ALASKA LEGISLATURE COMMITTEE FILES 1987-1988
4872 HRES ANWR REVENUE ISSUES, BACKGROUND, COURT PAPE

Savings clause of 1960 amendment to this chapter was applicable only to existing leaseholders, and leases issued as result of offers pending on date of enactment of 1960 amendment were subject to terms and conditions imposed by amendment. Miller v. Udall, 1963, 317 F.2d 573, 115 U.S.App.D.C. 162.

7. Mineral and mining laws

The term "public-land laws" is ordinarily used to refer to statutes governing alienation of public land, and generally is distinguished from both "mining laws" referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws", used to designate statutes governing the leasing of public lands for gas and oil. Udall v. Tallman, Dist.Col.1965, 85 S.Ct. 792, 380 U.S. 1, 13 L.Ed.2d 616, rehearing denied 85 S.Ct. 1325, 380 U.S. 989, 14 L.Ed.2d 283.

8. Reservation in United States

Where the United States reserves the mineral estate, together with the right to prospect for, mine, and remove the same, in a grant of the surface estate, there is a servitude laid on the surface estate for the benefit of the mineral estate. Transwestern Pipeline Co. v. Kerr-McGee Corp., C.A.N.M.1974, 492 F.2d 378, certiorari dismissed 95 S.Ct. 691, 491 U.S. 1097, 42 L.Ed.2d 689.

Where reservation of mineral rights to state and federal governments was based upon federal and state statutes, reservation did not constitute an "encumbrance" which would prevent vendors from conveying fee simple title to property free and clear of all encumbrances, and purchaser's failure to pay installment was a defalcation of so material and substantial a nature as to terminate purchaser's rights in contract. Mortenson v. Financial Growth, Inc., 1969, 456 P.2d 181, 23 Utah 2d 54.

9. Lands subject to disposition—Generally

"Public domain lands" are those which usually were never in state or private ownership. 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.

The words in this section "lands containing such deposits owned by the United States," do not apply where Congress has directed that the disposal of such lands is to be under other laws. 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.

Lands acquired by the United States for national-forest purposes under the provisions of the General Exchange Act of March 20, 1922, sections 485 and 486 of Title 16, are subject to both the general mining laws and this chapter. 1943, 40 Op.Atty.Gen. 260.

10. —— Indian lands

Where United States held lands of Ute Indians in trust, these lands were within the control of the United States and had not been so disposed of as to destroy the equitable interest of the Indians in them even though by provision of this section lands containing phosphate etc. were removed from disposition except by lease. Confederated Bands of Indians v. U.S., 1948, 112 Ct.Cl. 123.

The Attorney General of date May 12, 19[illegible] in response to a request for an opinion on question whether or not, this chapter was applicable to executive order Indian reservations, advised that this chapter was not applicable in view of the fact that this chapter referred solely to the public domain, and this chapter nowhere mentioned Indians, Indian lands, or Indian reservations of any kind, in view of the long settled rule of construction that general laws providing for the disposition of public lands do not apply to lands which have been set aside or reserved for public use unless the contrary clearly appears from the context or the circumstances attending the legislation, in view of the fact that this title never applied to Indian reservations whether created by treaty, act of Congress, or executive order, in view of section 185 of this title, concerning rights of way through the public lands including the forest reserves, and section 191 of this title, providing in mandatory language for the disposition of all the royalty moneys realized and in view of the legislative history of these sections. 1924, 34 Op.Atty.Gen. 171.

11. —— Military reservations

This chapter does not apply to federal military lands. Kingwood Oil Co. v. Henderson County Bd. of Sup'rs, Ky.1963, 367 S.W.2d [illegible]

12. —— Naval petroleum and oil-shale reserves

Neither Secretary of Interior nor Secretary of Navy were authorized to grant oil lease on naval oil reserve in February, 1922, in compromise of fuller's earth placer mining claim. U.S. v. Pan-American Petroleum Co., C.C.A. Cal.1932, 55 F.2d 753, certiorari denied 53 S.Ct. 14, 287 U.S. 612, 77 L.Ed. 532.

13. —— Submerged lands

This section applies only to "public lands" which in context of this section does not include lands beneath marginal seas. Justheim v. McKay, 1956, 229 F.2d 29, 97 U.S.App.D.C. 146, certiorari denied 76 S.Ct. 789, 351 U.S. 933, 100 L.Ed. 1461.

This section is not applicable to the submerged lands below low tide off the coasts of the United States and outside the inland waters within the States. 1947, 40 Op.Atty.Gen. 540.

14. —— Withdrawn lands

Application to purchase coal lands granted to state as school lands did not prevent withdrawal by federal government under this chapter. Work v. Braffet, Dist.Col.1928, 48 S.Ct. 363, 276 U.S. 560, 72 L.Ed. 700.

The Department of Interior's 1947 policy directive known as the Krug memorandum which stated that lands located north of the eleventh standard parallel in Teton County, Wyoming, were withdrawn from leasing, with few exceptions, was not contrary to law but was a proper exercise of the Secretary's discretionary power and authority. Learned v. Watt, D.C.Wyo.1981, 528 F.Supp. 980.

15. Aliens entitled to benefits

Only sovereign may complain of trust in realty in favor of alien disqualified to hold title under this chapter and such a trust is valid until alienage is judicially established at government's instance. Isaacs v. De Hon, C.C.A.Alaska 1926, 11 F.2d 943.

In issuing decision barring Kuwaiti citizens and corporations from acquiring interests in oil and gas leases on public lands under this chapter, Secretary of the Interior departed from clear legislative purpose underlying the alien qualification provision of this chapter, this section being concerned about discrimination against the United States citizens by foreign countries. Santa Fe Intern. Corp. v. Watt, D.C.Del.1984, 591 F.Supp. 929.

Fact that Kuwait owned 200,000 shares of oil company which owned all the shares of another company which owned 26 percent of shares of corporation proposing to construct northern tier oil pipeline did not establish that Kuwait had "stock ownership" in corporation proposing to construct pipeline so as to violate provision of this chapter prohibiting grant of right-of-way across federal lands to foreigners. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

16. Reciprocal countries

Great Britain is a reciprocal country under this section, conditioned upon the assumptions concerning applicable British statutes and regulations. 1936, 38 Op.Atty.Gen. 476.

17. Nature of lease

Mineral lease of government land under this chapter does not give the lessee the full ownership of a fee patentee, nor does it convey an unencumbered estate in the minerals, and Secretary of Interior's connection with the lands continues to subsist and he has the power, in a proper case to correct any errors in the transaction. Boersche v. Udall, Dist.Col.1963, 83 S.Ct. 1373, 373 U.S. 472, 10 L.Ed.2d 491.

18. Rights and privileges of lessees

Lessee of mineral rights in public lands withdrawn from settlement was entitled to equitable aid to prevent incompatible use of surface by homestead entryman. Kinney-Coastal Oil Co. v. Kieffer, Wyo.1928, 48 S.Ct. 580, 277 U.S. 488, 72 L.Ed. 961.

If oil shale placer locations on public lands assigned to plaintiff and upon which it sought to obtain a patent were valid, no mineral lease to such lands could validly issue under this chapter but if the claims were invalid, rights of plaintiff were subject to any intervening oil and gas lease. Union Oil Co. of Cal. v. Udall, 1961, 289 F.2d 790, 110 U.S.App.D.C. 124.

19. Withdrawal of lands from location

The effect of this section was to withdraw from location, all oil, gas and petroleum lands which were at that time property of the United States, and to place them within the exclusive jurisdiction of the Department of Interior to be administered by the Secretary, whose actions and determinations as regards such lands and mineral interests as to the leasing thereof are not subject to judicial review even in a direct proceeding. Thomas v. Union Pac. R. Co., D.C.Colo.1956, 139 F.Supp. 588, affirmed 239 F.2d 641.

This section withdrawing from location lands with oil shale deposits did not withdraw requirement that assessment work be performed on previously located mining claims. Hamilton v. Ertl, 1961, 360 P.2d 660, 146 Colo. 80.

§ 182. Lands disposed of with reservation of deposits of coal, etc.

The provisions of this chapter shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits.

(Feb. 25, 1920, c. 85, § 34, 41 Stat. 450; Sept. 2, 1960, Pub.L. 86-705, § 7(a), 74 Stat. 790; Nov. 16, 1981, Pub.L. 97-78, § 1(1), 95 Stat. 1070.)

Historical Note

1981 Amendment. Pub.L. 97-78 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)".

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

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 Ad[illegible] News, p. 1740.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10 Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.

West's Federal Practice Manual

Applicable lands, see § 5393.
Minerals on federal lands, see § 5301 et seq.

Library References

Mines and Minerals ⇐4.
C.J.S. Mines and Minerals §§ 9, 19.

Notes of Decisions

1. Superior rights under this section

Courts are without jurisdiction to grant relief in favor of one claiming only preference right of entry on coal lands by virtue of section 72 of this title, as against one in possession under lease from United States pursuant to this section, so long as title remains in United States. Wilson v. Elk Coal Co., C.C.A. Wash.1925, 7 F.2d 112, certiorari denied 46 S.Ct. 203, 269 U.S. 587, 70 L.Ed. 426.

§ 183. Cancellation of prospecting permits

The Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this chapter appropriate provisions for its cancellation by him.

(Feb. 25, 1920, c. 85, § 26, 41 Stat. 448.)

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10 Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.
Surrender of leases, see section 188a of this title.

West's Federal Practice Manual

Termination of leases and permits, see § 5401.

§ 184. Limitations on leases held, owned or controlled by persons, associations or corporations

(a) Coal leases or permits, acreage; regulations

(1) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, coal

leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State and in no case greater than an aggregate of one hundred thousand acres in the United States: *Provided*, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of one hundred thousand acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: *Provided, further*, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.

(2) Repealed. Pub.L. 94-377, § 11(b), Aug. 4, 1976, 90 Stat. 1090.

(b) Sodium leases or permits, acreage

(1) No person, association, or corporation, except as otherwise provided in this subsection, shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, sodium leases or permits on an aggregate of more than five thousand one hundred and twenty acres in any one State.

(2) The Secretary may, in his discretion, where the same is necessary in order to secure the economic mining of sodium compounds leasable under this chapter, permit a person, association, or corporation to take or hold sodium leases or permits on up to fifteen thousand three hundred and sixty acres in any one State.

(c) Phosphate leases, acreage

No person, association, or corporation shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, phosphate leases or permits on an aggregate of more than twenty thousand four hundred and eighty acres in the United States.

(d) Oil or gas leases, acreage, Alaska; options, semiannual statements

(1) No person, association, or corporation, except as otherwise provided in this chapter, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska[1]. *Provided, however*, That acreage held in special tar sand areas shall not be chargeable against such State limitations. In the case of the State of Alaska, the limit shall be three hundred thousand acres in the northern leasing district and three hundred thousand acres in the southern leasing district, and the boundary between said two districts shall be the left limit of the Tanana River from the border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth.

(2) No person, association, or corporation shall take, hold, own, or control at one time options to acquire interests in oil or gas leases under the provisions of this chapter which involve, in the aggregate, more than two hundred thousand acres of land in any one State other than Alaska or, in the case of Alaska, more than two hundred thousand acres in each of its two leasing districts, as hereinbefore described. No option to acquire any

interest in such an oil or gas lease shall be enforcible if entered into for a period of more than three years (which three years shall be inclusive of any renewal period if a right to renew is reserved by any party to the option) without the prior approval of the Secretary. In any case in which an option to acquire the optionor's entire interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. In any case in which an option to acquire a part of the optionor's interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be fully charged to the optionor and a share thereof shall also be charged to the optionee as his interest may appear, but after the option is exercised said acreage shall be charged to the parties pro rata as their interests may appear. In any case in which an assignment is made of a part of a lessee's interest in the whole or part of the acreage under a lease or an application for a lease, the acreage shall be charged to the parties pro rata as their interests may appear. No option or renewal thereof shall be enforcible until notice thereof has been filed with the Secretary or an officer or employee of the Department of the Interior designated by him to receive the same. Each such notice shall include, in addition to any other matters prescribed by the Secretary, the names and addresses of the parties thereto, the serial number of the lease or application for a lease to which the option is applicable, and a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto and shall be subscribed by all parties to the option or their duly authorized agents. An option which has not been exercised shall remain charged as hereinbefore provided until notice of its relinquishment or surrender has been filed, by either party, with the Secretary or any officer or employee of the Department of the Interior designated by him to receive the same. In addition, each holder of any such option shall file with the Secretary or an officer or employee of the Department of the Interior as aforesaid within ninety days after the 30th day of June and the 31st day of December in each year a statement showing, in addition to any other matters prescribed by the Secretary, his name, the name and address of each grantor of an option held by him, the serial number of every lease or application for a lease to which such an option is applicable, the number of acres covered by each such option, the total acreage in each State to which such options are applicable, and his interest and obligation under each such option. The failure of the holder of an option so to file shall render the option unenforcible by him. The unenforcibility of any option under the provisions of this paragraph shall not diminish the number of acres deemed to be held under option by any person, association, or corporation in computing the amount chargeable under the first sentence of this paragraph and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law. The Secretary may prescribe forms on which the notice and statements required by this paragraph shall be made.

(e) Association or stockholder interests, conditions; combined interests

(1) No person, association, or corporation shall take, hold, own or control at one time any interest as a member of an association or as a stockholder in a corporation holding a lease, option, or permit under the provisions of this chapter which, together with the area embraced in any direct holding, ownership or control by him of such a lease, option, or permit or any other interest which he may have as a member of other

associations or as a stockholder in other corporations holding, owning or controlling such leases, options, or permits for any kind of minerals, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this chapter, except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other instruments of ownership or control of such association or corporation, and except that within three years after September 2, 1960 no valid option in existence prior to September 2, 1960 held by a corporation or association on September 2, 1960 shall be chargeable to any stockholder of such corporation or to a member of such association so long as said option shall be so held by such corporation or association under the provisions of this chapter.

(2) No contract for development and operation of any lands leased under this chapter, whether or not coupled with an interest in such lease, and no lease held, owned, or controlled in common by two or more persons, associations, or corporations shall be deemed to create a separate association under the preceding paragraph of this subsection between or among the contracting parties or those who hold, own or control the lease in common, but the proportionate interest of each such party shall be charged against the total acreage permitted to be held, owned or controlled by such party under this chapter. The total acreage so held, owned, or controlled in common by two or more parties shall not exceed, in the aggregate, an amount equivalent to the maximum number of acres of the respective kind of minerals allowed to any one lessee, optionee, or permittee under this chapter.

(f) Limitations on other sections; combined interests permitted for certain purposes

Nothing contained in subsection (e) of this section shall be construed (i) to limit sections 227, 228, 251 of this title or (ii), subject to the approval of the Secretary, to prevent any number of lessees under this chapter from combining their several interests so far as may be necessary for the purpose of constructing and carrying on the business of a refinery or of establishing and constructing, as a common carrier, a pipeline or railroad to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees under this chapter or in the transportation of coal or (iii) to increase the acreage which may be taken, held, owned, or controlled under this section.

