ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4871 HRES ANWR REPORTS 2-10-88... - ANWR REVENUE ISSUES...

Congress ordered that a report and recommendation concerning development be made to Congress by the Secretary of the Interior within five years (the "1002 Report"). A study was conducted by the Fish and Wildlife Service ("FWS"), a report was made by the Assistant Secretary of the Interior for Fish, Wildlife and Parks, William Horn, to the Secretary of the Interior in November 1986, and the final 1002 Report was submitted to Congress by Secretary Hodel on June 1, 1987. Assistant Secretary Horn and Secretary Hodel recommended that Congress enact legislation that would open the coastal plain of ANWR for oil and gas exploration and development. There are presently a number of bills pending in Congress to implement the Secretary's recommendation as well as a number of bills that would declare the coastal plain a wilderness area, thereby barring development.

B. The Negotiations with the Native Corporations

Over two years before the 1002 Report was submitted to Congress, representatives of the Department of the Interior ("Interior") began holding secret discussions with several Alaskan native corporations concerning possible exchanges of subsurface rights in the ANWR coastal plain for inholdings in other national wildlife refuges in Alaska that would be conveyed to the FWS by the native corporations. Interior's negotiations have taken place with six native entities, representing 18 separate native corporations. Each of the six entities has an oil company partner or partners.

The entities and their partners are: Old Harbor Corporation and Texaco; Doyon, Ltd. and Atlantic Richfield; Gana-A'Yoo, Ltd. and Atlantic Richfield; Koniag Inc. and Chevron, [illegible] and Phillips Petroleum; Ahkiok-Kaguyak, Inc. and Shell; and Native Lands Group, L.P. and Conoco and Exxon.

During the months prior to July 1987, the native corporations and Interior reached agreement concerning which lands would be conveyed by each native group and agreed upon the value of those lands. They also agreed on the terms of the basic exchange agreements and the procedure that would be used to allocate tracts within ANWR. Prior to receipt of any selections from the native corporations, Interior divided the coastal plain into 576 tracts, with each tract containing approximately 2,560 acres. Interior then determined a minimum value for each tract. Interior claims to have calculated the value of the tracts "in the same manner as [it] would use in contemporaneous competitive federal lease sales of such tracts, plus the royalty value for such tracts discounted to net present value." See Model ANWR Tract Identification Agreement, p. 6.

From July 9 through July 11, 1987, Interior held closed-door "tract identification" meetings with the native corporations in a hotel in Arlington, Virginia to determine which tracts would be allocated to each participant. Three weeks prior to those meetings, each native corporation participant was given a map of the coastal plain with an overlay that designated the tracts. A week later, each

participant submitted lists of its tract nominations to Interior. Interior then prepared an aggregate overlay that reflected all of the primary nominations, without identifying the nominator of the individual tracts. Three days prior to the tract identification meetings, each participant was given a copy of the map and noted any errors in the representation of its selection.

The tract allocation procedure was carried out in rounds. In the first round each participant submitted a sealed bid which noted its first priority selection. The sealed bids were then opened by Interior and examined to determine which tracts were selected by only one participant and were not in violation of Interior's established "constraint provisions."* Such tracts were automatically awarded to that participant at the minimum value established by Interior. Selections that violated the constraint provisions or that were made by more than one participant were "negotiated." The participants were given an opportunity to leave the room and negotiate among themselves to try to allocate tracts so that they could still be awarded at the minimum price. Interior's specified mechanisms for resolving tract selection conflicts included having one participant pay cash to another participant to relinquish a

---

* In the selection process, Interior imposed constraint levels. The plain was divided into six constraint regions. Each region contained a number of tracts, with each tract contained solely in a single region. The constraint provisions required that within each constraint region one-third of the acreage or value of that region be reserved for future leasing.

tract selection. If, after 90 minutes of negotiations, there was still no agreement on allocation, the native corporations could mutually agree to competitive bidding, or if they did not agree, Interior could employ competitive bidding or a random drawing to allocate disputed tracts. Each bidding round continued until all of the participants had been awarded a tract.

The tract identification session continued until each participant had used up all or substantially all of its exchange value. Thus, at the end of the tract identification session, Interior's values for the ANWR tracts and the inholdings to be conveyed had been "matched" so that supposedly equal value was given for equal value.

Only three representatives of each participating native corporation (which included officers, employees or independent consultants) were allowed in the room during the selection process. Those representatives, however, apparently were able to seek advice from their oil company partners by telephone and clearly had been aided by their partners in making their initial selections. By the end of the process, the subsurface rights in 65 whole tracts and 8 partial tracts in the coastal plain of ANWR had been allocated to the native corporations.

The 166,000 acres allocated represents 10.8 percent of the coastal plain and is valued at $538.7 million. Interior maintains that the remaining 503 tracts will be

available for a federal leasing program and represent approximately $3.5 billion in revenue. However, the State of Alaska has performed an analysis that shows that Interior's focus on acreage is misleading. In a critique released by the Alaska Division of Oil and Gas, the proposed exchanges are criticized as including all of the most highly prospective coastal plain lands. According to that critique, all of the tracts selected are on structural traps mapped by Alaska and all of the mappable four-way closures (the best target areas on the structural traps) are located in the selected tracts. Thus, these subsurface rights may have far greater value than indicated by the amount of acreage involved in the exchange.

II. Interior's Valuation Procedures

A. The ANWR Tracts Were Significantly Undervalued

As described above, the "tract identification" process essentially eliminated competitive bidding. It ensured, as a result, that native corporations paid only the minimum price for each tract as established by Interior. In addition, two other aspects of the valuation process for the ANWR tracts minimized costs to the native corporations and resulted in considerable undervaluation of the ANWR tracts.

First, no royalties will be paid to the federal government. While the model exchange agreement provided that the federal government would receive a royalty of 1.75 percent on the coastal plain tracts, it appears, from the

draft agreements (dated 6/12/87*) between the native corporations and Interior, that this royalty has been eliminated. Considering that the MLA prescribes a 12.5 percent minimum royalty for oil and gas leases on federal lands, it appears that both the federal and Alaska state governments (which share royalty payments pursuant to the Alaska Statehood Act) are receiving less value for coastal plain tracts than they would have received if such tracts were leased competitively.

Interior asserts that the present value of these lost royalties was included in minimum tract prices which it established prior to awarding the tracts. This assertion is undermined by the fact that the oil companies appear to be willing to pay a significant royalty in addition to the minimum tract price established by Interior. For example, under the Old Harbor-Texaco agreement, Old Harbor will receive an up-front payment from Texaco (as soon as the exchanges are approved by Congress and Texaco accepts the leases) in an amount approximately equal to the total consideration Old Harbor paid to Interior plus a 1.4 percent royalty on production on the Old Harbor coastal plain tracts and a 1.5 percent royalty on all other production by Texaco in subsequently acquired ANWR coastal plain leases.** Texaco

---

* It is our understanding that these are the most recent drafts of the exchange agreements.

** We have learned of some of the provisions of the Old Harbor-Texaco agreement from an Old Harbor Proxy Statement urging adoption of that agreement. However, we have not been able to obtain any of the native corporation-oil company agreements.

thus thought the tracts were worth a great deal more than the value Old Harbor provided to the federal government in the form of exchanged inholdings. Texaco's willingness to pay a substantially greater price than the price received by Interior establishes that Interior significantly undervalued the tracts. The federal government, moreover, by exchanging the coastal plain tracts for less valuable native corporation inholdings, ensured that the state government would lose substantial royalties as well.

Second, four of the six draft exchange agreements give the native corporations the right to rescind "the exchange in its entirety" for "failure of consideration." Quite simply, the native corporations have the right to rescind the exchanges if no "Significant Quantities" (as defined) of oil or gas are discovered within 10 to 15 years.* If the native corporations' rescission rights are

---

* If the native corporation retains this right in its final agreement, the native corporation will have the right to rescind the agreement at any time prior to the earlier of (1) 10 years after completion of the drilling of a test well, (2) 15 years from the date of conveyance of the rights to the ANWR lands and the inholdings, or (3) discovery of Significant Quantities. Under this provision, therefore, full consideration does not pass until after the native corporation has found large reserves of oil or gas. If Significant Quantities are not found, the rights conveyed are revoked subject to a provision which permits Interior to retain inholdings that equal in value any revenues received by the native corporation by reason of its participation in the exchange.

exercised, the native corporations will receive back a portion of the lands they exchanged as consideration for the ANWR tracts.

The values allocated by Interior to the ANWR tracts prior to the tract identification meeting presumably take into account the possibility that significant quantities of oil and gas may not be discovered in a given tract. However, the native corporations have received a right to have their "money" returned if significant quantities of oil and gas are not found. As a result, the tracts should have been valued as if significant oil or gas reserves had already been found, thus making the land many times more valuable than the minimum values assigned by Interior and used in matching with the inholding values.

B. The Lands Received by Interior Were Significantly Overvalued

The inholdings that Interior will receive under the exchange agreements total approximately 791,000 acres, including: 87,000 acres in the Alaska Maritime Refuge; 125,000 acres in the Innoko Refuge; 75,000 acres in the Kanuti Refuge; 33,000 acres in the Kenai Refuge; 260,000 acres in the Kodiak Refuge; 78,000 acres in the Nowitna Refuge; and 233,000 acres in the Yukon Delta Refuge. The Secretary takes the position that the acquisition of these inholdings will consolidate Interior's holdings in other

refuges and that these inholdings "collectively represent some of the highest priority acquisition needs within the National Wildlife System in Alaska. Their uniqueness is reflected in world class habitats for migratory birds, anadromous fish, and brown bears, coupled with unsurpassed recreational opportunities." See Interior's briefing sheet on ANWR Land Exchange. Interior further alleges that the exchanges are "designed to protect the integrity, resources and purposes" of ANWR.

Neither Interior's claims about the environmental value of the inholdings received nor its valuation process, however, withstands even minimal scrutiny.

1. The Environmental Value of the Inholdings

Receipt of inholdings by Interior is valuable environmentally only if Interior can demonstrate that its receipt of the acreage will result in better protection of the fish and wildlife resources on the land. Interior can make only a de minimis showing of such benefits.

The inholdings to be conveyed fall into two categories. First, approximately 45 percent of the inholdings are already protected from development by section 22(g) of ANCSA (the "section 22(g) inholdings"). This section permits development on inholdings only if such development is permitted by the laws and regulations governing the national wildlife refuge system. The most important national wildlife refuge protection applicable to

the section 22(g) inholdings is the requirement that any development be "compatible" with the purposes of the surrounding refuge. 43 U.S.C. § 1621(g); ANILCA § 304(b); 43 C.F.R. §§ 2653.11, 2650.4-6. The National Wildlife Refuge Administration Act applies the same standards to development on lands that are actually included in a national wildlife refuge. 16 U.S.C. § 668dd(d)(1)(A). Since development of the section 22(g) inholdings is already governed by the same standard as development of actual refuge lands, acquisition of the inholdings will not provide them with any additional environmental protection since the public interest in these lands would have been equally protected even if the inholdings remained in the hands of the native corporations.

Second, with regard to the remaining 55 percent of the lands involved in the trade, the potential environmental benefits which Interior uses to justify the exchange were minimized, if not completely lost, as a result of Interior's decision to seek only the surface rights to these lands. Under the exchange agreements, the native corporations retain subsurface rights on all non-section 22(g) lands. If there is a threat to these lands it will, in all probability, arise from proposed subsurface development. In fact, the draft Doyon, Ltd. exchange agreement specifically provides that Doyon retains the same rights with respect to its refuge subsurface as it had before the exchange and that Doyon will advise the Secretary prior to the commencement of subsurface

activities. It is manifestly unlikely that the inholdings received by Interior are threatened by housing developments or other developments on the surface of the land. By excluding subsurface rights, Interior gave up its right to provide environmental protection for what may be the only portion of the exchanged lands which requires such protection.

Ironically, Interior implies that acquisition of the inholdings will reduce the checkerboard pattern on the refuges in Alaska, thereby aiding protection and regulation of the refuges. Yet a checkerboard pattern is precisely what will be created on the coastal plain by the exchange agreements. Native ownership of the coastal plain tracts will make regulation of development activities more difficult than if the United States retained ownership and leased the land for oil and gas exploration and development. In addition, while removing checkerboard land patterns on the inholdings is attractive in principle, it is doubtful that the FWS has the manpower resources to take advantage of refuge consolidation. On the Yukon Delta Refuge, for example, which totals approximately 19 million acres, the FWS has only three supervisory biologists.

2. Interior's Valuation Method

Interior's valuation scheme also cannot withstand scrutiny. As best we can determine, Interior asked the FWS realty office to appraise the fair market value of each of

the inholdings involved in the exchange.* The mean fair market value assigned to the inholding acreage by FWS is $75 per acre and 75 percent of the inholding acreage was valued at less than $165 per acre. Bearing these numbers in mind it is difficult, if not impossible, to understand how Interior arrived at an average value of $602 per acre for the inholdings (more than three times the FWS determined average fair market value). Interior's futile attempt to justify these valuations demonstrates that Interior had no basis for its decision.

Interior claims the value of the inholdings are increased by what it calls their "public interest attributes," including their fish, wildlife and recreational values. In arriving at this "public interest attributes" factor, Interior may have relied on a theory advanced in an appraisal of the Old Harbor inholdings by a private real estate appraisal company (paid for by the Old Harbor Corporation). Apparently, this appraisal company determined that an extra $1,000 of public interest value, corresponding to the rare and scenic value of the land, needed to be added to the fair market value of each and every acre. Often the land to which this $1,000 was added was valued at less than

---

* See attached letter from FWS to Kenneth Berlin, which summarizes FWS's appraisal values.

$100 per acre. Since definitionally fair market value reflects the price a willing buyer would pay for the land, it would seem that if this rare and scenic premium were real it would be reflected in the FWS fair market value. The fact that it was not included seems to demonstrate that it is simply an imaginative means to inflate the inholding values.

Interior further seeks to justify the excessive values which it assigned to the native corporation inholdings by pointing out that ANILCA prohibits condemnation of such inholdings. See Assistant Secretary Horn's Memorandum to ANWR Negotiation Team, 2/20/87. Interior states that this lack of condemnation authority, therefore, limits it to "willing seller inholding acquisitions," see Assistant Secretary Horn's letter to Senator J. Bennett Johnston, 3/31/87, and that these inholdings never again may be available for purchase by Interior. The fact that Interior is unable to condemn the inholdings is no justification for its valuation procedure, and there is certainly no evidence in the record to show that this may be the only opportunity to acquire the inholdings. The willingness of the native corporations to enter into the proposed exchanges in fact demonstrates that they would be willing sellers of the inholdings for satisfactory consideration.

We believe the record will show that the value assigned to the native corporation inholdings simply reflects Interior's desire to come up with sufficient value to justify

its giveaway of the subsurface rights on ANWR. In a case such as this, in which Interior appears to have been primarily concerned with justifying its allocation of the ANWR coastal plain tracts, Interior and the native corporations all benefitted by inflated inholding valuations and real negotiations were not possible.

III. Legal Analysis

A. Purported Authority for the Exchange Agreements

Interior takes the position that the Secretary has the authority to consummate the proposed exchanges under section 1302(h) of ANILCA,* although Secretary Hodel has assured Congress that, despite this purported authority, he will seek Congressional approval of the exchange agreements. Section 1302(h) authorizes the Secretary to exchange lands

---

* Section 1302(h) of ANILCA provides: "Notwithstanding any other provision of law, in acquiring lands for the purposes of this Act, the Secretary is authorized to exchange lands ... or interests therein ... with the [native] corporations . . . and other municipalities and corporations or individuals, the State ... or any Federal agency. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the property exchanged, except that if the parties agree to an exchange and the Secretary determines it is in the public interest, such exchanges may be made for other than equal value." Interior also relies on section 22(f) of ANCSA which contains language similar to section 1302h.

with the native corporations to further the purposes of ANILCA. This limited exchange authority requires that any proposed exchange be made on the "basis of equal value." The only exception to the equal value requirement is a situation in which the parties agree to an exchange and the Secretary makes an affirmative determination that the proposed exchange is in the public interest.

The proposed ANWR exchanges fail to meet any of the requirements of section 1302 and are therefore unauthorized.

B. The Exchanges Will Not Be Made for Equal Value

As set forth in part II above, the valuation procedures employed by Interior significantly undervalued the ANWR tracts and at the same time vastly overvalued the inholdings to be exchanged for the ANWR tracts. The native corporations were able to select coastal plain tracts for the minimum value established by Interior since the selections were made pursuant to an elaborate, cooperative procedure which was kept secret from the public rather than through competitive bidding subsequent to public notice in the Federal Register. Leases of federal lands are seldom based on the minimum value established by Interior, since that is simply the least Interior will accept and is therefore merely a beginning point in a competitive bidding situation. The fact that the oil company partners of the native corporations were willing to pay the native corporations virtually the

same amount as the native corporations paid Interior plus, in the case of Texaco, royalties of 14 percent on the exchange tracts and 1.5 percent on other ANWR tracts is further evidence that Interior's values were drastically understated.

C. The Exchanges Are Not In Furtherance of the Purposes of ANILCA and Are Not in the Public Interest

In order to fulfill the requirement that the exchanges be for equal value, Interior developed an elaborate procedure to value the inholdings and the ANWR tracts and then "matched" those values during the tract identification meetings. Obviously concerned with the weakness of its equal value argument, Interior attempts to argue, alternatively, that the exchanges will further the purposes of ANILCA (see pages 63-65 of the model exchange agreement) and claims that the Secretary is able to "confirm his findings as contained in the records of the Department that the exchange is in the public interest and, therefore, does not require equalization of values." (id. page 65). Not only is Interior wrong in claiming that equal value was exchanged, Interior is also incorrect in claiming that the exchanges further the purposes of ANILCA and are in the public interest.

1. The Exchanges Do Not Further the Purposes of ANILCA

Section 1302(h) gives Interior the authority to exchange lands only when it is acquiring lands in a manner consistent with the purposes of ANILCA. Although Interior

could argue that it has acted consistent with the purposes of ANILCA in acquiring inholdings in national wildlife refuges other than ANWR, the legislative history of section 1302(h) indicates that in deciding whether an exchange is for the purposes of ANILCA, Interior has to consider the entire transaction, including the effect of the exchange on the lands being given up by Interior, and not just the benefit of the land that Interior acquires.

The House Committee emphasized that while the statute gave the Secretary flexibility, "of course, the committee does not expect that this flexibility will be used to undermine the essential integrity of any conservation system unit or to frustrate the purpose of any such unit." H.R. Rep. No. 95-1045, Pt. I (p.212). As the Senate Committee explained: "the federal government will still own a large amount of land, and that land base, exclusive of lands located within conservation system units . . . should provide ample opportunity to exchange." S. Rep. 96-413 (p. 304) (emphasis added). Thus, it is clear that Congress did not intend that Section 1302 would be used to disrupt one refuge for the benefit of another refuge.

The ANWR exchanges violate the "for the purposes of the Act" requirement because: (i) contrary to the intent of Congress, they will significantly reduce native landholding in Alaska; (ii) they will undermine ANWR; (iii) Interior probably did not consider whether it could have acquired the

lands it sought by a trade using lands not in a national wildlife refuge; and (iv) the evidence probably will show that the motivating purpose of the exchange was to give up the ANWR lands, not to acquire lands on other refuges.

