should be should the agreement be set aside in whole or in part. ASRC has agreed not to exercise its rights under § 1431(o) of ANILCA with respect to the subsurface lands conveyed to it pursuant to the agreement unless the parties have returned to their positions prior to the execution of the exchange or ASRC has elected to rescind the exchange in accordance with the terms of the agreement. In the event that ASRC exercises its § 1431(o) option, the covenants in Appendices 1 and 2 shall apply to the ANWR lands acquired by ASRC. This provision assures that the environmental safeguards made applicable to ASRC's lands at that time shall be no less stringent than the level of protection achieved under the proposed agreement. Moreover, the United States will retain certain surface interests received from ASRC, depending on the degree of frustration suffered by ASRC due to causes beyond the parties' control. These two provisions should ensure that any decision that ASRC may consider to rescind the agreement will not be made lightly.

Attachments

For your further reference, the following documents are included in the attached file:

1. NPS recommendations.
2. FWS recommendations.
3. Photographs of the lands to be exchanged.
4. Subsistence evaluation and determination.
5. NPS surface and BLM subsurface appraisals.
6. Public interest determination.
7. Biological ascertainment.
8. Endangered Species Act correspondence.
9. Historic Preservation Act correspondence.
10. Coastal Zone Management Act correspondence.
11. Alaska Land Use Council correspondence.
12. OMB Cir. A-95 correspondence.
13. Kaktovik Inupiat Corporation and Village of Kaktovik correspondence.

14. Congressional correspondence.
15. Waiver of intent to convey notice.
16. Opinion of counsel regarding ASRC's authority to enter into exchange.
17. Agreement and appendices.

Conclusion

Based on a review of the above considerations, I strongly recommend that you execute the agreement and related documents on the bases that it is clearly in the public interest, that it promotes the purposes of ANILCA and of § 22(f) of ANCSA, while preserving the essential integrity of ANWR and its purposes and without significantly restricting subsistence uses and activities. Please indicate your decision by checking the appropriate line below. If you decide to execute the proposed agreement, this memorandum and its attachments will constitute the record of decision.

William P. How

Secretarial Decision

JW

I adopt the recommendations to execute the agreement between ASRC and the United States, and related documents.

I do not adopt the recommendations to execute the agreement between ASRC and the United States, and related documents

8/9/83

Date

James G. Watt
SECRETARY



United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

L1425 (767)

MAY 31 1983

Memorandum

To: Chief, Branch of Legislation
Attn: Randy Jones

From: Chief, Branch of Appraisal

Subject: Review of appraisals, Gates of the Arctic National Park
and Preserve

We have reviewed the enclosed appraisals of tracts No. 1 and No. 4 owned by the Arctic Slope Regional Corporation to be exchanged to the National Park Service. The appraisals were found acceptable. These together with approved appraisals for parcels No. 2 and No. 3 are bound in one volume.

We have been asked by the Pacific Northwest Region to furnish the above-referenced appraisals and the appropriate appraisal reviews directly to you. If you have any questions please contact Chuck Haslet at 523-5172.

Charles Haslet

Enclosures:

Appraisal

Appraisal Review



United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

NO REPLY REFER TO:

AUG 1982

Memorandum

TO: Secretary

FROM: Director

RE: Chandler Lake Acquisition, Gates of the Arctic National Park, Alaska

For the past several months representatives of the National Park Service have participated with officials of the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Department in negotiations with Arctic Slope Regional Corporation (ASRC). This effort has resulted in the proposed exchange of lands and interest in lands between the United States and ASRC for the purposes of acquiring Chandler Lake and surrounding lands within Gates of the Arctic National Park for the benefit of the public. If approved, this would be the largest single acquisition in the history of the National Park System.

Under the terms of the proposed exchange, approximately 101,272 acres of surface estate in and around Chandler Lake within the Gates of the Arctic National Park would be acquired by the United States to benefit the purposes of the Park. Recreation and access easements would be acquired by the United States for BLM administration at Lake Udrivik, Imiaknikpak Lake and the Killik River, all of which are adjacent to the Gates of the Arctic National Park, for the benefit of the public under section 903 of ANILCA. Recreation easements previously retained pursuant to section 17(b) of ANCSA at Shainin Lake would be retained by the United States, and ASRC would waive any rights it may have to vacate the easements from its interim conveyance. Restrictive covenants and land use stipulations would be imposed by the United States on the interests conveyed to ASRC on any exploration activities undertaken by the corporation to protect the environment, subsistence uses, resources and habitats of the Arctic National Wildlife Refuge. Developed as covenants to the deed of conveyance, the restrictions remain permanent.

In exchange for the above, approximately 92,150 acres of subsurface estate underlying the surface estate conveyed or to be conveyed to the Kaktovik Inupiat Corporation, the village corporation for the Native Village of Kaktovik (hereinafter "KIC"), would be conveyed to ASRC. In addition, ASRC would receive those subsurface interests of the United States underlying the townsite of the City of Kaktovik, approximately 300 acres, and underlying those Native allotments which are or may be conveyed within the exterior boundaries of KIC's lands, which approximate up to 1,800 acres. All of these interests to be conveyed to ASRC are within boundaries of the Arctic National Wildlife Refuge. ASRC would also receive or retain limited easements in the Gates of the Arctic National Park to ensure adequate access for continued subsistence uses in the Park.

Conveyance of the subsurface underlying the KIC surface estate was originally prohibited by provisions of ANCSA that precluded regional corporations from acquiring subsurface lands within wildlife refuges. As a result of section 1431(o) of ANILCA, however, ASRC may acquire this subsurface at any time within 5 years of an action by Congress, occurring by not later than December 2, 2020, which opens to oil and gas leasing lands within the Refuge and within 75 miles of KIC lands. Thus, ASRC currently holds an option to acquire the subsurface estate at a future date if certain conditions are met. If ASRC exercises this option, it must convey to the United States, as payment for the subsurface under KIC lands, an equal acreage, of its own choosing, from the in-lieu subsurface lands it acquired under section 12(a)(1) of ANCSA. As the selection of land to be conveyed to the United States under this option is within the sole discretion of ASRC, it can be presumed that the corporation would choose its least valuable lands for conveyance to the United States. The Bureau of Land Management estimates that the value of the lands the United States would acquire if section 1431(o) is triggered to be only \$10,800. Furthermore, since none of the Chandler Lake lands proposed for acquisition under the exchange are ANCSA section 12(a)(1) lands, the United States would not be able to acquire any of these lands by an exchange pursuant to section 1431(o).

The Department, by trading now, is able to obtain valuable inholdings within the National Park System, rather than obtaining virtually valueless lands later. Thus, the goals of four Administrations to protect and manage the valuable Chandler Lake lands as part of the Gates of the Arctic National Park and to provide public use and enjoyment of the Killik River will be realized through the implementation of this exchange.

The acquisition of the Chandler Lake innholdings and their management as part of Gates of the Arctic National Park represents a significant addition to the National Park System. Chandler Lake is a spectacular mountain rimmed lake. It is a major nationally significant resource whose geologic, cultural, scenic, recreation, wildlife and wilderness resources make a major contribution to furthering the purposes for which Gates of the Arctic National Park was established.

Chandler Lake is one of only eight major glacially formed lakes located in the northern foothills of the Brooks Range. The lake and related valleys to be conveyed to the United States provide an essential access corridor for park visitors, including hikers, campers, and fishermen, to the north central and northwestern reaches of the Park, which has few access points. At five miles in length, the lake is one of the largest lakes in the northern Brooks Range, and provides critical float plane access to this region of the Park. The scenic beauty of the lake and its surroundings provide a major contribution to the wilderness values of an area regarded as the greatest remaining wilderness in North America.

The Anaktuvuk River and Kollutarak Creek are major hiking valleys through the Park which provide access not only for visitors but wildlife. Consistent with the purposes of Section 201(4)(a) of ANILCA, the acquisition of the Chandler Lake and Kollutarak valley will protect critical wildlife populations as these areas serve as major migration routes for the Arctic caribou herd on its spring and fall movements through the Brooks Range. Chandler Lake is home for lake trout, Arctic char, whitefish, burbot and grayling. The mountainous areas to be acquired contain Dall Sheep.

The lands also encompass mountainous terrain, which in addition to great scenic beauty provide critical watershed protection for three major park rivers, the Chandler, John and Anaktuvuk Rivers. A segment of the John River, which is designated a wild river in the National Wild and Scenic River System, would also be acquired under the exchange.

The Chandler Lake and Kollutarak Creek drainages fall within a significant cultural resources zone which offers very high potential for archeological site discovery.

Of major consideration are the benefits obtained through improved management of the Park with the implementation of the exchange. Federal land holdings will be consolidated with the elimination of isolated tracts of Federal land. Land ownership patterns will be improved, facilitating the protection of Park resources, thus improving the ability to fulfill the purposes of the Park as defined in ANILCA.