(g) Forbidden interests acquired by descent, will, judgment, or decree; permissible holding period

Any ownership or interest otherwise forbidden in this chapter which may be acquired by descent, will, judgment, or decree may be held for two years after its acquisition and no longer.

(h) Cancellation, forfeiture, or disposal of interests for violation; bona fide purchasers and other valid interests; sale by Secretary; record of proceedings

(1) If any interest in any lease is owned, or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of this chapter, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General. Such a proceeding shall be instituted in

the United States district court for the district in which the leased property or some part thereof is located or in which the defendant may be found.

(2) The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, interest in a lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation. If, in any such proceeding, an underlying lease, interest, option, or permit is canceled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, the underlying lease, interest, option, or permit shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations subject to all outstanding valid interests therein and valid options pertaining thereto. Likewise if, in any such proceeding, less than the whole interest in a lease, interest, option, or permit is canceled or forfeited to the Government, the partial interests so canceled or forfeited shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations. If competitive bidding fails to produce a satisfactory offer the Secretary may, in either of these cases, sell the interest in question by such other method as he deems appropriate on terms not less favorable to the Government than those of the best competitive bid received.

(3) The commencement and conclusion of every proceeding under this subsection shall be promptly noted on the appropriate public records of the Bureau of Land Management.

(i) Bona fide purchasers, conditions for obtaining dismissals

Effective September 21, 1959, any person, association, or corporation who is a party to any proceeding with respect to a violation of any provision of this chapter, whether initiated prior to said date or thereafter, shall have the right to be dismissed promptly as such a party upon showing that he holds and acquired as a bona fide purchaser the interest involving him as such a party without violating any provisions of this chapter. No hearing upon any such showing shall be required unless the Secretary presents prima facie evidence indicating a possible violation of this chapter on the part of the alleged bona fide purchaser.

(j) Waiver or suspension of rights

If during any such proceeding, a party thereto files with the Secretary a waiver of his rights under his lease (including particularly, where applicable, rights to drill and to assign) or if such rights are suspended by the Secretary pending a decision in the proceeding, whether initiated prior to enactment of this chapter or thereafter, payment of rentals and running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or suspension of the rights until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

(k) Unlawful trusts; forfeiture

Except as otherwise provided in this chapter, if any lands or deposits subject to the provisions of this chapter shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in any wise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, optionee, or permittee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), gas, or sodium entered into by the lessee, optionee, or permittee or any agreement or understanding, written, verbal, or otherwise, to which such lessee, optionee, or permittee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this chapter, the lease, option, or permit shall be forfeited by appropriate court proceedings.

(l) Rules and regulations; notice to and consultation with Attorney General; application of antitrust laws; definitions

(1) At each stage in the formulation and promulgation of rules and regulations concerning coal leasing pursuant to this chapter, and at each stage in the issuance, renewal, and readjustment of coal leases under this chapter, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

(2) No coal lease may be issued, renewed, or readjusted under this chapter until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with subchapter II of chapter 5 of Title 5 and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this chapter, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this chapter, the antitrust laws, and the public interest.

(3) Nothing in this chapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(4) As used in this subsection, the term "antitrust law" means—

(A) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(B) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(D) sections 73 and 74 of the Act entitled "An Act to reduce taxation; to provide revenue for the Government, and for other purposes"; approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(Feb. 25, 1920, c. 85, § 27, 41 Stat. 448; Apr. 30, 1926, c. 197, 44 Stat. 373; July 3, 1930, c. 854, § 1, 46 Stat. 1007; Mar. 4, 1931, c. 506, 46 Stat. 1524; Aug. 8, 1946, c. 916, § 6, 60 Stat. 954; June 1, 1948, c. 365, 62 Stat. 285; June 3, 1948, c. 379, § 6, 62 Stat. 291; Aug. 2, 1954, c. 650, 68 Stat. 648; Aug. 13, 1957, Pub.L. 85–122, 71 Stat. 341; Aug. 21, 1958, Pub.L. 85–698, 72 Stat. 688; Sept. 21, 1959, Pub.L. 86–294, § 1, 73 Stat. 571; Mar. 18, 1960, Pub.L. 86–391, § 1(c), 74 Stat. 8; Sept. 2, 1960, Pub.L. 86–705, § 3, 74 Stat. 785; Aug. 31, 1964, Pub.L. 88–526, § 1, 78 Stat. 710; Aug. 31, 1964, Pub.L. 88–548, 78 Stat. 754; Aug. 4, 1976, Pub.L. 94–377, §§ 11, 15, 90 Stat. 1090, 1091; Nov. 16, 1981, Pub.L. 97–78, § 1(2), (5), 95 Stat. 1070.)

[1] So in original. Probably should be followed by a colon.

Historical Note

References In Text. The date of enactment of this section, referred to in subsec. (a)(1), probably means the date of enactment of Pub. L. 94–377, which was Aug. 4, 1976.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, as amended, referred to in subsec. (*l*)(4)(A), is Act July 2, 1890, c. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables volume.

The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended, referred to in subsec. (*l*)(4)(B), is Act Oct. 15, 1914, c. 323, 38 Stat. 730, as amended, known as the Clayton Act, and is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables volume.

The Federal Trade Commission Act, referred to in subsec. (*l*)(4)(C), is Act Sept. 26, 1914, c. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (section 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables volume.

Sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894, as amended, referred to in subsec. (*l*)(4)(D), are sections 73 and 74 of Act Aug. 27, 1894, c. 349, 28 Stat. 509, popularly known as the Wilson Tariff Act, and are classified to sections 8 and 9 of Title 15.

The Act of June 19, 1936, chapter 592, referred to in subsec. (*l*)(4)(E), is Act June 19, 1936, c. 592, 49 Stat. 1526, known as the Robinson-Patman Anti-discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short title note set out under section 13 of Title 15 and Tables volume.

Codification. In subsec. (*l*)(2), "subchapter II of chapter 5 of Title 5" was substituted for "the Administrative Procedure Act" on authority of Pub.L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

1981 Amendment. Subsec. (d)(1). Pub.L. 97–78, § 1(5), added proviso that acreage held in special tar sand areas not be chargeable against State limitations.

Subsec. (k). Pub.L. 97–78, § 1(2), substituted "gilsonite (including all veintype solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, bituminous rock,".

1976 Amendment. Subsec. (a)(1). Pub.L. 94–377, § 11(a), added "or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation" preceding "shall take, hold, own or control", "and in no case greater than an aggregate of one hundred thousand acres in the United States" following "in any one State," the proviso relating to the non-relinquishment of leases or permits by an entity owning or controlling more than an aggregate of one hundred thousand acres, and the proviso prohibiting the ownership or control of further Federal leases or permits until reduction to below an aggregate of one hundred thousand acres.

Subsec. (a)(2). Pub.L. 94–377, § 11(b), struck out subsec. (a)(2) providing for application, hearing and granting of additional acreage, not to exceed 5120 acres in any one State, to a person, association or corporation requiring such extra acreage to carry on business economically, and the subsequent reevaluation of such entity's continuing need for such extra acreage.

Subsec. (*l*). Pub.L. 94–377, § 15, added subsec. (*l*).

1964 Amendments. Subsec. (a)(1). Pub.L. 88–526 deleted ", except as otherwise provided in this subsection," following "corporation" and increased the aggregate number of acres from 10,240 to 46,080 acres.

Subsec. (c). Pub.L. 88–548 increased the aggregate number of acres from 10,240 to 20,480 acres.

1960 Amendments. Pub.L. 86–705 generally revised the provisions and divided them into subsecs. (a) to (k). Other changes concerned: maximum acreage in Alaska, unreported options, their unenforceability, form for notice of options party to give notice, inclusion of options in acreage determinations, charge of association or corporate holdings against principal stockholders, hearings requirement based upon prima facie evidence of violations, running of time against a lease and the payment of rentals during a waiver or suspension of a lessee's rights.

Pub.L. 86–391 authorized issuance of phosphate permits.

1959 Amendment. Pub.L. 86–294 provided that: the right of cancellation or forfeiture for violations shall not apply so as to affect adversely the interest of a bona fide purchaser in a lease acquired in conformity with acreage limitations; that bona fide purchasers in such situations have right to be dismissed as parties from proceedings; and that if a party to proceedings files waiver of rights to drill or assigns his interests, or if such rights are suspended pending decision, he shall, if he is not in violation of provisions, have the right to have his interest extended for a period of time equal to the period between filing of waiver or order of suspension and final decision, without payment of rental.

1958 Amendment. Pub.L. 85–698 increased the limitation on the acreage which may be taken or held under coal leases or permits in any one State from 5,120 to 10,240 acres, permitted applications for additional coal leases or permits not exceeding 5,120 additional acres in the State, provided for hearings on such applications authorized reevaluation and cancellation of leases and permits for additional acreage, and prohibited assignment, transfer, or sale of any of the additional acreage without the Secretary's approval.

1957 Amendment. Pub.L. 85–122 deleted from the second sentence the words "or permits exceeding in the aggregate five thousand one hundred and twenty acres in any one State, and" following the words "phosphate leases".

1954 Amendment. Act Aug. 2, 1954, increased the acreage that any one person can hold in the aggregate from fifteen thousand three hundred and sixty acres to forty-six thousand and eighty acres, increased the number of acres that can be held under option from one hundred thousand acres to two hundred thousand acres, and extended the term of the option from 2 to 3 years.

1948 Amendments. Act June 1, 1948, substituted in the second proviso of section "within two years after the passage of this Act" for "on or before August 8, 1950" in order to allow options to be exercised up to that time.

Act June 3, 1948, increased the aggregate acreage allowed one person, etc., from two thousand five hundred and sixty acres to five thousand one hundred and twenty acres of coal or sodium leases, and increased the aggregate acreage allowed one person, etc., from seven thousand six hundred and eighty acres to fifteen thousand three hundred and sixty acres of oil or gas leases.

1946 Amendment. Act Aug. 8, 1946, principally doubled the amount of land that may be leased by any person or corporation in any one State and abolished the former acreage limitation of 2,560 acres on one structure; excluded operating contracts and leases held in common from the definition of "association"; inserted the provisions relating to options; and omitted the provisions relating to cooperative or unit plans and operating, drilling or development contracts.

1931 Amendment. Act Mar. 4, 1931, amended section generally.

1930 Amendment. Act July 3, 1930, amended section generally.

1926 Amendment. Act Apr. 30, 1926, amended section generally.

Effective Date of 1959 Amendment. Section 2 of Pub.L. 86–294 provided that: "The rights granted by the second and third sentences of the amendment contained within section 1 of this Act [amending this section to provide that holder of interest in lease has right to be dismissed from cancellation or forfeiture proceedings upon showing he acquired his interest as bona fide purchaser and without violation of provisions, and to provide right to have his lease extended if rights thereunder to drill and to assign are suspended or waived during such proceedings and it is determined he is not in violation of provisions] shall apply with respect to any proceeding now pending or initiated after the date of enactment of this Act [Sept. 21, 1959]."

Savings Provisions. Savings provisions, see note set out under section 181 of this title.

Section 11(b) of Pub.L. 94–377 provided in part that repeal by such section of subsec. (a)(2) of this section is subject to valid existing rights.

Transfer of Functions. The functions of the Secretary of the Interior, referred to in subsec. (*l*), to promulgate regulations under

this chapter relating to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97-100, Title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and the functions of the Secretary of Energy were returned to the Secretary of the Interior. See House Report No. 97-315, pp. 25, 26, Nov. 5, 1981.

Admission of Alaska as State. 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.

Legislative History. For legislative history and purpose of Act June 1, 1948, see 1948 U.S.Code Cong.Service, p. 1639. See, also, Act June 3, 1948, 1948 U.S.Code Cong.Service, p. 1640; Act Aug. 2, 1954, 1954 U.S.Code Cong. and Adm.News, p. 2852; Pub.L. 85-122, 1957 U.S.Code Cong. and Adm.News, p. 1404; Pub.L. 85-698, 1958 U.S.Code Cong. and Adm. News, p. 3671; Pub.L. 86-294, 1959 U.S.Code Cong. and Adm.News, p. 2620; Pub.L. 86-391, 1960 U.S.Code Cong. and Adm.News, p. 1805; Pub.L. 86-705, 1960 U.S.Code Cong. and Adm. News, p. 3313; Pub.L. 88-526, 1964 U.S.Code Cong. and Adm.News, p. 3293; Pub.L. 88-548, 1964 U.S.Code Cong. and Adm.News, p. 3334; Pub.L. 94-377, 1976 U.S.Code Cong. and Adm. News, p. 1943; Pub.L. 97-78, 1981 U.S.Code Cong. and Adm.News, p. 1740.

Cross References

Acreage limitations for coal leases not waived by consolidation of coal leases into logical mining unit, see section 202a of this title.
Authority of Secretary of the Navy to enter into agreements such as those provided for under this section, see section 7[illegible]a of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.
States authorized to consent to operation and development of lands acquired from United States, under agreements for conservation of oil and gas resources, see section 184a of this title.
Surrender of leases, see section 188a of this title.

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Acreage limitations, see § 5395.
Coal acreage, see § 5429.
Coal permits and leases, see § 5424 et seq.
Lease option limitations, see § 5404.
Minerals on federal lands, see § 5301 et seq.
Phosphate leases and permits, see § 5440.
Sodium leases and permits, see § 5436.

Library References

Mines and Minerals ⇐5.1(3), (7).
C.J.S. Mines and Minerals § 128.

Notes of Decisions

1. Retroactive effect

Bona fide purchaser protection afforded by 1959 amendment to this section was intended to have retroactive application to extent that it was possible. Southwestern Petroleum Corp. v. Udall, C.A.N.M.1966, 361 F.2d 650.

Amendment of this section by changing limitation of holdings from leases to limitation of number of acres was inapplicable to lease existing before amendment. Carter Oil Co. v. Pacific-Wyoming Oil Co., 1928, 267 P. 85, 38 Wyo. 361.

2. Acreage limitations

Under this section prohibiting anyone from holding more than 46,080 acres of oil or gas leases, and under regulation that such limitation includes applications for leases or offers to lease, applicant was chargeable with 9,551.57 acres he held under lease and the 669.81 acres for which he was the first qualified applicant with result that his applications for 35,614.1 acres did not increase his acreage beyond limit of 46,880 acres. Brown v. Udall, 1964, 335 F.2d 706, 118 U.S.App.D.C. 284.

3. Oil and gas lease options

Provision of this section rendering unenforceable any option not filed with Secretary of Interior and any option running for more than three years without prior approval of Secretary does not warrant creating at large a federal common law of federal mineral lease contracts among private interests. 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.

4. Cancellation, forfeiture or disposition of lease—Generally

See, also, Notes of Decisions under section 188 of this title.