First, the land exchanges require the native corporations to trade almost five acres of land for every acre of subsurface rights they receive in ANWR. Congress, however, never intended that Section 1302(h) be used by Interior to reduce the amount of land owned by native Alaskans or that it be used to give up all surface rights in land for subsurface mineral rights. Instead, Congress included Section 1302(h) in ANILCA so that "federal condemnation not be used to unnecessarily dimimish the private land base in Alaska." S. Rep. No. 96-413, 96th Cong., 1st Session (1979) at 304. Congress stated that the exchange authority enables Interior to "make a good faith effort to find other lands within the state of Alaska (as near to existing lands as possible) for which he can exchange the land desired to be acquired." Id. Congress' desire to avoid condemnation - i.e., the taking of private lands that reduces the amount of land in private ownership--is inconsistent with a trade that requires native corporations to give up 866,000 acres of land and receive no surface lands and only subsurface rights to 166,000 acres in return.

Second, even if Congress opens ANWR to oil exploration and development, the exchanges will undermine the integrity of the refuge by creating a checkerboard pattern of private and public ownership within the refuge. Generally, Interior regards such a pattern as unacceptable and it justifies its acquisition of inholdings in other refuges as necessary to ensure adequate management on the refuges. But if Interior believes that acquiring inholdings on refuges is necessary for effective management, it acted arbitrarily if it concluded that it could manage ANWR effectively after it created a massive set of inholdings on the coastal plain.

The need for consolidated management is particularly important in ANWR. The refuge has a unique combination of environmental values and potential for oil development and in section 1302 of ANILCA, Congress made it clear that if development took place, it would do so only after a careful study of environmental issues. Presumably, if ANWR is opened to development, a carefully thought-through federal regulatory regime will be devised to protect the environment. The exchanges, however, will remove the lands involved from ANWR and from that federal regime (even if environmental stipulations are built into the exchange agreements, they are very unlikely to be as stringent or as carefully thought-through as the requirements that will be placed on federal lands). Thus, the exchange is not only contrary to Interior's policy of acquiring inholdings, but it will have a particularly strong impact on ANWR.

The land exchanges also violate Congress' instructions to Interior that it establish a systematic program designed to ensure that inholdings in national wildlife refuges be acquired without disrupting other refuges. Congressman Udall explained: "We expect that the Secretary shall inventory the lands in Alaska for the purpose of locating suitable tracts for trade . . ." 146 Cong. Rec. H10548 (Nov. 12, 1983). Congress also expected the Secretary to ensure that agencies such as the Fish and Wildlife Service have full authority to identify lands managed by the Bureau of Land Management for trade to acquire the inholdings. Indeed, to ensure that lands outside national wildlife refuges and other conservation units were available for exchanges, Congressman Udall emphasized that:

> "If BLM resists yielding prime lands under its jurisdiction, thus frustrating the land acquisition policy of another agency such as the Park Service, we intend that the Secretary step in. The Secretary shall give each agency managing conservation unit lands authority to identify areas for trade on BLM lands." 146 Cong. Rec. H10548 (Nov. 12, 1980)

There is no evidence that Interior considered alternative lands to give in exchange for the lands it will receive in the exchanges.

Finally, we expect that when the record of the exchanges is reviewed, it will become apparent that the purpose of the exchanges is to remove lands from ANWR so that they can be open to immediate development by private parties

without waiting for Interior to establish a full management and leasing regime for all ANWR. The record probably will show that Interior acquired lands via the exchanges to justify giving up ANWR lands and not vice versa. Nothing in the legislative history of ANILCA supports an argument that section 1302(h) can or should be used to open national wildlife refuges to mineral development or to transfer national wildlife refuge lands to native groups and their industry partners for development. Such an approach is not consistent with the purposes of ANILCA.

2. The Exchanges Are Not in the Public Interest

Interior's "public interest" determination under section 1302 of ANILCA is subject to review in a federal court under the arbitrary and capricious standard. Keating v. FAA, 610 F.2d 611, 612 (9th Cir. 1979); National Audubon Society v. Hodel, 606 F. Supp.825 (D. Alaska 1984). Agency actions are arbitrary and capricious if they are not based on "a consideration of the relevant factors" and "there was a clear error of judgment." Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971); Village of False Pass v. Watt, 565 F. Supp. 1123, 1138 (D. Alaska 1983). Interior's public interest analysis fails both of these tests.

a. Competitive bidding

First, Interior acted arbitrarily and capriciously when it found that it was in the public interest and in furtherance of ANILCA to provide a means for development of

the coastal plain without competitive bidding. Competitive bidding for oil and gas leases of federal lands has been and remains the cornerstone of federal oil and gas leasing policy. Competitive bidding promotes the orderly development of petroleum resources on publicly-owned lands by private industry and assures that the U.S. receives the best price for the leasing of public resources.

Congress has repeatedly recognized the central role of competitive bidding in lease or sale programs for public land. For example, in 1909, Congress enacted a criminal statute (currently found at 18 U.S.C. § 1860 and entitled "bids at land sales") making it a crime to agree not to bid or to hinder anyone from participating in a competitive bid for public lands. The statute states:

> Whoever bargains, contracts, or agrees, or attempts to bargain, contract, or agree with another that such other shall not bid upon or purchase any parcel of lands of the United States offered at public sale; or
>
> Whoever, by intimidation, combination, or unfair management, hinders, prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract or land so offered for sale--
>
> Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

By making collusion or interference in bids for public lands a crime, Congress emphasized its commitment to a fair and orderly process for development of public lands.

Oil and gas lease sales in the lower 48 states are controlled by section 17 of the Mineral Leasing Act of 1920, as amended ("MLA") (30 U.S.C.§§ 181-263), which requires competitive bidding for all oil and gas leases in "known geological structures." While the law applicable to oil and gas lease sales on federal lands in Alaska differs somewhat from that applicable to oil and gas lease sales in the lower 48, such differences are primarily directed at accommodating environmental concerns. Competitive bidding remains the touchstone of the Alaska federal oil and gas leasing programs.

Oil and gas lease sales covering federal lands in Alaska are subject to three different programs: Section 100 of the Interior Appropriations Act of 1981 (P.L. 96-514) ("IAA"); section 1008(d) of ANILCA; or, section 1002(i) of ANILCA. These programs apply, respectively, to the National Petroleum Reserve - Alaska ("NPRA"), non-ANWR federal lands exclusive of the NPRA, and ANWR lands. The first two programs, which permit oil and gas leasing, each adopt a central policy of competitive bidding.

Section 100 of IAA provides for competitive leasing of all oil and gas lands in the NPRA in accordance with the bidding system employed in the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629). Section 1008(d) of ANILCA establishes a leasing program for the non-North Slope lands in Alaska pursuant to the MLA. This program differs from the MLA program applicable to the lower 48 in that

competitive bidding for oil and gas leases under section 1008(d) of ANILCA is triggered more easily than under the known geologic structure standard of the MLA. Section 1008(d) requires competitive bidding for both those federal lands on which oil and gas have been discovered and those lands within which there is a high probability that oil and gas will be discovered (designated as favorable petroleum geological provinces ("FPGP") by the Bureau of Land Management). Thus, ANILCA provides for competitive bidding in instances in which there is merely high probability that oil and gas will be discovered, rather than the higher standard applicable to the lower 48, namely that oil and gas deposits have been discovered by drilling and that such deposits have been determined to be productive.

Section 1002(i) of ANILCA withdrew the coastal plain of ANWR from all form of entry under the mineral leasing laws. Thus, Section 1008(d) of ANILCA does not currently apply to the coastal plain of ANWR. If, however, the coastal plain of ANWR were made available for oil and gas leasing by Congress, it is clear the coastal plain should be designated as an FPGP based on the extremely high probability that oil and gas will be discovered there. The coastal plain is adjacent to the giant Prudhoe Bay field, which currently supplies almost 20 percent of the total U.S. oil production. Available data indicates that the coastal plain reserves should equal and may well be even greater than Prudhoe.

Based on the foregoing, it is clear that in enacting ANILCA, Congress did not intend to ease the standards under which competitive bidding for oil and gas leases on federal lands would be required. In fact, the contrary is true: at a minimum, competitive leasing is required when there is only a probability that oil and gas will be discovered. The Secretary's action in exchanging the withdrawn ANWR lands in order to facilitate oil and gas leasing without competitive bidding subverts 67 years of mineral leasing policy and thwarts the clear intent of sections 1002(i) and 1008(d) of ANILCA.

b. Valuation of ANWR Tracts and Inholdings

Second, as discussed above, Interior made a clear error of judgement and failed to consider relevant factors in its valuations of the ANWR tracts and the inholdings. Moreover, if the predictions concerning potential oil and gas reserves in the ANWR coastal plain are correct, the public interest has not been served by giving those tracts away to the native corporations at bargain prices. Additionally, without realizing what it was doing (because it had not seen any contracts between the native corporations and their oil company partners), Interior transferred the royalty payments in ANWR from the federal and state governments to Alaskan native corporations.

c. Alternatives Are Available that Protect the Public Interest

Interior also made a clear error of judgment and failed to consider relevant factors in concluding that the exchanges are necessary to further the purposes of ANILCA and protect the public interest. Interior's identified purposes for the exchanges -- consolidation of refuge lands and acquisition of priority lands -- can be accomplished by other, more rational and more equitable means.

(i) Environmental Value

The inholdings are part of a conservation system designed by Congress to protect the lands from or during development. A large percentage of the inholdings to be acquired are section 22(g) lands and as such are statutorily protected from development. Moreover, Interior will receive only the surface rights to the non-section 22(g) inholdings, and it is unlikely that any of the inholdings are threatened by housing development or other surface development. The only likely threat to those lands is from possible subsurface development. Thus, Interior had no rational basis to conclude that the exchange has the environmental benefits which Interior claims.

(ii) Acquisition of Inholdings

The land exchanges are not the only available means for Interior to acquire these "priority" lands. Revenues derived from leasing the coastal plain

tracts, for example, could be used to purchase them or Interior and Congress could devise a procedure that let native corporations bid the value of inholdings during normal competitive biddings on ANWR tracts. Such a procedure could well cost Interior much less than the exchanges, given the overvaluation of the exchanged inholdings and the undervaluation of the ANWR tracts.

(iii) Protection of the Native Corporations

If there is a fear that the native corporations will not benefit from any future development of the ANWR coastal plain, a far simpler and more equitable procedure would be to ensure their participation at the point that Congress votes to open the plain for development. There is no reason to rush into these exchanges, particularly since they do not offer the claimed benefits to all the native corporations and do not allow participation by all interested parties. If, as Interior believes, the exchanges are not subject to section 7(i) of ANCSA,* only those native corporations which have entered into exchange agreements will share in the revenues derived from the development of the coastal plain. The state treasury, moreover, will be deprived of substantial revenues that would inure to the benefit of all residents of Alaska. Any number of alternatives would be available to ensure participation by the native corporations when and if Congress votes to open

the plain. For example, the native corporations could be authorized to participate in the bidding process by bidding land rather than money.

d. Interior Ignored the Effects on Competition

Finally, Interior made an error of judgment and failed to consider relevant factors when it ignored the anticompetitive effect of the exchanges. As discussed above, competitive bidding has been the cornerstone of federal oil and gas leasing policy for almost 70 years. Notwithstanding that policy, Interior entered into secret negotiations with select native corporations linked to select oil company partners. The oil companies that did not participate in these exchanges have been excluded not only from participation in the first potential development of the coastal plain, but may well be excluded effectively from any participation in development of the coastal plain. Such exclusion would result from the competitive advantage gained as a result of the head start period which the participating oil companies will have. During this period the participating oil companies will have an opportunity to determine where it is most probable that oil and gas reserves

---

* Section 7(i) of ANCSA (43 U.S.C. § 1606(i)) provides that 70 percent of the timber and subsurface revenues from lands conveyed to a regional corporation pursuant to ANSCA shall be divided among the twelve regional corporations.

are located. When the remaining ANWR lands are finally made publicly available through a competitive leasing program, they will be able to use this information to guide their bidding.

IV. Conclusion

Interior's proposed land exchanges violate important public policies set forth in ANILCA and the MLA and are in violation of section 1302(h) of ANILCA.

(907)762-2547

October 30, 1987

Mr. Dan Hinkle
Marathon Oil Company
P. O. Box 3128
Houston, Texas 77253

Dear Dan:

As you can see, the governor has signed the cover letter for the division's critique on the ANWR exchanges. Please feel free to use (liberally) in whatever manner you see fit.

Sincerely,

James E. Eason
Director

Enclosure

1147E

00477 00473

EXHIBIT 25 PAGE 1

ANWR

(907)762-2547

October 26, 1987

26

Mr. Dan Winkle
Marathon Oil Company
P. O. Box 3128
Houston, Texas 77253

Dear Dan:

As we discussed earlier, I have enclosed for your review copies of the Executive Summary and the Division's Critique of the Proposed ANWR Land Exchanges. It is my understanding that these materials are being forwarded to Secretary Hodel under a cover letter from Governor Cooper. I believe the documents speak for themselves; however, if you have any questions, please feel free to call.

Sincerely,

James E. Eason
Director

Enclosure

1132K

EXHIBIT 26 PAGE 1

To Rod Sarpe
from LENNIE

RESOLUTION RELATING TO
LAND EXCHANGES WITHIN THE COASTAL PLAIN
OF THE ARCTIC NATIONAL WILDLIFE REFUGE, ALASKA

BE IT RESOLVED BY THE INTERSTATE OIL COMPACT COMMISSION (IOCC) AND THE SIGNATORY STATES TO THIS DOCUMENT:

27

WHEREAS, the U. S. Congress has reserved unto itself the right to permit leasing of lands for the exploration and development of oil and gas within the coastal plain of the Arctic National Wildlife Refuge (ANWR), Alaska; and

WHEREAS, the coastal plain of ANWR has uniquely high petroleum resource potential and is the most outstanding onshore petroleum exploration target on the North American continent; and

WHEREAS, oil resources beneath the coastal plain of ANWR may be in excess of 40 billion barrels of in-place oil, surpassing proven reserves at the Prudhoe Bay and Kuparuk River oil fields; and

WHEREAS, reserves of this magnitude in ANWR would significantly increase domestic production, thereby reducing our nation's future requirements for imported oil, reducing its trade deficit and significantly improving national security, and could contribute billions of revenue dollars to the public treasury through bonus, rental and royalty payments; and

WHEREAS, the Department of the Interior has a long-term tradition of competitively leasing public lands for exploration of petroleum resources to provide fair and equal access for all resource developers and to assure

receipt of fair market value for these lands and resources, and provide for substantial revenue to the public treasury; and

WHEREAS, in contrast to competitive leasing, the Department of the Interior now proposes to exchange the subsurface rights to selected tracts within the coastal plain of ANWR for the surface estate of certain Alaska Native Corporation inholdings located in other federal refuges within Alaska; and

WHEREAS, these proposed land exchanges would establish an unfortunate precedent of substituting in lieu of a competitive process noncompetitive, negotiated exchanges which favor only a few companies and Native Corporations; and

WHEREAS, these exchanges, through loss of bonus, rental and royalty payments, could result in a substantial reduction of revenue that would otherwise be available for the public treasury;

WHEREAS, the IOCC has previously adopted a resolution in support of the opening of ANWR to oil and gas exploration and development.

BE IT RESOLVED THAT the members of the IOCC states urge the U. S. Congress to reject the proposal of the Department of the Interior to allow for noncompetitive exchanges of subsurface rights to selected tracts within the ANWR coastal plain for the surface estate of certain Native Corporation inholdings from other federal refuges within Alaska.

BE IT FURTHER RESOLVED that the U. S. Congress is urged, instead, to require competitive oil and gas leasing under the terms of the 1920 Minerals

Lands Leasing Act, for all lands which it determines should be made available for exploration and development.

1161E

DELIVER TO: Leasing Program LOCATION C.O.
FROM: [illegible] LOCATION Anch
TELEPHONE/TELECOPIER #: _____ TOTAL NUMBER OF PAGES 3
TRANSMITTING ON/SPEED _____ DATE 10/30/87 TIME 4:45
PHONE FOR PROBLEMS-NAME/NUMBER _____
COMMENTS Please review & comment.

VIEW THE DOCUMENT I00

o: Distribution List October 30, 1987

hru: Tom Hawkins, Director

m: 762-2680

ANWR Land Trade Update

ıry Gustafson, Chief
ınd Management
ınd and Water Management

ıtive corporation briefings for Congressmen and staff on the proposed NWR land trades are scheduled for next week (November 2-6, 1987) in ıshington, D.C.

ɔrmal luncheons are scheduled individually for the House Merchant Maıne and Fisheries Committee and the House Interior and Insular Affairs ɔmmittee. Several hundred formal invitations have been sent. The

F1 Top PF2 Bottom PF4 Up PF5 Down PF6 Note Screen 1 of 4
F9 Help PF10 Next Screen PF11 Previous Screen PF12 Return
=¶

EXHIBIT 28 PAGE 1

Native corporation briefings for Congressmen and staff on the proposed ANWR land trades are scheduled for next week (November 2-6, 1987) in Washington, D.C.

Formal luncheons are scheduled individually for the House Merchant Marine and Fisheries Committee and the House Interior and Insular Affairs Committee. Several hundred formal invitations have been sent. The luncheon briefings will be conducted in the following manner. First, Margie Sagerser of CIRI will provide an overview of the entire situation. Margie will be followed by Morris Thompson (providing the regional corporation perspective) and Ralph Eluska (village corporation perspective). Finally, John Doebel of the USFWS will present his 20 minute slide show on the trades.

Also scheduled for next week are a strategy session with Don Young which will involve the Native corporation lobbyists and involved oil company representatives.

In addition, a briefing is scheduled Thursday, November 5 for the National Press Club.

You'll also be interested to note that the draft House bill on ANWR soon to emerge from House Merchant Marine and Fisheries Committee includes a statement that Congress finds and declares that the ongoing ANWR land exchange negotiations "deserve further Congressional consideration". This draft has many other troublesome aspects as well.

If anyone would like a copy, please let me know.

Distribution List:

Judith M. Brady, Commissioner
Lennie Gorsuch, Deputy Commissioner
John Katz, Governor's Office, Washington, D.C.
Rod Swope, Governor's Office, Juneau
Jim Eason, Director, DOG
Maggie Moran, Governor's Office, Washington, D.C.
Tom Koester, Attorney General's Office, Juneau

EXHIBIT 28 PAGE 2

MEMORANDUM State of Alaska

TO: Molly McCammon
Special Staff Assistant
Office of the Governor

DATE: March 12, 1986

FILE NO:

TELEPHONE NO:

FROM: Tom Hawkins
Tom Hawkins, Director
Division of Land & Water Management
Department of Natural Resources

SUBJECT: ASRC Trade - ANWR F

You recently asked why it was that the National Park Service (NPS) and Arctic Slope Regional Corporation (ASRC) were able to complete a land exchange involving subsurface in the Arctic National Wildlife Refuge (ANWR), without adversely affecting the state's 90 percent royalty share from federal oil and gas leases.

29

My staff and I have examined the 1983 NPS/ASRC trade package and conclude that the state's royalty share was not affected due to specific allowances in ANILCA. Section 1431 (o) of ANILCA allows ASRC to replace its in-lieu subsurface selections elsewhere (under other villages) for an equal amount of acreage under Kaktovik selections. However, such replacement must occur within five years of the date such subsurface is opened for commercial development of oil and gas.

This provision essentially allows ASRC to leap about with its subsurface selections, finally settling on those of highest commercial value. However, pursuant to the ASRS/NPS trade, ASRC must commit to a certain area south of Kaktovik.

The state was not affected by the trade because as noted above, ANILCA Section 1431(o) had already granted ASRC the right to obtain this land anyway (at its option), had it gone into commercial production. Therefore, the state's 90 percent royalty share under the Minerals Leasing Act was not compromised by the trade. Rather, ANILCA had already bargained away this right for the first area to go into commercial production which might then be obtained by ASRC.

I have attached related information for your use. If you have any questions, please give either Gary Gustafson or me a call.