The importance of Chandler Lake and related mountains and valleys has long been recognized. In 1972, the area was proposed by the National Park Service for withdrawal under section 17(d)(2) of ANCSA. While subsequent negotiations between the Department and ASRC resulted in the eventual withdrawal of these lands under section 11(a)(3) of ANCSA for ASRC selection, these lands have remained a major concern to the National Park Service. Both the legislative recommendations of Secretary Morton in 1973 and Secretary Andrus in 1977 included these lands within a proposed national park. Congress responded to this continued recognition of the area's values through the establishment of the Gates of the Arctic National Park in 1980, including these lands within exterior boundaries of the Park. The Congress, through section 1302 of ANILCA authorized the acquisition of these lands with the consent of ASRC. Now the goal of four Administrations and the Congress will be achieved as the Chandler Lake lands become federally owned and managed as part of the Park.

The Chandler Lake area is also important for the subsistence lifestyle of the Anaktuvuk Pass people. Isolated in a mountain pass, the local people are dependent upon the fish of the lake and the caribou and other mammals of the area. The Village of Anaktuvuk Pass and ASRC supported the inclusion of their lands, and the Village itself, within the Park to facilitate the protection of those fish and wildlife resources critical to the subsistence lifestyle of the local people.

Title VIII of ANILCA guarantees and protects the rights of the Anaktuvuk Pass people to continue to hunt and fish for subsistence purposes in the Park. Title 36 C.F.R. Part 13 designates Anaktuvuk Pass as a resident zone under Title VIII of ANILCA, thus assuring that all rural residents of the Village may continue subsistence activities on Federal park lands. Access to Chandler Lake and through the mountain valleys is assured through access easements which are retained by ASRC under this Agreement for the benefit of the Village.

The Killik River was recommended by the Department for designation as a wild river component of the Wild and Scenic Rivers System in 1973 and again in 1977. In the legislative history of ANILCA, the Congress indicated that the river was not so designated because of the private lands (owned by ASRC) which controlled access and use of the river. The Killik River today retains its nationally significant values and the acquisition of the recreation and access easements along the river and its associated lakes will open this beautiful Arctic river to public use and enjoyment.

Shainin Lake serves as an important access point to that portion of the Park east of Anaktuvuk Pass. The retention of

the access and recreation easements here will facilitate use of the Park and the lake itself.

On July 19, 1983, the National Park Service, Arctic Slope Regional Corporation, and the North Slope Borough attended a town meeting in the Village of Anaktuvuk Pass. The proposed exchange was explained to the local people, who expressed several concerns about the exchange and now it would effect subsistence uses and access to Chandler Lake and other traditional hunting areas. Based upon input from this meeting, clarifications and changes were made in the agreement to address those issues.

The acquisition of these important lands by the National Park Service and the acquisition of the recreation and access easements together make a significant contribution to the purposes of the Alaska National Interest Lands Conservation Act and the National Park System. We strongly support this proposed land exchange and recommend its approval.

Russell E. Dickenson



United States Department of the Interior

FISH AND WILDLIFE SERVICE

WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR
FISH AND WILDLIFE SERVICE

Memorandum

To : Secretary

From : Director, U.S. Fish and Wildlife Service

Subject: Proposed Land Exchange Between the Department of the Interior
and Arctic Slope Regional Corporation

We have reviewed the proposed exchange agreement and appendices that would provide for approximately 100,000 acres of surface estate in and around Chandler Lake within the Gates of the Arctic National Park to be conveyed to the U.S. by the Arctic Slope Regional Corporation (ASRC). In exchange, ASRC would receive approximately 92,160 acres of subsurface estate within the Arctic National Wildlife Refuge (ANWR), the surface of which has been or is to be conveyed to the Kaktovik Inupiat Corporation (KIC).

The Service has reviewed this exchange in light of the provisions of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), the Alaska Native Claims Settlement Act (ANCSA), and on the basis of the several documents listed below:

- (1) Public Interest Evaluation;
- (2) Ascertainment Evaluation;
- (3) Subsistence Evaluation for Section 810 of ANILCA;
- (4) Intra-Service Biological Opinion prepared under Section 7 of the Endangered Species Act;
- (5) FWS evaluation on endangered species managed by the National Marine Fisheries Service;
- (6) Coastal Zone Management Consistency Determination; and,
- (7) Section 106 of the National Historic Preservation Act of 1966 Evaluation.

Under Section 1431(o) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), ASRC is entitled to exchange subsurface lands selected under 12(a)(1) of ANCSA for subsurface lands beneath the lands selected by the Kaktovik Inupiat Corporation within 5 years of such time as Congress opens public lands within 75 miles of Kaktovik's lands to commercial oil and gas development. Given such Congressional action, ASRC would acquire the subsurface, without covenants for land use restrictions but subject to discretionary land use regulations, in exchange for an equal amount of subsurface

lands elsewhere. However, earlier this year, ASRC approached the Department regarding its desire to effect an exchange on a more timely basis. As a result, the Service had the opportunity to participate in negotiating the conditions of such an agreement, including land use stipulations and other restrictive covenants running with the land.

As a result of the negotiations process, ASRC has agreed to:

- Be bound by the "no significant adverse impact" ^{threshold is 6 x 12 mi in 1002 area} standard that applies ^{to oil and gas exploration operations on the ANWR} to oil and gas exploration operations on the ANWR;
- Grant the Service free use of sand and gravel for certain easements that cross its lands;
- Submit a plan of operations for oil and gas exploration to the Regional Director for review;
- Submit a plan of operations for the use of sand and gravel to the Regional Director for review;
- Permit the Regional Director to identify special caribou, snow goose, and waterfowl areas to be closed during seasons of sensitive use; and,
- Submit to the Regional Director, for his approval, plans of any other uses of the subsurface.

It should be recognized that these benefits are in addition to the significant acreage in and around Chandler Lake that ASRC has agreed to convey to the Gates of the Arctic National Park.

It is our recommendation that this agreement be signed. Given the benefits that will accrue to the United States from the exchange, we believe that the exchange is in the public interest, promotes the purposes of ANILCA without undermining the essential integrity of ANWR or frustrating its purposes, and will not significantly restrict subsistence uses.

Robert C. [Signature]

AGREEMENT BETWEEN ARCTIC
SLOPE REGIONAL CORPORATION
AND THE UNITED STATES OF AMERICA

THIS AGREEMENT entered into this 9th day of August, 1983, is by ARCTIC SLOPE REGIONAL CORPORATION (hereinafter "ASRC"), a corporation authorized pursuant to the Alaska Native Claims Settlement Act (hereinafter "ANCSA"), 85 Stat. 688, as amended, 43 U.S.C. §§ 1601, et seq., and duly organized under the laws of the State of Alaska, and the UNITED STATES OF AMERICA, acting through James G. Watt, the Secretary of the Interior (hereinafter "Secretary"). ASRC and the Secretary are collectively referred to as "the parties."

W I T N E S S E T H:

WHEREAS, the Secretary desires to acquire private inholdings in Gates of the Arctic National Park in the Chandler Lake and nearby areas currently owned by ASRC, which lands, upon acquisition, would become, and be administered as, a part of Gates of the Arctic National Park; and

WHEREAS, the Secretary also desires to acquire easements for public purposes, including access and recreation, along the Killik River and on associated lakes between Gates of the Arctic National Park and the National Petroleum Reserve-Alaska; and

HEREAS, the Secretary has determined that the acquisition of lands owned by ASRC in the Chandler Lake and nearby areas will enhance the protection of the outstanding natural values of the areas as a part of Gates of the Arctic National Park and will further the purposes set forth in §§ 101 and 201(4) of the Alaska National Interest Lands Conservation Act (hereinafter "ANILCA"), Pub. L. 96-487, 98 Stat. 2374 and 2378, 16 U.S.C. §§ 3111 and 410hh(4); and

HEREAS, § 22(f) of ANCSA, 43 U.S.C. § 1621(f), and § 130(h) of ANILCA, 16 U.S.C. § 3192(h), authorize the Secretary to acquire lands or interests therein by exchanging public lands in Alaska, including lands, or interests therein, within conservation system units, including the Arctic National Wildlife Refuge (hereinafter "ANWR"); and

HEREAS, ASRC desires to acquire at this time the subsurface estate of lands the surface estate of which is owned or hereafter is owned, by Kaktovik Inupiat Corporation (hereinafter "KIC"), the Village Corporation established by the Native residents of the Village of Kaktovik, Alaska, and desires to acquire the remainder of the subsurface estate of lands the surface estate of which is owned, or hereafter is owned, by holders of Alaska Native allotments and the townsite trustee for the benefit of the occupants of the Townsite of Kaktovik, Alaska; and

WHEREAS, ASRC has a right under the provisions of § 1431(o) of ANILCA to exchange in-lieu subsurface lands which it selected pursuant to the provisions of § 12(a)(1) of ANCSA for an equal acreage of the subsurface estate beneath those lands selected by KIC within ANWR, contingent only upon the opening of ANWR lands within 75 miles of lands selected by KIC for purposes of commercial development of oil or gas; and

WHEREAS, under the provisions of §§ 1002 and 1003 of ANILCA, ANWR lands within 75 miles of the lands selected by KIC cannot be opened for purposes of commercial development of oil or gas until authorized by an Act of Congress; and

WHEREAS, ASRC desires to obtain at this time the subsurface estate beneath the surface estate owned by KIC, rather than to wait to exercise its rights under § 1431(o) of ANILCA, pursuant to which ASRC, at its sole option, could exchange its least valuable in-lieu subsurface lands for the subsurface estate beneath KIC lands; and

WHEREAS, the Secretary desires to obtain valuable inholdings within Gates of the Arctic National Park in the Chandler Lake and nearby areas which are not eligible for acquisition under § 1431(o) of ANILCA by exchanging the subsurface estate beneath the surface estate owned or to be owned by KIC and the remaining interest of the United States in lands owned or to be owned by Native allottees and the townsite trustee for the benefit of the occupants of the Townsite of Kaktovik, Alaska; and

WHEREAS, both KIC and the Village of Kaktovik have expressed in letters to the Secretary their strong support for an exchange in which ASRC would receive the subsurface estate beneath lands conveyed to KIC; and

WHEREAS, the Secretary has determined that the exchange of lands set forth in this Agreement is in the public interest;

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, the parties hereto covenant and agree as follows:

1. The parties agree to the land exchange specified in the following paragraphs and to be bound thereby. The parties agree that this exchange of lands is authorized and undertaken pursuant to the Secretary's authority under § 22(f) of ANCSA and § 1302(h) of ANILCA.