This section, as amended, lays upon the Secretary of the Interior or his subordinates the plain duty to bring an action in the United States district court where leased lands are situated, if he seeks to cancel leases on the ground of fraud, if the lands contain valuable deposits of oil or gas. Pan Am. Petroleum Corp. v. Pierson, D.C.Wyo.1960, 181 F.Supp. 557, reversed on other grounds 284 F.2d 649, certiorari denied 81 S.Ct. 1661, 366 U.S. 936, 6 L.Ed.2d 848.

5. —— Bona fide purchaser rights

The Secretary of Interior has broad authority to cancel oil and gas leases for violations of this chapter and regulations thereunder, as well as for administrative errors committed before the lease was issued; however the Secretary's authority is limited by the bona fide purchaser amendment to this section. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

After mineral lease had been issued, plaintiff which had filed offer to lease subsequent to filing of offer which had been accepted was entitled to seek administrative cancellation of lease and issuance of lease to it, but such right was not vested right or existing legal or equitable title, interest or ownership and did not come within protection of U.S.C.A. Const. Amend. 5 and right of assignee of lease as bona fide purchaser was superior to right of plaintiff, even though lease was defective. Southwestern Petroleum Corp. v. Udall, C.A.N.M.1966, 361 F.2d 650.

6. Bona fide purchaser—Generally

Interior Board of Land Appeals' conclusion that Bureau of Land Management records did not furnish assignees of first drawees in simultaneous drawings for noncompetitive oil and gas leases on public land with notice that broker for first drawees might have impermissible interest in leases was supported by substantial evidence, and therefore assignees of first drawees were bona fide purchasers and assignee of second drawees could not contest issuance of leases to first drawees, even if first drawees were unqualified by broker's alleged interest and issuance was thus improper. Geosearch, Inc. v. Watt, C.A.Wyo.1983, 721 F.2d 694, certiorari denied 104 S.Ct. 2347, 80 L.Ed.2d 820.

The bona fide purchaser amendment to this section was added to protect bona fide purchasers of federal oil and gas leases who acquired their holdings in good faith from the possible consequences of violations of this chapter by their predecessors in title, to foster development of oil and gas resources on public lands and to protect innocent investors and operators. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

For assignee of lease issued under section 226 of this title to qualify as "bona fide purchaser" under common-law standards, generally applicable under the bona fide purchaser amendment to this section he must have acquired his interest in good faith, for valuable consideration and without notice of violation of departmental regulations. Southwestern Petroleum Corp. v. Udall, C.A.N.M.1966, 361 F.2d 650.

Although actions of the Wyoming state office of the Bureau of Land Management in issuing oil and gas lease to second drawee prior to termination of 90-day appeal period and misdirected efforts of first drawee, whose application was rejected, in filing his appeal in the wrong state and thereafter omitting to file a stay or notice of lis pendens in the proper federal judicial district could not be condoned, such actions did not change the fact that the assignee of the lease, who took the assignment from the second drawee without exercising reasonable prudence, was not a "bona fide purchaser" within the meaning of this section. Winkler v. Andrus, D.C.Wyo.1980, 494 F.Supp. 946.

7. —— Commencement of status

For purpose of determining whether assignee of oil and gas lease was a bona fide purchaser within the meaning of this section, it was the date of the assignment which was critical as to the bona fides of the assignee. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

8. —— Consideration for interest

Defendant was a bona fide purchaser of federal oil and gas lease, without actual or implied knowledge of any facts which would have put him on notice of an unrecorded as-

assignment by his vendor to another, or which would have created a further duty to inquire thereinto, where the price defendant paid was low but not unreasonably so in view of the short remaining lease term and the highly speculative nature of the investment, where the Bureau of Land Management records were not such as to create a duty of further inquiry into matters not of record at the Bureau, and where the vendor's statement that the assignment would be without warranty was not unusual but, in fact, was the expected course of conduct. O'Kane v. Walker, C.A.N.M.1977, 561 F.2d 207.

9. —— Examination of records

In order for an assignee of a federal mineral lease to be protected as a bona fide purchaser, examination of Bureau of Land Management records must be made; however, assignees are not required to go outside the records relating to the particular parcel of land assigned which records are kept in the Bureau state office. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

Prospective assignee of mineral lease issued under section 226 of this title in taking assignment of federal oil and gas lease could presume regularity in issuance of lease where land office serial register pages, tract book and plat showed particular lands to be available for leasing and particular lease to be in good standing and assignee was not bound to make searching examination of land office records pertaining to other lands in order to ascertain whether defect in lease application may have existed. Southwestern Petroleum Corp. v. Udall, C.A.N.M.1966, 361 F.2d 650.

§ 184a. Authorization of States to include in agreements for conservation of oil and gas resources lands acquired from United States

Notwithstanding the provisions of any applicable grant, deed, patent, exchange, or law of the United States, any State owning lands or interests therein acquired by it from the United States may consent to the operation or development of such lands or interests, or any part thereof, under agreements approved by the Secretary of the Interior made jointly or severally with lessees or permittees of lands or mineral deposits of the United States or others, for the purpose of more properly conserving the oil and gas resources within such State. Such agreements may provide for the cooperative or unit operation or development of part or all of any oil or gas pool, field, or area; for the allocation of production and the sharing of proceeds from the whole or any specified part thereof regardless of the particular tract from which production is obtained or proceeds are derived, and, with the consent of the State, for the modification of the terms and provisions of State leases for lands operated and developed thereunder, including the term of years for which said leases were originally granted, to conform said leases to the terms and provisions of such agreements: *Provided*, That nothing in this section contained, nor the effectuation of it, shall be construed as in any respect waiving, determining or affecting any right, title, or interest, which otherwise may exist in the United States, and that the making of any agreement, as provided in this section, shall not be construed as an admission as to the title or ownership of the lands included.

(Jan. 26, 1940, c. 14, 54 Stat. 17.)

Historical Note

Codification. Section was not enacted as part of Act Feb. 25, 1920, c. 85, 41 Stat. 437, known as the Mineral Lands Leasing Act, which comprises this chapter.

§ 185. Rights-of-way for pipelines through Federal lands

(a) Grant of authority

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the

transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

(b) Definitions

(1) For the purposes of this section "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) "Secretary" means the Secretary of the Interior.

(3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

(c) Inter-agency coordination

(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

(d) Width limitations

The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites, and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

(e) Temporary permits

A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

sary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided*, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

(p) Joint use of rights-of-way

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

(q) Statutes

No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

(r) Common carriers

(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

(2)(A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.

(3)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act [15 U.S.C.A. § 717 et seq.] or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(B) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this chapter that the lessee, assignee, or

beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this chapter.

(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

(s) Omitted

(t) Existing rights-of-way

The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) [42 U.S.C.A. § 4332(2)(C)] of the National Environmental Policy Act of 1970 (Public Law 90–190; 42 U.S.C. 4321).

(u) Limitations on export

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administra-

tion Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided,* That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

(v) State standards

The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

(w) Reports

(1) The Secretary and other appropriate agency heads shall report to the House and Senate Committees on Interior and Insular Affairs annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

(2) The Secretary or agency head shall notify the House and Senate Committees on Interior and Insular Affairs promptly upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty days (not counting days on which the House of Representatives or the Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

(4) The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Secretary of Energy any potential dangers of or actual explosions, or potential or actual spillage on Federal lands and shall include in such report a statement of corrective action taken to prevent such explosion or spillage.

(x) Liability

(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this chapter shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent

to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(y) Antitrust laws

The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws.

(Feb. 25, 1920, c. 85, § 28, 41 Stat. 449; Aug. 21, 1935, c. 599, § 1, 49 Stat. 678; Aug. 12, 1953, c. 408, 67 Stat. 557; Nov. 16, 1973, Pub.L. 93-153, Title I, § 101, 87 Stat. 576; Aug. 4, 1977, Pub.L. 95-91, Title III, §§ 301(b), 306, Title IV, § 402(a), (b), Title VII, §§ 703, 707, 91 Stat. 578, 581, 583, 584, 606, 607; July 12, 1985, Pub.L. 99-64, Title I, § 123(b), 99 Stat. 156.)

Unconstitutionality of Legislative Veto Provisions

The provisions of section 1254(c)(2) of Title 8, Aliens and Nationality, which authorize a House of Congress, by resolution, to invalidate an action of the Executive Branch, were declared unconstitutional in Immigration and Naturalization Service v. Chadha, 1983, 103 S.Ct. 2764. See similar provisions in subsec. (u) of this section.

Historical Note

References In Text. The National Environmental Policy Act of 1969, referred to in subsec (h)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

The date of enactment of this subsection, referred to in subsec. (k), the effective date of this provision, referred to in subsec. (q), and the effective date of this subsection, referred to in subsec. (t), probably mean the date of

approval of Pub. L. 93-153, which was Nov. 16, 1973.

The Natural Gas Act, referred to in subsec. (r)(3)(A), is Act June 21, 1938, c. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (section 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables volume.

The Export Administration Act of 1979, referred to in subsec. (u), is Pub.L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables volume.

The Federal antitrust laws, referred to in subsec. (y), are classified generally to chapter 1 (section 1 et seq.) of Title 15, Commerce and Trade.

Codification. Subsec. (s) of this section provided that the Secretary, in consultation with Federal and State agencies, review the need for a national system of transportation and utility corridors across Federal lands and report to Congress and to the President by July 1, 1975.

1985 Amendment. Subsec. (u). Pub. L. 99-64, § 123(b)(1), substituted "Export Administration Act of 1979 (50 U.S.C.App. 2401 and following)" for "Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841)".

Pub. L. 99-64, § 123(b)(2), substituted "Export Administration Act of 1979" for "Export Administration Act of 1969" following "enforcement provisions of the" and again following "accord with the provisions of the".

1973 Amendment. Pub.L. 93-153 completely rewrote the section substituting 25 subsecs. lettered (a) through (y) covering all aspects of the granting of rights-of-way for pipelines through Federal lands for the former single unlettered paragraph under which rights-of-way of 25 feet on each side of the pipeline could be granted and under which the pipeline was to be operated as a common carrier.

1953 Amendment. Act Aug. 12, 1953, permitted companies subject to Federal regulation, or public utilities subject to State regulations, to pass through the public domain without incurring the obligation to become a common carrier.

1935 Amendment. Act Aug. 21, 1935, substituted "may be granted by the Secretary of the Interior" for "are granted" and inserted "and conditions" following "regulations" in two instances, and "and shall accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipe line in such proportionate amounts as the Secretary of the Interior may, after a full hearing with notice thereof to the interested parties and a proper finding of facts, determine to be reasonable:" following "and maintained as common carriers.".

Change of Name. The Committee on Interior and Insular Affairs of the Senate was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Transfer of Functions. Enforcement functions of Secretary or other official in Department of Interior related to compliance with grants of rights-of-way and temporary use permits for Federal land and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of Department of Agriculture, related to compliance with associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in Appendix 1 to Title 5, Government Organization and Employees.

"Secretary of Energy or Federal Energy Regulatory Commission" was substituted for "Interstate Commerce Commission or Federal Power Commission" in subsec. (r)(5) pursuant to sections 301(b), 306, 402(a), (b), 703, and 707 of Pub.L. 95-91, which are classified to sections 7151(b), 7155, 7172(a), (b), 7293, and 7297 of Title 42, The Public Health and Welfare, and which transferred the functions vested in the Interstate Commerce Commission, and the Chairman and members thereof, relating to the transportation of oil by pipeline to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission within the Department of Energy), and terminated the Federal Power Commission and transferred its functions to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission).

"Secretary of Energy" was substituted for "Interstate Commerce Commission" in subsec. (w)(4) pursuant to sections 306 and 707 of Pub.L. 95-91, which are classified to sections 7155 and 7297 of Title 42, and which transferred the functions vested in the Interstate Commerce Commission, and the Chairman and members thereof, relating to the transportation of oil by pipeline to the Secretary of Energy (except for certain functions).

Outer Continental Shelf; Pipeline Rights-of-Way. Pipeline rights-of-way in connection with oil, gas, and other leases on submerged lands of outer Continental Shelf, see section 1334 of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Act Aug. 12, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2357. See, also, Pub.L. 93-153, 1973 U.S.Code Cong. and Adm.News, p. 2417; Pub.L. 99-64, 1985 U.S. Code Cong. and Adm.News, p. 108.

Cross References

Allocation and export to other countries in accordance with section 6271 of Title 42, not precluded by this section, see section 6271 of Title 42, The Public Health and Welfare.
Applicability of this section to rights-of-way, permits, leases, etc., issued pursuant to construction of trans-Alaska oil pipeline system, see section 1652 of Title 43, Public Lands.
Construction of section as not effecting any lands within borders of naval petroleum reserves and naval oil-shale reserves or agreements concerning operations thereunder, see section 236a of this title.
Conveyance of Federal lands covered by right-of-way granted under this section, see section 1768 of Title 43, Public Lands.
Deepwater ports provisions construed as not amending or otherwise limiting application of provisions of this section, see section 1522 of Title 33, Navigation and Navigable Waters.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.
Pipeline rights-of-way, see section 3167 of Title 16, Conservation.
Restrictions on exportation of domestically produced crude oil from the United States, see section 2406 of Title 50, Appendix, War and National Defense.
Rights-of-way over Federal land with respect to approved crude oil transportation system or the Long Beach-Midland project to be governed by this section, see section 2009 of Title 43, Public Lands.

Federal Practice and Procedure

Scope of rule 301, Federal Rules of Evidence, Title 28, see Wright & Graham: Evidence § 5123.

West's Federal Forms

Bonds and undertakings, see §§ 1521 to 1524.

West's Federal Practice Manual

Claims Court—
Jurisdiction, see § 1840.
Limitations and laches, see § 1894.
Minerals on federal lands, see § 5301 et seq.
Rights-of-way for pipe lines, see § 5449.

Code of Federal Regulations

Reimbursement of costs, see 10 CFR 1530.1 et seq.
Rights-of-way under Mineral Leasing Act, see 43 CFR 2880.0-3 et seq.
Short supply controls and monitoring, see 15 CFR 377.1 et seq.

Library References

Commerce ⇐85.4.
Mines and Minerals ⇐6.
C.J.S. Commerce § 142(9).
C.J.S. Mines and Minerals §§ 128 to 130.

Notes of Decisions

Time of grant 13
Width limitations 6

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1. Construction with other laws

Requirement of this section that rights-of-way for pipe lines be subject to express condition that lines be constructed, operated, and maintained as common carriers, was not impliedly repealed by enactment of Natural Gas Act, section 717 et seq. of Title 15. Chapman v. El Paso Natural Gas Co., 1953 204 F.2d 46, 92 U.S.App.D.C. 154.

2. Retroactive effect

This section which states that an applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application and that the holder of a right-of-way or permit shall reimburse the United States for monitoring costs, though it made pipeline service company and oil companies liable for additional costs incurred by the United States in connection with the construction and operation of the trans-Alaska pipeline after the effective date of this section, did not contain even a suggestion that pipeline service company and oil companies were liable to reimburse the United States for costs incurred by it prior to the enactment of this section. Alyeska Pipeline Service Co. v. U.S., 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

Where this section contained certain common carrier provisions affecting pipe lines granted rights of way through public lands, and an amendment to this section provided such common carrier provisions would not apply to the operation of the pipe lines where they were subject to state or municipal regulation, such amendment applied to present and future operation of pipe lines and present and future regulation of such lines, drawing upon antecedent grants only as a condition for its present effect. Mondakota Gas Co. v. Federal Power Commission, 1956, 232 F.2d 358, 98 U.S.App.D.C. 101, certiorari denied 77 S.Ct. 45, 352 U.S. 846, 1 L.Ed.2d 51.