Attachments

RECEIVED
MAR 12 1986
GOVERNOR'S OFFICE

02 001A(Rev. 10/79)

EXHIBIT 29 PAGE 1

(DTN. ... June 30 letter - Gov - Jake Adams.

United States/ASRC Land
Exchange

August 9, 1983

- The United States National Park Service acquired 100,000 acres of inholdings from the Arctic Slope Regional Corporation (ASRC) within the Gates of the Arctic National Park. In exchange, the ASRC was conveyed subsurface estate (previously retained by the federal government) to 92,160 acres of land within the Arctic National Wildlife Refuge. All titles and interest to the surface estate is owned by the Kaktovik Inupiat Corporation (pursuant to Sec. 1431(g)(3) of ANILCA and Sec. 14(a) of ANCSA).

- The exchange was authorized pursuant to Sec. 1302(h) of ANILCA and Sec. 22(f) of ANCSA.

- The federally acquired lands are managed as part of the national park system. The ASRC retained subsurface rights and has leased portions of that land to Shell Oil Company. The federal government does have the option to acquire the subsurface rights after the leases expire in 1991.

- The ASRC acquired subsurface estate, through a cooperative agreement with KIC, has been leased to Chevron. Chevron started drilling an exploratory well last year and is close to completion this year. They are also proposing to drill a number of shallow wells in the area in the coming year(s).

- No exploration, development or use of subsurface resources, other than oil and gas exploration or the extraction, processing, transportation and storage of sand and gravel is permitted by ASRC.

- 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.

- Easement rights were retained on 26,122 acres of land conveyed to ASRC to ensure access for subsistence use by residents near Anaktuvuk Pass.

- With the exception of requiring changes to the proposed language of environmental stipulations, the State endorsed the proposed land exchange and found it to be consistent with the Alaska Coastal Management Program (August 3, 1983). The review was completed in 38 days. Comments were received from the Alaska Departments of Transportation and Public Facilities, Fish and Game, Commerce and Economic Development, Natural Resources, and Environmental Conservation; City of Kaktovik; the people of Anaktuvuk Pass; North Slope Borough; Nunamiut Corporation; Congressman Young and Senators Stevens and Murkowski.

nb86020401rsd

no reference to 90/10 in agreement - feds relinquished all rights and interest.

1431(o) - ANILCA

Gedhof - atty.

EXHIBIT 30 PAGE 1

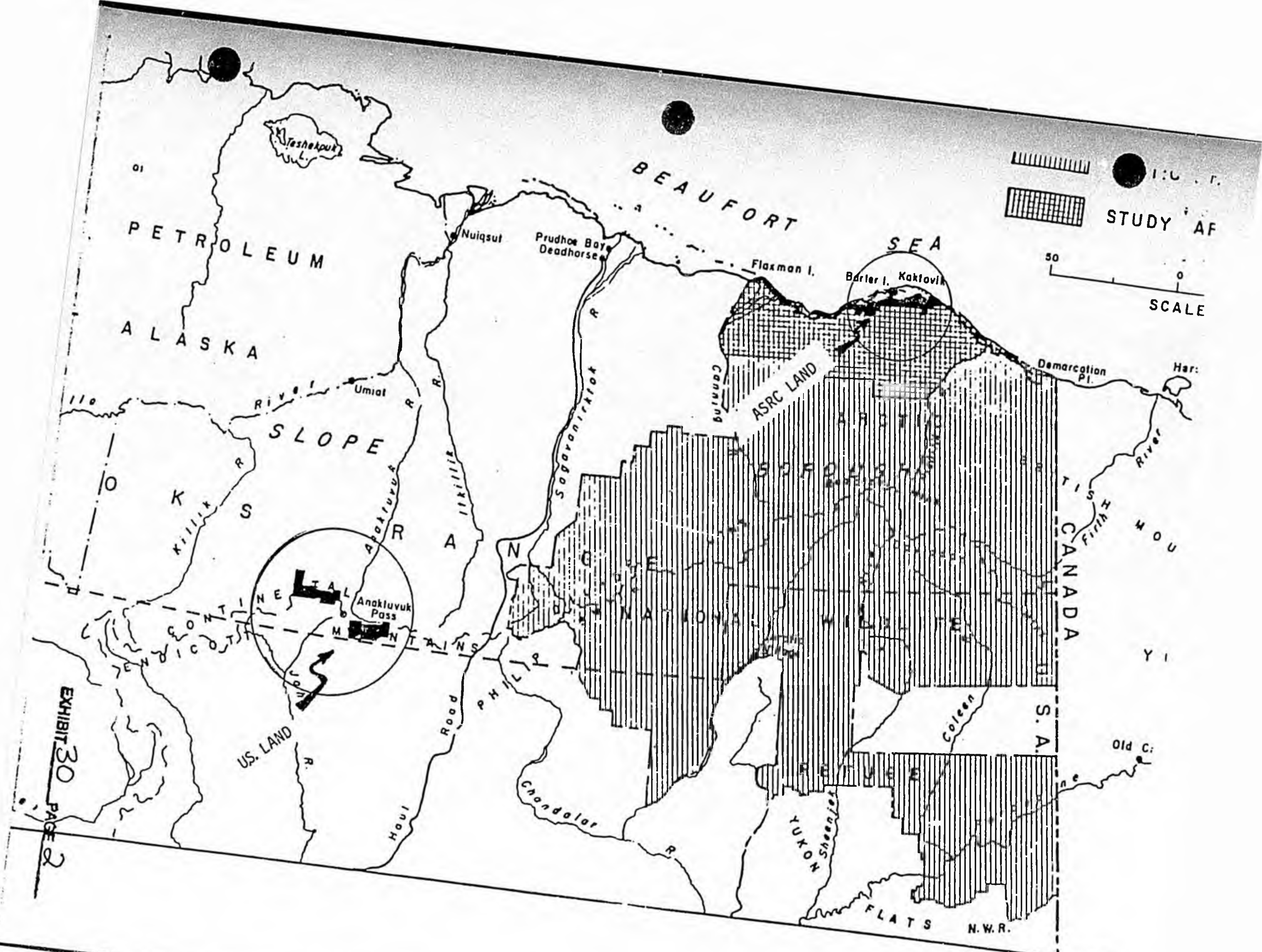


EXHIBIT 30 PAGE 2

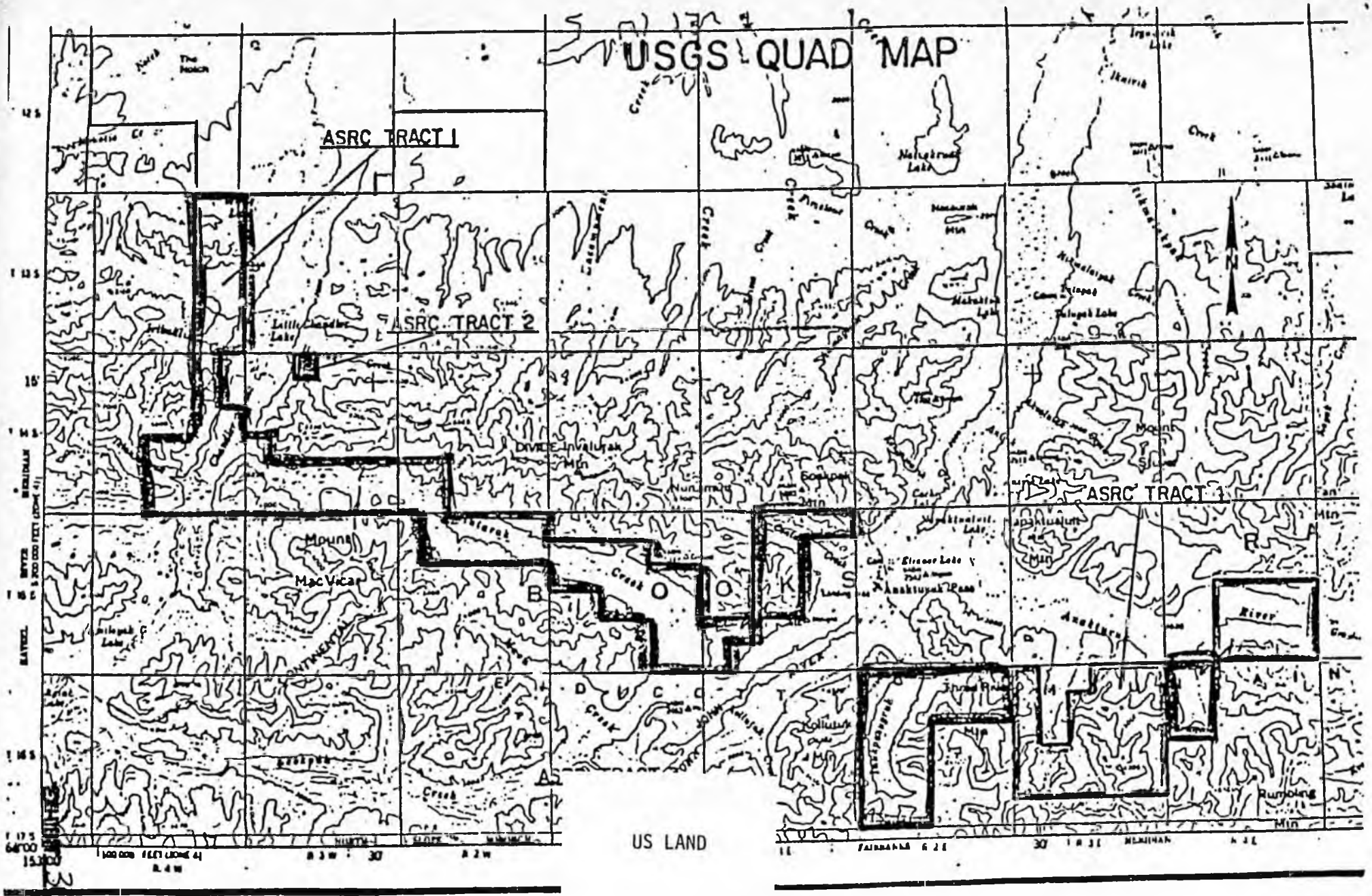


EXHIBIT 20 PAGE 3

RINGS IN THE ANWR COASTAL PLAIN

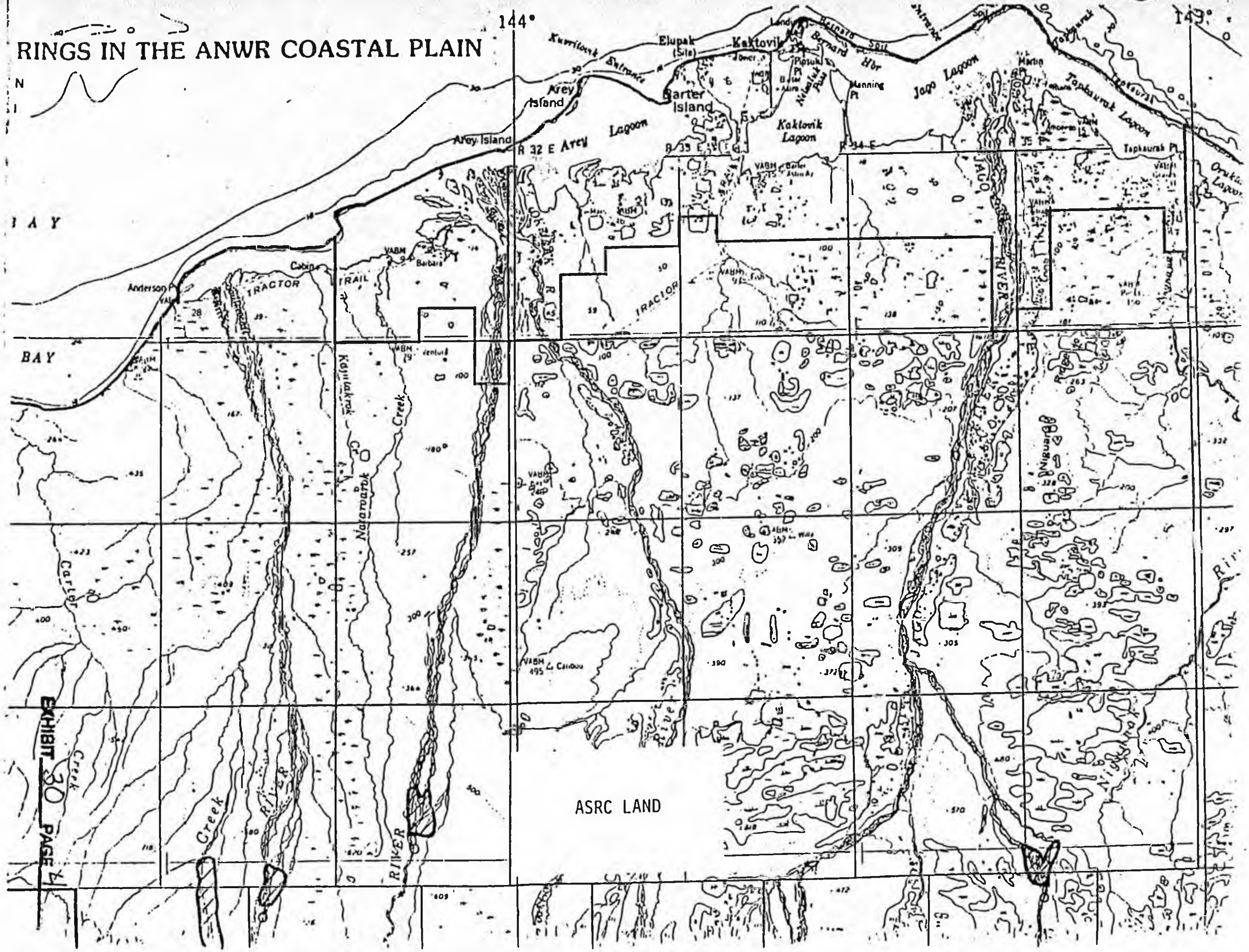


EXHIBIT 30 PAGE 4

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES--DIVISION OF LAND AND WATER MANAGEMENT

TO: Bob Arnold
Deputy Commissioner

DATE: May 20, 1986

FILE NO:

TELEPHONE NO: 762-4355

FROM: Tom Hawkins
Director

SUBJECT: ANWR

This memo describes actions taken over the past few months to monitor ANWR land exchange activities and to advance state interest in potential exchange opportunities.

In early February ADF&G and ADNR jointly prepared a listing of candidate lands for possible exchange for presentation to the USF&WS (Appendix I). The list included more than 12,000,000 acres of state land within and adjacent to refuges and other ANILCA units. The listing emphasized lands which were primarily valuable for habitat and recreation resources. In March, Robert Gilmore, Alaska Regional Director for the U.S. Fish & Wildlife Service responded to the state's listing and indicated the interests of his agency.(Appendix II). In short the USF&WS marked 1 state parcel as high priority but indicated considerable interest in 7 additional parcels.

31

It should be recognized that the state list did not include those valuable state habitat lands that had been designated for long-term retention by the Alaska legislature. For instance the USF&WS has repeatedly expressed its interest in owning the Izembek Lagoon tidelands accorded state refuge status by the legislature in 1972. These and other state lands in critical habitat areas and game sanctuaries were not included in the ADF&G/ADNR proposal because it would take legislative action to make them available for exchange consideration. While the habitat values of these lands would most likely be preserved and protected as well in federal ownership as under current state management ADF&G determined that raiding the state's designated habitat protection system in order to acquire subsurface estate speculatively valuable for oil and gas would create its own set of perception problems.

The USF&WS response offers the state a clear opportunity to proceed to the next stage of an exchange. Land exchange negotiations with the USF&WS should proceed in order to preserve the state's standing in any exchange activities. At the very least efforts to advance the Tetlin townships would keep the state in the midst of the land exchange action. As could be expected the USF&WS did not recognize advantage in acquiring lands that are sought by the National Park Service. These parcels were included on the list to allow the federal government to realize which benefits from possible exchanges in addition to acquiring refuge lands. A second prong of the state initiative should include elevation of the USF&WS lack of interest in these parcels to the attention of Interior department policymakers.

The remainder of the assignment contained in the February 17 memorandum required monitoring of USF&WS exchange activities with parties other than the State of Alaska. USF&WS efforts in this regard began in 1984 when Koniag

EXHIBIT 31 PAGE 1

broached the subject with the Service and have been conducted on a variety of fronts since that time. DNR met with the USF&WS to find out what was happening in these exchange negotiations. The dual purpose of that meeting was to reiterate the State's position that any land tenure changes on the Arctic coastal plain should involve significant state participation and to present the aforementioned inventory of state land which may be available for exchange consideration should Congress determine that oil and gas development will be permitted in ANWR.

USF&WS's Robert Gilmore conducted the briefing, seemed quite familiar with the State's general interest, and was intrigued by the list of possible exchange land candidates offered by the State. He explained that the Service, through its refuge planning process, had identified numerous parcels of land within and adjacent to refuge system units in Alaska that had significant wildlife values but were not in federal ownership. Gilmore also explained that Koniag made the initial contact with his predecessor Keith Schreiner a number of years earlier. Possibilities for an exchange had been discussed off and on since that time. Map review exercises had been carried out with Koniag, Bristol Bay, Doyon and Arctic Slope regional corporations. The focus was initially on regional corporations because of ANCSA subsurface ownership provisions, including 7(i), and the plans of the Service to only offer Arctic National Wildlife Refuge (ANWR) subsurface estate for exchange purposes.

USF&WS recognized early that village corporations owned many of the Service's land acquisition candidates. Unfortunately region-village institutional arrangements and operating relationships didn't always allow the region to offer swaps of village surface estate. At first the Washington Office of Interior prohibited contact with village corporations. This ban has since been lifted and Gilmore has conducted a series of village contacts including meetings in King Salmon and Ft. Yukon.

Another problem facing USF&WS was the absence of a habitat rating methodology to allow the Service to prioritize among parcels identified by regions in the map review portion of the discussion. The Service has now developed a ranking system which permits them to assess their interest in acquiring particular units of candidate lands. USF&WS utilized the methodology to review the State's candidate acreage. Gilmore believes that the methodology materially advanced the state of the art and usefully substitutes for the regularly confusing array of superlatives normally used to characterize habitat values.

The next dilemma facing the Service was the matter of appraisal. Borrowing from refuges across the country Gilmore assembled a team of Service appraisers and began the task of determining values for about 1 million acres of surface estate held by the subject corporations. Familiarity with Service appraisal standards was not the problem for this task force. Applying the traditional methodology to the immense acreages, remote locations, and other unique Alaskan conditions required special training and adaptations however. The standard discount for large parcels had to be modified for this exercise because it reduced the value of the native land to unacceptable values. The absence of meaningful comparative sales also posed difficulties. Calculation of the discount appropriate for Section 22(g) of ANCSA was done administratively because it also exceeded the experience of the appraisal team. However the initial appraisal work is not essentially complete. The appraisals have been approved by the Washington office and Gilmore has a ball park estimate of the values involved.

Calculating the 22(g) factor was just one of a host of nontraditional aspects of the appraisal assignment. The Service proceeded along the lines of the zone concept developed in the Kodiak Refuge Plan to determine a standard deduction value for the fact that much of the native land was required to be managed according to the adopted refuge plan. This severely restricted the possible uses of the land and lowered its value considerably. Coupled with the fact the acreage was remote and not of great worth in traditional real estate terms, the appraised value of native land was quite low even after Gilmore's efforts to modify the traditional Service methodology.