2. ASRC shall convey to the United States, subject to the conditions set forth in subparagraph 5(b) of this Agreement, as its part of the exchange, the following described lands or interests in lands:

(a) by warranty deed, the surface estate in the following lands previously conveyed by the United States to ASRC, excepting therefrom the easements reserved and described in Appendix 3 attached to and incorporated as a part of this Agreement:

Umiat Meridian

Township 13 south, range 4 west, sections 1, 2, 11-14, 23-26, 35, 36;

Township 14 south, range 2 west, sections 29-32;

Township 14 south, range 3 west, sections 4, 19, 25-36;

Township 14 south, range 4 west, sections 2, 11, 13, 14, 21-28, 33-36;

Township 14 south, range 2 east, section 32;

Township 15 south, range 2 west, sections 1-5, 8-12;

Township 15 south, range 1 west, sections 7-10, 13-18, 21-26, 35, 36;

Township 15 south, range 1 east, sections 1-4, 9, 10, 15, 16, 21, 22, 29, 30, 31;

Township 16 south, range 2 east, sections 1-12, 16-21, 28-33;

Township 16 south, range 4 east, sections 5-8, 17, 18; and

Township 17 south, range 1 west, sections 3, 4 (partials); aggregating 75,150 acres;

(b) by relinquishment, all right, title and interest which ASRC has under § 22(f) of ANCSA or § 1431(c)(1) of ANILCA to receive the surface estate of the following lands, ASRC's right to receipt of which has vested by virtue of previous satisfaction by ASRC of the conditions precedent set forth in the first sentence of § 1431(c)(1) of ANILCA:

Umiat Meridian

Township 16 south, range 3 east, sections 1-3, 6, 7, 9-16, 18-30; and

Township 15 south, range 4 east, sections 6, 7, 18, 21-28, 33-36;

aggregating 26,122 acres, excepting therefrom the right to receive an interim conveyance of an easement for access or for subsistence uses, or both, identical to the easements excepted from the lands conveyed by ASRC to the United States pursuant to subparagraph 2(a) of this Agreement and described in paragraph 1 of Appendix 3 of this Agreement, which easement shall extend: (i) easterly along that portion of the Anaktuvuk River in Township 15 south, range 4 east, sections 21-23, 25-27 (Umiat Meridian), and (ii) southerly along those portions of the tributaries of the Anaktuvuk River in Township 16 south, range 3 east, sections 13, 16, 20, 21, 24, 25, 27, 28 (Umiat Meridian), and shall be subject to all the terms, conditions and limitations set forth in paragraph 1 of Appendix 3 of this Agreement. Nothing in this Agreement shall affect ASRC's right to a conveyance of the subsurface estate of the lands described in this subparagraph 2(b);

(c) by warranty deed, the easements described in Appendix 4 attached to and incorporated as a part of this Agreement, provided, that, in the event of any inconsistency between the provisions of Appendix 4 and the provisions of the warranty deed issued by ASRC pursuant to subparagraph 5(b) of this Agreement, the provisions of Appendix 4 shall control, and ASRC shall promptly issue a reformed warranty deed to correct the inconsistency; and

(d) by relinquishment, all right, title and interest which ASRC has under § 12(c) of ANCSA to receive the surface estate of any lands within the lands described in subparagraph (a) of this paragraph 2 in the event that any of such lands become available for conveyance to ASRC as the result of the denial of an allotment application adjudicated pursuant to the Act of May 17, 1906, 34 Stat. 197, as amended, or § 905 of ANILCA. Nothing in this Agreement shall affect ASRC's right to a conveyance of the subsurface estate of the lands described in this subparagraph 2(d).

3. The Secretary shall convey, subject to valid existing rights and the provisions of subparagraphs (f) and (g) of this paragraph 3 and the provisions of paragraph 4 of this Agreement, to ASRC, as his part of the exchange, the following:

(a) all right, title and interest of the United States in the subsurface estate of the following lands:

Umiat Meridian

Township 7 north, range 32 east, section 1;

Township 8 north, range 32 east, sections 1-3, 7-16, 18-33, 36;

Township 8 north, range 33 east, sections 1-21, 29-32;

Township 8 north, range 34 east, sections 1-17;

Township 8 north, range 35 east, sections 1-18, 24, 25, 36;

Township 8 north, range 36 east, sections 1-13, 18, 19, 30;

Township 9 north, range 32 east, all;

Township 9 north, range 33 east, all, except lands within P.L.O. No. 715, as amended by P.L.O. No. 5448;

Township 9 north, range 34 east, all, except lands within P.L.O. No. 715, as amended by P.L.O. No. 5448;

Township 9 north, range 35 east, all; and

Township 9 north, range 36 east, all;

(b) all right, title and interest of the United States in the subsurface estate of the following lands:

Township 8 north, range 33 east, sections 22-24; and

Township 8 north, range 34 east, sections 18-20;

(c) all right, title and interest of the United States in the subsurface estate beneath all lands conveyed to KIC pursuant to the provisions of § 1431(g)(3) of ANILCA;

(d) all right, title and interest of the United States in the subsurface estate beneath all lands conveyed to KIC to satisfy its entitlement under §§ 12 and 14 of ANCSA and § 1431(g) of ANILCA, provided, that, if conveyance of the subsurface estate to ASRC pursuant to the provisions of subparagraphs (a), (b), (c) and (d) of this paragraph 3 results in gross acreage conveyed to ASRC in excess of 92,160 acres, then ASRC shall promptly convey to the United States the surface estate of lands it owns within the exterior boundaries of Gates of the Arctic National Park in an amount equal to the number of acres conveyed to ASRC in excess of 92,160 acres, the identification of lands to be conveyed to the United States to

be solely at the discretion of ASRC, and provided further, that the conveyance by ASRC to the United States pursuant to this subparagraph (d) shall be in whole sections or in aliquot part thereof with respect to the last section so conveyed, and shall not result in isolated tracts of federal ownership, and provided further, that the remaining pattern of ASRC ownership following such conveyance to the United States shall be in compact and contiguous tracts of not less than 5,760 acres in size; and

(e) all right, title and interest of the United States remaining in the subsurface estate: (i) beneath Kaktovik Townsite Patent No. 50-68-6022; and (ii) beneath all allotments adjudicated and heretofore or hereafter approved pursuant to the Act of May 17, 1906, 34 Stat. 197, as amended, or § 905 of ANILCA, within the exterior boundaries of lands conveyed to KIC to satisfy its entitlement under §§ 12 and 14 of ANCSA and § 1431(g) of ANILCA.

(f) The Secretary shall convey to ASRC the subsurface estate of those lands described in subparagraphs (a), (b), (c) and (d) of this paragraph 3 only when the surface estate of those lands has been conveyed to KIC. If, upon the satisfaction of the full land entitlement of KIC pursuant to §§ 12 and 14 of ANCSA and § 1431(g) of ANILCA, any of the surface estate of the lands described in subparagraphs (a) and (b) of this paragraph 3 is not conveyed to KIC, the subsurface estate of those lands shall not be conveyed to ASRC.

(g) The full extent and legal boundary of the interest of ASRC, its successors or assigns, in the subsurface estate of the lands conveyed to ASRC pursuant to this paragraph 3 shall be coterminous with the interest in the surface estate of those lands conveyed to KIC pursuant to § 14(a) of ANCSA and § 1431(g) of ANILCA and with the interest in the surface estate of those lands conveyed pursuant to subparagraph (e) of this paragraph 3. ASRC's interest in the subsurface estate shall increase or decrease in the same manner and to the same extent as the surface estate increases or decreases by operation of law, including, but not limited to, processes such as accretion or erosion.

4. The subsurface estate of the lands to be conveyed by the Secretary to ASRC pursuant to paragraph 3 of this Agreement shall be subject to (i) the terms, conditions, covenants, limitations, exceptions and reservations set forth in Appendix 1 attached hereto and incorporated herein as part of this Agreement, except that, with respect to conveyances pursuant to subparagraph 3(e) of this Agreement, paragraphs 5 and 13 of Appendix 1 shall not apply; and (ii) the stipulations and limitations on ASRC's activities and uses set forth in Appendix 2 attached hereto and incorporated herein as a part of this Agreement. All of the provisions of Appendices 1 and 2 shall run with the land and shall be binding upon ASRC, its successors and assigns. The Secretary shall insert in any

conveyance to ASRC of the subsurface estate of the lands described in paragraph 3 of this Agreement the language set forth in Appendix 1.