3. Pipeline facilities and purposes within section—Generally

This chapter by the very terms of its preamble could not serve as basis for promulgation of fee regulations by the bureau of land management to reimburse government for costs in processing and monitoring applications of utilities for rights-of-way for electric transmission lines and related equipment across public lands. Public Service Co. of Colorado v. Andrus, D.C.Colo.1977, 433 F.Supp. 144.

4. —— Pumping stations

Pumping stations are part of the "pipeline" within provision of this section relating to rights-of-way over public lands for the transportation of oil or natural gas and the statutory "right-of-way" provides not only for 25 feet on each side of the pipe, but also for 25 feet on each side of facilities which constitute part of "pipeline." Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

Wherever it is made to appear to the satisfaction of the Secretary of the Interior that the establishment of a pumping station in a public domain in connection with a pipe line for the transportation of oil and gas is reasonably necessary for the operation of the pipe line, he has authority to authorize the grantee to construct such a pumping station and provide the site reasonably necessary for that purpose. 1931, 36 Op.Atty.Gen. 480.

5. Federal lands within section

Indians' nonexclusionary easement which allows them access to their usual and accustomed fishing sites does not constitute "lands held in trust for an Indian or an Indian tribe" as such phrase is used in provision of subsec. (b)(1) of this section prohibiting granting of right-of-way over Indian lands. No Oilport! v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

6. Width limitations

Special land use permit for use of 46-foot-wide strip adjacent to and parallel with right-of-way for proposed trans-Alaska oil pipeline was "right-of-way" "for the transportation of oil" within meaning of provision of this section which places limitation on width of rights-of-way across public lands. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S. App.D.C. 121, certiorari denied 93 S.Ct. 1550, 441 U.S. 917, 36 L.Ed.2d 309.

Where right-of-way granted over federal lands was within 50-foot width limitation, there was no violation of limitation even though exact site of right-of-way was not determined within two-mile corridor. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

7. Submission of construction, etc., plans

Plans submitted in connection with application for right-of-way over federal lands for construction of northern tier oil pipeline were sufficient to comply with requirement that applicant for right-of-way submit plan of construction, operation, and rehabilitation. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

8. Technical and financial capability of applicants

In considering application for construction of northern tier oil pipeline which would involve grant of right-of-way through federal lands, Secretary of Interior was not required to make finding as to applicant's technical and financial capability to construct, operate, maintain and terminate project but was required to be satisfied as to applicant's capability to do so. No Oilport! v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

9. Hearings

Secretary of Interior has substantial discretion as to hearings to be conducted in connection with application for right-of-way through federal lands. No Oilport! v. Carter, D.C. Wash.1981, 520 F.Supp. 334.

10. Reimbursement of Government costs

Secretary of Interior did not exceed his authority under Independent Offices Appropriation Act [31 U.S.C.A. § 9701] and Mineral Leasing Act [30 U.S.C.A. § 185(l)] in promulgating regulations for determining fees to charge applicants for Bureau of Land Management's costs in processing certain right-of-way applications, despite applicant's contention that Secretary exceeded his authority in issuing the regulations because he failed to consider and articulate "fair and equitable" factors, including "value to the recipient," and to state which costs were to be reimbursed and basis upon which they were to be calculated; although the regulations did not parrot the words "fair and equitable" or "value to the recipient," this deficiency was mitigated in at least four ways, including fact that costs related only to processing of the application. Sohio Transp. Co. v. U.S., C.A.Fed.1985, 766 F.2d 499.

The Secretary did not have authority under this chapter or applicable regulations to assess against a pipeline service company and the oil companies that formed the service company any part of a $12,253,730 fee paid to the Department of the Interior to reimburse the government for its expenses incurred in processing permit to build and operate trans-Alaska oil pipeline. Alyeska Pipeline Service Co. v. U.S., 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

11. Common carrier obligations

Where pipe line company was granted a right of way through public lands under this section which contained certain common carrier provisions affecting it, and an amendment of this section provided that such common carrier provisions would not apply in certain cases, Federal Power Commission had authority under this amendment to release pipe line company from continuing common carrier service. Mondakota Gas Co. v. Federal Power Commission, 1956, 232 F.2d 358, 98 U.S.App.D.C. 101, certiorari denied 77 S.Ct. 45, 352 U.S. 846, 1 L.Ed.2d 51.

This section authorizing Secretary of Interior to grant rights-of-way for natural gas pipe lines, on condition that lines be constructed, operated, and maintained as "common carriers", in absence of more specific language embraces the common law meaning of the term "common carriers". Chapman v. El Paso Natural Gas Co., 1953, 204 F.2d 46, 92 U.S.App. D.C. 154.

Pipelines are operated as common carriers and, as such, they are subject to the Interstate Commerce Act, section 1 et seq. of Title 49. Thomas v. Amerada Hess Corp., D.C.Pa.1975, 393 F.Supp. 58.

Defendant oil company which operated pipeline company violated this section by failing to operate system as common carrier in that it did not hold out lines as being available to transport for others and, when requested, refused to provide transportation for others. Denver Petroleum Corp. v. Shell Oil Co., D.C. Colo.1969, 306 F.Supp. 289.

12. Compliance with State standards

Record in action to block construction of northern tier oil pipeline which involved right-of-way through federal lands established that there was compliance with requirement that state standards for right-of-way construction be considered. No Oilport! v. Carter, D.C. Wash.1981, 520 F.Supp. 334.

13. Time of grant

Where notice to proceed with construction would not be issued until exact location of right-of-way over federal lands was established, grant of right-of-way before exact location within two-mile corridor was established did not violate provisions of this chapter. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

§ 186. Reservation of easements or rights-of-way for working purposes; reservation of right to dispose of surface of lands; determination before offering of lease; easement periods

Any permit, lease, occupation, or use permitted under this chapter shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this chapter, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes. The Secretary of the Interior, in his discretion, in making any lease under this chapter, may reserve to the United States the right to

lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for use of the lessee in extracting and removing the deposits therein. If such reservation is made it shall be so determined before the offering of such lease. The said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved.

(Feb. 25, 1920, c. 85, § 29, 41 Stat. 449.)

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.

Code of Federal Regulations

Rights-of-way under Mineral Leasing Act, see 43 CFR 2880.0-3 et seq.

§ 187. Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases for protection of diverse interests in operation of mines, wells, etc.; State laws not impaired

No lease issued under the authority of this chapter shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

(Feb. 25, 1920, c. 85, § 30, 41 Stat. 449; Oct. 30, 1978, Pub.L. 95-554, § 5, 92 Stat. 2074.)

Historical Note

1978 Amendment. Pub.L. 95-554 substituted "provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface" for "provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface".

Legislative History. For legislative history and purpose of Pub.L. 95-554, see 1978 U.S. Code Cong. and Adm.News, p. 4736.

Cross References

Assignment or sublease of oil or gas lease notwithstanding this section, see section 187a of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.
Relinquishment in writing of all rights under oil and gas lease notwithstanding this section, see section 187b of this title.
Surrender of leases, see section 188a of this title.

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Assignment generally, see § 5400.
General provisions in leases, see § 5401.5.
Oil and gas assignment, see § 5412.
Termination, see § 5401.
Wage and hour statutes, see § 1209.

Notes of Decisions

Assignments or subleases 1
Miscellaneous transfers 2
State laws relating to lease provisions 3

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1. Assignments or subleases

Where owner of royalty interest in leasehold assigned a portion thereof to assignee and filed affidavit in office of Bureau of Land Management at Cheyenne, Wyoming, about a month prior to date of assignment from assignee to subassignee, even if filing of affidavit constituted constructive notice to subassignee of rights of assignor in and to overriding royalty estate, since court found as between assignor and subassignee that assignee had not committed fraud in procuring of assignment of overriding royalty interest to him, and since court also found that assignment from assignee to subassignee was predicated on valuable consideration, filing of affidavit did not constitute constructive notice of any facts which rendered title of subassignee voidable upon any ground of fraud or lack of consideration. Wight v. Chandler, C.A.Wyo.1959, 264 F.2d 249.

The matter primarily intended to be covered by the prohibition against an assignment or subletting a lease issued under the authority of this chapter was a voluntary change by the lessee of his relations to the lease through assignment or subleasing. Hodgson v. Federal Oil & Development Co., C.C.A.Wyo.1925, 5 F.2d 442, affirmed 47 S.Ct. 502, 274 U.S. 15, 71 L.Ed. 901, 54 A.L.R. 869.

This section and administrative regulations relating to assignment of oil and gas leases from the United States or any interest therein are for the benefit and protection of the government, and their prohibition is available only to the government, and not to an individual. Recovery Oil Co. v. Van Acker, 1947, 180 P.2d 436, 79 Cal.App.2d 639.

2. Miscellaneous transfers

Transfer by operation of law as by foreclosure of lien, does not avoid lease. Hockman v. Sunhew Petroleum Corporation, 1932, 11 P.2d 778, 92 Mont. 174.

3. State laws relating to lease provisions

In proviso of this section that none of "such provisions" shall be in conflict with laws of states in which leased property is situated, term "such provisions" means only provisions of preceding sentence, relating to employment practices, prevention of undue waste and monopoly, and diligence requirements, and not including land use planning controls, and, also, proviso assures only that Secretary of Interior shall observe state standards in drafting terms of lease, and proviso is not recognition of concurrent state jurisdiction. Ventura County v. Gulf Oil Corp., C.A.Cal.1979, 601 F.2d 1080, affirmed 100 S.Ct. 1593, 445 U.S. 947, 63 L.Ed.2d 782.

§ 187a. Oil or gas leases; partial assignments

Notwithstanding anything to the contrary in section 187 of this title, any oil or gas lease issued under the authority of this chapter may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this chapter, and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof, together with any required bond and proof of the qualification under this chapter of the assignee or sublessee to take or hold such lease or interest therein. Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed. The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease, or of a part of a legal subdivision. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and as above provided, release and discharge the assignor from all obligations thereafter accruing with respect to the assigned lands; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this chapter. Upon the segregation by an assignment of a lease issued after September 2, 1960 and held beyond its primary term by production, actual or suspended, or the payment of compensatory royalty, the segregated lease of an undeveloped, assigned, or retained part shall continue for two years, and so long thereafter as oil or gas is produced in paying quantities.

(Feb. 25, 1920, c. 85, § 30a, as added Aug. 8, 1946, c. 916, § 7, 60 Stat. 955, and amended July 29, 1954, c. 644, § 1(6), 68 Stat. 585; Sept. 2, 1960, Pub.L. 86–705, § 6, 74 Stat. 790.)

Historical Note

1960 Amendment. Pub.L. 86–705 changed the last sentence of this section to restrict automatic extensions after Sept. 2, 1960.

1954 Amendment. Act July 29, 1954, authorized partial assignment of a lease in its extended term regardless of reason for extension.

Savings Provisions. Savings provisions, see note set out under section 181 of this title.

Leases Issued Prior to Sept. 2, 1960. Section 6 of Pub.L. 86–705 provided in part that: "The provisions of this section 6 [amending this section] shall not be applicable to any lease issued prior to the effective date of this Act [Sept. 2, 1960]."

Legislative History. For legislative history and purpose of Act July 29, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2695. See, also, Pub.L. 86–705, 1960 U.S.Code Cong. and Adm.News, p. 3313.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

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Bonds and undertakings, see §§ 1521 to 1524.

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Assignment, see § 5412.
Extension, see § 5411.

Library References

Mines and Minerals ⇐5.1(6).
C.J.S. Mines and Minerals § 130.

Notes of Decisions

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1. Law governing

Inasmuch as Louisiana law permits transfer of mineral lease by written instrument, provision in this section that oil and gas leases shall be assignable did not justify use of federal rather than state law in determining rights of private parties with respect to joint venture agreement and option agreement pertaining to oil rich islands leased to private party by United States and located in mouth of Mississippi River. 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.

Leases which could be created only by virtue of amendments to this section providing for segregating assignments were governed by such amendments including provision making relinquishments effective as of date of filing. Wright v. Paine, 1961, 289 F.2d 766, 110 U.S. App.D.C. 100.

2. Approval by Secretary

Inasmuch as Secretary of Interior, who must approve all assignments before lease obligations or record titles are shifted finally, is entirely free to disapprove assignees however valid their assignments might otherwise be, provisions of this chapter of curtailing alien ownership and limiting any lessee or option holder to maximum number of acres did not warrant creating at large a federal common law of federal mineral lease contracts among private interests. 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.

Congress in this chapter has not undertaken to assume exclusive control of federal mineral lands under this chapter but it has imposed two significant controls which must be satisfied before the state police power in area of conservation may ultimately attach; the first is that a federal mineral lessee may not assign his lease without the consent of federal government, and the second is that a pooling or communitization agreement involving federal and nonfederal lands must be approved by the federal government. Texas Oil & Gas Corp. v. Phillips Petroleum Co., D.C.Okl.1967, 277 F.Supp. 366, affirmed 406 F.2d 1303, certiorari denied 90 S.Ct. 80, 396 U.S. 829, 24 L.Ed.2d 80.

In action to recover rentals paid by plaintiff to the Bureau of Land Management on oil and gas leases assigned by plaintiff to defendant on the ground that defendant's neglect to file the assignments for approval obligated plaintiff as record owner of the leases to pay the rentals, defendant's failure to file the assignments for approval in keeping with the regulations did not effect a reassignment of the leases to the plaintiff without the latter's consent and against its wishes. Pan Am. Petroleum Corp. v. Gibbons, D.C.Utah 1958, 168 F.Supp. 867, affirmed 262 F.2d 852.

Where this section provided in part that assignment of interest in government lease must be approved by Secretary of Interior before assignment is valid, and assignment to interpleaded defendant by plaintiff who sought to recover moneys withheld on sale to defendant of oil runs had not been approved, and evidence was not such that court could say that assignment would be approved, plaintiff was entitled to all moneys from sale of oil runs on the lease. Oasis Oil Co. v. Bell Oil & Gas Co., D.C.Okl.1952, 106 F.Supp. 954.

3. Responsibility for lease obligations

Fact that assignments of certain federal oil and gas leases were unapproved by Bureau of Land Management was immaterial in determining whether assignee was liable for rental due under such leases, since assignee could not avoid rental obligations of the leases by simply not offering them to the Bureau for approval. Gibbons v. Pan American Petroleum Corp., C.A.Utah 1958, 262 F.2d 852.

The lessee of an oil and gas lease will be released by the act of the lessor in substituting the assignee in the place of the lessor, but even though there is no such substitution, an assign-

ee becomes primarily responsible for the payment of rent as between the assignor and assignee. Pan Am. Petroleum Corp. v. Gibbons, D.C.Utah 1958, 168 F.Supp. 867, affirmed 262 F.2d 852.