Low value was not the problem on the other end of the exchange package. Rumors described BLM's appraisal of the subsurface value of the Arctic Coastal Plain as quite high at least in preliminary review stages of the process. When the oil and gas industry points to an area and states that it is the best prospect in the country it is easy to imagine how the folks with access to geological and seismic information from that area might be enthusiastic. But the objective approach to these possibilities places them in terms of probability and must provide for a discount factor. When BLM's analysis is unveiled it can be reviewed and contrasted with the similar study performed by the State of Alaska. As the state has experienced in numerous past exchange situations the F&WS recognized that subsurface valuation was not an exact science. BLM was hesitant to place hard and fast values on the individual lease tracts in their analysis. But without comparative values it is difficult to fashion any kind of a trade package. So Gilmore has pressed BLM to offer values that can be utilized in the exchange process. Additionally the Service has had to design a failsafe process so that participating native corporations aren't faced with the risk of losing their land base and finding no oil and gas resources. A mechanism which would guarantee a soft landing in case of exploration failures has been fashioned. None-the-less the exchange process has bogged down because Koniag is unwilling to accept the values that have been assigned to their lands by the USF&WS. Koniag has retained former USF&WS Alaska Director Bob Putz and others to press their case in Washington D.C. They argue that in addition to the real estate value the lands must receive credit for their public interest values. This effort to attach a "blue sky" increment to the land value may be successful because its permitted by law and Interior's presumed interest in offering ANWR subsurface for development. Most likely the actual exchange will not occur until Congress takes action allowing subsurface development.

Koniag's situation is reported here because their train is furthest down the track. Other regions maintain interest in ANWR subsurface and access to current status on all fronts is not available. Most recently CIRI met with Interior officials in Washington and received encouragement to fashion a joint state - ANCSA corporation package for Interior consideration. Most observers agree that such a configuration would be the most saleable package to the Department. CIRI envisions a swap that would give them ANWR subsurface while the USF&WS would acquire state acreage and the state would conclude its Kachemak State park acquisition from Seldovia and CIRI. Alternatively teamed with CIRI or some other ANCSA corporation the state could be more likely to acquire ANWR subsurface. All of these possibilities should be measured against Alaska's current 90% interest in ANWR's mineral resources and its steadfast assertion that it should be considered first in any further decision-making process.

In summary, ADF&G & DNR advanced candidate exchange lands to USF&WS. The Service's positive response calls for further action. We continue to monitor exchange efforts underway and find it would be easier to accomplish these tasks from the midst of the maelstrom than from the edges.

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES--DIVISION OF LAND AND WATER MANAGEMENT

TO: The Honorable Steve Cowper
Governor of the State of Alaska

DATE: December 9, 1986

FILE NO:

TELEPHONE NO: 762-4355

FROM: Tom Hawkins, Director
Gary Gustafson, Chief, LMS

SUBJECT:

OVERVIEW:

Participation in the recent ANWR meetings with the Interior Department (DOI) make it clear that prompt decisive action by the State is required to preserve policy options and optimize benefits for Alaskans. There are two schedules which require attention. The short range tasks focus on the land exchange process and the February 15th deadline for tract selections. The long-range picture revolves around the draft 1002 report of the Secretary to Congress. State participation is expected in public hearings scheduled for early January and written comments on the report are due by month's end. The Secretary will make his recommendations to Congress in April. We anticipate that legislation which could open the Coastal Plain will be introduced in May. DOI also envisions Congressional approval of its exchange negotiations during this same period.

BACKGROUND:

Over the past three years numerous native corporations have discussed land exchanges with the Fish and Wildlife Service (F&WS) whose primary objective is to acquire surface ownership of refuge system inholdings. Corporate goals are many but acquisition of subsurface interests with revenue generating potential is critical. The regional corporation which has been at the table the longest is Koniag. Three other native corporations have recently become active participants. Each native corporation has an oil industry partner. DOI's Assistant Secretary for Parks and Refuges Bill Hor , has established the February 15 deadline to benefit Koniag which plans to present the exchange proposal to its shareholders for a vote, before the fishing season begins. The other participants, including the state, must conform to the Koniag timeframe in order to participate in the first round of tract selections. It is interesting to note that DOYON sees the cart before the horse. DOYON's reservations center on the tract selection process preceeding Secretarial recommendations or Congressional action. The following table depicts the participants, their agents, and the acreage they offer for exchange.

PARTICIPANTS	AGENT	ACREAGE
Native Land Group (CIRI)	Mark Rindner	230,000
Koniag	Bill Timme	130,000
Akhiok/Kaguyak	Tony Smith	100,000
DOYON	Jim Mery	600,000

00130 00131

EXHIBIT 32 PAGE 1

02-001A(Rev. 10/79)

PROCESS:

The exchange action consists of three components. Land identification, land valuation, and a conceptually approved draft contract. The Koniag timeframe requires completion of these tasks by 15 February. Land identification consists of F&WS regional office acceptance of candidate lands. Land valuation begins with a fair market value appraisal and is adjusted through negotiations with Bill Horn designed to capture public interest value considerations. For instance we believe that Koniag's 130,000 acres have an appraised value of $35 million. Horn, presumably utilizing comparative values derived from other Congressional land transactions (Pribilof purchase, Haida exchange and others), elevated this value to $200 million. Similar adjustments for other native participants are likely.

The BLM assumed the task of valuing ANWR's recoverable hydrocarbons. They have assigned a value to each of 560 tracts in the coastal plain. While they have used state of the art methodology for these valuations the data base is weak and the values are considered speculative. DNR's divisions of Oil and Gas and Mining and Geological and Geophysical Surveys can expand on this matter.

The tract selection process is still under negotiation. Each participant currently advocates an approach which maximizes its interests. The critical calls will be made in the dispute resolution mechanism. When more than one participant chooses the same tract DOI expects to employ one of four procedures for deciding the outcome. The amount of candidate acreage and the value of it dictate which approach is favored.

ALASKA'S ROLE:

The State and the F&WS have not agreed on which acreage will be included in an exchange. The State has pressed for inclusion of state lands sought by the National Park Service (NPS). NPS is wary that it might end up on the wrong side of an environmental issue. NPS also recognizes that this is a F&WS ballgame and they expect to participate only if invited. F&WS is resistant to first round consideration of NPS lands. As the NPS has identified interest in almost 500,000 acres of state inholdings within parks (Katmai, Lake Clark, Wrangell-St. Elias) this indecision weakens the State position.

F&WS has acknowledged that it wants the 75,000 acres of state land in the Tetlin refuge. F&WS is considering an array of 130,000 acres of valid selections and tentative approvals in seven other refuges. They have also taken under advisement approximately 325,000 acres on the Alaska Peninsula in the Black Hills caribou calving area. The exact acreage sought from State land by F&WS will not be known for a few weeks.

The valuation process and negotiation cannot commence until the acreage is identified. F&WS personnel have yet to acknowledge that "full public interest consideration values" can be claimed by the state. The theme of this discussion requires the state to justify why federal ownership would be more

appropriate than state ownership of particular habitat lands. This issue requires serious consideration because the public interest multiplier is so high.

SUMMARY

The time frame is extremely tight and delay would benefit the State of Alaska. DOYON's reservations match ours. In order to fully participate in the first round tract selections the State would seek to maximize its candidate exchange lands. That negotiation process could well take more time than is currently scheduled.

The paralell 1002 review and articulation of a State position on the Arctic Coastal Plain management issue should really be the primary state interest. To achieve the State's ANWR objectives will require a thoughtful strategy and a thorough advocacy. The views of many agencies must be sought.

In short the exchange process forces a mobilization of effort for the wrong battle. While required to preserve options exchange effort must be recognized as secondary to state action to open the Coastal Plain of ANWR to oil and gas exploration, development and production.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.
February 6, 1987

The Honorable William P. Horn
Assistant Secretary for Fish,
Wildlife and Parks
Department of the Interior
C St. between 18th & 19th Sts., N.W.
Room 3156
Washington, D.C. 20240

Dear Bill:

The State of Alaska has completed a comprehensive resource assessment of the state areas proposed for exchange to the Department of the Interior (DOI) for oil and gas rights within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR). This assessment was compiled by the Department of Fish and Game with assistance from the Department of Natural Resources. A copy of the assessment report is enclosed for your review.

The report is organized so as to address each of the eight criteria included in the U.S. Fish and Wildlife Service's (USFWS) Alaska Regional Acquisition Priorities. Accordingly, each state exchange candidate area is identified and pertinent information is provided concerning: (1) important fish and wildlife resources; (2) public interest values; (3) the importance of the proposed exchange to the refuge; and (4) potential developmental activities.

This information is provided in order to supplement DOI familiarity with these state lands and resources. I expect this information will prove particularly useful as DOI and the state engage in the process of negotiating final exchange values for these lands prior to ANWR tract identification.

When Congress created Alaska as a sovereign state, Congress repeatedly stated that the vast federal land holdings in Alaska had retarded the development of the territory. Granting land to the new state was necessary to encourage growth, development, the expansion of communities and recreational areas, and basic economic vitality. The Alaska State Constitution (Article VIII, Section 1) and the Alaska

HALL of the STATES — Suite 518 — 444 North Capitol Street N.W. — (202) 624-5858

Statutes (AS 38.04.005) provide that it is the policy of the state to provide for maximum use of state land and resources consistent with the public interest.

Enclosed for your information is a generalized chart (Table 1) depicting the various classification categories and corresponding permitted uses for the state land proposed for exchange. Please note that unless specifically closed, all state land is open and available for mining and mineral locations. The locator therefore acquires the exclusive right to possess and extract any minerals and may use the surface estate as reasonably necessary to exercise this right.

All of the state areas proposed for exchange have fish and game populations of varying interest to commercial guides, outfitters, and lodge operators. State lands historically accommodate a high proportion of this type of use when located adjacent to federal conservation system units or Native corporation lands. The state generally authorizes these uses through ten year negotiated leases which provide for improvements such as lodges, campsites, airstrips, etc. In addition, most of these areas are prime candidates for trapping cabin permits, remote cabin permits and related activities.

The state also operates a successful statewide land disposal program which has transferred since statehood over 400,000 acres into private ownership through a variety of disposal programs. As you know, the state's disposal program occasionally has conflicted with the objectives of several conservation system units in Alaska. The Fireweed Mountain Subdivision within the Wrangell-St. Elias National Park and Preserve and the Village View Subdivision adjacent to Denali National Park and Preserve were examples of such conflict. Obviously, such future conflicts can be avoided by federal ownership of state inholdings. Although some speculate that Native ownership poses a greater future development threat to parks and refuges than state ownership, the state believes this to be an overstatement. Much of the Native corporation land proposed for the ANWR exchange is relatively inaccessible, remote and has developmental constraints. Furthermore, the lands within the Kenai, Kodiak, and Yukon Delta refuges are subject to the refuge management consistency parameters of Section 22(g) of ANCSA, constraints which do not apply to state land. In addition, it is unrealistic to suppose that much of this Native land could be developed in the foreseeable future, if at all, due to overriding local subsistence use

concerns and loss of the tax exemptions provided by ANCSA and ANILCA for undeveloped Native lands.

Finally, in considering the relative value attributable to state lands as opposed to Native lands, your office might also wish to consider the likelihood that Native corporation lands within and adjacent to refuges may be entered into future land bank agreements with DOI, pursuant to Section 907 of ANILCA. Land banking has already proven to be an attractive management alternative for many corporations which desire the benefits afforded by Section 907(c) of ANILCA. Obviously, the land bank option is inapplicable to state lands.

You will notice that certain state lands adjacent to refuges as well as other state land in-holdings within three national park areas remain in our pool of available exchange candidates. Although DOI has thus far only approved about 260,000 acres of state lands and selections within refuges for trade, we feel strongly that additional areas should also be included. These areas include the Cinder River/Mother Goose Lake and Black Hills/Cathedral River areas located immediately adjacent to, and surrounded by, the Alaska Peninsula National Wildlife Refuge and other federal conservation system units. These areas were previously recommended for acquisition by the USFWS through exchange as part of the Bristol Bay Cooperative Management Plan mandated by Section 1203 of ANILCA. In addition, the state has also included certain state national park in-holdings which were identified as high priority acquisition priorities by the National Park Service. I urge your careful consideration of these additional state exchange candidate areas.

In conclusion, the state requests that your final exchange land evaluation process treat state and Native land values in the same manner (i.e., similarly situated lands should be assigned similar values).

I offer these observations as constructive suggestions for your use during the state exchange land valuation process. Please don't hesitate to contact me for clarification of this material.

Sincerely,

John

John W. Katz
Director of State/Federal
Relations and Special
Counsel to the Governor

Enclosures

EXHIBIT 33 PAGE 3

EXHIBIT 33 PAGE 4

TABLE 1 - LAND USE

EXCHANGE PARCEL	AREA PLAN	CLASSIFICATION TYPE	COMMENTS	ALLOWED USES
1. Tetlin	Tanana Basin	Unclassified	Not identified as state land during the area planning process.	MC, OG, MS, ROW, SL, LUP, RC, TS.
2. Alaska Maritime Sundstrom/Long Is.	None	Resource Management	Grazing.	MC, OG, MS, ROW, SL, LUP, RC, TS, GR.
3. Alaska Peninsula Herendeen Bay	Bristol Bay	Resource Management	Coal resources.	MC, OG, MS, ROW, SL, LUP, TS.
4. Yukon Delta	None	Resource Management	Guides and outfitters.	MC, OG, MS, ROW, SL, LUP, GR.
5. Togiak	Bristol Bay	Unclassified	Not identified as state land during planning process.	MC, OG, MS, ROW, SL, LUP, RC, GR.
6. Innoko	None	Resource Management	Oil and gas potential, guides and outfitters.	MC, OG, MS, ROW, SL, LUP, RC, TS, GR.
7. Koyukuk	None	Resource Management	Timber sales, guides and outfitters.	TS, GR, RC, LUP, SL, ROW, MS, OG, MC.
8. Mother Goose Lake/ Cinder River	Bristol Bay	Oil and gas/Public Recreation/Wildlife Habitat	Oil and gas leasing.	OG, MC, ROW, SL, LUP.
9. Black Hills	Bristol Bay	Oil and Gas/Wildlife Habitat	Oil and gas leasing.	OG, MC, ROW, SL, LUP.

MC = Mining Claims; OG = Oil and Gas Leases; MS = Material Sales; ROW = Rights-of-Way; SL = Surface Leases; LUP = Land Use Permits; LD = Land Disposals; RC = Remote Cabins; TS = Timber Sales; GR = Grazing.

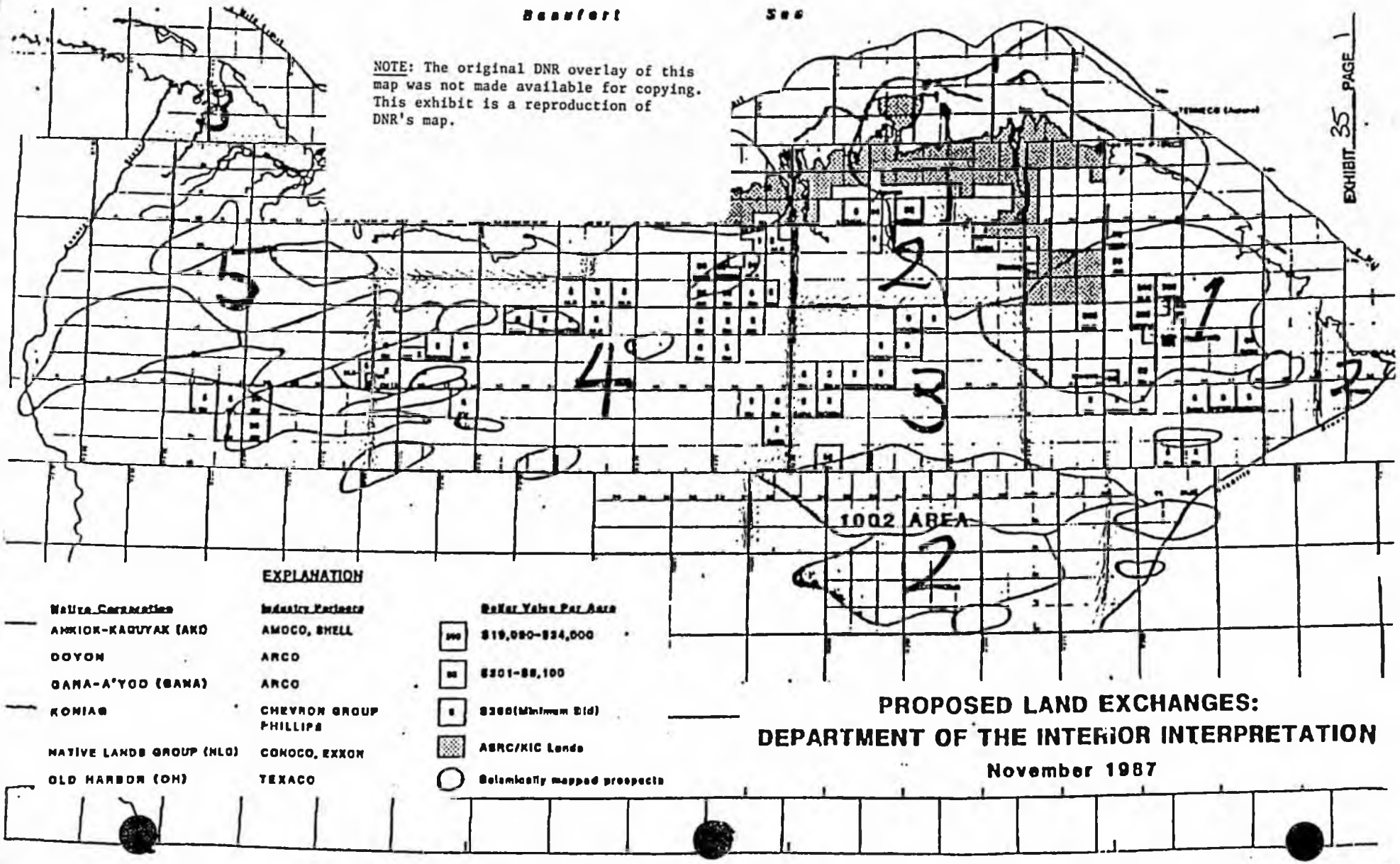
The color-coded overlay and the overlay showing BLM's seismic prospects are intended to convey the "relative" oil and gas potential of areas within the coastal plain of the Arctic National Wildlife Refuge (ANWR). The department has also mapped the location of all prospective subsurface structures identifiable from the geophysical surveys within ANWR; however, because the data upon which these detailed structure maps are based are confidential, it cannot disclose the specific locations and configurations of those structures.

To guide you in your assessment of the relative subsurface potential within the coastal plain of ANWR, the colored overlay portrays what are referred to as "#1 ranked" through "#5 ranked" blocks of acreage, based on our interpretation of the seismic data. The #1 qualifier means those townships within the 1002 area which are underlain by all or a portion of a relatively well-defined structure with interpreted "closure" (trap) mappable from geophysical (seismic) data, and which appear to contain Ellesmerian age or other high potential reservoir rocks. The #2 qualifier means those townships with at least three-way closure (almost certainly a trap?), and with inferred Ellesmerian or other high potential reservoir rocks. For a variety of reasons, those townships with #3 through #5 ranked acreage should be considered marginally to poorly prospective.

34

Simply put--the #1 areas are those areas comprised of townships (23,040 acres) that are the most likely to produce oil and gas discoveries based upon an analysis of all the factors which are typically required to assure exploration success. Townships were the minimum areas selected to portray relative potential simply because the available seismic data cannot identify and define prospectiveness of smaller blocks of acreage. For example, given the seismic data grid within ANWR, it is entirely possible to overlook a subsurface structure the size of Amauligak, the recently announced discovery in the Canadian Beaufort Sea. That structure is reported by Gulf Canada to contain as much as 800-850 million barrels of oil!

Thus, it is important to realize in interpreting these relative rankings that there is, in every instance, one or more mapped structures (or portions of structures) underlying the townships identified as #1 or #2. An individual township boundary may encompass more than the defined limits of one or more isolated structures. However, considering the relative paucity of the data, the acreage adjacent to the mapped structures ranked either as #1 or #2 must be acknowledged as also being highly prospective even though the current interpretation cannot confirm specific closure beneath the area.