5. The parties mutually agree that each can perform his or its respective obligations under paragraphs 1 through 4 of this Agreement in a series of transactions, but that:

(a) the Secretary shall exercise his best efforts to convey to ASRC, on or before September 1, 1983, the subsurface estate of the lands described in paragraph 3 of this Agreement the surface estate of which has previously been conveyed to KIC. The Secretary shall then convey to ASRC the remaining subsurface estate of the lands described in subparagraphs 3(a), (b), (c) and (d) of this Agreement at the time that the Secretary conveys the surface estate of such lands to KIC. The Secretary shall make a good faith effort to convey to ASRC the interests in lands described in subparagraph 3(e)(i) of this Agreement and those interests in lands described in subparagraph 3(e)(ii) of this Agreement beneath any allotment heretofore approved within one year of the effective date of this Agreement, and to convey to ASRC those interests in lands described in subparagraph 3(e)(ii) of this Agreement beneath any allotment hereafter approved upon the date of approval of the allotment, provided, that the conditions set forth in subparagraph 3(e)(ii) have been satisfied. The Secretary shall make a good faith effort to convey to ASRC the easement

described in subparagraph 2(b) of this Agreement within eight (8) months of the effective date of this Agreement.

(b) ASRC shall convey to the United States the surface estate of the lands described in subparagraph 2(a) of this Agreement by warranty deed, shall relinquish to the United States its rights to the surface estate of the lands described in subparagraph 2(b) of this Agreement by letter from an authorized officer of the corporation, shall convey the easements described in subparagraph 2(c) of this Agreement by warranty deed, and shall relinquish to the United States its rights to the surface estate of the lands described in subparagraph 2(d) of this Agreement by letter from an authorized officer of the corporation, such deeds, letters of relinquishment, appropriate corporate resolutions and opinions of counsel to be delivered to the Department of the Interior at the time of the delivery to ASRC of the conveyance of the lands described in the first sentence of subparagraph (a) of this paragraph 5. ASRC shall also deliver to the Department of the Interior all documents necessary for the review, approval and acceptance of title or relinquishment from ASRC to the United States.

6. The parties agree that the Secretary shall convey to ASRC the easement described in subparagraph 2(b) of this Agreement and the subsurface estate of the lands described in paragraph 3 of this Agreement by patent or by interim

conveyance, as authorized in § 22(j) of ANCSA, as amended by § 1410 of ANILCA. Recognizing that the subsurface estate to be conveyed to ASRC pursuant to this Agreement is coterminous with the surface estate conveyed, or to be conveyed, to KIC and with the interest in the surface estate of those lands conveyed pursuant to subparagraph 3(e) of this Agreement, as set forth in subparagraph 3(f) of this Agreement, ASRC hereby accepts the survey, if any, of lands conveyed to KIC pursuant to § 14(a) of ANCSA and § 1431(g) of ANILCA and the surveys, if any, of Kaktovik Townsite Patent No. 50-68-6022 and of Alaska Native allotments approved under the Act of May 17, 1906, 34 Stat. 197, as amended, or § 905 of ANILCA. If KIC elects to receive patent to its lands under § 909 of ANILCA, ASRC waives any right that it may have to require an independent survey. ASRC further waives any right that it may have to require a survey of the easement to be conveyed to ASRC pursuant to subparagraph 2(b) of this Agreement.

7. The Secretary shall convey the subsurface estate of the lands described in paragraph 3 of this Agreement and the easement described in subparagraph 2(b) of this Agreement subject to valid existing rights, including, but not limited to, the unexpired term of any outstanding lease, license, permit or contract, provided, that the Secretary shall terminate or suspend, if terminable or suspendable in the judgment of the Secretary without liability to the United

States, that portion of any such lease, license, permit or contract which authorizes activities on the lands the subsurface estate of which has been conveyed to ASRC pursuant to paragraph 3 of this Agreement, and provided further, that, with respect to the subsurface estate to be conveyed to ASRC pursuant to subparagraph 3(b) of this Agreement and the subsurface estate to be conveyed to ASRC pursuant to subparagraph 3(e)(ii) of this Agreement within the exterior boundaries of the subsurface estate described in subparagraph 3(b) of this Agreement, the Secretary shall be authorized to approve any application for a permit to conduct geological or geophysical surveys that was filed on or before the effective date of this Agreement, and provided further, that, with respect to the subsurface estate to be conveyed to ASRC pursuant to subparagraph 3(c) of this Agreement and the subsurface estate to be conveyed to ASRC pursuant to subparagraph (3)(e)(ii) of this Agreement within the exterior boundaries of the subsurface estate described in subparagraph 3(c) of this Agreement, the Secretary shall be authorized to approve any application for a permit to conduct geological or geophysical surveys that was filed with the Department of the Interior on or before the date of identification of lands pursuant to § 1431(g)(3) of ANILCA or the effective date of this Agreement, whichever last occurs, and provided further, that, with respect to the subsurface estate to be conveyed to

ASRC pursuant to subparagraph 3(d) of this Agreement and the subsurface estate to be conveyed to ASRC pursuant to subparagraph 3(e)(ii) of this Agreement within the exterior boundaries of the subsurface estate described in subparagraph 3(d) of this Agreement, the Secretary shall be authorized to approve any application for a permit to conduct geological or geophysical surveys that was filed with the Department of the Interior on or before the date of conveyances of such estates to ASRC to the extent that those estates are located within the area identified by § 1002(b)(1) of ANILCA, and provided further, that the Secretary shall terminate on September 1, 1984, if terminable in the judgment of the Secretary without liability to the United States, that portion of such permits for geological and geophysical surveys that is outstanding on the date of the conveyance to ASRC of the subsurface estate of the lands described in subparagraphs 3(b) and (c) of this Agreement and which authorizes activities on such lands. Identification of lands pursuant to § 1431(g)(3) of ANILCA shall be deemed to have occurred when KIC finally and irrevocably identifies in writing to the Secretary the lands it desires to acquire, and the Secretary has concurred in that identification as provided in § 1431(g)(3) of ANILCA and the provisions of paragraph 8 of this Agreement.

8. The Secretary hereby concurs in any identification of lands that KIC makes pursuant to § 1431(g)(3) of ANILCA within

the former withdrawal made by § 11(a)(1) of ANCSA, as more particularly described in § 1431(g)(3) of ANILCA, provided, that the lands identified by KIC shall be compact and contiguous with lands previously conveyed to KIC in accordance with the provisions of 43 C.F.R. § 2651.4(b), and provided further, that the concurrence of the Secretary pursuant to this paragraph 8 in such identification by KIC is conditioned upon KIC irrevocably identifying not more than 105 percent of its remaining entitlement under § 1431(g)(3) of ANILCA and listing the identified sections of land in order of priority for conveyance. Nothing in this paragraph 8 shall be construed as exercising or waiving the Secretary's discretion to concur in the identification by KIC of lands outside the former withdrawal made by § 11(a)(1) of ANCSA.

9. ASRC agrees to waive its right pursuant to Paragraph 10 of the Agreement of August 6, 1976, between the parties to Arctic Slope Regional Corporation, et al. v. Kleppe, Civil Action No. A75-218, United States District Court for the District of Alaska, to have Easements EIN 15-C5 (15a) and EIN 17-C5 (17a), which were excepted and reserved to the United States in the lands conveyed to ASRC in Interim Conveyance No. 048, vacated, modified, altered or relocated, provided, that the waiver of ASRC pursuant to this paragraph 9 shall not be construed to restrict the right of ASRC, its successors and assigns, to use or develop any resources in the area of the

above-described easements, including without limitation, oil and gas, valuable minerals, and sand and gravel, and provided further, however, that ASRC will ensure adequate access around any obstructions placed upon the bed of Shainin Lake or the bank thereof.

10. ASRC agrees to utilize its best efforts to assist the United States to obtain from KIC an easement for access to conduct scientific research and studies on lands conveyed, or to be conveyed, to KIC. ASRC agrees that its subsurface estate shall be subject to any easement, license or other authorization for scientific research and studies so granted by KIC, and further agrees that, in the event that KIC grants such an easement, license or other authorization, ASRC shall grant the United States a conforming easement, license or authorization for use of the subsurface estate to a depth of three feet for scientific research and studies. Any easement, license or authorization granted by ASRC pursuant to this paragraph 10 shall not interfere with ASRC's full use and enjoyment of the subsurface estate of the lands conveyed to ASRC pursuant to paragraph 3 of this Agreement. Nothing in this paragraph 10 shall be construed to diminish any rights of access of the United States.

11. The Secretary hereby finds that he has evaluated the effects of the exchange set forth in this Agreement on subsistence uses and needs, the availability of other lands for

the purposes sought to be achieved, and other alternatives that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes and has determined, in accordance with the provisions of § 810(a) of ANILCA, that the exchange set forth in this Agreement will not significantly restrict subsistence uses.

12. The Secretary hereby finds that the conveyance to ASRC of the subsurface estate of the lands described in paragraph 3 of this Agreement, subject to the stipulations, covenants and limitations set forth in paragraph 4 of this Agreement, will not undermine the essential integrity of ANWR, will not frustrate the purposes of ANWR, and will not significantly adversely affect the fish and wildlife, their habitats, or the environment of ANWR.