4. Extension of lease term

Secretary of the Interior had authority to make decision relating to the extension of lease by assignments made under 30 U.S.C.A. § 187a to operate prospectively only, which decision placed a different construction on 30 U.S.C.A. § 187a from that previously reached by the Associate Solicitor of the Department of the Interior. Safarik v. Udall, 1962, 304 F.2d 944, 113 U.S.App.D.C. 68, certiorari denied 83 S.Ct. 206, 371 U.S. 901, 9 L.Ed.2d 164.

5. Effectiveness of assignment

Partial assignment of lease of government-owned oil lands, though filed in Land Office on September 24 prior to expiration date of lease on October 31, was ineffective, where rental for first year of extended lease was not paid, and therefore first applicant, who applied on November 2 for lease, was first qualified applicant and was entitled to lease, and not second applicant, who filed applicant on November 20, though Land Office did not until November 19 vacate its November 10 approval of assignment and declare assignment void. McGarry v. Udall, 1962, 216 F.Supp. 314, affirmed 317 F.2d 595, 115 U.S.App.D.C. 184.

6. Enforceability of assignments

Where plaintiffs assigned original prospecting permit for oil and gas on public lands to assignee on certain conditions, right of the parties arose out of and in agreement between private parties, and unless contrary to declared public policy, they were enforceable in accordance with its terms and conditions and applicable law and were not extinguished by subsequent federal legislation. Oldland v. Gray, C.A.Colo.1950, 179 F.2d 408, certiorari denied 70 S.Ct. 803, 339 U.S. 948, 94 L.Ed. 1362.

§ 187b. Oil or gas leases; written relinquishment of rights; release of obligations

Notwithstanding any provision to the contrary in section 187 of this title, a lessee may at any time make and file in the appropriate land office a written relinquishment of all rights under any oil or gas lease issued under the authority of this chapter or of any legal subdivision of the area included within any such lease. Such relinquishment shall be effective as of the date of its filing, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condition for suspension or abandonment in accordance with the applicable lease terms and regulations; thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment.

(Feb. 25, 1920, c. 85, § 30b, as added Aug. 8, 1946, c. 916, § 8, 60 Stat. 956.)

Historical Note

Savings Provisions. Savings provisions, see note set out under section 181 of this title.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

West's Federal Forms

Bonds and undertakings, see §§ 1521 to 1524.

West's Federal Practice Manual

Assignment, see § 5412.

Library References

Mines and Minerals ⇐5.1(7).
C.J.S. Mines and Minerals § 128.

Notes of Decisions

1. Time of relinquishment

Application of regulation interpreted as providing that only upon notation of relinquishment of noncompetitive oil and gas lease on tract books, lands shall be open to further offers so as to disqualify as premature lease offer filed prior to notation but after date upon which prior lease would have expired was not plainly erroneous or inconsistent with regulation. Wright v. Paine, 1961, 289 F.2d 766, 110 U.S.App.D.C. 100.

§ 188. Failure to comply with provisions of lease

(a) Forfeiture

Except as otherwise herein provided, any lease issued under the provisions of this chapter may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of this chapter, of the lease, or of the general regulations promulgated under this chapter and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof.

(b) Cancellation

Any lease issued after August 21, 1935, under the provisions of section 226 of this title shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States land office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such district, then in the post office nearest such land. Notwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law: *Provided, however,* That when the time for payment falls upon any day in which the proper office for payment is not open, payment may be received the next official working day and shall be considered as timely made: *Provided,* That if the rental payment due under a lease is paid on or before the anniversary date but either (1) the amount of the payment has been or is hereafter deficient and the deficiency is nominal, as determined by the Secretary by regulation, or (2) the payment was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or made in accordance with a bill or decision which has been rendered by him and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary.

(c) Reinstatement

Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if—

(1) a petition for reinstatement, together with the required rental, including back rental accruing from the date of termination of the lease, is filed with the Secretary; and

(2) no valid lease has been issued affecting any of the lands covered by the terminated lease prior to the filing of said petition. The Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him. In any case where a reinstatement of a terminated lease is granted under this subsection and the Secretary finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable: *Provided,* That (A) such extension shall not exceed a period equivalent to the time beginning when the lessee knew or should have known of the termination and ending on the date the Secretary grants such petition; (B) such extension shall not exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination; and (C) when the reinstatement occurs after the expiration of the term or extension thereof the lease may be extended from the date the Secretary grants the petition.

(d) Additional grounds for reinstatement

(1) Where any oil and gas lease issued pursuant to section 226(b) or (c) of this title or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease (A) occurs after the expiration of the primary term or any extension thereof, or (B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

(2) No lease shall be reinstated under paragraph (1) of this subsection unless—

(A) with respect to any lease that terminated under subsection (b) of this section prior to January 12, 1983:

(i) the lessee tendered rental prior to January 12, 1983, and the final determination that the lease terminated was made by the Secretary or a court less than three years before January 12, 1983, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any lease that terminated under subsection (b) of this section on or after January 12, 1983, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of—

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

(e) Conditions for reinstatement

Any reinstatement under subsection (d) of this section shall be made only if these conditions are met:

(1) no valid lease, whether still in existence or not, shall have been issued affecting any of the lands covered by the terminated lease prior to the filing of such petition: *Provided, however,* That after receipt of a petition for reinstatement, the Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him;

(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future rentals at a rate of not less than $10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement that future rentals shall be at a rate not less than $5 per acre per year, all as determined by the Secretary;

(3)(A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future royalties at a rate of not less than 16⅔ percent computed on a sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royalty[1] schedule then in force and used for royalty determination for competitive leases issued pursuant to such section as determined by the Secretary: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

(B) payment of back royalties and inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement for future royalties at a rate not less than 16⅔ percent: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the cancellation or termination of the original lease; and

(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the reinstatement.

A copy of said notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the Secretary deemed significant in making this determination to reinstate, shall be furnished to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate at least thirty days in advance of the reinstatement. The lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed $500. In addition the lessee shall reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement.

(f) Issuance of noncompetitive oil and gas lease; conditions

Where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 1744 of Title 43, and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease, consistent with the provisions of section 226(e) of this title, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

(1) a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim, being filed with the Secretary—

(A) with respect to any claim deemed conclusively abandoned on or before January 12, 1983, on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any claim deemed conclusively abandoned after January 12, 1983, on or before the one hundred and twentieth day after final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim;

(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition: *Provided, however,* That after the filing of a petition for issuance of a lease under this subsection, the Secretary shall not issue any new lease affecting any of the lands covered by such abandoned oil placer mining claim for a reasonable period, as determined in accordance with regulations issued by him;

(3) a requirement in the lease for payment of rental, including back rentals accruing from the statutory date of abandonment of the oil placer mining claim, of not less than $5 per acre per year;

(4) a requirement in the lease for payment of royalty on production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the statutory date the claim was deemed conclusively abandoned, of not less than 12½ percent; and

(5) compliance with the notice and reimbursement of costs provisions of paragraph (4) of subsection (e) of this section but addressed to the petition covering the conversion of an abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease.

(g) Treatment of leases

(1) Except as otherwise provided in this section, a reinstated lease shall be treated as a competitive or a noncompetitive oil and gas lease in the same manner as the original lease issued pursuant to section 226(b) or (c) of this title.

(2) Except as otherwise provided in this section, the issuance of a lease in lieu of an abandoned patented oil placer mining claim shall be treated as a noncompetitive oil and gas lease issued pursuant to section 226(c) of this title.

(h) Statutory provisions applicable to leases

The minimum royalty provisions of section 226(j) of this title and the provisions of section 209 of this title shall be applicable to leases issued pursuant to subsections (d) and (f) of this section.

(i) Royalty reductions

(1) In acting on a petition to issue a noncompetitive oil and gas lease, under subsection (f) of this section or in response to a request filed after issuance of such a lease, or both, the Secretary is authorized to reduce the royalty on such lease if in his judgment it is equitable to do so or the circumstances warrant such relief due to uneconomic or other circumstances which could cause undue hardship or premature termination of production.

(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes if, in his judgment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease after the rent had become due and had not been paid; or if in the judgment of the Secretary it is equitable to do so for any reason.

(j) Discretion of Secretary

Where, in the judgment of the Secretary of the Interior, drilling operations were being diligently conducted on the last day of the primary term of the lease, and, except for nonpayment of rental, the lessee would have been entitled to extension of his lease, pursuant to section 226–1(d) of this title, the Secretary of the Interior may reinstate such lease notwithstanding the failure of the lessee to have made payment of the next year's rental, provided the conditions of subparagraphs (1) and (2) of subsection (c) of this section are satisfied.

(Feb. 25, 1920, c. 85, § 31, 41 Stat. 450; Aug. 8, 1946, c. 916, § 9, 60 Stat. 956; July 29, 1954, c. 644, § 1(7), 68 Stat. 585; Oct. 15, 1962, Pub.L. 87–822, § 1, 76 Stat. 943; May 12, 1970, Pub.L. 91–245, §§ 1, 2, 84 Stat. 206; Jan. 12, 1983, Pub.L. 97–451, Title IV, § 401, 96 Stat. 2462.)

[1] So in original. Probably should be "royalty".

Historical Note

References in Text. The Mineral Leasing Act for Acquired Lands, referred to in subsec. (d)(1), is Act Aug. 7, 1947, c. 513, 61 Stat. 913, which is classified generally to chapter 7 (section 351 et seq.) of this title. For complete classification of this Act to the Code, see section 351 of this title and Tables volume.

1983 Amendment. Subsec. (d). Pub.L. 97–451 added subsec. (d). Former subsec. (d) was redesignated (j).

Subsecs. (e) to (i). Pub.L. 97–451 added subsecs. (e) to (i).

Subsec. (j). Pub.L. 97–451 redesignated former subsec. (d) as (j).

1970 Amendment. Subsec. (b). Pub.L. 91–245, § 1, added the proviso authorizing continuance of a lease where timely paid rent is nominally deficient or miscalculated due to an error either in acreage figure stated in the lease, in any decision affecting the lease, or in a bill or decision rendered by the Secretary, except where a new lease was issued prior to May 12, 1970 or the lessee failed to pay the deficiency within the period allowed by the Secretary.

Subsec. (c). Pub.L. 91–245, § 2, added provisions allowing reinstatement of a lease despite a twenty-day delay in payment of rent, made the payment of back rental accruing from the date of termination of the lease a prerequisite to such reinstatement, restricted the Secretary's power to issue a new lease on the lands covered by the terminated lease, gave the Secretary discretion to extend the term of a reinstated lease so as to afford the lessee a reasonable opportunity to continue operations under the lease, and struck out requirement that the petition for reinstatement of any lease terminated prior to Oct. 15, 1962 be filed within 180 days after Oct. 15, 1962.

1962 Amendment. Pub.L. 87–822 designated existing pars. as subsecs. (a) and (b) and added subsecs. (c) and (d).

1954 Amendment. Act July 29, 1954, provided for automatic termination of a lease on failure to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities.

1946 Amendment. Act Aug. 8, 1946, principally added second paragraph relating to cancellation of leases by the Secretary of the Interior.

Effective Date of 1983 Amendment. Amendment by section 401 of Pub.L. 97–451 applicable to oil and gas leases issued before, on, or after Jan. 12, 1983, except that in the case of a lease issued before such date, no provision of such amendment or any rule or regulation prescribed under such amendment to alter the express and specific provisions of such lease, see section 305 of Pub.L. 97–451, set out as a note under section 1701 of this title.

Savings Provisions. Savings provisions, see note set out under section 181 of this title.

Authority for Issuance of Leases Unaffected by Reinstatement of Leases. Section 2 of Pub.L. 87–822 provided that: "Nothing in this Act [amending this section] shall be construed as limiting the authority of the Secretary of the Interior to issue, during the periods in which petitions for reinstatement may be filed, oil and gas leases for any of the lands affected."

Outer Continental Shelf; Cancellation of Leases. Cancellation of mineral leases on submerged lands of outer Continental Shelf, see sections 1334 and 1337 of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Act July 29, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2695. See, also, Pub.L. 87–822, 1962 U.S.Code Cong. and Adm.News, p. 3236; Pub.L. 91–245, 1970 U.S. Code Cong. and Adm.News, p. 3002; Pub.L. 97–451, 1982 U.S.Code Cong. and Adm.News, p. 4268.

Cross References

Cancellation, forfeiture or disposal of lease interests for violations relating to ownership and control, see section 184 of this title.
Civil penalties for failure to pay rent on terminated leases, see section 1719 of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
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.
Surrender of leases, see 188a of this title.

West's Federal Practice Manual

Oil and gas lease termination, see § 5417.
Termination generally, see § 5401.

Code of Federal Regulations

Location of mining claims, see 43 CFR 3831.1 et seq.
Oil and gas leasing, see 43 CFR 3100.0–3 et seq.

Library References

Mines and Minerals ⇐5.1(7).
C.J.S. Mines and Minerals § 174.

Notes of Decisions

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1. Retroactive effect

Amendment in 1954 of this section pertaining to automatic termination of leases of certain federal oil or gas wells was not applicable to leases in effect prior to passage of this chapter and which were automatically extended through termination of a unit agreement. Gibbons v. Pan Am. Petroleum Corp., C.A.Utah 1958, 262 F.2d 852.

This section providing that the failure of lessee to pay rental on or before the anniversary date of the lease for any lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates the lease, does not apply retroactively to contracts entered into prior to its effective date in the absence of consent indicated by the parties to the contract in line with the regulations issued pursuant thereto. Pan Am. Petroleum Corp. v. Gibbons, D.C.Utah 1958, 168 F.Supp. 867, affirmed 262 F.2d 852.

2. Forfeiture and cancellation of leases—Generally

This section providing that a lease of public lands may be cancelled by an appropriate proceeding in federal district court and that a lease shall be subject to cancellation by Secretary of Interior after 30 days' notice upon failure of lessee to comply with any provisions of the lease, unless land is known to contain valuable deposits of oil and gas, concerns only cancellations based on post-lease events and it does not affect Secretary of Interior's administrative authority to cancel lease on basis of prelease factors. Boersche v. Udall, Dist.Col. 1963, 83 S.Ct. 1373, 373 U.S. 472, 10 L.Ed.2d 491.

In action to quiet title to noncompetitive oil and gas lease, cancelled by Bureau of Land Management as erroneously issued to plaintiff on application filed while application of individual defendant for such a lease and corporate defendant's placer mining claim locations on leased public lands were of record, district court cannot determine that either plaintiff or defendants have any interest in lands until exhaustion of their administrative remedies in pending proceedings before Bureau to determine defendants' rights. Call v. Richfield Oil Corp., D.C.Cal.1951, 101 F.Supp. 972.