Beaufort Sea
NOTE: The original DNR overlay of this map was not made available for copying. This exhibit is a reproduction of DNR's map.
EXHIBIT 35 PAGE 1
1002 AREA
EXPLANATION
Native Corporation
Industry Partners
AMBLER-KOBUYUK (AKO
AMOCO, SHELL
DOYON
ARCO
GANA-A'YOO (GANA)
ARCO
KONIAG
CHEVRON GROUP PHILLIPS
NATIVE LANDS GROUP (NLG)
CONOCO, EXXON
OLD HARBOR (OH)
TEXACO
Dollar Value Per Acre
$19,000-$24,000
$201-$8,100
$200(Minimum Bid)
ASRC/KIC Lands
Seismically mapped prospects
PROPOSED LAND EXCHANGES:
DEPARTMENT OF THE INTERIOR INTERPRETATION
November 1987

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

PO BOX 7016
ANCHORAGE ALASKA 99510

DIVISION OF MINING & GEOLOGY

A Comparison of State and Federal Appraisals of the Arctic National Wildlife Refuge Coastal Plain

by

James J. Hansen
Richard W. Kornbrath

The Alaska Department of Natural Resources Professional Report 90 presents the State's preliminary appraisal of the petroleum resource potential in the coastal plain of the Arctic National Wildlife Refuge (ANWR). The results of this study are compared with the resource estimates in the Department of Interior draft report titled "Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment", which was issued for public review and comment on November 24, 1986.

To assess the potential for in-place oil and gas in this frontier area each study uses the geologic play as the basic unit of analysis. A geologic play is an area which can be viewed as an aggregate of prospects (areas of potential hydrocarbon accumulation) that have similar geologic characteristics and share common geologic elements. In analyzing the hydrocarbon potential of geologic plays, geoscientists familiar with the regional geology make three sets of probability judgments concerning the geological characteristics of these plays. These judgments comprise the basic geologic data necessary for a resource appraisal.

The first set of judgments concerns the individual probabilities that each geologic characteristic common to the play area is favorable for petroleum accumulation. These characteristics are: petroleum source, favorable timing of oil generation and migration, availability of potential migration paths, and reservoir rocks in which to retain the oil. These individual probabilities are multiplied together to arrive at the "marginal-play probability".

The second set of judgments involves probabilities that concern the presence of three geologic characteristics common to the individual prospects within each play area: trapping mechanism, effective porosity of the reservoir rock and hydrocarbon accumulation. The product of these probabilities is the "conditional-deposit probability".

The "success factor", which gives the probability of a well encountering commercial accumulations of oil, is a product of the marginal-play probability and the conditional-deposit probability.

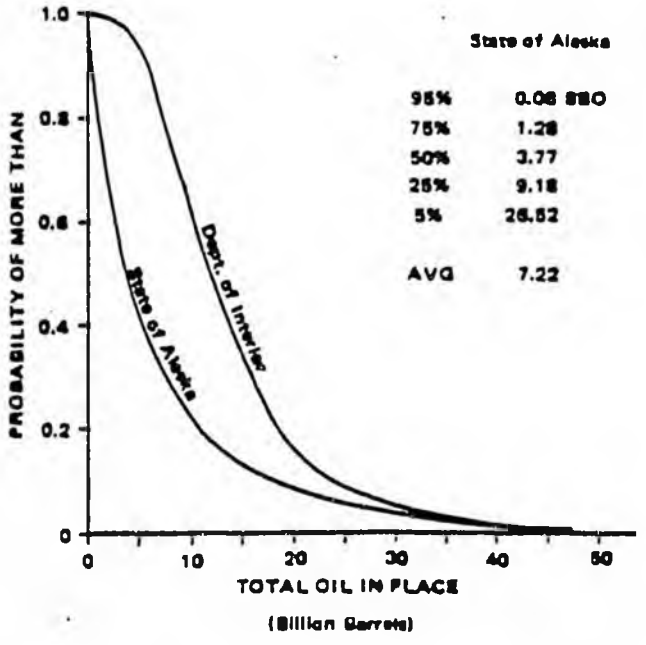
The third set of judgments involves the geologic parameters that determine the potential reservoir volume for a deposit. These reservoir characteristics include area of closure, trap fill, reservoir depth, reservoir lithology, and relative hydrocarbon mix (oil vs. gas).

EXHIBIT 36 PAGE 1 01515

Once a range of values for each of these characteristics is determined, computer simulation programs are used to analyze these characteristics and to arrive at a probability distribution for in-place oil and gas for each play, and for the frontier area as a whole. The State uses the Resource Appraisal Simulation for Petroleum (RASP) program, which employs a Monte Carlo method of randomly sampling probability distributions for each geological characteristic as many as 3,000 times. The Interior study uses Fast Appraisal Simulation for Petroleum (FASP), which utilizes a statistical approach to probability theory. The FASP method is based on a seven-point probability distribution for each geologic characteristic (i.e., a 95% probability of a given sandstone having 10 feet of net pay, a 90% probability of it having 15 feet of net pay, etc.). FASP computes a mean and the standard deviation from each distribution, then combines these figures to arrive at the oil in-place for each probability level.

Both RASP and FASP simulations yield lognormal distributions that show the probability of these being a given quantity of in-place oil or gas. The lognormal distribution, when plotted as a "bell type" curve, is skewed to the right. This means that the simulation processes result in the generation of many small values for oil in-place and relatively few large ones. Mathematically, the generation of a lognormal distribution is the result of a multiplicative relationship of the input parameters and of the random sampling that is conducted. The effect of the multiplicative relationship is that small variance in the input parameters can result in significant changes in the final numbers.

The following figure compares the probability distribution curves for in-place oil from the two appraisals:



	State of Alaska	Dept. of Interior
95%	0.08 BBO	4.8 BBO
75%	1.28	8.2
50%	3.77	11.8
25%	9.18	17.2
5%	26.82	29.4
AVG	7.22	13.8

The Department of Interior distribution curve is right-shifted relative to the State curve, meaning that for any given probability, Interior estimates that there is more oil in-place. Alternately, Interior estimates that there is a higher probability for a given amount of oil to be in-place, relative to the State estimate. Geoscientists make subjective judgments to select the geologic characteristics that are input into these two modeling programs. Because there are limited subsurface data in ANWR, there will understandably be differences in the geologic characteristics input into each modeling program. In comparing the two studies conducted, there are four main differences concerning the input data that can account for the divergence between these two distributions:

1. Difference in Geologic Plays

   With the exception of the Kemik-Thomson Sand Play, the two studies analyzed different geologic plays. For example, the State's Post-Albian Play encompasses Interior's Topset, Turbidite, and Imbricate Fold Belt plays.

2. Appraisal of Ellesmerian sequence rocks

   The Interior appraisal attributes approximately 50% of the oil to Ellesmerian rocks, with an average estimated oil in-place of 7.2 BBO. The State's appraisal only assigns a small probability of there being a significant quantity of this rock sequence in the subsurface; the average estimated oil in-place is 1.13 BBO. At probability levels above 25% the State appraisal exhibits little confidence of there being any Ellesmerian rocks; the federal report indicates that above this probability level there could exist Ellesmerian rocks capable of containing up to 9 BBO. However, the Interior report does state that if most of the Ellesmerian rocks are missing in most of the 1002 area, their assessment number would be reduced considerable (DOI Report, p. 54)

3. Success factors

   The State's success factor varied from 8% to 1% for the Ellesmerian rocks, was 9% for the Kemik-Thomson Sand Play, and was the highest, at 12.5%, for the Post-Albian Clastics Play. Though the success factors are not presented in the Interior appraisal, it can be inferred that their percentages were considerably higher (on the order of 10 - 25%) for all plays, since assigning higher success factors will shift the distribution curves further to the right.

4. Appraisal of pre-Mississippian rocks

   State geologists disagree with Interior geologists as to the contribution of pre-Mississippian rocks for oil accumulation. Though they have little effect on the distribution curve, Interior's appraisal includes these rocks, while the State appraisal does not.

Volumes of yet undiscovered petroleum resources in frontier areas are extremely difficult to estimate with a high degree of reliability. In the case of ANWR, the lack of sufficiently detailed subsurface geologic information results in a wide variance in the geologic characteristics that form the framework for the resource appraisal methods. In fact, geoscientists will differ in their opinion as to what should constitute a geologic play. It is not surprising (in fact, it should be expected) that these somewhat subjective scientific judgments, based on limited geologic data, will vary from group to group.

In addition to the variance in geologic input, inherent problems exist in the applied methodology and presentation of the resulting data. Lognormal distributions are the result of the multiplicative relationship of the input data; small variances in these input parameters can result in large differences in the resulting totals. It is important to note the fact that both probability distributions show the possibility for a wide range of resources. This is simply a reflection of the high uncertainty in the input data, and it should not be interpreted in a negative manner.

A comparison of the results of the two studies reveals the following:

1. Both reports conclude that the key elements requisite for petroleum accumulations have been demonstrated to be present beneath the coastal plain of ANWR.

2. Both reports conclude that there is a small possibility that significant and unusually large petroleum resources are present beneath the coastal plain.

3. Both reports conclude that there is a greater likelihood that the resources present are smaller in size. However, prior to its discovery, some industry officials had estimated that there was only a two percent probability that the Prudhoe Bay area contained two billion barrels of oil. They did not anticipate the twenty three and a half billion barrels of oil that are now calculated to have been initially in-place.

4. While the State study indicates smaller resources at the higher probability levels relative to the Interior study, there is close agreement between both studies at the lower probability levels.

5. Neither study can be labeled right or wrong. Both studies are valid professional estimates of resource potential under ANWR's coastal plain. Exploratory drilling will ultimately determine which estimate was more accurate.

EXHIBIT 36 PAGE 4

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES

State of Alaska
DIVISION OF OIL AND GAS

TO: Judith M. Brady
Commissioner

Thru: James E. Eason
Director

FROM: Rich Kornbrath RK
Petroleum Geologist

DATE: June 15, 1987

FILE NO:

TELEPHONE NO: 762-2185

SUBJECT: Ongoing concerns with Interior's PRESTO analysis of recoverable reserves for the 1002 area.

Attached is a brief analysis of technical problems with the Department of Interior's (Interior) 1002 area resource assessments.

As you know, we have already documented the resource assessment problems having to do with the inadequacy of the ANWR database, such as seismic grid size, the lack of well data and the complex geology. We also pointed out Interior's misapplication of regional resource assessment methodology for tract-specific valuations, as well as its apparent willingness to conduct the land exchanges based upon minimum acceptable bid values as opposed to true fair market value.

The attachment shows that Interior used abnormally low geologic risk (high success factors) for its evaluation estimates and that these percentages are not technically defensible for the purposes of an equal value land exchange should they be questioned or made public.

I believe that if this particular technical problem receives much publicity, it could be used by groups opposed to the ANWR opening as a means to discredit Interior's resource analyses and thereby delay the opening, cause ANWR to be closed, or provide support to the proponents of an NPRA-type government drilling program.

I understand that by early July Interior intends to convene the tract selection meetings in Washington, D. C. Their intent is to finalize and initial contracts regardless of the status of the Trustees' suit at that time. With this in mind, and realizing that once contracts are signed the state will have an uphill battle, I believe that we should make our concerns fully evident to Secretary Hodel. It is important that we point out the problems and make a request, officially, based upon Alaska's potential financial interests and its concerns regarding the opening, for a full, technical review of Interior's evaluation procedures prior to the tract selection meetings.

The request for a "moratorium" on initialing the exchange contracts could be based upon Alaska's contention that, given the technical problems with the evaluation procedures, as well as the other concerns with the land trades, it is prudent to delay contract finalization and have the federal and state technical staffs meet privately to discuss specific areas of concern.

37

cc: Lennie Gorsuch
James Eason
Gary Gustafson
James Hansen
Tom Koester

Attachment
0856E

01745

EXHIBIT 37 PAGE 1

02-001A (Rev. 10/79)

Analysis of Technical Problems with

Recoverable Resource Estimates in the Federal 1002 Report

The Department of Interior (Interior) prepared an assessment of in-place oil resources for the 1002 area using methodology similiar to what was used by the state. Unlike the state, however, Interior went a step further and published estimates of recoverable resources based on a prospect-specific analysis and various economic assumptions. Unfortunately, the specific parameters that went into the federal estimates have not been published. The draft and final 1002 reports do not provide detailed information on the analyses, and without detail on the input parameters, it is difficult to determine exactly what federal evaluators have done.

Interior is presently involved in using the prospect-specific analysis and economic assumptions to derive dollar valuations for individual 2,560 acre tracts for the purpose of the land exchanges proposed by Assistant Secretary Bill Horn.

The Division of Oil and Gas has attempted, through communication with federal scientists, use of the limited data in the 1002 report and inference, to ascertain, specifically, how the federal estimates have been made. The problems related to the inadequacy of the ANWR database for these types of detailed analyses have been well documented in previous discussion papers and involve the seismic grid size, the lack of well data, and the complex geology. Other problems identified include Interior's misapplication of regional resource assessment methodology for tract-specific valuations, and the use of minimum acceptable bid values as opposed to true fair market value for the land exchanges. However, based on the present work, it is clear that additional technical problems may exist in the federal evaluations.

The present analysis indicates the single major difference between the state and federal in-place estimates is in the assignment of geologic risk to the individual plays.

The geologic risk or "play risk" is one minus the product of the marginal play probability and the conditional deposit probability. Marginal play probability describes the favorability of four play attributes: hydrocarbon source, timing, migration and reservoir facies. Conditional deposit probability describes the favorability of three prospect attributes conditioned on all the play attributes being

favorable: trapping mechanism, effective porosity and hydrocarbon accumulation. The following relationships are used for the standard RASP and FASP resource assessments.

Play Attributes:

Mp = S x T x M x R , where Mp = marginal play probability
S = hydrocarbon source
T = timing
M = migration
R = potential reservoir facies

Prospect Attributes:

CDp = TM x P x HA, where CDp = conditional deposit probability
TM = trapping mechanism
P = effective porosity
HA = hydrocarbon accumulation

Geologic Risk = 1 - (Mp x CDp)

In this context, the geologic risk is essentially the "dry hole risk" and the "chance of success" is simply Mp x CDp.

For example, in Professional Report 90 (the state's RASP assessment of the 1002 area), for the Permian-Triassic Clastics North Play, the following values were assigned:

S = 1
T = 1
M = 1
R = 0.5 therefore, Mp = 0.5

TM = 0.3
P = 0.8
HA = 0.4 therefore, CDp = 0.096

Geologic Risk = 1 - (0.5 x 0.096) = 0.952 or 95%

For this particular play, there is a 95% chance of drilling a dry hole on a randomly selected prospect and conversely, only a 5% chance of drilling a successful well.

The state's success factors for the seven plays evaluated in the RASP analysis are less than 10%, except for the Post Albian Clastics Play which had the highest success factor of 12.5%.

The federal success factors, although not published, are known by us to be on the order of 20% to 30%, or better. Interior also evaluated seven plays, which are similar but not identical to the state's geologic plays.

The federal success factors are unusually high for assessments of frontier areas such as the ANWR coastal plain and, likely, could not be technically defended. The geologic risk or, conversely, success factor has a very standardized definition as demonstrated above. In regional resource appraisals throughout the United States and worldwide, success factors in excess of about 15 percent are only applied in areas where a play has prospects with demonstrated productive capability trending into the area being assessed. Further, the Folded Ellesmerian/Pre-Mississippian Play in the federal 1002 report accounts for approximately 50 percent of the oil in place in the federal appraisal. Yet, the text of the 1002 report acknowledges the extreme uncertainty of these rocks even being present in the play area. This uncertainty must be assessed by use of reasonably high geologic risk factors, and this is not, apparently carried out in the Interior calculations.

The greater problem, however, comes with the next two steps in the overall federal resource assessment. First, Interior uses a prospect-specific analysis of 26 mapped prospects and PRESTO methodology to establish recoverable resources at various probability levels and economic assumptions. As you know, this type of prospect analysis is similiar to what the state conducts prior to leasing. For each prospect so analyzed, the following input parameters are required: area of the prospect, percent fill of the trap, recovery factors, net pay thickness, geologic risk, and economic inputs.

In the absence of detailed seismic mapping and subsurface data, Interior is forced to use sketchy input parameters that have been ranged with an associated triangular (three point) probability distribution. Interior's prospect analysis apparently uses the same range of values for input parameters as was used in its FASP in-place estimates. Beyond these concerns is the fact that Interior, based on our best information, has used the same, technically indefensible high success factors for the prospect-specific recoverable resource analysis as it did for its in-place resource assessment.

For comparison, the state's in-house prospect analyses used success factors of 1% to 5%. Interior is apparently using success factors of 20% to 30%, or better. These high levels of success would, normally, only be applied in areas with known or developed fields, in drainage situations, not in frontier areas such as ANWR.

Of course, the final step taken by Interior is to use these same prospect estimates to affix a dollar value to individual 2,560 acre tracts for the purpose of land exchanges. The effect of the high success factors is to substantially increase the dollar value on individual tracts. Although this result is not undesirable in terms of attempting to get a fair "price" of inholdings for the subsurface estate in the proposed trades, it

is not technically defensible, and in no way reflects the "actual" fair market value which can only be attained through competitive leasing.

MEMO

To: Jim Eason

Director, DO&G

D R A F T

From: Rich Kornbrath

Petroleum Geologist

August 4, 1987

Subject: DOI press release regarding ANWR land selections

The Resource Evaluation staff has reviewed the limited information made available by the Department of the Interior which describe the results of the recent ANWR land exchange meetings. As you know, on July 9 through 11, 1987 tract identification and selection was completed in a series of closed meetings between DOI staff and representatives of six different native groups.

The press release contains less than two pages of text, accompanying lists of nominated and selected tracts (including the DOI assigned values) and a small-scale location map. There was very little substantive information provided to enable analysis of how dollar values were derived or how competing selections were adjudicated. BLM and FWS representatives have indicated in phone conversations that no further information will be made available. According to the press release, the native groups traded a total of 891,000 acres of inholdings valued at $538.7 million for 166,278 acres of ANWR subsurface rights valued at a comparable amount.

With the limited information now available it is difficult to determine precisely the impact of the exchanges. The staff believe, as we have discussed with you previously, that BLM staff have used a database that is entirely inadequate for the purpose for which it is being used (ie., "equal value land exchanges"). We believe that the frontier nature of the area, the limited and relatively poor quality geophysical (seismic) data, the lack of subsurface geological (well) data, and the high risk of the geologically complex structures would, likely, yield relatively low (or conservative) dollar values for individual tracts using technically correct prospect-specific analysis methodology.

However the BLM-assigned dollar values on most tracts seem to be impres[illegible]ly high as compared to bids in Camden Bay and the

38

eastern Beaufort Sea. We are at a loss to explain how the high values were calculated. Possible explanations include some type of "enhancement" modifier that inflated the value to take into account the lack of competition in the selection process, or the use of overly optimistic or inflated input parameters, such as the expected price of oil, discount rates, development costs, assumed reservoir thicknesses, percent fill of the trap, etc. Another factor which could have produced inflated tract values is the assignment of atypically low geologic risk factors on the individual prospects. How these "perceived subsurface values" relate to the appraised values of the surface estate from the inholdings and how much of the value was simply "negotiated" is unknown. How these values were treated with respect to the current 10% retained federal interest, the 90% state statutory revenue share or the recision clause that reduces the risk to the native groups is also unknown. Without details of the process and methodology used by BLM, we can only speculate.