13. The Secretary hereby finds that the acquisition of lands and interests in land in the Chandler Lake and nearby areas will enhance the protection of the outstanding natural values of the areas and further the purposes of ANILCA, including the purposes set forth in §§ 101, 201(4) and 1302 of ANILCA, by: the preservation of unrivaled scenic and geological values associated with natural landscapes; the protection of habitat for, and the populations of, fish and wildlife, including those species dependent on vast, relatively undeveloped areas; the preservation in its natural state of an extensive unaltered arctic environment; the preservation of

wilderness resource values and related recreational opportunities and the maintenance of the wild and undeveloped character of the area, including opportunities for visitors to experience solitude, and the natural environmental integrity and scenic beauty of the mountains, lakes, rivers and other natural features of the area; the exercise of an opportunity to eliminate substantial inholdings within Gates of the Arctic National Park; the facilitation of access to lands within Gates of the Arctic National Park and other public lands; and the consolidation of Federally-owned lands in Gates of the Arctic National Park. The Secretary further finds that the conveyance to ASRC of the subsurface estate of the lands described in paragraph 3 of this Agreement will further the purposes of ANILCA, including the purposes set forth in §§ 101, 303(2), and 1302 of ANILCA, by: the conveyance pursuant to paragraph 3 of this Agreement or § 1431(o) of ANILCA (in the event that the provisions of subparagraph 19(d) of this Agreement are triggered) to ASRC of those lands subject to covenants running with the land, assuring that the conveyance will not undermine the essential integrity of ANWR, will not frustrate the purposes of ANWR, and will not significantly adversely affect the fish and wildlife, their habitats, or the environment of ANWR; the conservation of fish and wildlife populations and habitats in their natural diversity; the contermination of Native-owned lands within ANWR; the provision of the

opportunity for continued subsistence uses by local residents; and the provision of an adequate opportunity for satisfaction of the economic and social needs of the Native people of the Arctic Slope Region. For these reasons and because this exchange enables the United States presently to acquire valuable National Park inholdings and other interests of significant public value in return for conveyance to ASRC of an interest in the land which ASRC may in the future be entitled to acquire for far less consideration and to impose by contract the kinds of environmental safeguards that the Secretary would seek to impose by regulation should ASRC exercise its rights under § 1431(o) of ANILCA, the Secretary concludes that the exchange set forth in this Agreement is in the public interest and therefore does not require equalization of values.

14. With respect to the lands conveyed or relinquished by ASRC to the United States pursuant to paragraph 2 of this Agreement, nothing in this Agreement, other than the easements excepted to ASRC from the lands conveyed by ASRC to the United States pursuant to subparagraph 2(a) of this Agreement and reserved and described in Appendix 3 attached to this Agreement and the easement excepted to ASRC from the lands relinquished by ASRC pursuant to subparagraph 2(b) of this Agreement, shall be construed to enlarge, diminish, alter or affect in any manner the rights of the rural residents of the Village of Anaktuvuk Pass, Nunamiut Corporation or ASRC, as the context

requires: (1) to access pursuant to §§ 811, 1109, 1110, and 1111 of ANILCA and any other applicable authority; and (2) to engage in subsistence uses pursuant to Title VIII of ANILCA. It is expressly stipulated and agreed that the lands conveyed or relinquished by ASRC to the United States pursuant to paragraph 2 of this Agreement shall be public lands within the meaning of § 102(3) of ANILCA and as that term is used in the provisions of Title VIII of ANILCA.

15. Nothing in this Agreement shall be construed to enlarge or diminish ASRC's rights of access under Title XI of ANILCA or other applicable authority.

16. The parties agree that the land conveyances and relinquishments authorized under this Agreement, if consummated, shall not affect the entitlement of ASRC under § 12(c) of ANCSA. The parties agree that those lands previously conveyed to ASRC pursuant to § 12(c) of ANCSA, the surface estate of which is to be conveyed to the United States by ASRC pursuant to subparagraph 2(a) of this Agreement, aggregating 75,150 acres of surface estate, and those lands which ASRC has a right to a conveyance under § 22(f) of ANCSA and § 1431(c)(1) of ANILCA, the right to a conveyance of the surface estate of which is to be relinquished to the United States pursuant to subparagraph 2(b) of this Agreement, aggregating 26,122 acres of surface estate, for a total of 101,272 acres of surface estate, will remain or be charged to

ASRC against its entitlement under ANCSA. The parties recognize that a portion of these lands has not been surveyed and mutually agree upon the acreage figures set forth above to remain or be charged to ASRC against its entitlement under ANCSA and that ASRC shall receive any gain or bear any loss of acreage due to errors, if any, in such figures, and notwithstanding a change in the method of computing the acres charged to entitlement when land is conveyed. The parties further agree that ASRC will receive no credit or reduction against those acres conveyed or to be conveyed to it as a result of its reconveyance or relinquishment of the surface estate of those lands described in subparagraphs 2(a) and (b) of this Agreement and the conveyance to ASRC of the subsurface estate of the lands described in paragraph 3 of this Agreement and of the easement described in subparagraph 2(b) of this Agreement.

17. The parties recognize that, upon the consummation of this Agreement, ASRC will retain the subsurface estate of the lands in the Chandler Lake and nearby areas, the surface estate of which will be conveyed by ASRC to the United States pursuant to subparagraph 2(a) of this Agreement. ASRC has leased a substantial portion of this subsurface estate to Shell Oil Company, but ASRC is not aware at this time of any plans of Shell Oil Company to conduct exploration or development activities on the leased subsurface. The parties further

recognize that leases held by Shell Oil Company are scheduled to terminate in 1991, but may be terminated, at the option of Shell Oil Company, prior to that time. Within sixty (60) days of the termination of the leases held by Shell Oil Company, ASRC shall notify in writing the Regional Director of the National Park Service, Alaska, of the termination. The parties agree that, upon the termination of the leases held by Shell Oil Company, the parties will enter into good faith negotiations to seek an exchange, on an equal value basis, of the subsurface estate of the lands in the Chandler Lake and nearby areas, as well as the subsurface estate of the lands the surface estate of which is to be relinquished to the United States pursuant to subparagraphs 2(b) and (d) of this Agreement, for other lands, or interests therein, owned by the United States in the Arctic Slope Region. If, after a period of six months following the termination of the leases held by Shell Oil Company, the parties have failed to reach an agreement on an exchange by which ASRC will convey these subsurface estates to the United States, the United States may initiate a condemnation proceeding to acquire from ASRC these subsurface estates. ASRC hereby waives any right that it may have to object to such a condemnation proceeding, and expressly consents to the acquisition of these subsurface estates through such a condemnation proceeding if the parties are unable to reach an agreement on an exchange pursuant to the provisions of this paragraph 17.

18. Nothing in this Agreement shall be construed as a permit to conduct any particular activity on any lands to be conveyed to ASRC under this Agreement; nor shall this Agreement be construed as relieving ASRC of any obligations it may have under Federal, State and local laws and regulations with respect to obtaining necessary permits prior to commencing any activity on its lands.

19. (a) In the event that the exchange of lands provided for in this Agreement is set aside because of a final order of a court of competent jurisdiction, the parties shall return to their status and rights prior to the execution of this Agreement and the parties agree to take whatever actions and to execute whatever documents are necessary to restore the status quo ante the exchange, provided, that, if ASRC has been able to complete the drilling of an exploratory well or wells on the lands conveyed to ASRC pursuant to subparagraph 3(a) of this Agreement prior to the time that the exchange is set aside and ASRC is not deprived of the economic benefits obtained or to be obtained from the drilling of an exploratory well or wells, then the setting aside of the exchange shall be treated as a frustration of purpose and the provisions of subparagraph (c) of this paragraph 19, rather than the provisions of this subparagraph (a), shall apply.

(b) In the event that the Secretary is prevented, by judicial or legislative action, from conveying any portion of

the subsurface estate of the lands described in paragraph 3 of this Agreement within one year of the conveyance to KIC of the surface estate of those lands pursuant to the provisions of § 14(a) of ANCSA or § 1431(g) of ANILCA, ASRC shall be entitled to designate lands conveyed or relinquished to the United States pursuant to paragraph 2 of this Agreement, equal in acreage to the lands which have not been conveyed or relinquished to ASRC beneath surface estate conveyed to KIC, provided, that the lands so designated by ASRC shall be in compact and contiguous tracts of not less than 5,760 acres in size, or the total number of acres that the Secretary is prevented from conveying to ASRC, whichever is smaller, and provided further, that ASRC shall not be entitled to designate any of the following described lands for reconveyance pursuant to the provisions of this subparagraph (b):

Umiat Meridian

Township 14 south, range 4 west, sections 13, 14, 21-28, 33-36; and

Township 14 south, range 3 west, sections 19, 30, 31.

The Secretary shall reconvey to ASRC the surface estate of the lands so designated.