3. —— Waiver of right

Mere acceptance of royalties will not deny to lessor his right to terminate lease for failure to comply with covenant to produce and market gas, but where lessors have acquiesced in acts of lessees in development of field, making no claim that lease was forfeited, in addition to acceptance of royalties, they will not be permitted to terminate lease. Eggleson v. McCasland, D.C.Okl.1951, 98 F.Supp. 693.

4. —— Acreage limitations

Secretary of Interior had administrative power to cancel a noncompetitive oil and gas lease covering an 80-acre tract when application for lease covered only 80 acres, and an adjoining tract was available for leasing but was not included as required under a regulation providing that application cover at least 640 acres except where lands sought to be leased are surrounded by other land which is not available for leasing. Boesche v. Udall, Dist.Col.1963, 83 S.Ct. 1373, 373 U.S. 472, 10 L.Ed.2d 491.

5. —— Production and marketing of minerals

Federal lease could not be cancelled administratively because it was a currently-producing oil and gas lease. Naartex Consulting Corp. v. Watt, 1983, 722 F.2d 779, 232 U.S.App. D.C. 293, certiorari denied 104 S.Ct. 2399, 81 L.Ed.2d 355.

Where provisions of an oil and gas lease from the United States respecting forfeiture of lease for nondevelopment gave the government a right to forfeit lease only after written notice was given and failure to develop continued thereafter, the lessee's failure to drill wells called for by lease did not in itself work a "forfeiture" of lease. Rush v. Kirk, C.C.A.Wyo. 1942, 127 F.2d 368.

Where lessee under oil and gas lease was unable to obtain market for gas during term of lease because it was not financially feasible to expend fund necessary to make connection with transmission line, but lessee expended in excess of $800,000 in developing general area in which lease was located in hope that it could create market for gas existing in that area and it appeared that market might soon become available, lease would not be terminated for failure to comply with covenant to produce and market. Eggleson v. McCasland, D.C.Okl.1951, 98 F.Supp. 693.

Temporary suspension of about 13 months in pumping oil from producing wells did not entitle lessor to a termination or a forfeiture of oil and gas lease requiring defendant to

produce oil and providing for termination for failure to perform terms or conditions of lease unless performed within 30 days after written notice from lessor, where defendant kept lessor informed of difficulties encountered in an effort to market oil, lessor made no objections and gave no notice that defendant was in default at any time but permitted defendant to expend $6,500 on another well, and wells had been reopened and oil had been pumped and marketed 11 months before action for cancellation of lease was commenced. Stimson v. Tarrant, D.C.Mont.1941, 43 F.Supp. 657, affirmed 132 F.2d 363, certiorari denied 63 S.Ct. 1164, 319 U.S. 751, 87 L.Ed. 1705.

6. —— Injunction against termination

Proposed action by government officials to cancel, by administrative procedure, oil and gas leases affected lessee's rights by clouding his title, and entitled him to equitable relief by way of injunction. 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.

Lessee was not entitled to enjoin Secretary of Interior from instituting proceedings to cancel oil leases on government land; remedy at law being adequate. Bell Oil & Gas Co. v. Wilbur, 1931, 50 F.2d 1070, 60 App.D.C. 256.

7. Reinstatement

Secretary of Interior did not abuse his discretion in refusing to reinstate oil and gas leases, which were automatically terminated for failure to make timely rental payments, upon finding that lessee, who alleged that a particular employee who was responsible for mailing rental checks and who had satisfactorily performed a task in the past had failed to send in the rental payments on time and falsely told her supervisor that the payments had been mailed, failed to exercise reasonable diligence. Ram Petroleums, Inc. v. Andrus, C.A. Nev.1981, 658 F.2d 1349.

Although narrow, Secretary of Interior's interpretation of provision of this section governing reinstatement where late payment of rental was either justifiable or not due to lack of reasonable diligence on part of lessee as being justifiable only where late payment is caused by factors outside lessee's control and as satisfying reasonable diligence standard only where rental payment is mailed sufficiently in advance to account for normal delays in mail delivery was not arbitrary or capricious or abuse of discretion and regulation was properly applied to deny reinstatement although late payment was due solely to employee negligence or misconduct. Ramoco, Inc. v. Andrus, C.A.Utah 1981, 649 F.2d 814, certiorari denied 102 S.Ct. 569, 454 U.S. 1032, 70 L.Ed.2d 475.

Since oil and gas leases issued by United States Bureau of Land Management and state of Wyoming lapsed by their own terms because of failure of debtors in possession to make required delay rental payments the bankruptcy court in proceedings brought under former section 701 et seq. of Title 11 was powerless to order reinstatement. In re Trigg, C.A.N.M.1980, 630 F.2d 1370.

8. Rental payments

Where agreement required defendant to reimburse plaintiff acquiring leases from the United States the funds used for purpose of acquisition of the leases, and not for payment of delay rentals, this section and section 226 of this title eliminating free second and third years and requiring advance delay rental of 50¢ per acre for each year did not make the delay rentals a personal obligation of the defendant. King-Stevenson Gas & Oil Co. v. Texam Oil Corp., Okl.1970, 466 P.2d 950.

§ 188a. Surrender of leases

The Secretary of the Interior is authorized to accept the surrender of any lease issued pursuant to any of the provisions of this chapter, or any amendment thereof, where the surrender is filed in the Bureau of Land Management subsequent to the accrual but prior to the payment of the yearly rental due under the lease, upon payment of the accrued rental on a pro rata monthly basis for the portion of the lease year prior to the filing of the surrender. The authority granted to the Secretary of the Interior by this section shall extend only to cases in which he finds that the failure of the lessee to file a timely surrender of the lease prior to the accrual of the rental was not due to a lack of reasonable diligence, but it shall not extend to claims or cases which have been referred to the Department of Justice for purposes of suit.

(Nov. 28, 1943, c. 329, 57 Stat. 593; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

Historical Note

Codification. Section was not enacted as a part of Mineral Lands Leasing Act, which comprises this chapter.

Transfer of functions. "Bureau of Land Management" was substituted for "General Land Office" on authority of Reorg. Plan No. 3 of 1946, § 403, set out in Appendix 1 to Title 5, Government Organization and Employees.

Library References

Mines and Minerals ⇐5.1(7).
C.J.S. Mines and Minerals § 128.

§ 189. Rules and regulations; boundary lines; State rights unaffected; taxation

The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

(Feb. 25, 1920, c. 85, § 32, 41 Stat. 450.)

Historical Note

Transfer of Functions. The functions of the Secretary of the Interior to promulgate regulations under this chapter relating to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub.L. 97-100, Title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and the functions of the Secretary of Energy were returned to the Secretary of the Interior. See House Report No. 97-315, pp. 25, 26, Nov. 5, 1981.

Outer Continental Shelf; Rules and Regulations with Respect to Leases. Rules and regulations with respect to mineral leases on submerged lands of outer Continental Shelf to be prescribed by Secretary of the Interior, see section 1334 of Title 43, Public Lands.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.
Surrender of leases, see section 188a of this title.

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Mineral Leasing Act, see § 5392.

Code of Federal Regulations

Appeals procedure, see 30 CFR 290.1 et seq.
Approval, sales agreements or contracts covering disposal of oil and gas lease products except as to Indian or Naval petroleum reserve lands, see 30 CFR 207.1 et seq.
Audits and inspections, see 30 CFR 217.50 et seq.
Disposal of government royalty oil, see 30 CFR 208.1 et seq.

Exploration and mining operations of solid minerals (other than coal), see 43 CFR 3570.0–1 et seq.
Leasing of minerals other than oil and gas, see 43 CFR 3500.0–3 et seq.
Mining and reclamation of lands, surface exploration, see 43 CFR 23.1 et seq.
Onshore oil and gas unit agreements, unproven areas, see 43 CFR 3180.0–1 et seq.
Special laws and rules, see 43 CFR 2091.0–7 et seq.
Timber, free use, see 43 CFR 5510.1 et seq.

Notes of Decisions

1. Mandatory nature of section

As respects whether lands on which oil and gas lease was sought were within a producing field, this section authorizing Secretary of Interior to determine boundaries of all oil and gas field structures was not mandatory but permissive. Wann v. Ickes, 1937, 92 F.2d 215, 67 App.D.C. 291.

2. Rules and regulations—Generally

The Secretary of the Interior is bound by his own regulation promulgated pursuant to this chapter so long as it remains in effect, since it has the force of law. McKay v. Wahlenmaier, 1955, 226 F.2d 35, 96 U.S.App.D.C. 313.

This section, authorizing Secretary of Interior to make rules and regulations, did not authorize Secretary to condition the granting of rights-of-way for natural gas pipeline on signing of stipulation embodying specific and detailed regulations and conditions for operation of pipe line as common carrier. Chapman v. El Paso Natural Gas Co., 1953, 204 F.2d 46, 92 U.S.App.D.C. 154.

Regulation by Secretary of Interior relative to the leasing of federal coal lands, when published in the Federal Register as one of general applicability and legal effect had force and effect of a statute and as such was binding upon Secretary until repealed or modified by him. Sheridan-Wyoming Coal Co. v. Krug, 1949, 172 F.2d 282, 84 U.S.App.D.C. 172, reversed on other grounds 70 S.Ct. 392, 338 U.S. 621, 94 L.Ed. 393.

Under this section, giving the Interior Department the right to prescribe rules and regulations to carry this chapter into effect, regulations enacted pursuant to such power should be given the full force and effect of this section when not inconsistent with or repugnant to this section. Hodgson v. Midwest Oil Co., D.C.Wyo.1924, 297 F. 273, case transferred to Circuit Court of Appeals, 46 S.Ct. 100, 269 U.S. 534, 70 L.Ed. 399.

Provision of 30 U.S.C.A. § 189 that the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of the Mineral Lands Leasing Act [30 U.S.C.A. § 181 et seq.] grants the Secretary broad powers and authority commensurate with the broad responsibilities imposed upon his office. Getty Oil Co. v. Clark, D.C.Wyo.1985, 614 F.Supp. 904.

Since Congress has said that the pertinent sections of this chapter shall not be construed to affect the rights of the states or other local authority to exercise any rights which they may have, this must likewise be a limitation on Secretary of the Interior as to his regulation-making authority set out in this section. Texas Oil & Gas Corp. v. Phillips Petroleum Co., D.C.Okl.1967, 277 F.Supp. 366, affirmed 406 F.2d 1303, certiorari denied 90 S.Ct. 80, 396 U.S. 829, 24 L.Ed.2d 80.

3. —— Abandonment of mineral sites

The regulation adopted by Department of Interior under this chapter, providing that, if permittee shall fail to plug properly any dry or abandoned well, the district supervisor, after giving 30 days' notice to parties in interest, may plug such well at expense of permittee or his surety, conferred upon supervisor, a "discretionary power" which was a proper exercise of the administrative authority vested in the Secretary of Interior. Forbes v. U.S., C.C.A.Mont.1942, 125 F.2d 404, affirmed 127 F.2d 862.

4. —— Acreage limitations

Regulation providing that offer for each oil and gas lease may not be for less than 640 acres except when land is surrounded by lands not available for leasing was not unreasonably interpreted in rejecting part of one offer as to 160 acres of land adjoining land available for leasing and accepting part of same offer as to 120 acres of land isolated from land available for leasing. Southwestern Petroleum Corp. v. Udall, 1963, 325 F.2d 633, 117 U.S.App.D.C. 60.

5. —— Mineral sale prices

Secretary of the Interior can fix price at which operator on oil lands leased from government shall sell his share of oil after paying government's royalty. Wilbur v. Texas Co., 1930, 40 F.2d 787, 59 App.D.C. 275, certiorari denied 51 S.Ct. 24, 282 U.S. 843, 75 L.Ed. 748.

6. —— Qualifications for leases and permits

Rule cannot add to qualifications of applicant for prospecting permit. West v. U.S., 1929, 30 F.2d 739, 58 App.D.C. 329.

7. —— Royalties

Regulation which was adopted by Secretary of Interior and which limited distribution of royalty oil to small business enterprises was invalid. Plateau, Inc. v. Department of Interior, C.A.N.M.1979, 603 F.2d 161.

Secretary of the Interior may establish reasonable values for royalty purposes. California Co. v. Udall, 1961, 296 F.2d 384, 111 U.S. App.D.C. 262.

8. State rights—Generally

Congress, having provided for leasing the public lands to private corporations and persons whose property, income, business and occupations ordinarily were subject to State taxation, meant by the proviso of 30 U.S.C.A. § 189 to say in effect that, although 30 U.S. C.A. § 181 et seq. deals with the letting of public lands and the relations of the Government to the lessees thereof, nothing in 30 U.S. C.A. § 181 et seq. shall be construed to affect the right of the States to levy and collect taxes as though the Government were not concerned. Mid-Northern Oil Co. v. Walker, Mont.1925, 45 S.Ct. 440, 268 U.S. 45, 69 L.Ed. 841.

Nothing in proviso of this section governing federal mine leases stating that nothing in chapter would be construed or held to affect rights of states or other local authority to exercise any rights which they may have, including right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of United States gives states any power over those lands which they do not already possess. Kirkpatrick Oil & Gas Co. v. U. S., C.A.Okl. 1982, 675 F.2d 1122.

Saving clause of this section, preserving to states "any rights which they may have" was express recognition of right of states to tax activities of government's lessee pursuant to lease, but did not give states or their subdivisions right to apply local regulations impermissibly conflicting with achievement of congressionally approved use of federal lands. Ventura County v. Gulf Oil Corp., C.A.Cal. 1979, 601 F.2d 1080, affirmed 100 S.Ct. 1593, 445 U.S. 947, 63 L.Ed.2d 782.

Oil and gas conservation laws of Oklahoma, including forced pooling order in question, applied to federal lands which were located in Oklahoma and with respect to which plaintiffs owned oil and visions nor federal statutes and regulations contained specific prohibition against exercise of state police power over working interests of plaintiffs in lands in question, as statutes and regulations did not evince congressional intent to exercise exclusive control over the same, and as the required federal approval of assignments of its leases and communitization agreement involving federal land with nonfederal lands had been granted. Texas Oil & Gas Corp. v. Phillips Petroleum Co., D.C.Okl.1967, 277 F.Supp. 366, affirmed 406 F.2d 1303, certiorari denied 90 S.Ct. 80, 396 U.S. 829, 24 L.Ed.2d 80.

Even assuming that an assignor's right to retain interests upon assignment is more restricted in the instance of federal oil and gas leases than is the case in private lease transfer, such restriction deals with the federal government's relationship with the assignor and the assignee, and is not germane to the state's exercise of its taxing power. Hagood v. Heckers, 1973, 513 P.2d 208, 182 Colo. 337.

9. —— Communitization requirements

Under this chapter, state communitization order may not bind federally owned land, or extend leases of such land within unit, without consent of Secretary, and, therefore, in absence of approval, production from other property in unit cannot be attributed to federal property and thereby extend terms of federal oil and gas lease requiring production of oil or gas in paying quantities. Kirkpatrick Oil & Gas Co. v. U. S., C.A.Okl.1982, 675 F.2d 1122.