****

The following is a summary of the pertinent information presented in the DOI press release:

Total (approx.) federally-owned 1002 acreage = 1.53 million acres

Total number of tracts = 576 (approx. 2560 acres per tract)
Total number of tracts selected = 73 (65 whole tracts, 8 partial)

Range of tract values:

Greater than $19,000/acre =	8 tracts
$19,000-$1,000/acre =	13 tracts
$1,000-$320/acre =	2 tracts
Under $301/acre =	50 tracts
Total	73 tracts

Total native inholdings exchanged = 891,000 acres
Total value of native inholdings = $538.7 million

Total subsurface estate selected = 166,278 acres
Total value of subsurface estate selected = $538.7 million

Total value of remaining unselected tracts = $3.5 billion

From these figures, several interesting calculations can be made that reflect DOI's assessment of value per acre:

Total value of the federally-owned 1002 acreage = $4.0387 billion

or, $\frac{\$4.0387 \text{ billion}}{1.53 \text{ million acres}} = \$2,640$ per acre (average)

00563 00565

EXHIBIT 38 PAGE 2

Total value of the selected subsurface estate = $538.7 million

or, $538.7 million / 166,278 acres = $3,240 per acre (average)*

* The eight highest-priced tracts were valued at over $19,000/acre, tending to inflate this average.

Total value of the native inholdings exchanged = $538.7 million

or, $538.7 million / 891,000 acres = $605 per acre

Total value of remaining unselected tracts = $3.5 billion

or, $3.5 billion / 1.53 million acres - 166,278 acres = $2565 per acre

****

Paragraph two on page two of the DOI press release states that "Of the 73 tracts identified, 34 were on potential oil and gas containing structures mapped for the 1002 study and report to Congress. The 503 (85.5%) tracts not identified remain available for a federal leasing program and include 87.7% of the tracts over mapped structures.". This statement is completely in error, and very misleading. Based on the value per acre that DOI assigned, these tracts must overlie potential structures or traps, otherwise the values assigned could not have been derived using prospect analysis methodology. Further, the fact that these particular tracts were selected in the first round of a non-competitive process by well informed oil companies indicates strongly that these tracts overlie mapped structures. Several important questions immediately come to mind concerning the DOI evaluation, but of course cannot be answered without detailed information on the evaluation process. What is the basis for minimum value assigned by DOI to the selected acreage? How was value assigned by DOI to areas without mapped structures? What reliability can the DOI values have if their evaluation missed or did not consider, for the evaluation purposes, some of the most promising structures (as indicated by the "bidding")?

In the Draft 1002 report on page 60, Figure III-10, structural culminations are depicted for the highly deformed younger section of rocks. The draft report states "No prospects were adequately resolved within the detached and highly deformed ...rocks." Only the 26 deep seismically mapped potential traps were considered in the economic analysis in the final report and, presumably, for the tract-specific evaluation (tract-specific evaluations necessitate having mapped prospects). DOI has assigned a dollar value to tracts that they state, essentially, cannot be evaluated

due to insufficient map resolution. However, a minimum value of $300/acre appears on virtually all of the tracts (over 30 of the 73 selected) overlying the "unmappable" Tertiary folds. These tracts have obvious high perceived value because they drew substantial interest by industry in the first round of a noncompetitive selection process.

The seismic mapping by the Resource Evaluation Section shows that 100% of the tracts selected overlie mapped structures. Further, our mapping indicates that the selections have targeted the specific structures that (based on the limited seismic grid) have demonstrable four-way closure. These are very well-informed selections and encompass a high percentage of the best acreage available in the coastal plain. These selections, together with the ASRC/KIC trade remove well over a quarter of a million acres of the best coastal plain acreage from any future competitive leasing program. The main producing reservoir of the giant Prudhoe Bay Field encompasses about 150,000 acres. In addition, 59% of the recoverable oil (5.9 billion barrels) is found under the best 40,000 acres in the field; 94% of the recoverable oil (9.4 billion barrels) is found under the best 100,000 acres in the field.

The fact that, as stated in the DOI press release, these latest selections only represent a small (10.8%) percentage of the entire 1002 area is misleading and totally immaterial. These selections may well represent 100% of the producible petroleum resources, and, at the very least, are the most prospective tracts that would be leased and explored in first round drilling on the coastal plain.

The opportunity to explore tracts early, prior to competitive bidding is an extremely valuable advantage. Without a doubt, those companies with knowledge of the Chevron Jago River (KIC) #1 well had a considerable advantage over the other trade participants. Likewise, early drilling of exchange tracts prior to leasing of adjacent tracts represents an advantage that is worth a considerable amount to the companies involved. Given the limited information available to us, it is impossible to confirm whether this very real "value" was taken into consideration in the selection process. The most likely result of drilling on the selected tracts prior to leasing is condemnation of adjacent leases. Unfortunately, even in the most promising prospecting areas (remember Mukluk), historically, the outcome of exploration is negative. The potential revenue loss as a result of early drilling and condemnation of adjacent unleased tracts prior to competitive lease sales could be considerable. A complete analysis of the tract selection process also needs to consider the fact that no "real" money exchanged hands between DOI and the native groups. Had DOI been forced to pay cash for the native groups' inholdings or had the native groups been forced to pay cash for the ANWR leases, the assigned values of both sets of

properties might well have been quite a bit lower.

One final observation regarding the selections involves multiple nominations. Apparently at least 19 tracts received multiple nominations, as listed by DOI. However, the selections do not reveal whether conflicts arose on these popular tracts, and if so, how they were resolved. It seems highly unlikely that the selections could have been made without significant conflicts on tracts desired by multiple groups. It is unknown to us whether prior meetings were undertaken to pre-select the most popular tracts or whether arrangements were made through some form of negotiations at the selection meetings to resolve competing interests.

Any further analysis of these latest selections will necessitate having considerably more detailed information on the subsurface evaluation procedures, the selection process, and the surface appraisal procedures.

Summary Notes:

1. The existing seismic data is adequate to show structures that would be selected on a first round of leasing. Our mapping indicates that 100% of the tracts selected overlie structures and these structures exhibit 4-way closure.

2. The selections overlie a high percentage of the best acreage available on the coastal plain. When combined with the ASRC/KIK acreage, most of the land over the highly prospective structures is removed, clearly not leaving 87.7% of the tracts over mapped structures available for leasing as stated by Interior officials.

3. We believe the data base is inadequate to establish true fair market tract value for the purpose of "equal value" land trades. The data base includes seismic, geologic, engineering, and economic factors that are highly interpretive and when combined, yield unacceptably high uncertainties in the tract values.

4. Normal competition, which is a key element of competitive leasing, and establishing true fair market value through competitive bidding is lost for both the tracts already selected and the remaining acreage. The native corporation land holders and their partners will have a competitive advantage if allowed to evaluate their tracts. The most likely result of exploratory drilling is condemnation of adjacent leases.

39

EXHIBIT 39 PAGE 1

al conservation will be instruct-
in some kind of intelligible form
se as soon as that can be man-

lpful. I mean, I do not want to

nding, subsequent to what the
fore yesterday, that in fact the
ry recently, any full-time moni-
g what has happened at Prud-

be that is not correct. But we

n, if I might. The question has
t may be from the state leasing

lands, there is, because of the
hat ANWR does not allow the
ver, that the leasing is in fact,
attempt to increase the pres-

correct allegation? How do

that particular area has been
me years.
that the commissioner of natu-
hly had in mind the future de-
e ANWR. I suspect that is the

tion would be very influential
newer the main question. And
leveloped, it is not very likely
going to be productive of com-

was promising, and we put it
lly did not see any reason to

go back a couple questions ago
s, with respect to the perform-
l matters that relate to Prud-

ak they have tried, they have
ave made some mistakes. But
record.
see to appreciate. It is a very
ell as the pipeline.
ng whether it is or not. I only
y comes up and says, this is a

gram, great. What data do we
gram? I just would like to un-
ment like that. It sounds good
k and see if there is appro-

I do not know, Mr. Chairman, if you got into the Chairman's idea of the split on potential revenues. Have you discussed that with the governor?

The CHAIRMAN. No.

Senator WIRTH. I was wondering if you were familiar with the suggestion that has been made by The Chairman of the Committee?

Bennett, I do not want to be one to paraphrase your suggestion. Maybe you might just repeat that for the record, so that the governor is sure what your suggestion is, and we might get his comment on that.

The CHAIRMAN. Well, I have a bill pending, Governor, that would split the oil, if permission is granted, and that is very much an undecided question. We are not prejudging that at all.

But the bill would say that if we should allow drilling that the State of Alaska would get 50 percent, 25 percent to the Federal government, and another 25 percent would basically go for property acquisition, for the National Park Service, Fish and Wildlife Service, the Bureau of Land Management, and the Forestry Service.

The question to you, of course, would be, how do you feel about 50 percent to the State of Alaska? Is that too much?

Governor COWPER. Well, Mr. Chairman, 90 percent is always better than 50 percent. But we also recognize that 90 percent of nothing is nothing.

Let me put it this way. The Congress has the jurisdiction to decide that question. Our position is as stated earlier, that we entitled to a 90 percent share, based on a historical analysis of how that number got into the Statehood Act to begin with.

So I think perhaps I will let it rest at that.

Senator WIRTH. Governor, I thank you very much for coming down and helping us out. And we look forward to working with you as we sort our way through it.

As you know, it is a very charged and difficult issue, and we appreciate your being here. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Wirth. Thank you, Governor. We appreciate your testimony.

Governor COWPER. Thank you. Mr. Chairman.

The CHAIRMAN. We have some more questions for you.

Senator MURKOWSKI. I am wondering, Governor, if we can accurately ascertain this year the survival/mortality rate, based on wherever the caribou finally calve this year.

Does that give us an indication of what will happen if the caribou are displaced from a preferred area?

Governor COWPER. Well, I think that you would have to have some comparative numbers.

I think that probably the most valuable thing would be to see whether the caribou were displaced from the calving area by simulated facilities, and what happened once they were displaced.

Do they wander down into areas that are less, provide them less feed? Do they wander into areas where their calves are going to be eaten up by various——

Senator MURKOWSKI. So we will have some information this year, because there are a lot of biologists up there.

I am over my time, but I would appreciate, for the record, if you would give us some idea, as you are able to develop it, of defining the are a little more precisely. Because it is going to create a problem.

Senator WEICKER. Would the Senator yield?

Senator MURKOWSKI. Yes.

Senator WEICKER. Thank you. I do not know if you heard about the testimony two days ago, that the Interior Department solved the core calving area problem.

They just deleted it from the final report, and that was their way of solving the problem. So as you respond to Senator Murkowski, I just want to tell you there is another ingenious way for sorting through that complicated problem.

Governor COWPER. Well, it is just one of those things. Everybody knows it is there, and nobody can describe it.

It is a little like paraphrasing the remark about pornography that Justice Stewart make some years ago. But everybody knows that there is an area where a lot of the caribou come, probably a majority of them, during most years, when the conditions are more or less normal up there.

It is our job to describe it as specifically as possible, and all we can do is use whatever data we have to try to put it together the best that we can. It will not be exact. I know that.

Senator WEICKER. I thank the Senator for yielding.

Senator MURKOWSKI. The land exchanges have been brought up, and we are faced on the Committee with the reality of, is it in the national interest, say, to pick up the bear refuge on Kodiak Island that Kodiak holds, vis a vis allowing a land exchange in ANWR.

And the question of what is good for the Federal government is not necessarily what is good for Alaska. But in your opinion do these kind of exchanges make sense from the standpoint of having that kind of a refuge in the state? That is my last question.

Governor COWPER. We are not opposed to the concept of land trades. We just think they are little bit out of order in terms of this legislation.

We think that there may be a time when they ought to be considered. I am sure the Congress would like to take a look at additions to the refuge system. And maybe that could be something that could be taken up after some disposition has been made of this particular piece of legislation.

We are not opposed to it. We just think that the process is flawed, which is what we said earlier in the year.

Senator MURKOWSKI. I think it is evident that the process has to be approved by Congress. So when you say flawed, I am a little confused as to what your specific concern is.

Governor COWPER. Well. Senator, I was referring to the way in which the meetings to negotiate the land trades were taking place.

I felt that the state frankly was a second-class person at the table. I felt we did not have the kind of information that the other parties had, and we thought that it was simply a matter that needed to be taken up not before the legislation, which would decide whether or not to open up the Coastal Plain or not, but after.

We thought that things were simply out of place there, and we said so. And that is why I ordered my people to withdraw from the negotiations. I understand that there are other views. There always are in this business. That is the view that we had.

Senator MURKOWSKI. Well, I am wondering, if you take Kodiak as an example, just because it is one that is familiar to the Committee and the desirability of adding to the national land treasure this valuable bear refuge, what in your time frame is an appropriate time for Congress to take that up? Or other exchanges that are proposed to Congress?

Governor COWPER. Well, to the extent that I have got any control over it, which is none, by the way, I think the logical way to do it would be to first answer the question as to whether or not the Coastal Plain is going to be open or not.

Nobody wants any land in there, I do not think, except for the caribou, if it is not going to be explored and developed. Once that question is answered, then it seems to me that it would be in order to have an open process to discuss whether land trades would be in the best interest of the country or not.

Senator MURKOWSKI. So you are saying that if this Committee authorized the opening of ANWR, at that point you would not object to the discussion of exchanges.

Governor COWPER. Well, actually, we do not object to the discussion at any time.

Senator MURKOWSKI. Well, Congressional action. Congress has to address it if it is going to be viable.

Governor COWPER. It seems to us that the time to do it would be after the main question has been answered.

Senator MURKOWSKI. Which is once this Committee or once the Congress authorized the opening of ANWR, then you think it would be appropriate.

Because obviously if there is going to be a land exchange, it is going to affect the leasing proposals, because it is either going to transfer into private Alaskan ownership on an exchange basis, or it is going to be part of the overall leasing.

Governor COWPER. Well, in a time sequence, you could have the bill pass, and then discuss land exchanges, and then have a lease sale. You could do it that way.

Senator MURKOWSKI. That it correct. Would you propose that that would be an appropriate way? I am just trying to get the state's position on this.

Governor COWPER. Well, I am not proposing——

Senator MURKOWSKI. Well, it is important that we have for the record what the state's position might be.

Because it is a subject that has come up before this Committee, and there are proponents in the state, obviously, and you have heard from them and so have I. And there is interest on the part of the U.S. Fish and Wildlife Service to acquire these assets.

Governor COWPER. Well, there is nothing generic about the land trade that causes them to be not in the national interest.

As a matter of fact, a good case could be made, once a decision as to whether to open up the refuge or not has been made, a good case could be made that it would be in the national interest to trade off

y out of place there, and we
people to withdraw from the
are other views. There always
hat we had.
ndering, if you take Kodiak
that is familiar to the Com-
to the national land treasure
r time frame is an appropri-
Or other exchanges that are

at that I have got any control
think the logical way to do it
n as to whether or not the
t.
do not think, except for the
ed and developed. Once that
me that it would be in order
ther land trades would be in

ng that if this Committee
hat point you would not

e do not object to the discus-

ional action. Congress has to

at the time to do it would be
rred.
this Committee or once the
ANWR, then you think it

to be a land exchange, it is
because it is either going to
ip on an exchange basis, or it
g.
sequence, you could have the
anges, and then have a lease

act. Would you propose that
I am just trying to get the

roposing——
portant that we have for the
be.
me up before this Committee,
te, obviously, and you have
here is interest on the part of
acquire these assets.
thing generic about the land
national interest.
be made, once a decision as
has been made, a good case
national interest to trade off

those lands within the refuge for lands that have a very high wildlife value, for instance, on Kodiak Island.

I think you could make that case, and I think that that case would rise or fall on its own merits, from the standpoint of the national interest. That is the way we look at it.

Senator MURKOWSKI. Finally, as the debate on leasing the Coastal Plain continues, there will undoubtedly be extensive discussions continuing on the impact of exploration on the Porcupine Caribou Herd.

If the debate demonstrates, Governor, to your satisfaction that there will be no detrimental impact on the population herd, will the state perhaps change its request for a 7 year delay in further Congressional review?

Governor COWPER. Well, the cart is kind of way out there in front of the horse on that one, Senator, We figure it will take us about 7 years to figure out whether there will be an impact or not.

If I were convinced today that there would be no impact on caribou calving through development activities, I would not have brought up the core caribou herd exemption to begin with.

My biologists, however, have told me that there is in fact a substantial possibility that there will be an impact on the survival of the calves. And that is the reason that we brought up this temporary deferral.

Senator MURKOWSKI. You had proposed to use the 7 years to simulate, to gather evidence. You would put simulations in the area.

Governor COWPER. Well, we think that at the end of 7 years we will have a pretty good set of figures and data to justify whatever conclusions we——

Senator MURKOWSKI. I understand that. You understand our problem, is the question of, you know, if we do authorize, what do we exclude?

Because there is a lack of definition in the Department of Interior, and there is a lack of definition from the state. And you are suggesting that we work together to address this in time, and we are certainly willing to do that.

Governor COWPER. Well, we were not planning on throwing the ball back in your lap. We were going to try to define those areas, with the best information that we have.

Our problem is that about a week or 10 days ago we discovered that conflicting methodologies had been used and then sort of thrown in the same pot and stirred up and then out come these very specific areas out of that pot. Well, it just does not work.

Senator MURKOWSKI. Well, and we are both aware that there is a significant influence from some of the extreme environmental groups that do not want any activity of any kind to take place in the entire Coastal Plain or any portion of the Coastal Plain, and they will use any excuse possible or any opportunity that would foreclose any opening of ANWR as we propose.

Governor COWPER. Well, I am sure that is correct, Senator, and I guess there are also people that do not care what happens to the Caribou. But I am constrained to do what I can for both sides.

Senator MURKOWSKI. I think we all are, and I think the Prudhoe Bay experience is one that is pretty nice to have behind us, because it has proven successful.

I understand as well that very few of the calves this year have been born in the general ANWR area, which we are still trying to decide where it really is.

From the standpoint of the concentration, the majority of the herd is still on the Canadian side of the border, and only a few caribou have reached what we generally refer to, whether it be yourself, Senator Stevens, or the Department of Interior, as the preferred calving area.

And I think it would be appropriate for The Chairman, with his concurrence, to have for the record whatever figures are accurate, ultimately this year would be very helpful.

The last question that I have, and it refers to, I think, the communication that you and the senior Senator had, and that is the question of exploration vis-a-vis production.

And I believe you testified that your concern is the disruption of calving during production, not necessarily exploration, because we agreed exploration would be done in a time where the caribou were not around.

Yet in your proposal you call for a 7 year study on calving impact in ANWR, and I guess the concern is, how can we have a 7 year study in ANWR before production begins? Because you are kind of conditioning, okay, this is an area I think we need——

Governor COWPER. Senator, that is not the import of my remarks. We think that production should take place in all of the areas of the Coastal Plain except the so-called preferred calving areas or core calving areas, or whatever you want to call them.

And in those areas what we wanted to do was to defer, actually defer leasing—that was our position—for that period of time, so that we could figure out what the effect of development and production would be on the calving area.

Now the rest of the territory there, we have got no problem with. And by the way, the indication is, while nobody knows for sure exactly where we are going to wind up with defining those areas, probably a couple hundred thousand acres, which is a pretty low percentage of the acreage on the Coastal Plain.

Now with respect to Senator Stevens' previous question, which you just brought up, about exploration, I do not have any problem with exploratory activities. The problem is that I was trying to be real about the oil industry.

I do not think anybody wants just a license to go up and do exploratory work. They want a lease. They want to be able to produce whatever they find.

And I think that the experience that we had in the national petroleum reserve, west of Prudhoe Bay, indicates that if you contract for the exploration of areas, you do not get much. I think you have to put some incentives in there, and that is what we were thinking about.