(c) At its sole option, ASRC may rescind this exchange if, as a result of judicial, legislative or administrative action beyond the control of ASRC, ASRC is denied the necessary permits or authorizations to drill, or is otherwise prohibited

from completing, by May 1, 1987, up to three exploratory wells on the lands conveyed to it under this Agreement at locations of its own choosing, or within one mile of the locations selected by ASRC, notwithstanding timely applications and vigorous good faith efforts on the part of ASRC to obtain the necessary permits and authorizations to drill such wells. For purposes of this subparagraph (c), no application filed after May 1, 1985, shall be deemed timely. Any well, the drilling of which is commenced by May 1, 1987, and which ASRC is not thereafter prohibited from completing by judicial or legislative action, shall be deemed to have been completed by May 1, 1987, for purposes of this subparagraph (c). In the event of rescission of this exchange by ASRC pursuant to the provisions of this subparagraph (c), the parties shall take all steps and execute all documents necessary to restore the status quo ante the exchange, except that:

- (i) the United States may retain title to the following described lands if frustration occurs prior to completion of the first well:

Umiat Meridian

Township 16 south, range 2 east, sections 31-33;
and

Township 17 south, range 1 west, sections 3, 4
(partials).

- (ii) the United States may retain title to the following described lands if frustration occurs prior to completion of the second well:

Umiat Meridian

Township 16 south, range 2 east, sections 31-33;

Township 17 south, range 1 west, sections 3, 4
(partials); and

Township 15 south, range 4 east, sections 22-27,
34-36.

- (iii) the United States may retain title to the following described lands if frustration occurs prior to completion of the third well:

Umiat Meridian

Township 16 south, range 2 east, sections 31-33;

Township 17 south, range 1 west, sections 3, 4
(partials);

Township 15 south, range 4 east, sections 22-27,
34-36; and

Township 14 south, range 4 west, sections 13, 14,
22-24, 26-28, 33, 34.

The option of ASRC to rescind pursuant to this subparagraph (c) shall terminate upon completion of the third exploratory well on the lands conveyed to ASRC pursuant to paragraph 3 of this Agreement. ASRC shall notify the Secretary of its decision to elect to rescind the exchange pursuant to this subparagraph (c) within six (6) months of the occurrence of any event constituting frustration under this subparagraph (c). For purposes of this subparagraph (c), frustration will not exist if it results from the failure of ASRC to comply with any term or condition of this Agreement.

(d) ASRC agrees that it will not exercise its rights under § 1431(o) of ANILCA with respect to the subsurface estate of any lands conveyed to it pursuant to this Agreement unless the parties have returned to the status quo ante pursuant to subparagraph (a) of this paragraph 19 or ASRC has elected to rescind the exchange pursuant to subparagraph (c) of this paragraph 19. In the event that ASRC exercises its rights under § 1431(o) of ANILCA to acquire the subsurface estate of any lands covered by this Agreement, ASRC agrees that the provisions of paragraph 4 of this Agreement shall apply to the lands so acquired.

20. The United States Fish and Wildlife Service, or the Department of the Interior acting on its behalf, shall not oppose any application to any Federal, State or local government agency for permits or other approvals necessary to conduct activities on the lands conveyed to ASRC pursuant to paragraph 3 of this Agreement that is consistent with the provisions of this Agreement. Nothing in this paragraph 20 shall be construed to affect the Secretary's responsibilities under § 7 of the Endangered Species Act, 87 Stat. 892, as amended, 16 U.S.C. § 1536.

21. Any failure by either party to this Agreement to object to or to seek a remedy of any violation by the other party of any provision of this Agreement shall not be deemed a waiver of or estop any future right to object to or to seek a

remedy of a subsequent violation, whether the later violation is of the same or another provision of this Agreement.

22. A copy of this Agreement shall be attached to and incorporated in the first conveyance issued to ASRC pursuant to paragraph 3 of this Agreement, and shall be recorded by ASRC with the conveyance. In any subsequent conveyance issued to ASRC pursuant to paragraph 3 of this Agreement, this Agreement shall be incorporated by reference to the place, date, volume and page of recordation. ASRC agrees that it will refer to the applicability of the provisions of this Agreement in any document relating to a subsequent sale, transfer or other disposition of the subsurface estate, or any interest therein, of the lands conveyed to ASRC pursuant to paragraph 3 of this Agreement. ASRC further agrees to provide a copy of this Agreement to any person that ASRC permits to use in any manner the subsurface estate of the lands conveyed to ASRC pursuant to paragraph 3 of this Agreement.

23. Nothing in this Agreement shall be construed as creating any rights of enforcement by any person or entity that is not a party to this Agreement.

24. This Agreement shall become effective only upon its execution by both of the parties, and the effective date of the Agreement shall be the date upon which the last of the subscribed parties signs the Agreement.

25. For purposes of expediting execution of this Agreement, it may be signed in separate counterparts by the parties, which, when all have so signed, shall be deemed a single Agreement.

26. The parties agree that this Agreement may be amended by mutual consent of the parties.

27. For purposes of this Agreement, the easements to be conveyed by ASRC to the United States pursuant to subparagraph 2(c) of this Agreement and described in Appendix 4 attached to and incorporated as a part of this Agreement and the subsurface estate to be conveyed by the United States to ASRC pursuant to subparagraph 3(e)(i) of this Agreement are mutual and exclusive consideration one for the other. In the event that the exchange of the above-described interests in lands is set aside because of a final order of a court of competent jurisdiction, the above-described exchange shall be severable from the remainder of this Agreement, and the parties agree to immediately commence good faith negotiations to enter into a new agreement to exchange the above-described interests in lands.

28. The following general provisions shall apply to each of the provisions of this Agreement, except to the extent specifically provided otherwise in such provision:

(a) The parties mutually covenant and agree not to sue each other challenging the legal authority or capacity of

the Secretary or ASRC to enter into this Agreement or to effectuate any provision herein, provided, that nothing herein shall be construed to prevent either party from suing to enforce this Agreement or seeking any other available remedy for breach of this Agreement.

(b) ASRC agrees not to assign to any third party its right under this Agreement to receive the conveyance of the subsurface estate of the lands described in paragraph 3 of this Agreement.

(c) The parties mutually covenant and agree not to encumber property proposed to be exchanged or conveyed to the other party under this Agreement, except to the extent provided in paragraph 7 of this Agreement or otherwise required by law.

(d) No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

(e) As used in this Agreement, the term "Secretary" shall include the Secretary of the Department of the Interior or his authorized representative.

(f) As used in this Agreement, the term "Arctic Slope Regional Corporation" shall include ASRC, its successors and assigns.

(g) As used in this Agreement, the term "Kaktovik Inupiat Corporation" shall include KIC, its successors and assigns.

(h) As used in this Agreement, the term "Agreement" shall refer to this "Agreement Between Arctic Slope Regional Corporation and the United States of America", the terms, conditions, covenants, limitations, exceptions and reservations set forth in Appendix 1 attached hereto and incorporated as a part of this Agreement pursuant to the provisions of paragraph 4 of this Agreement, the "Land Use Stipulations, ASRC Lands, Kaktovik, Alaska" attached hereto as Appendix 2 and incorporated as a part of the Agreement pursuant to the provisions of paragraph 4 of this Agreement, the easements excepted to ASRC from the land conveyed by ASRC to the United States pursuant to subparagraph 2(a) of this Agreement and reserved and described in Appendix 3 attached hereto and incorporated as a part of the Agreement pursuant to the provisions of subparagraph 2(a) of this Agreement, the easements conveyed by ASRC to the United States pursuant to subparagraph 2(c) of this Agreement and described in Appendix 4 attached hereto and incorporated as a part of the Agreement pursuant to the provisions of subparagraph 2(c) of this Agreement, or all of the foregoing, as the context requires.

(i) As used in this Agreement, an allotment shall not be deemed to be approved until the issuance of the

Certificate of Allotments, provided, however, that the United States shall make a good faith effort to expedite the issuance of Certificates of Allotment within the exterior boundaries of lands conveyed to KIC to satisfy its entitlement under §§ 12 and 14 of ANCSA and § 1431(g) of ANILCA.

(j) The parties agree that clerical and typographical errors contained herein may be corrected upon notice to the other party. Unless such errors are deemed substantive or otherwise objected to by either party within sixty (60) days by written notice, correction may be made without formal ratification by the parties.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date herein written.

ARCTIC SLOPE REGIONAL CORPORATION

Date: August 9, 1983

By Jacob Adams
Jacob Adams
President

UNITED STATES OF AMERICA

Date: August 9, 1983

By James G. Watt
James G. Watt
Secretary of the Interior

APPENDIX 1

RESERVING TO THE UNITED STATES from the lands so granted:

An easement pursuant to which the United States shall have reasonable rights of access as may be necessary to properly monitor and ensure compliance with the provisions set forth in the Agreement Between Arctic Slope Regional Corporation and the United States of America of August 9, 1983.

THE GRANT OF THE ABOVE-DESCRIBED LANDS IS SUBJECT TO:

1. The requirements of the second sentence of § 22(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1621(g).
2. The easements and rights-of-way reserved to the United States pursuant to § 17(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(b), in the conveyance of the surface estate of those lands to Kaktovik Inupiat Corporation.
3. Any site-specific road or trail easement acquired by the United States in the surface estate of those lands after the effective date of the Agreement Between Arctic Slope Regional Corporation and the United States of America of August 9, 1983, provided, that the above-described lands shall only be subject to such road or trail easement to the extent of the lesser of either its actual width or thirty (30) feet on either side of its centerline, and provided further, that, prior to acquiring any such future easement, the Department of the

Interior shall consult in good faith with Arctic Slope Regional Corporation concerning the location and proposed use of such easement, and provided further, that any such future easement acquired by the United States shall not interfere with the reasonable use and enjoyment of the subsurface estate by Arctic Slope Regional Corporation.