10. —— Income taxes

For purposes of state income taxation, federal law was not determinative of the characterization of the interests of nonresidents who, under this chapter, were granted oil and gas leases for federal lands located in Colorado, who assigned their interest to various parties, and who, in consideration therefor, received, inter alia, future overriding royalties. Hagood v. Heckers, 1973, 513 P.2d 208, 182 Colo. 337.

11. —— License taxes and fees

Leasing Act Feb. 25, 1920, § 32 [30 U.S.C.A. § 189], providing that nothing in said Act [30 U.S.C.A. § 181 et seq.] shall affect the rights of the States to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, etc., was applicable to an annual license tax imposed by the State of Montana. Mid-Northern Oil Co. v. Walker, Mont.1925, 45 S.Ct. 440, 268 U.S. 45, 69 L.Ed. 841.

12. —— Severance taxes

Even assuming that Montana's coal severance tax may reduce royalty payments to the federal government under leases executed in Montana, this fact alone did not demonstrate that the tax is inconsistent with this chapter; indeed, in this section, Congress expressly authorized the states to impose severance taxes on federal lessees without imposing any limits

on the amount of such taxes, and there was nothing in the language or legislative history of this section to support an assertion that Congress intended to maximize and capture through royalties all "economic rents" from the mining of federal coal, and then to divide the proceeds with the state in accordance with formula. Commonwealth Edison Co. v. Montana, Mont.1981, 101 S.Ct. 2946, 453 U.S. 609, 69 L.Ed.2d 884, rehearing denied 102 S.Ct. 889, 453 U.S. 927, 69 L.Ed.2d 1023.

§ 190. Oath; requirement; form; blanks

All statements, representations, or reports required by the Secretary of the Interior under this chapter shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require.

(Feb. 25, 1920, c. 85, § 33, 41 Stat. 450.)

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

Laws applicable, see sections 275 and 285 of this title.

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Jurat, see § 1487.

§ 191. Disposition of moneys received

All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C.A. § 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C.A. § 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 U.S.C.A. § 1019], shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of Title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States

Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(Feb. 25, 1920, c. 85, § 35, 41 Stat. 450; May 27, 1947, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub.L. 85-88, § 2, 71 Stat. 282; July 7, 1958, Pub.L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351; Apr. 21, 1976, Pub.L. 94-273, § 6(2), 90 Stat. 377; Aug. 4, 1976, Pub.L. 94-377, § 9, 90 Stat. 1090; Sept. 28, 1976, Pub.L. 94-422, Title III, § 301, 90 Stat. 1323; Oct. 21, 1976, Pub.L. 94-579, Title III, § 317(a), 90 Stat. 2770; Jan. 12, 1983, Pub.L. 97-451, Title I, § 104(a), 111(g), 96 Stat. 2451, 2456.)

Historical Note

References In Text. The Federal Oil and Gas Royalty Management Act of 1982, referred to in text, is Pub.L. 97-451, Jan. 12, 1983, 96 Stat. 2447, which is classified generally to chapter 29 (section 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

The Geothermal Steam Act of 1970, referred to in text, is Pub.L. 91-581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (section 1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

The Reclamation Act, referred to in text, is Act June 17, 1902, c. 1093, 32 Stat. 388, as amended, which is classified generally to chapter 12 (section 371 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 371 of Title 43 and Tables volume.

Codification. "Section 7433(b) of Title 10" was substituted for "the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252)", which was classified to section 524 of former Title 34, Navy, on authority of Act Aug. 10, 1956, c. 1041, § 49(b), 70A Stat. 640, the first section of which enacted Title 10, Armed Forces.

Provisions of this section which authorized the payment of monies to the Territory of Alaska were omitted as superseded by the provisions authorizing the payment of monies to the State of Alaska.

1983 Amendment. Pub.L. 97-451, § 104(a), struck out "as soon as practicable after March 31 and September 30 of each year" after "Secretary of the Treasury" and "of those from Alaska", and added at the end provisions directing that payments to States be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, that warrants be issued by the Treasury not later than 10 days after receipt of the money by the Treasury, that moneys placed in a suspense account which are determined to be payable to a State be made not later than the last business day of the month in which a dispute is resolved, and that amounts placed in a suspense account pending resolution bear interest until the dispute is resolved.

Pub.L. 97-451, § 111(g), inserted reference to interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982.

1976 Amendments. Pub.L. 94-579 substituted provisions setting forth determination of amount, time for payments, and manner of expenditure by the States of all moneys received from sales, etc., under the provisions of this chapter and the Geothermal Steam Act of 1970, and proviso relating to naval petroleum reserve moneys, for provisions setting forth determination of amount and time for payment to the States of all moneys received from sales, etc., under the provisions of this chapter, and provisos relating to naval petroleum reserve moneys, additional moneys from sales, etc., under this chapter and the Geothermal Steam Act of 1970, and expenditure of State oil shale funds.

Pub.L. 94-422 added proviso that all moneys paid to any State from sales, bonuses, royalties, and rentals of oil shale in public lands may be used by any State for planning, construction, and maintenance of public facilities as legislature of State may direct.

Pub.L. 94-377 substituted "40 per centum thereof shall be paid into, reserved" for "52½ per centum thereof shall be paid into, reserved", added "and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof" preceding "shall be paid into the Treasury of the United States", "and the Geothermal Steam Act of 1970" preceding "from lands within the naval petroleum reserves" and preceding "not otherwise disposed of by this section", respectively, the proviso

relating to the payment of an additional 12½ per centum of all money received from lands under the provisions of this chapter and the Geothermal Steam Act of 1970 to the State within whose boundaries the lands are located, to be used for construction of public facilities, and the proviso relating to the use of funds received by Colorado and Utah under the specified leases.

Pub.L. 94–273 substituted "March" for "December" and "September" for "June".

1958 Amendment. Pub.L. 85–508, §§ 6(k), 28(b), eliminated provisions which related to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska and substituted ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof" for ", and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" preceding the proviso, respectively.

1957 Amendment. Pub.L. 85–88 inserted ", and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" preceding the proviso.

1950 Amendment. Act Aug. 3, 1950, in providing that payments to States be made bi-annually instead of annually, substituted "as soon as practicable after December 31 and June 30 of each year" for "after the expiration of each fiscal year".

1947 Amendment. Act May 27, 1947, extended provisions by allocating 37½% of the money received from sales, bonuses, royalties, and rentals of public lands to the Territory of Alaska, for the construction and maintenance of public schools or other public educational institutions and added provisions relating to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska.

Effective Date of 1983 Amendment. Amendment by section 104(a) of Pub.L. 97–451 applicable with respect to payments received by the Secretary of the Treasury after Oct. 1, 1983, unless the Secretary by rule, prescribes an earlier effective date, see section 104(c) of Pub.L. 97–451, set out as a note under section 1714 of this title.

Amendment by section 104(a) of Pub.L. 97–451 applicable to oil and gas leases issued before, on, or after Jan. 12, 1983, except that in the case of a lease issued before such date, no provision of such amendment or any rule or regulation prescribed under such amendment to alter the express and specific provisions of such lease, see section 305 of Pub.L. 97–451, set out as a note under section 1701 of this title.

Savings Provisions. Amendment by Pub.L. 94–579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub.L. 94–579, set out as a note under section 1701 of Title 43, Public Lands.

Funds held by Colorado and Utah from Interior Department Oil Shale Test Leases. Section 317(b) of Pub.L. 94–579 provided that: "Funds now held pursuant to said section 35 [this section] by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C–A; C–B; U–A and U–B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services."

Admission of Alaska as State. Effectiveness of amendment of this section by Pub.L. 85–508 was dependent upon the admission of Alaska into the Union under sections 6(k) and 8(b) of Pub.L. 85–508. Admission 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. See notes preceding section 21 of Title 48, Territories and Insular Possessions.

Outer Continental Shelf; Revenues from Leases. Disposition of revenues from leases on submerged lands of outer Continental Shelf, see sections 1337 and 1338 of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Act May 27, 1947, see 1947 U.S.Code Cong.Service, p. 1060. See, also, Act Aug. 3, 1950, 1950 U.S.Code Cong.Service, p. 2890; Pub.L. 85–88, 1957 U.S.Code Cong. and Adm.News, p. 1294; Pub.L. 85–508, 1958 U.S. Code Cong. and Adm.News, p. 2933; Pub.L. 94–273, 1976 U.S.Code Cong. and Adm.News, p. 690; Pub.L. 94–377, 1976 U.S.Code Cong. and Adm.News, p. 1943; Pub.L. 94–422, 1976 U.S.Code Cong. and Adm.News, p. 2442; Pub.L. 94–579, 1976 U.S.Code Cong. and Adm. News, p. 6175; Pub.L. 97–451, 1982 U.S.Code Cong. and Adm.News, p. 4268.

Cross References

Disbursement of money received from mining of source material on coal lands, see section 541f of this title.
Disposition of receipts derived from leases on lands acquired for military or naval purposes, see section 355 of this title.
Disposition of royalties from mining of gold, silver or quicksilver, see section 292 of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Late charges on payments to States required by this section, see section 1721 of this title.
Laws applicable, see sections 275 and 285 of this title.
Loans to States to relieve social and economic impact occasioned by development of mineral leases, see section 1747 of Title 43, Public Lands.
Offsite leases, provisions for payments to be credited against annual rental, see section 241 of this title.
Reduction of payment for entitlement land by amounts received under this section, see section 6903 of Title 31, Money and Finance.

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Mineral leasing revenues, see § 5392.

Library References

United States ⇐81.
C.J.S. United States § 121.

Notes of Decisions

Moneys subject to disposition 1
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1. Moneys subject to disposition

Word "minerals" as used in section 715a of Title 16 providing for distribution of all revenues received by Secretary of Interior from "sale or other disposition of * * * minerals" in connection with operation of areas of National Wildlife Refuge System would be read restrictively so that such statute would govern distribution of mineral leasing revenues only from acquired land; therefore, distribution of mineral leasing revenues from wildlife refuge which was created by reservation of land in public domain was governed by this chapter. Kenai Peninsula Borough v. Andrus, D.C.Alaska 1977, 436 F.Supp. 288, affirmed 612 F.2d 1210, affirmed 101 S.Ct. 1673, 451 U.S. 259, 68 L.Ed.2d 80.

2. Public lands within section

The Attorney General in advising the President as to whether or not this chapter was applicable to executive order Indian reservations, drew an argument, from the mandatory character of the language of this section for the disposition of all the royalty moneys raised, in support of his opinion that this chapter was not so applicable. 1924, 34 Op.Atty. Gen. 171, 181.

3. Payments to States

New Mexico's claim against the Secretary of the Treasury stating that this chapter requires payment to states of 50% of federal royalties diluted by windfall profits tax was an action against the United States, although Secretary of Treasury was nominal defendant in suit; thus, suit was essentially one for money which government owned and was a claim under the Tucker Act, sections 1346(a)(2) and 1491 of Title 28, over which the Claims Court possessed exclusive jurisdiction. State of N.M. v. Regan, C.A.N.M.1984, 745 F.2d 1318, certiorari denied 105 S.Ct. 2138, 85 L.Ed.2d 496.

While Rattlesnake National Recreation Area and Wilderness Act of 1980, section 460*ll*–3 of Title 16, authorized exchange of Montana Power Company's lands for equal value of "bidding rights" for competitive Federal coal leases and proposed "Exchange Agreement" would require Treasury to pay State of Montana 50 percent share of total received, including bidding rights, this section provides for remitting "money" received by Treasury and since bidding rights are not money, State payment may not be based on their receipt. 1983, 62 Op.Comp.Gen. 102.

§ 192. Payment of royalties in oil or gas; sale of such oil or gas

All royalty accruing to the United States under any oil or gas lease or permit under this chapter on demand of the Secretary of the Interior shall be paid in oil or gas.

Upon granting any oil or gas lease under this chapter, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil

and gas acc... or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee: *Provided,* That inasmuch as the public interest will be served by the sale of royalty oil to refineries not having their own source of supply for crude oil, the Secretary of the Interior, when he determines that sufficient supplies of crude oil are not available in the open market to such refineries, is authorized and directed to grant preference to such refineries, in the sale of oil under the provisions of this section, for processing or use in such refineries and not for resale in kind, and in so doing may sell to such refineries at private sale at not less than the market price any royalty oil accruing or reserved to the United States under leases issued pursuant to this chapter: *Provided further,* That in selling such royalty oil the Secretary of the Interior may at his discretion prorate such oil among such refineries in the area in which the oil is produced: *Provided, however,* That pending the making of a permanent contract for the sale of any royalty, oil or gas as herein provided, the Secretary of the Interior may sell the current product at private sale, at not less than the market price: *And provided further,* That any royalty, oil, or gas may be sold at not less than the market price at private sale to any department or agency of the United States.

(Feb. 25, 1920, c. 85, § 36, 41 Stat. 451; July 13, 1946, c. 574, 60 Stat. 533.)

Historical Note

1946 Amendment. Act July 13, 1946, inserted first two provisos which were enacted in order to assist small business enterprise by encouraging the operation of oil refineries not having an adequate supply of crude oil.

Outer Continental Shelf; Royalties from Leases. Payment of royalties from mineral leases on submerged lands of outer Continental Shelf, see section 13... of Title 43, Public Lands.

Cross References

Cancellation or modification of contracts entered into pursuant to this section, see section 192a of this title.

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

Laws applicable, see sections 275 and 285 of this title.

Preferences to certain oil refineries not having their own stock of oil reserves, ineligibility under this section, see section 192b of this title.

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Payment of royalty in oil or gas, see § 5418.

Code of Federal Regulations

Disposal of government royalty oil, see 30 CFR 208.1 et seq.

Library References

Mines and Minerals ⇐5.1(8).
C.J.S. Mines and Minerals § 128.

Notes of Decisions

1. Construction with other laws

Section 524 of former Title 34 [now covered by section 7421 et seq. of Title 10] dealing entirely with the naval petroleum reserves, conferring upon the Secretary of the Navy wide discretion as to administering the naval reserves, and providing that he may conserve, develop, use, and operate the properties in the naval reserves either directly or by contract, lease, or otherwise, though section 524 of former Title 34 is a rider to an appropriation bill, is complete in itself and independent of other statutes, such as this section and the following sections of this title, dealing with general public land matters. U.S. v. Mammoth Oil Co., C.C.A.Wyo.1926. 14 F.2d 705, affirmed 48 S.Ct. 1, 275 U.S. 13.

Section 524 of former Title 34 [now covered by section 7421 et seq. of Title 10] conferring power upon the Secretary of the Navy to conserve, develop, use, and operate the property in the petroleum naval reserves in his discretion directly or by contract lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof and those from all royalty oil from lands within such reserves, provided such sums as have been or may be turned into the United States treasury from royalties on such lands prior to July 1, 1921, not to exceed $500,000 are made available for this purpose until July 1, 1922, limited exchange of royalty oils to not exceeding named sum for fuel oil for current use of navy in existing depots, and did not authorize exchange for new storage facilities, in view of this section, section 191 of this title, requiring all proceeds of sales of royalty oils to be turned into the United States treasury, sections 484 and 487 of Title 31 [now section 3302 of Title 31 and see sections 2208, 2210, 4501 to 4840, 7201 to 7854, and 9501 to 9840 of Title 10], sections 5, 11, and 12 of Title 41, and section 573 of former Title 34 [now covered by sections 2301 and 2303 to 2305 of Title 10]. Pan-American Petroleum Co. v. U.S., C.C.A.Cal.1926, 9 F.2d 761, affirmed 47 S.Ct. 416, 273 U.S. 456, 71 L.Ed. 734.