Now if it is the will of this Congress to somehow structure a program of exploration up there alone, then I would not see why you would have to accept the core calving areas, because they are not there when that exploratory activity takes place. They are in Canada.

Senator MURKOWSKI. Well, I think you are aware that one of the difficulties we are going to have from the standpoint of the testimo-

ny of the state is to get a grasp on what the area specifically consists of, because in your formal testimony I think your reference is quite limited.

You indicate, however, the herd has traditionally favored a particular portion of the 1002 area for bearing its young. This area has been depicted differently in the Department of Interior's draft and the 1002 report.

The state is currently working to reconcile those differences and will advise Congress of its result. Now that, with all due respect, the extent of your identification of the area, which leaves it up to a future agreement.

And I can understand that. If you do not know, you do not know. But we are talking about authorizing exploration and/or development here, and we are going to have to address very soon the question of how much of the area is significant, and indeed how much of the area are we going to consider, and on what basis?

My experience in government is to the effect that it is much better if we have suggestions coming in from the people who are concerned rather than this Committee or the Federal government coming up with a proposed answer that you can live with.

I would much rather have your input, Governor, and that of the people of Alaska as to what they feel is the area, rather than us attempting to do that.

The other area that I want to mention very briefly is the matter which is covered in your statement, but I do not think you addressed, and that is revenue-sharing. There are various proposals that have been initiated from time to time to reduce the state's traditional 90 percent share of revenues from ANWR.

Would you consider it appropriate that the state be permitted to, say, share in the reclamation fund program, as other states do? I think Alaska is the only state that has its own 9/10. The rest of them, it is a 50–50 sharing back out of reclamation.

Governor COWPER. Senator, I would very much like for Alaska to share in that fund. By way of history, I do not want to be too redundant here, because it is in my written testimony.

But by way of the Statehood Act, Alaska was allowed a 90 percent share of revenues which were from areas such as the refuge here, from oil and gas production. The reason was that the rest of the country had a 50–40–10 split.

Fifty percent went to the state, 40 percent went to the reclamation fund, 10 percent went to the Federal government. But Alaska is not eligible to share in the reclamation fund, which of course is a fund that is very beneficial, particularly to the western states.

So in recognizing that Alaska does not share in that fund, we were allowed to take 90 percent, which is higher than any other state. That is correct. On the other hand, we do not get the benefits of the Reclamation Act.

And that kind of made up for it. But we think that that was a compact that was made at statehood, and that we should be allowed to continue under that provision.

Question from Mr. Tauzin from Louisiana. Governor, let me also thank you for your testimony. In reference to the manner in which Alaska shares in revenues from production on public lands, you make the point in your written statement that other states receive the equivalent of ninety percent because they receive fifty percent directly and another forty percent is invested in the reclamation fund. Would such an arrangement suit you if that were applied to the ANWR distribution of funds?

Governor Cowper. If it were applied to the ANWR, yes, it would be.

Mr. Tauzin: Thank you, sir.

Question from Mr. Thomas from Georgia. Governor, it is good to have you here in Washington. You seem to be opposed to the land exchanges in Alaska and you seem to be in favor of the 90-10 formula and opposed to a 50-50 proposition with fifty percent coming back into the wildlife resources. With all due respect, before I support any bill, the one that I have helped introduce and that I co-sponsored with our Chairman, Mr. Jones, if we go into ANWR I have to see that a substantial portion of the revenue generated is going back into our wildlife resources. We know there is going to be an impact. Anyone who has visited the area and has seen the kind of footprint left with a major oilfield is fully aware we're going to lose some habitat, that we are going to have an impact on wildlife populations. Basically, if you are opposed to the land exchanges and you are opposed to the 50-50 formula, I have to point out to you that you leave no

ground for a member, such as myself, in your proposition, who wants to see more resources put back into the refuge system. I would like you to respond to that.

Governor Cowper. Congressman, I am from a state which was admitted to the Union with a stipulation that we receive ninety percent of revenue from resource production on refuge lands. The reason for that has been stated but I will restate it. Most states share 50-40-10. Fifty percent goes to the state, forty percent goes to the reclamation fund, and ten percent goes back into the Federal Government. We are not allowed by law to participate in the reclamation fund. So it was thought to be just that we take the entire ninety percent. I was asked much the same question in some earlier testimony that I gave in Washington last year, and my answer was that fifty percent of something is normally better than ninety percent of nothing. I am required to adhere to my previous position. There may be a legal question involved as a matter of fact. I don't want to give anybody here the impression that the state would oppose a bill which was otherwise satisfactory to us simply because there was a provision that some reduction in the revenue share. I want to say that right here and now, however, you can count on our opposing any such motions as they may come up.

Mr. Thomas. Thank you for explaining your position on that. I would just say to fellow members of the Committee, and I am here as an honorary member, I think this has been one of the important issues we should have considered all along. If you are, as I am, of the opinion that we certainly need to look at the potential for oil development in that area, and that potential is probably very high, at the same time I

think there is an obligation on us, we are going to a very valuable wildlife refuge, to see that resources come back to enable us to expand our holdings in other areas and to enhance areas where we are certainly going to have an impact with oil development in that area. I think this should be a point we should all keep in mind as this legislation moves along.

(p. 33)

Testimony of Representative Cotten from Alaska. On the question of revenue entitlements, I think this was already discussed. Alaska, like other Western states receives the benefits of ninety percent of Federal receipts from oil and gas activity on Federal land. Congress is considering reducing the state's share to fifty percent. Obviously, as an an Alaskan, I must object to such treatment. The ninety percent entitlement was agreed to at Statehood and is part of our compact with the Union of States. We want to be treated equitably. All the same, if Congress does chose to adjust the entitlement unilaterally, I support proposals by some Members of Congress to dedicate a portion of the Federal revenue stream to conservation purposes. Our national parks and refuges could be improved by the acquisition of holdings, facility construction, and new access. Another issue that is very important to Alaska is employment. Because our economy is in the doldrums, and because Congress is considering a reduction in the State's revenue allotment, I don't feel bad asking the Committees to consider special treatment for us in one respect, resident hire.

(The Representative goes on to suggest that Congress pass Federal legislation requiring resident hire on gas and oil exploration and development in the Coastal Plain.)

(P. 45)

Question from Mr. Young from Alaska. A question for either of you, preferably the Senator, on the 90-10. You heard the Governor's comment about if we got reclamation monies that that would not be acceptable but would be more acceptable if we didn't get the reclamation monies. You helped write the Constitution. Why didn't we get the reclamation monies, and secondly, why were we getting the 90 instead of the 50 like the rest of the States?

Answer of Senator Coghill. Mr. Chairman, Congressman Young, as I recollect the reason why we were allowed the 90-10 and not the forty percent into the reclamation fund is because they considered us poor folk from up North. And that they considered that we had to have every opportunity possible to make Statehood happen. In fact, they gave us transition money for four years in order for us to get our program established. I think there was no idea in the Water Reclamation Act that there would be reclamation in the Arctic and that we needed to have the revenues. My position on it is very clear. A deal is a deal. The compact between the United States Government, the people of the United States, and the people of the State of Alaska is a compact and that compact has the 90-10 provision in it. I agree with the Governor. If you mess with it, you will be in court.

RM:jap
8CWWG1

ANWR -

REVENUE ISSUES,

BACKGROUND,

COURT PAPERS

Inside

INTERCOM

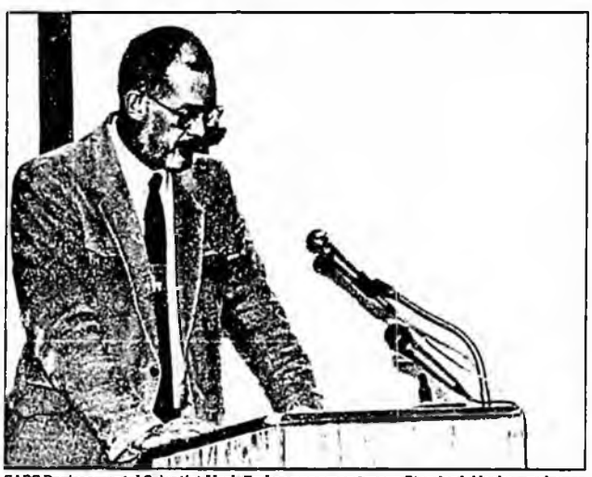
Volume Nine, Number One. January, 1987

ANWR: MORE THAN AN ALASKA ISSUE:

SAPC launches information program

SAPC employees testify at ANWR public hearings

Ed. Note: *This year Congress is expected to decide on whether the Arctic Coastal Plain of the Arctic National Wildlife Refuge (ANWR) will be opened to oil and gas exploration. The draft 1002h report released last November recommended that the area be opened for exploration, based upon the fact it contains large structures which geologists say could contain the most significant hydrocarbon reserves in the U.S. At public hearings in Anchorage January 5th, SAPC employees, were among the many individuals who testified in favor of opening the coastal plain to exploration and development. Following the public hearing and comment period, which will end January 23, the Secretary of Interior is expected to recommend to Congress that the Refuge be opened to full oil and gas leasing. However, the question of whether to permit exploration in this small portion of northeastern Alaska is perceived by some in a narrow sense—that ANWR is an issue of concern to Alaska's residents and the petroleum industry. Late last year Standard Alaska Production Co. (SAPC) launched an information campaign to inform lower 48 businessmen and lawmakers how important the domestic petroleum industry is to the national economy, and ultimately, U.S. security. The following text contains excerpts from that information program, as well as comments by SAPC President* ***George N. Nelson*** *and others involved in the program.*



SAPC Environmental Scientist Mark Fraker was among many Standard Alaska employees who testified at the ANWR public hearing in Anchorage January 5. The majority of testimony from the public favored opening the coastal plain of ANWR for oil and gas leasing.

Energy security — a national concern

Development of Alaska's arctic over the past 10 years has brought more than $30 billion in business to all 50 states, providing major benefits to thousands of U.S. firms. Standard Alaska Production Company (SAPC) itself has spent $15 billion since Prudhoe development began in 1974.

These and other expenditures related to Alaska petroleum development have served to develop 20 percent of America's domestic petroleum production—oil which presently comes from the North Slope of Alaska. The nearly five billion barrels produced from Alaska's Prudhoe Bay field over the past 10 years has reduced the cost of foreign imports by more than $130 billion.

The United State's dependence on foreign oil is quickly increasing. Today we import more than one-third of our supply, and by the year 2000, could be importing as much as two-thirds. Our economy and national security mandate that we not allow ourselves to become more dependent on unreliable foreign suppliers. The Middle East, one of our principal suppliers, is no more stable today than it was in 1973 or 1979 when we suffered devastating shortages.

> "Development of Alaska's arctic over the past 10 years has brought more than $30 billion in business to all 50 states..."

Our own proven petroleum reserves and production capacity are dwindling. Alaska's 20 percent contribution to domestic oil production will begin to fall in the next five years as Prudhoe Bay production declines. By the year 2000, production from all Alaska arctic oil fields will have declined from the current level of 1.8 million barrels per day to about 600,000 barrels per day. Unless other domestic reserves are developed, we are certain to become increasingly dependent on foreign suppliers.

ANWR: What is its petroleum potential?

The geology of the two largest producing oilfields in North America—Prudhoe and Kuparuk—is essentially the same as that which underlies the coastal plain of ANWR. This fact, together with the evidence of numerous oil seeps and other favorable conditions, largely explains the opinion that the coastal plain of ANWR represents the greatest unexplored oil resource area in North America.

The Marsh Creek anticline, an extremely large geological structure, has long been recognized from surface features and outcrops. In addition, recently acquired geophysical data confirm the existence of other potential oil-bearing structures which may contain reserves comparable to Prudhoe Bay and Kuparuk River fields.

In the draft 1002h assessment prepared late last year, seven different geological "plays" or regions of promising geology, were identified—each with characteristics favorable for oil and gas. In-place resource potentials were calculated: There is a 95 percent chance of at least 4.8 billion barrels of in-place oil and a five percent chance of in-place oil resources of 29.4 billion barrels.

If commercial discoveries are made in ANWR's coastal plain—an area which represents less than eight percent of the area's 19 million acres, or, half of the land area of the State of Washington—the infrastructure built to accommodate one or more oilfields could also support exploration and development in other areas, such as offshore state and federal acreage to the north of the coastal plain and also, State land to the east of Prudhoe but west of ANWR.

(continued on page 2)

Endicott modules ahead of schedule

By the end of 1986 construction of the large oilfield modules for Standard Alaska's Endicott Project were 85 percent complete and ahead of schedule at New Iberia, La.

About 900 contract and Standard Oil Production Company employees are on location, working to complete five major modules, plus additional equipment housed in smaller modules and open skid bases.

Construction status on the individual modules:

- Power Generation/Control Module.....92%
- Utilities and Chemical storage.....87%
- Phase Separation and NGL.....87%
- Seawater and Produced Water.....83%
- Gas Compression.....78%

Early this coming summer the completed modules and other equipment totaling 22,000 tons will be transported to Alaska's North Slope on four barges, which will be pulled by large, ocean-going tugs. The sealift is expected to arrive at Endicott in late July.

Published Monthly in Anchorage by the Standard Alaska Production Company for its employees.

ANWR: more than an Alaskan issue (continued from page 1)

America needs jobs—economic activity

Development on the coastal plain of ANWR will generate economic activity and jobs in every State. If a major discovery is made on the coastal plain, billions of dollars will be spent to construct and operate oil field facilities. This spending will involve the manufacturing, construction, transportation and service sectors, and indirect spinoffs in local areas. Some other important facts:

- The U.S. tanker fleet is predominantly employed to transport North Slope oil. Unless new supplies of petroleum are developed, those tankers will be retired and their crews terminated.
- Imported oil accounts for more than one-third of the U.S. trade deficit ($53 billion in 1984). We can reduce this substantially and enhance our trade opportunities by developing domestic resources within the coastal plain area.
- A recent study by Battelle/DRI determined that oil and gas development on ANWR could increase the U.S. Gross National Product (GNP) by one percent and create more than a million new jobs around the nation.

Environmental integrity—development footprint

Every significant species on the coastal plain has thrived alongside 20 years of oil exploration and production on the North Slope of Alaska and in northern Canada. Caribou and a variety of important bird life co-exist with oil development at nearby Prudhoe Bay. The Central Arctic caribou herd which inhabits the Prudhoe field during part of the year has more than quadrupled in size since oil production began in 1977. Two other major North Slope caribou herds—the Western Arctic herd and the Porcupine Herd, to the east, are also increasing in size, and are expected to soon reach historical high levels. Extensive biological studies in northern Alaska and Canada have shown that wolf predation and hunting, not oilfield development, has the greatest impacts on caribou populations.

Through the use of modern technology and development techniques, impact on permafrost, tundra vegetation and water quality can be minimal. The government and oil industry have spent tens of millions of dollars learning how to operate in the arctic without ruining esthetic or habitat values. A little known fact is just how small an area oil-related facilities occupy. For example, during the debate in the late 1960s on whether to allow construction of the trans Alaska pipeline, the newspaper buzz-phrase was "pipeline bisecting Alaska." Maps with the "line" from Prudhoe to Valdez made the pipeline appear unnaturally wide, as if it covered a large area of Alaska. In fact, the 800-mile-long pipeline right-of-way from Prudhoe Bay to Valdez occupies less than 14 square miles!

On the North Slope, the Prudhoe Bay unit involves about 242,000 acres of leased acreage. The Kuparuk River unit, which many geologists believe to be more typical of what might be found in ANWR, covers about 150,000 acres of leased land. But in both these huge oilfields, and the smaller Milne Point field, to the north, only 8,000 acres are actually occupied by production pads, roads, pipelines or other facilities.

By the time any discoveries in the coastal plain are developed, optimistically by the year 2000, technological progress within the industry will allow development to occur using even less space, through new directional drilling techniques and smaller, more compact field production facilities.

Alaska wilderness inventory

Alaska has more than 50 million acres of congressionally designated wilderness lands, which comprise about 15 percent of the state. Alaska also has 70 million acres of other National Wildlife Refuges and National Parks. Eight million acres, or 44 percent of the 19-million-acre Arctic National Wildlife Refuge, has already been designated wilderness.

"Opponents of ANWR development have introduced house Bill 4922 which calls for a wilderness designation of ANWR's coastal plain," comments **George N. Nelson**, SAPC President. "Such a law would forever prevent oil and gas activity in this vital area.

"We have the new State administration and legislature behind us on the ANWR issue," Nelson adds, "but we must continue to make contact with lower 48 Congressmen and Senators, State governors and administrations, as well as business leaders. We need to make a concerted effort to show the nation that exploration of ANWR's coastal plain is not simply a State or regional issue or an oil industry issue. We need to convey to the 100th Congress that ANWR is also a national issue which could have far-reaching implications for our country's economy and national security."

During November and early December, SAPC mailed nearly 2,500 ANWR information packets to businessmen and lawmakers in the lower 48. The cover letters for each of the packets described the specific economic benefits Alaska petroleum development has provided that particular state.

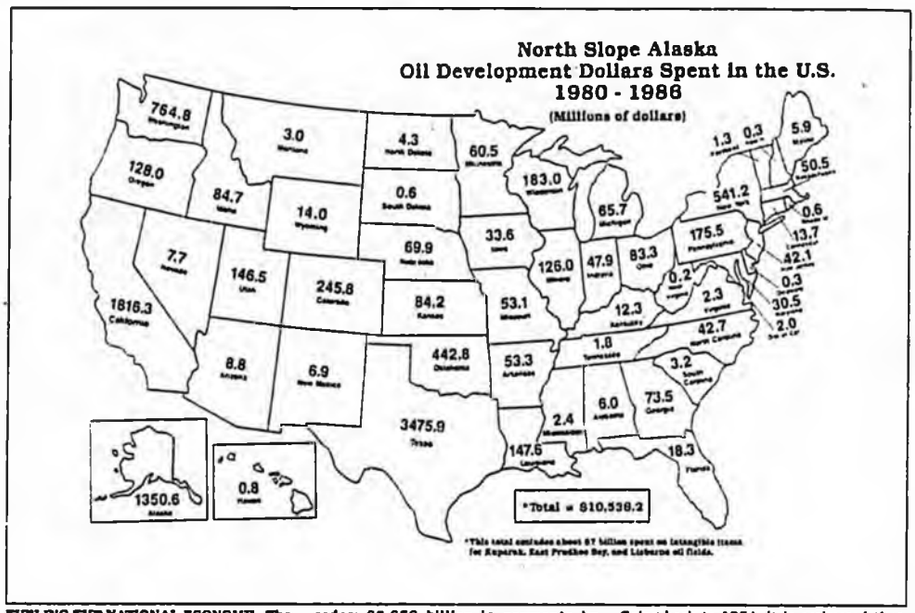
"It's impressive enough that petroleum revenues have been providing about 85 percent of Alaska's income," commented George Nelson. "But the widespread impact of Alaska's oil industry really strikes home when you consider billions of dollars which have gone to State and local economies in the lower 48, not to mention, federal taxes."

SAPC's **Roger Herrera**, who has recently been making presentations on ANWR to various groups in the lower 48, says that educating the nation on the strategic importance of ANWR will be a difficult job.

"The arctic coastal plain is a long ways from where most people live," says Herrera. "As in the D-2 land battle in the 1970s, Congressmen who haven't been to the arctic can't conceptualize ten thousand acres—let alone the 1.5 million acres they would designate wilderness under House Bill 4922. They have no frame of reference in discussing such huge chunks of land—or in the case of the coastal plain—how relatively little area the oil industry is considering for exploration.