4. Any site-specific easement reserved to or acquired by the United States in the surface estate of those lands which is relocated pursuant to an agreement between the Department of the Interior and the surface owner after the effective date of the Agreement Between Arctic Slope Regional Corporation and the United States of America of August 9, 1983, provided, that, prior to acquiring any such relocated easement, the Department of the Interior shall consult in good faith with Arctic Slope Regional Corporation concerning the location and proposed use of such easement, and provided further, that any such relocated easement reserved to or acquired by the United States shall not interfere with the reasonable use and enjoyment of the subsurface estate by Arctic Slope Regional Corporation, and provided further, that the above-described lands shall only be subject to any relocated acquired road or trail easement to the extent of the lesser of either its actual width or thirty (30) feet on either side of its centerline.

5. The covenant that Arctic Slope Regional Corporation, its successors and assigns, shall make sand and gravel within

the confines of any easement or right-of-way reserved to the United States pursuant to § 17(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1616(b), in the conveyance of the surface estate of those lands to Kaktovik Inupiat Corporation and within the confines of any site-specific road or trail to the extent of the lesser of either its actual width or thirty (30) feet on either side of its center line acquired by the United States in such surface estate after the effective date of the Agreement Between Arctic Slope Regional Corporation and the United States of America of August 9, 1983, available at no cost to the United States for the purposes of construction or maintenance of the easement and adjoining easements, if any, provided, however, that Arctic Slope Regional Corporation shall enjoy reasonable access to, and the reasonable opportunity to use, remove or sell, such sand and gravel insofar as such use, removal or sale does not interfere with the existing use of the easement at the time of such use, removal or sale. In the event that the use, removal or sale by Arctic Slope Regional Corporation of sand and gravel makes the same unavailable for the purposes of the easement or otherwise interferes with the present or future use of the easement, then Arctic Slope Regional Corporation shall make available in reasonably proximate locations sufficient quality and quantity of sand and gravel to alleviate the need or interference. The right of Arctic Slope Regional Corporation to use, remove or sell sand

and gravel applies to all easements referenced in this covenant, including streamside and marine shoreline easements, and it shall not be deemed an interference with the present or future use of an easement that such use or removal may detract from the aesthetics of the easement area.

6. The covenant that Arctic Slope Regional Corporation, its successors and assigns, shall use those lands in conformance with the "Land Use Stipulations, ASRC Lands, Raktovik, Alaska" attached as Appendix 2 to the Agreement Between Arctic Slope Regional Corporation and the United States of America of August 9, 1983, and incorporated herein.

7. The covenant that Arctic Slope Regional Corporation, its successors and assigns, shall not use those lands, or the surface of those lands, in any manner that significantly adversely affects the fish and wildlife, their habitats, or the environment of those lands or Arctic National Wildlife Refuge lands.

8. The covenant that Arctic Slope Regional Corporation, its successors and assigns, shall use any portion of those lands that lies beneath a floodplain in compliance with the valid applicable provisions of Federal, State and local law relating to floodplains and shall not utilize any such portion of those lands in any manner that will violate the valid applicable restrictions of Federal, State or local law with respect to floodplains.

9. The covenant that Arctic Slope Regional Corporation, its successors and assigns, shall use any portion of those lands that lies beneath wetlands in compliance with the valid applicable provisions of Federal, State and local law relating to wetlands and shall not utilize any such portion of those lands in any manner that will violate the valid applicable restrictions of Federal, State or local law with respect to wetlands.

10. The covenant that Arctic Slope Regional Corporation, its successors and assigns, shall take no action on those lands that significantly restricts subsistence uses on such lands, the surface thereof or adjacent public lands. For purposes of this covenant, the term "subsistence uses" shall have the meaning ascribed to it in § 803 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3113.

11. The covenant that Arctic Slope Regional Corporation agrees that the full extent and legal boundary of the interest of Arctic Slope Regional Corporation, its successors and assigns, in those lands shall be coterminous with the interest in the surface estate of those lands conveyed to Kaktovik Inupiat Corporation pursuant to § 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(a), and § 1431(g) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 2538, and with the interest in the surface estate of those lands conveyed pursuant to subparagraph 3(e) of the

Agreement Between Arctic Slope Regional Corporation and the United States of America of August 9, 1983, and that the interest of Arctic Slope Regional Corporation, its successors and assigns, in those lands shall increase or decrease in the same manner and to the same extent as the surface estate increases or decreases by operation of law, including, but not limited to, processes such as accretion or erosion.

12. The covenant that Arctic Slope Regional Corporation, its successors and assigns, will permit on the above-described lands, and will not interfere with, such reasonable rights of access as may be necessary to enable the United States to properly monitor and ensure compliance with the provisions set forth in the Agreement Between Arctic Slope Regional Corporation and the United States of America of August 9, 1983.

13. The covenant that Arctic Slope Regional Corporation, its successors and assigns, shall reconvey to the United States by limited warranty deed any portion of the lands above-described determined by the Secretary of the Interior to be subject to a meritorious claim(s) of valid existing rights; the claim(s) will then be adjudicated and the lands will be reconveyed to Arctic Slope Regional Corporation if the claimant(s) cannot establish the claimed valid existing rights. If any valid existing right is approved and conveyed, then the Secretary shall reconvey to Arctic Slope Regional Corporation

those rights reserved to the United States in the subsurface estate, if any.

APPENDIX 2

LAND USE STIPULATIONS ASRC LANDS, KAKTOVIK, ALASKA

A. INTRODUCTION

1. Purpose.

Activities on, and uses of, lands conveyed to Arctic Slope Regional Corporation ("ASRC") pursuant to paragraph 3 of the Agreement Between Arctic Slope Regional Corporation and the United States of America ("the Agreement") of August 9, 1983, shall be conducted in accordance with these stipulations. The purpose of these stipulations, which shall apply to ASRC, its successors and assigns, is (1) to implement the Secretary's responsibility under § 1302(h) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2475, to ensure that the conveyance to ASRC of the subsurface estate of those lands described in paragraph 3 of the Agreement ("ASRC Lands") will not undermine the essential integrity of the Arctic National Wildlife Refuge ("the Refuge") and will not frustrate the purposes of the Refuge, and (2) to implement, based on presently available information respecting the fish and wildlife resources and the environment of the ASRC Lands and the Refuge, the Secretary's responsibility under the second sentence of § 22(g) of the Alaska Native Claims Settlement Act

("ANCSA"), 43 U.S.C. § 1621(g), as it relates to uses and activities occurring on ASRC Lands, including oil and gas exploration, until, as to such exploration, these stipulations are superseded in accordance with the provisions of Paragraph B.9 of these stipulations, and to sand and gravel extraction, processing, transportation and storage.

2. Definitions.

The following definitions are applicable to these stipulations:

(a) "Adequate protective cover" means snow or a frostline, or both, sufficient to protect the vegetation and soil from significant adverse effects due to the operation of surface equipment.

(b) "ANILCA" means the Alaska National Interest Lands Conservation Act, 94 Stat. 2371 et seq., as amended.

(c) "ASRC Lands" means, as the context requires, the subsurface estate conveyed to ASRC beneath lands conveyed to Kaktovik Inupiat Corporation ("KIC") pursuant to § 14(a) of ANCSA and § 1431(g) of ANILCA and the subsurface estate conveyed to ASRC pursuant to the provisions of subparagraph 3(e) of the Agreement, or the surface of such lands.

(d) "Coastal plain" means that portion of the Arctic National Wildlife Refuge defined by § 1002(b)(1) of ANILCA and 50 C.F.R. § 37.2(d) or as amended.

(e) "Cultural resource" means any district, site, building, structure, or object significant in American history, architecture, archeology, engineering or culture included on or eligible for inclusion on the National Register of Historic Places.

(f) "Department" means the Department of the Interior and any of its component bureaus and offices.

(g) "Exploration activities" means geological exploration or geophysical exploration or both, including exploratory drilling, and all related activities and logistics associated with either or both.

(h) "Exploratory drilling" means the drilling of any well to a sufficient depth to measure the geologic, geophysical and engineering parameters used for determining an area's oil and gas potential.

(i) "Gas" means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at normal temperature and atmospheric pressure conditions.

(j) "Harass" means to pursue, hunt, take, capture, molest, collect, harm, shoot or kill or attempt to engage in any of the preceding by either intentional or negligent act or omission.

(k) "Hazardous substances" means petroleum, petroleum products, toxic materials, chemical effluent,

explosives, or other materials which are likely to cause significant adverse effects to the wildlife, its habitat, or the environment of the ASRC Lands or the Refuge lands.

(l) "Oil" means any viscous combustible liquid hydrocarbons or solid hydrocarbon substance easily liquifiable on warming which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.

(m) "Operator" means a person, designated by ASRC, who conducts or proposes to conduct exploration activities pursuant to a plan of operations.

(n) "Person" means any individual, firm, partnership, corporation, association, organization or agency.

(o) "Plan of operations" means detailed procedures proposed for conducting exploration activities.