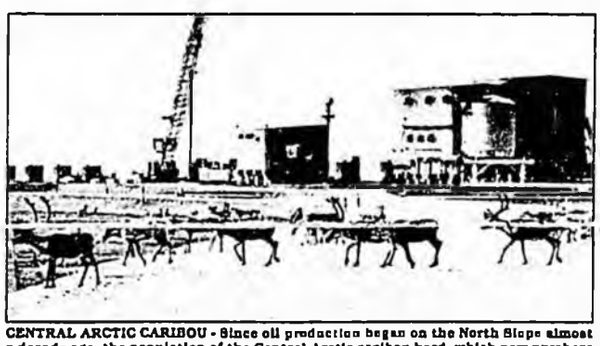
"The upcoming debates on ANWR will often take emotional tacks completely outside the realm of logic and fact," Herrera continues. "If we can keep the dialogues on a steady, logical course, and stick to the facts, I think Congress will agree that it is in the nation's best interest to allow exploration and development in the coastal plain—that the petroleum industry is capable of operating in this area without adversely effecting the environment."

Ed. Note: Intercom will closely follow upcoming ANWR debates and dialogues, and will occasionally feature special interviews on the subject.



FUELING THE NATIONAL ECONOMY - The map above provides a dramatic visual presentation of the national economic impacts from oil development on Alaska's North Slope from 1980-86. The $10.5 billion depicted here ($10,536.2) includes $6.745 billion in payments by Standard Alaska to U.S. vendors traceable to ZIP codes; $3.669 billion in payments by ARCO, Alaska Inc. for tangible items for the East side of Prudhoe Bay, Kuparuk and Lisburne; and $124 million in payments by Conoco to develop Milne Point (1983-86). It does not include about $7 billion on intangible items for Kuparuk, East Prudhoe Bay and Lisburne oilfields. Going back to 1974, it is estimated that the cost of developing the Prudhoe, Kuparuk, Milne Point, Lisburne and Endicott fields has exceeded $36 billion. Conservatively, Standard Oil's share of that amount has been about $15 billion.

Development on the Coastal plain of ANWR will generate economic activity and jobs in every state.



CENTRAL ARCTIC CARIBOU - Since oil production began on the North Slope almost a decade ago, the population of the Central Arctic caribou herd, which now numbers about 18,000, has more than quadrupled. The other two main North Slope caribou herds, the Western Arctic herd and Porcupine Herd, are also reaching historical high levels.

ANWR Hearings

DRAFT

General Information for Requested Witness

Hearing times and Places

1st Hearing: Friday, March 6th, Fairbanks, Borough Assembly Chambers
Saturday, March 7th, Fairbanks

2nd Hearing: Friday, March 13th, Anchorage, Z.J. Loussac Municipal Library
Saturday, March 14th, Anchorage

3rd Hearing: Friday, March 20th, Ketchikan, Community College
Saturday, March 21st, Ketchikan / Forum Room

4th Hearing: Friday, March 27th, Kodiak, Assembly Chambers
Saturday, March 28th, Kodiak

Friday Format: 9am opening of hearing
Testimony from:
US Fish and Wildlife Service
Bureau of Land Management

Testimony will include a 30-minute background presentation on the agencies' role in development of the draft 1002 (h) report for Congress, on the ANWR. The remaining time will be for the answering of questions from the committee.

12pm Break for Lunch

Friday Afternoon
Format: 1pm reconvene hearings
Testimony will be heard from the state departments of Natural Resource, Fish and Game, and Environmental Conservation. 30 minutes will be allowed for the agency to present its role in the development of the 1002 (h) report, with the remaining time being for questions from the committee.

5pm recess until 9am the following day.

Saturday Format: 9am reconvene hearings
Testimony will be heard from requested witnesses, including industry and individuals with specific expertise on ANWR, related to the 1002(h) report.

11am Testimony will be heard from the general public, with 3 minutes allowed for comment and 2 minutes for questions from the committee.

DRAFT

Saturday Continued

12pm to 1pm Lunch Break

1pm reconvene general public testimony

3pm close location hearing

Saturday's hearing may run over to 5pm, depending on public interest.

The purpose of these hearings is two fold. One is to build a public record which the Alaska State Legislature will utilize, in making an informed decision on proposed development activities in the coastal plain of the ANWR. The second is to allow the public as great an opportunity as possible to have input into this decision making process, and access to the same information which the legislature will be basing it's findings.

Requested Witness will have a limited amount of time for general comments. Time allocations will be determined by the structure of the presentation, i.e. single witness or panel; and by the total number of witnesses. Only two hours are set aside for this portion of the hearing.

General Witness Catagories

Environmental
- representative organizations
- biological experts

Labor
- union leaders

Industry
- environmental
- engineering
- geology
- regulatory

Native
- organization
- corporate

DRAFT

Industry related areas of concern

1. Regulatory framework industry would be working within in ANWR.
   - Environmental protection
   - Permitting process
   - Timelines associated with permits

2. Work that industry has done or participated in, dealing with ANWR and the 1002 report.
   - Geologic data gathering
   - Development feasibility studies
   - Wildlife assessments including: offshore - Bow Head
     onshore - PCH
     Subsistence

3. Specific involvement in development of the 1002 report

4. How the information that has beer collected influences industries evaluation of ANWR's potential to be an oil producer.

5. What sort of development scenarios might take place, given a range of recoverable oil reserve being located in ANWR.

6. How long would it take to get a range of discoveries into production.

7. How long might the range of reserves last

8. What other advantages to development on the North Slope exist if recoverable economic reserves are discovered in ANWR.

Reservation of helium-gas-bearing land on the public domain, see section 167a of Title 50, W and National Defense.
Resettlement lands for Navajo tribe, transfer of interests of United States as lessor under chapter, see section 640d-10 of Title 25, Indians.
Review of withdrawals in certain states which closed lands to appropriation under this chapte see section 1714 of Title 43, Public Lands.
Revocation of reservation of certain lands in and around Yaquina Head and restoration to publ lands, except that such lands be withdrawn from entry under this chapter, see section 178 of Title 43.
Status of offers for noncompetitive oil and gas leases on lands conveyed to Alaska nativ corporations or individual Alaska natives, see section 1633 of Title 43.
Steese National Conservation Area, mineral exploration and development, see section 460mm- of Title 16, Conservation.

SUBCHAPTER I—GENERAL PROVISIONS

§ 181. Lands subject to disposition; persons entitled to bene fits; reciprocal privileges; helium rights reserved

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonit (including all vein-type solid hydrocarbons), or gas, and lands containin such deposits owned by the United States, including those in nationa forests, but excluding lands acquired under the Appalachian Forest Ac approved March 1, 1911 (36 Stat. 961), and those in incorporated citie towns, and villages and in national parks and monuments, those acquire under other Acts subsequent to February 25, 1920, and lands within th naval petroleum and oil-shale reserves, except as hereinafter provided, sha be subject to disposition in the form and manner provided by this chapte to citizens of the United States, or to associations of such citizens, or to an corporation organized under the laws of the United States, or of any Stat or Territory thereof, or in the case of coal, oil, oil shale, or gas, t municipalities. Citizens of another country, the laws, customs, or regul tions of which deny similar or like privileges to citizens or corporations c this country, shall not by stock ownership, stock holding, or stock contro own any interest in any lease acquired under the provisions of this chapte

The term "oil" shall embrace all nongaseous hydrocarbon substanc other than those substances leasable as coal, oil shale, or gilsonite (inclu ing all vein-type solid hydrocarbons).

The term "combined hydrocarbon lease" shall refer to a lease issued in special tar sand area pursuant to section 226 of this title after November 1 1981.

The term "special tar sand area" means (1) an area designated by th Secretary of the Interior's orders of November 20, 1980 (45 F 76800-76801) and January 21, 1981 (46 FR 6077-6078) as containin substantial deposits of tar sand.

The United States reserves the ownership of and the right to extra helium from all gas produced from lands leased or otherwise grante under the provisions of this chapter, under such rules and regulations shall be prescribed by the Secretary of the Interior: *Provided further*, Th in the extraction of helium from gas produced from such lands it shall b so extracted as to cause no substantial delay in the delivery of gas produc from the well to the purchaser thereof.

(Feb. 25, 1920, c. 85, § 1, 41 Stat. 437; Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058; Aug. 1946, c. 916, § 1, 60 Stat. 950; Sept. 2, 1960, Pub.L. 86-705, § 7(a), 74 Stat. 790; No 16, 1981, Pub.L. 97-78, § 1(1), (4), 95 Stat. 1070.)

Historical Note

References in Text. The Appalachian Forest Act, referred to in the first undesignated paragraph, is Act Mar. 1, 1911, c. 186, 36 Stat. 961, as amended, also known as the "Weeks law", which is classified to sections 480, 500, 513 to 519, 521, 552 and 563 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 552 of Title 16 and Tables volume.

1981 Amendment. Pub.L. 97–78, in first par., substituted "gilsonite (including all vein-type solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)", and added, following first par., three paragraphs which defined "oil", "combined hydrocarbon lease", and "special tar sand area", respectively.

1960 Amendment. Pub.L. 86–705 included deposits of native asphalt, solid and semisolid bitumen, and bituminous rock.

1946 Amendment. Act Aug. 8, 1946, reenacted: existing par., less three provisos, as first sentence of first par., inserting "potassium" after "sodium", which was also included in the 1927 amendment, and substituting provision for disposition of deposits "in incorporated cities, towns, and villages, and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves" for such disposition "in national parks, and in lands withdrawn or reserved for military or naval uses or purposes" and phrase "associations of such citizens" for "any association of such persons"; former third proviso as second sentence of first par.; former first proviso, as second par., inserting reservation of ownership provision and deleting "permitted" preceding "leased or otherwise granted"; and former second proviso as proviso in second par.

1927 Amendment. Act Feb. 7, 1927, included deposits of potassium.

Short Title of 1981 Amendment. Pub.L. 97–78, Nov. 16, 1981, 95 Stat. 1070, which generally made provision for a combined hydrocarbon lease through an amendment of this section and sections 182, 184, 209, 226, 241, 351, and 352 of this title and the enactment of provisions set out as a note under this section, is popularly known as the Combined Hydrocarbon Leasing Act of 1981.

Short Title of 1976 Amendment. Pub.L. 94–377, § 1(a), Aug. 4, 1976, 90 Stat. 1083, as amended by Pub.L. 95-554, § 8, Oct. 30, 1978, 92 Stat. 2075, provided that: "This Act [enacting sections 202a, 208–1 and 208–2 of this title, amending sections 184, 191, 201, 203, 207, 209 and 352 of this title, repealing sections 201–1 and 204 of this title, and enacting provisions set out as notes under sections 184, 201, 201–1, 203, and 204 of this title] may be cited as the 'Federal Coal Leasing Amendments Act of 1976'."

Short Title of 1960 Amendment. Section 1 of Pub.L. 86–705 provided that Pub.L. 86–705, which amended sections 181, 182, 184, 187a, 226, 226–1, 226–2, and 241 of this title, and enacted provisions set out as notes under sections 187a and 226 of this title may be cited as the "Mineral Leasing Act Revision of 1960."

Short Title of 1946 Amendment. Act Aug. 8, 1946, c. 916, 60 Stat. 950, as amended, which enacted sections 187a, 187b, 226c, and 236b of this title, amended sections 181, 184, 188, 193, 209, 225, 226, and 285 of this title, repealed sections 223a, 226a, and 226b of this title, and enacted a provision set out as a note under section 181 of this title, is popularly known as the O'Mahoney-Hatch Act.

Short Title of 1927 Amendment. Act Feb. 7, 1927, c. 66, 44 Stat. 1057, as amended, which enacted sections 281 to 287 of this title, amended sections 181 and 193 of this title, and repealed sections 141 to 152 of this title, is popularly known as the Potash Leasing Act of 1927 and the Potassium Act of 1927.

Short Title. This chapter is popularly known as the General Leasing Act, the Mineral Lands Leasing Act, the Mineral Lands Leasing Act of 1920, the Mineral Leasing Act, the Mineral Leasing Act of 1920, and the Oil Lands Leasing Act.

Savings Provisions. Provisions of Federal Land Policy and Management Act of 1976, Pub.L. 94–579, Oct. 21, 1976, 90 Stat. 2743, not to be construed as permitting any person to place, or allow to be placed, spent oil shale, etc., on any Federal land other than land leased for the recovery of shale oil under the Act of Feb. 25, 1920, section 181 et seq. of this title, see section 701(d) of Pub.L. 94–579, set out as a note under section 1701 of Title 43, Public Lands.

Section 15 of Act Aug. 8, 1946 provided: "No repeal or amendment made by this Act [enacting sections 187a, 187b, 226c, and 236b of this title, amending sections 181, 184, 188, 193, 209, 225, 226, and 285 of this title, and repealing sections 223a, 226a and 226b of this title] shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at the time of its acquisition; but any person holding a lease on the effective date of this Act [Aug. 8, 1946] may, by filing a statement to that effect, elect to have his lease governed by the applicable provisions of this Act instead of by the law in effect prior thereto."

Construction and Applicability of 1981 Amendments. Section 1(10), (11) of Pub. L. 97–78 provided that:

"(10) Nothing in this Act [see Short Title of 1981 Amendment note under this section] shall affect the taxable status of production

from tar sand under the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96–223), reduce the depletion allowance for production from tar sand, or otherwise affect the existing tax status applicable to such production.

"(11) No provision of this Act [see Short Title of 1981 Amendment note under this section] shall apply to national parks, national monuments, or other lands where mineral leasing is prohibited by law. The Secretary of the Interior shall apply the provisions of this Act to the Glen Canyon National Recreation Area, and to any other units of the national park system where mineral leasing is permitted, in accordance with any applicable minerals management plan if the Secretary finds that there will be no resulting significant adverse impacts on the administration of such area, or on other contiguous units of the national park system."

Admission of Alaska as State: Selection of lands. Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub.L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

Selection of lands by Alaska from lands made available by Statehood provisions including lands subject to leases, permits, licenses or contracts issued under this chapter, see section 6(h) of Pub.L. 85–508, set out as a note preceding section 21 of Title 48.

Outer Continental Shelf; Mineral Leases. Grant by the Secretary of the Interior of mineral leases on submerged lands of outer Continental Shelf, see sections 1331 et seq. of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Pub.L. 86–705, see 1960 U.S. Code Cong. and Adm.News, p. 3313. See, also, Pub.L. 97–78, 1981 U.S.Code Cong. and Adm. News, p. 1740.

Cross References

Conveyances to occupants of unpatented mining claims, reservation of mineral rights, see section 707 of this title.
Designation of areas unsuitable for surface coal mining, see section 1272 of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Helium reserve lands, development of other mineral resources on, see section 529 of this title.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10, Armed Forces.
Laws applicable, see sections 275 and 285 of this title.
Permits to take coal for local domestic needs without royalty payments, etc., see section 208 of this title.
Rents and royalties on geothermal leases, see section 1004 of this title.
Rights-of-way for pipelines through Federal lands, see section 185 of this title.

West's Federal Forms

Complaint for establishment of oil shale claims, see § 1725.

West's Federal Practice Manual

Classification of lands, see § 5572.
Geothermal resources, see § 5467.
Mineral leasing, see § 5391 et seq.
Minerals on federal lands, see § 5301 et seq.
Multiple mineral development, see § 5328.

Code of Federal Regulations

Coal management, see 43 CFR Chap. II, Subchap. C, Group 3400.
Federal lands program, see 30 CFR Chap. VII, Subchap. D.
Geothermal resources leasing, see 43 CFR 3200.0–3 et seq.
Helium conservation, see 43 CFR 16.1 et seq.
Leasing, minerals other than oil and gas, see 43 CFR Chap II, Subchap. C, Group 3500.
Mineral exploration, extraction on Department of Defense lands, see 32 CFR 235.1 et seq.
Minerals management, see 43 CFR Chap. II, Subchap. C, Group 3000.
Nondiscrimination in federally-assisted programs of the Department of the Interior, see 43 CFR 17.1 et seq.
Oil and gas leasing, see 43 CFR Chap II, Subchap. C, Group 3100.
Rights-of-way under Mineral Leasing Act, see 43 CFR 2880.0–3 et seq.
Royalty Management, see 30 CFR Chap. II, Subchap. A.

Library References

Mines and Minerals ⇐4, 5.
Public Lands ⇐7.

C.J.S. Mines and Minerals §§ 9, 19, 128.
C.J.S. Public Lands §§ 3 to 5, 41.

Notes of Decisions

1. Historical

Prior to establishment of the lease system for mineral lands, these lands, like other public lands, were subject to disposition by patent and, upon issuance of patent, administrative control ceased and the patent could be set aside or cancelled only by judicial proceedings in the courts. Pan Am. Petroleum Corp. v. Pierson, C.A.Wyo.1960, 284 F.2d 649, certiorari denied 81 S.Ct. 1661, 366 U.S. 936, 6 L.Ed.2d 848.

2. Constitutionality

This chapter is not violative of the due process clause of U.S.C.A. Const.Amend. 5, in that this chapter does not provide methods of giving notice to those persons claiming an interest in lands affected by this chapter; the Land Department having under authority given to it by this chapter required notice to be given of all applications for leases. Hodgson v. Midwest Oil Co., D.C.Wyo.1924, 297 F. 273.

3. Construction with other laws

This section, section 122 of this title and section 299 of Title 43, relating to disposal of surface rights and for leasing of oil and gas deposits of public lands withdrawn from settlement by executive order must be read together, each as the complement of the other, and as so read they disclose an intention to divide oil and gas lands into two estates for purpose of disposal, one including the underlying oil and gas deposits and the other the surface, and to make the latter servient to the former. Bourdieu v. Seaboard Oil Corporation of Delaware, 1940, 100 P.2d 528, 38 Cal. App.2d 11.

4. Purpose

This section was intended to expand not contract the Secretary of Interior's control over mineral lands of United States. Boesche v. Udall, Dist.Col.1963, 83 S.Ct. 1373, 373 U.S. 472, 10 L.Ed.2d 491.

Purpose of this chapter was to promote orderly development of oil and gas deposits in publicly owned lands of United States through private enterprise. Harvey v. Udall, C.A.N.M. 1967, 384 F.2d 883. See, also, Geosearch, Inc. v. Andrus, D.C.Wyo.1981, 508 F.Supp. 839.

This chapter was intended to promote wise development of natural resources and to obtain for the public reasonable financial returns on assets belonging to the public. Mountain States Legal Foundation v. Andrus, D.C.Wyo. 1980, 499 F.Supp. 383.

5. Policy

This chapter may be regarded as the expression of a new policy for the disposition of public lands open to exploration or entry by leave instead of by complete alienation. West v. Work, 1926, 11 F.2d 828, 56 App.D.C. 191, certiorari denied 46 S.Ct. 639, 271 U.S. 689, 70 L.Ed. 1153. See, also, Pan Am Petroleum Corp. v. Pierson, C.A.Wyo.1960, 284 F.2d 649, certiorari denied 81 S.Ct. 1661, 366 U.S. 936, 6 L.Ed.2d 848.

6. Law governing

Even if Congress could under Constitution readily enact complete code of law governing transactions in federal mineral leases among private parties, that was not enough to require that federal law govern dealings of private parties in oil and gas lease validly issued under this chapter. Wallis v. Pan Am. Petroleum Corp., La.1966, 86 S.Ct. 1301, 384 U.S. 63, 16 L.Ed.2d 369, on remand 366 F.2d 210.

Federal law does not govern all questions of contract interpretation involving leases issued under this chapter, but it applies to questions with significant implication for federal policy and which require uniform resolution throughout federal system, and thus federal law governed determination of whether Interior Department improperly rejected individual applicants' offers to lease, after their application cards were drawn, on basis that filing service company's "Amendment and Disclaimer" of illegal standard contract clause was ineffective. Lowey v. Watt, 1982, 684 F.2d 957, 221 U.S.App.D.C. 435.