(p) "Reclamation" means the act of restoring the landform and vegetation as nearly as practicable to its preconveyance shape and condition.

(q) "Refuge" means the Arctic National Wildlife Refuge.

(r) "Regional Director" means the director of that region of the U.S. Fish and Wildlife Service responsible for overseeing the administration of the Refuge, or his authorized representative.

(s) "Waste" means all material for discard from exploration activities, including, but not limited to, human waste, trash, garbage, refuse, fuel drums, shot wire, survey stakes, explosives boxes, ashes, and functional and nonfunctional equipment.

(t) "Wildlife" means fish or wildlife or both.

3. Activities Covered by Stipulations.

These stipulations shall apply to uses of, and all activities conducted with respect to, ASRC Lands.

B. OIL AND GAS EXPLORATION

1. Exploratory Drilling.

Exploratory drilling conducted on ASRC Lands by the operator shall be conducted in accordance with these stipulations, but in no event shall exploratory drilling be conducted on the surface of lands the subsurface estate of which is conveyed to ASRC pursuant to subparagraph 3(b) or (c) of the Agreement or pursuant to subparagraph 3(d) or (e)(ii) of the Agreement to the extent that the subsurface estate conveyed pursuant to subparagraph 3(d) or (e)(ii) is beneath the coastal plain until Congress hereafter enacts legislation that permits exploratory drilling within the coastal plain or that permits production, or leasing or other development leading to production, of oil and gas from the coastal plain or the ASRC Lands, or both.

2. Prohibition on Development.

Production of oil and gas from ASRC Lands is prohibited and no leasing or other development leading to production of oil and gas from ASRC Lands shall be undertaken until Congress authorizes such activities on Refuge lands within the coastal plain or on ASRC Lands, or both.

3. Plan of Operations.

(a) No oil and gas exploration activities shall be conducted by an operator on ASRC Lands in the absence of a plan of operations covering the activities to be carried out thereunder which shall be reviewed by the Regional Director.

(b) The plan of operations shall include information necessary for the Regional Director to determine that the operations will not significantly adversely affect the wildlife, its habitat, or the environment of the ASRC Lands and Refuge lands. The information shall include, as appropriate, the following:

(1) The names and legal addresses of the following persons: the operator, contractors, subcontractors and the owner(s) or lessee(s) other than the operator;

(2) A copy of the instrument by which the operator's right to conduct operations was granted;

(3) A map or maps showing: (i) the location of a point of reference selected by the operator within the area covered by the plan of operations showing, in relation to that

point, existing and proposed access routes or roads within the area, the boundaries of proposed surface disturbance and location of all survey lines; (ii) the location of proposed drilling sites, wellsite layout and all surface facilities including but not limited to sumps, reserve pits and ponds; (iii) sources of construction materials within the area including but not limited to gravel; and (iv) the location of ancillary facilities including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations and airstrips. A point of reference selected by the operator within the area of operations shall be marked with a ground monument;

(4) A description of (i) all surface facilities, including but not limited to sumps, reserve pits and ponds, and ancillary facilities, including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations and airstrips, and (ii) the major equipment to be used in the operations, including but not limited to equipment and methods for the transport of all waters used in or produced by operations, and of the proposed method of transporting such equipment within the area covered by the plan of operations, including to and from the site;

(5) An estimated schedule for any phase of operations of which review by the Regional Director is sought and the anticipated date of operation completion;

(6) The geological name of the surface formation;

(7) The proposed drilling depth, and the estimated tops of important geological markers:

(8) The estimated depths at which anticipated water, brines, oil, gas, or other mineral bearing formations are expected to be encountered;

(9) The nature and extent of proposed operations including:

(i) The proposed casing program, including the site, grade, and weight of each string, and whether it is new or used;

(ii) The proposed setting depth of each casing string, and the amount and type of cement, including additives, to be used;

(iii) The operator's minimum specifications for pressure control equipment which is to be used, a schematic diagram thereof showing sizes, pressure ratings, and the testing procedures and testing frequency;

(iv) The type and characteristics of the proposed circulating medium or mediums to be employed for rotary drilling and the quantities and types of mud and weighting material to be maintained;

(v) The testing, logging, and coring programs to be followed; and

(vi) Anticipated abnormal pressure or temperatures or potential hazards to the environment, such as hydrogen sulfide gas or oil spills, along with plans for mitigation of such hazards;

(10) Provisions for proposed reclamation;

(11) A detailed estimate of the various cost elements to be incurred during implementation of the proposed reclamation plan;

(12) Methods for disposal of all wastes and hazardous substances;

(13) An affidavit stating that the operations planned will be in compliance with these stipulations and all applicable Federal, State, and local laws and regulations; and

(14) Contingency plans in case of spills, leaks or other accidents.

(c) The Regional Director shall complete his review and provide any comments that he may have on the plan submitted by the operator promptly, but in any event within forty-five (45) days from the date of submission of the plan. If the Regional Director notifies ASRC and the operator that the proposed plan complies with the Agreement and these stipulations, the operator may commence operations under the plan immediately. If the Regional Director believes that any

provision of a proposed plan would significantly adversely affect the wildlife, its habitat, or the environment of the ASRC Lands or Refuge lands or would otherwise be inconsistent with any provision of the Agreement or these stipulations, he shall immediately (but not later than the 45th day following submission) notify ASRC and the operator in writing of the basis for his belief and recommend those technically and economically feasible alternatives and modifications, if any, that would make the plan acceptable.

(d) ASRC and the operator shall adopt all recommendations received from the Regional Director unless ASRC or the operator responds to the Regional Director, within forty-five (45) days of the receipt of his recommendations, explaining in writing either: (i) why the plan of operations as submitted or modified by ASRC or the operator will not significantly adversely affect the wildlife, its habitat, or the environment of the ASRC Lands or Refuge lands or otherwise will not be inconsistent with the Agreement and these stipulations; or (ii) why the Regional Director's recommended alternatives and modifications are based on erroneous information, are technically or economically infeasible, or are inconsistent with recognized safety standards or legal requirements. The response may propose alternatives to the Regional Director's recommendations. The Regional Director shall accept any proposed alternatives that are consistent with

the Agreement and these stipulations. The response shall state how ASRC or the operator intends to proceed in implementing the plan of operations as originally proposed or subsequently modified.

(e) Following the Regional Director's receipt of the response of ASRC or the operator, the parties shall, if requested by ASRC, the operator or the Regional Director, enter immediately into good faith negotiations to arrive at a plan of operations acceptable to the parties. However, unless the United States obtains an order from a court of competent jurisdiction restraining implementation of the plan of operations, ASRC and the operator shall have the right to implement the plan of operations, as originally proposed or as subsequently modified as a result of review and comment by the Regional Director, provided that the Regional Director has been notified of such modifications.

(f) ASRC or the operator shall not commence operations prior to the earliest of: (1) the expiration of forty-five (45) days from the submission of the plan of operations, if the Regional Director fails to provide any comments or recommendations on the plan to ASRC or the operator; (2) the adoption by ASRC and the operator of the Regional Director's recommendations; or (3) the expiration of thirty (30) days from the receipt of the written response of ASRC or the operator to the Regional Director's

recommendations. Notwithstanding the time periods set forth in the preceding sentence, in no event shall ASRC or the operator commence operations for five (5) days following the receipt of notification to the Regional Director that ASRC or the operator proposes to modify the plan of operations as a result of review and comment by the Regional Director.

(g) Any judicial proceeding initiated by the United States in accordance with the procedures of subparagraph (e) of this Paragraph B.3 to restrain implementation of a plan of operations shall be de novo and the burden shall be on the United States to establish that the planned operations would significantly adversely affect, or are significantly adversely affecting, the wildlife, its habitat or the environment of the ASRC Lands or Refuge lands, or would be or are otherwise inconsistent with the provisions of the Agreement or these stipulations.

(h) The Regional Director shall have such reasonable access to the area of operations as is necessary to properly monitor and ensure compliance with the plan of operations.

(i) Upon the completion of exploration activities, the operator shall submit a reclamation plan for approval of the Regional Director, acting in consultation with ASRC, and shall implement the plan according to its terms.

(j) A proposal to supplement or revise a plan of operations may be made by ASRC, the operator or the Regional

Director to adjust the plan to changed conditions or to address conditions not previously contemplated by notifying the appropriate party in writing of the proposed alteration and the justification therefor. The parties shall negotiate in good faith concerning any proposed revision. ASRC and the operator shall accept any proposed revision that will not jeopardize the overall success of the plan of operations or unreasonably increase the cost of completing the plan. The Regional Director shall accept any proposed revisions that will not significantly adversely affect the wildlife, its habitat, or the environment of the ASRC Lands and Refuge lands and are otherwise consistent with these stipulations and the Agreement.

(k) To the extent necessary to allow the Regional Director to determine compliance with the plan of operations and these stipulations and consistent with Paragraph B.7 of these stipulations, technical data gathered during the drilling of any well, including daily drilling reports and geological reports which are submitted to the State of Alaska pursuant to State regulations or to any other bureau or agency of the Federal government, shall be made available by ASRC and the operator for inspection by the Regional Director upon his request.

(l) If an operator violates its plan of operations, and if the violation does not pose an immediate threat of significant adverse effect on the wildlife, its habitat, or the