The geographical preference scheme for purchase of royalty oil from United States Department of Interior under this section is not in conflict with primary policy objectives of subsequently enacted Emergency Petroleum Allocation Act of 1973, section 751 et seq. of Title 15, and thus both statutes could be given simultaneous effect. Laketon Asphalt and Refining, Inc. v. U.S. Dept. of Interior, D.C.Ind. 1979, 476 F.Supp. 668, affirmed 624 F.2d 784.

2. Sale at public bidding

The provision of this section that all royalty accruing to the government under any lease should, on demand of Secretary of Interior, be paid in oil or gas, authorizes Secretary to take royalty oil in kind or in money and he must offer for sale at public bidding or auction only the oil he elects to take in kind, and this section does not apply to oil which he elects to take in money. U.S. v. Ohio Oil Co., C.C.A. Wyo.1947, 163 F.2d 633, certiorari denied 68 S.Ct. 459, 333 U.S. 833, 92 L.Ed. 1117, rehearing denied 68 S.Ct. 738, 333 U.S. 865, 92 L.Ed. 1143.

3. Private sale to preferred refineries—Generally

Use of geographic preference system by the Department of Interior to allocate royalty crude oil under this section was rationally related to purpose of amendment of this section to distribute royalty oil to refineries not having their own source of supply for crude oil. Laketon Asphalt Refining, Inc. v. U.S. Dept. of Interior, C.A.Ind.1980, 624 F.2d 784.

The so-called preference eligible refiners status, based solely on geographic location, for purchase of royalty oil from federal government was not arbitrary and irrational on asserted ground that it bore no relationship to governmental interest in furthering assistance to all eligible refiners including a refiner from outside the geographic area whose prior contracts for purchase of royalty oil were not renewed because it lacked the requisite preference eligibility. Laketon Asphalt and Refining, Inc. v. U.S. Dept. of Interior, D.C.Ind.1979, 476 F.Supp. 668, affirmed 624 F.2d 784.

4. —— Resale of oil in kind

Royalty oil exchange agreements as authorized by the Department of Interior were not contrary to mandate of this chapter that the oil was to be sold to eligible refiners "not for resale in kind." Laketon Asphalt Refining, Inc. v. U.S. Dept. of Interior, C.A.Ind.1980, 624 F.2d 784.

§ 192a. Cancellation or modification of contracts

Where, under any existing contract entered into pursuant to the first proviso in the second paragraph of section 192 of this title, any refinery is required to pay a premium price for the purchase of Government royalty oil, such refinery may, at its option, by written notice to the Secretary of the Interior, elect either—

(1) to terminate such contract, the termination to take place at the end of the calendar month following the month in which such notice is given; or

(2) to retain such contract with the modifications, that (a) the price, on and after March 1, 1949, shall be as defined in the contract, without premium payments, (b) any credit thereby resulting from past premium payments shall be added to the refinery's account, and (c) the Secretary may, at his option, elect to terminate the contract as so modified, such termination to take place at the end of the third calendar month following the month in which written notice thereof is given by the Secretary.

(Sept. 1, 1949, c. 529, § 1, 63 Stat. 682.)

Historical Note

Codification. Section was not enacted as part of Act Feb. 25, 1920, c. 85, 41 Stat. 437, known as the Mineral Lands Leasing Act, which comprises this chapter.

Legislative History. For legislative history and purpose of Act Sept. 1, 1949, see 1949 U.S.Code Cong.Service, p. 1909.

Cross References

Applicability of this section to existing contracts for purchase of government royalty oil entered into after July 13, 1946, see section 192b of this title.

Disposition of receipts derived from leases or permits issued under authority of this section, see section 192c of this title.

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

Library References

Mines and Minerals ⇐5.1(7), (8).
C.J.S. Mines and Minerals § 128.

§ 192b. Application to contracts

The provisions of sections 192a to 192c of this title shall apply to all existing contracts for the purchase of Government royalty oil entered into after July 13, 1946, and prior to September 1, 1949, irrespective of whether a determination of preference status was made in connection with the award of such contracts, but shall not apply to any such contract which subsequent to its award has been transferred, through the acquisition of stock interests or other transactions, to the ownership or control of a refinery ineligible for a preference under section 192 of this title, and the regulations in force thereunder at the time of such transfer.

(Sept. 1, 1949, c. 529, § 2, 63 Stat. 682.)

Historical Note

Codification. Section was not enacted as part of Act Feb. 25, 1920, c. 85, 41 Stat. 437, known as the Mineral Lands Leasing Act, which comprises this chapter.

Legislative History. For legislative history and purpose of Act Sept. 1, 1949, see 1949 U.S.Code Cong.Service, p. 1909.

Cross References

Disposition of receipts derived from leases or permits issued under authority of this section, see section 192c of this title.

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

§ 192c. Rules and regulations governing issuance of certain leases; disposition of receipts

The Secretary of the Interior is authorized under general rules and regulations to be prescribed by him to issue leases or permits for the exploration, development, and utilization of the mineral deposits, other than those subject to the provisions of chapter 7 of this title, in those lands added to the Shasta National Forest by the Act of March 19, 1948 (Public Law 449, Eightieth Congress), which were acquired with funds of the United States or lands received in exchange therefor: *Provided*, That any permit or lease of such deposits in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe to insure the adequate utilization of the lands for the purposes set forth in the Act of March 19, 1948: *And provided further*, That all receipts derived from leases or permits issued under the authority of sections 192a to 192c of this title shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease or permit, the intention of this provision being that sections 192a to 192c of this title shall not affect the distribution of receipts pursuant to legislation applicable to such lands.

(Sept. 1, 1949, c. 529, § 3, 63 Stat. 683.)

Historical Note

References in Text. The Act of March 19, 1948 (Public Law 449, Eightieth Congress), referred to in text, is Act Mar. 19, 1948, c. 139, 62 Stat. 83. See Shasta National Forest codification note set out under sections 486a to 486w of Title 16, Conservation.

Codification. Section was not enacted as part of Act Feb. 25, 1920, c. 85, 41 Stat. 437, known as the Mineral Lands Leasing Act, which comprises this chapter.

Transfer of Functions. Functions of the Secretary of the Interior under this section, with respect to the use and disposal from lands under the jurisdiction of the Secretary of Agriculture of those mineral materials which the Secretary of Agriculture is authorized to dispose of from other lands under his jurisdiction under sections 601 to 604 and 611 to 615 of this title, see Pub.L. 86-509, June 11, 1960, 74 Stat. 205, set out as a Transfer of Functions from Secretary of Interior to Secretary of Agriculture note under section 2201 of Title 7, Agriculture.

Legislative History. For legislative history and purpose of Act Sept. 1, 1949, see 1949 U.S.Code Cong.Service, p. 1909.

Cross References

Applicability of this section to all existing contracts for purchase of government royalty oil entered into after July 13, 1946, see section 192b of this title.

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

Removal of nonleasable minerals from lands within recreation areas in accordance with this section, see section 460q-5 of Title 16, Conservation.

Code of Federal Regulations

Audits and inspections, see 30 CFR 217.50 et seq.
Leasing, minerals other than oil and gas, see 43 CFR Chap. II, Subchap. C, Group 3500.
Minerals, see 36 CFR 228.1 et seq.

Library References

Mines and Minerals ⇐5.1(8).
C.J.S. Mines and Minerals § 128.

§ 193. Disposition of deposits of coal, and so forth

The deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits in Lander, Wyoming, coal entries numbered 18 to 49, inclusive, shall be subject to disposition only in the form and manner provided in this chapter, except as provided in sections 1716 and 1719 of Title 43, and except as to valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

(Feb. 25, 1920, c. 85, § 37, 41 Stat. 451; Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058; Aug. 8, 1946, c. 916, § 11, 60 Stat. 957; Oct. 30, 1978, Pub.L. 95-554, § 4, 92 Stat. 2074.)

Historical Note

Codification. Section was from Act Feb. 25, 1920, in which words now reading "in Lander, Wyoming, coal entries numbered 18 to 49, inclusive," originally read "described in the joint resolution entitled 'Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal mining operations on certain lands in Wyoming,' approved August 12, 1912, (Thirty-seven Statutes at Large p. 1346)." The change was effected by interpolation, in lieu of the reference to the 1912 resolution, the actual description of lands contained in said resolution.

1978 Amendment. Pub.L. 95-554 provided for disposition of minerals as provided in sections 1716 and 1719 of Title 43.

1946 Amendment. Act Aug. 8, 1946, excluded from section 5 of Act Feb. 7, 1927, the incorporation, by reference, of section 181 of this title, and reenacted inclusion of deposits of potassium.

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

Legislative History. For legislative history and purpose of Pub.L. 95-554, see 1978 U.S. Code Cong. and Adm.News, p. 4736.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.

West's Federal Forms

Complaint, see § 1725 and Comment thereunder.

Notes of Decisions

1. Deposits subject to disposition

Under this chapter, the Department of the Interior has the right to grant leases upon placer mining claims to the owners thereof, and when the Department has made findings of fact and spoken with respect to the ownership, or has recognized the ownership of a placer mining act claim for the purpose of granting a lease to the owner, unless the decision is impeached for fraud, jurisdictional irregularities, or on account of being based upon erroneous propositions of law, that adjudication is final, and will not be disturbed by the courts. Hodgson v. Mountain, etc., Oil Co., D.C.Wyo.1924, 297 F. 269. See, also, Hodgson v. Midwest Oil Co., D.C.Wyo.1924, 297 F. 273.

2. Claims existent on Feb. 25, 1920—Generally

"Cash Coal Entry No. 13" was not within the exception in this section precluding Secretary of Interior from disposing of mineral lands, including coal lands, other than by lease, except as to valid claims existent at date of passage of this chapter and thereafter maintained in compliance with the laws under which initiated, where such entry had been cancelled on May 7, 1883 and therefore had not been "existent at the date of the passage" of this chapter and notice had not been filed or the lands paid for as required by law. Southport Land & Commercial Co. v. Udall, C.A.Cal.1967, 371 F.2d 526.

This section has no effect on the right to relocate where the original location was made before the enactment of this section. U.S. ex rel. Krushnic v. West, 1929, 30 F.2d 742, 58 App.D.C. 332, modified on other grounds 50 S.Ct. 103, 280 U.S. 306, 74 L.Ed. 445.

3. —— Discovery requirements

In enacting this chapter, Congress contemplated that preexisting oil shale claims could satisfy discovery requirement of section 22 et seq. of this title. Andrus v. Shell Oil Co., Colo.1980, 100 S.Ct. 1932, 466 U.S. 657, 64 L.Ed.2d 593.

4. —— Work or improvements

Where oil shale mining claims, originally asserted under sections 22, 26, 28 and 29 of this title and sought to be matured under this section had not substantially met conditions of section 28 of this title respecting assessment work, default in doing such assessment work did not inure only to benefit of relocators but, under sections 22, 26, 28 and 29 of this title, claims were subject to cancellation with return of full possessory rights to the government. Hickel v. Oil Shale Corp., Colo.1970, 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d 193, mandate conformed to 370 F.Supp. 108.

Locator of mining claim defaulting in annual assessment work for one year, but resuming assessment work before intervention of any relocation by third parties, was entitled to patent after aggregate of $500 worth of labor had been performed, notwithstanding 30 U.S.C.A. § 193, withdrawing certain mineral deposits from private acquisition, since locator was not by reason thereof subjected to any forfeitures that did not apply to this title, and mere fact that oil shale claims were no longer subject to relocation did not affect the rights of the original locator under existing law. Wilbur v. U.S. ex rel. Krushnic, 1930, 50 S.Ct. 103, 280 U.S. 306, 74 L.Ed. 445.

5. Election as to procedure

Under this section, the owner of a claim maintained and perfected in accordance with the requirements of section 35 of this title has the option to proceed either under section 35 of this title or this chapter. Hodgson v. Midwest Oil Co., D.C.Wyo.1924, 297 F. 273.

Where persons claiming rights under section 35 of this title applied for a lease, they elected to prosecute the claim further by submitting it to the Interior Department under this chapter, and gave up their right to prosecute it under section 35 of this title, especially where they transferred their alleged titles to the government by deed as a condition precedent to receiving a lease. Robbins v. Elk Basin Consol. Petroleum Co., D.C.Wyo.1922, 285 F. 179.

§ 193a. Preference right of United States to purchase coal for Army and Navy; price for coal; civil actions; jurisdiction

The United States shall, at all times, have the preference right to purchase so much of the product of any mine or mines opened upon the lands sold under the provisions of this Act, as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the United States Claims Court for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

(May 28, 1908, c. 211, § 2, 35 Stat. 424; Apr. 2, 1982, Pub.L. 97-164, Title I, § 160(a)(10), 96 Stat. 48.)

Historical Note

References in Text. This Act, referred to in text, is Act May 28, 1908, c. 211, 35 Stat. 424. Sections 1, 3, and 4 of this Act related to consolidation of claims permitted and the limit of acreage, prohibition against unlawful trusts, etc., and contents of patents, respectively, and are not classified to the Code.

Codification. Section was not enacted as part of Act Feb. 25, 1920, c. 85, 41 Stat. 437, known as the Mineral Lands Leasing Act, which comprises this chapter.

Section was formerly classified to section 453 of Title 48, Territories and Insular Possessions.

1982 Amendment. Pub. L. 97-164 substituted "United States Claims Court" for "Court of Claims".

Effective Date of 1982 Amendment. Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub. L. 97-164, see 1982 U.S. Code Cong. and Adm. News, p. 11.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

§ 194. Repealed. Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 644

Historical Note

Section, Acts Feb. 25, 1920, c. 85, § 38, 41 Stat. 451; Mar. 3, 1925, c. 462, 43 Stat. 1145, related to fees and commissions of registers (successors to consolidated offices of registers and receivers), the predecessors of managers.

SUBCHAPTER II—COAL

§ 201. Leases and exploration

(a) Division into tracts; bidding and award; negotiated sales on exercise of right-of-way permits; leases to public agencies; fair market value of leases; leases in National Forests; comprehensive land-use plans; notice of proposed lease offering

(1) The Secretary of the Interior is authorized to divide any lands subject to this chapter which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding: *Provided*, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary and incidental to the exercise of a right-of-way permit issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 [43 U.S.C.A. § 1761 et seq.]. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market

value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease. He is authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants.

(2)(A) The Secretary shall not issue a lease or leases under the terms of this chapter to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided for in section 207(b) of this title, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to August 4, 1976, shall not be counted.

(B) Any lease proposal which permits surface coal mining within the boundaries of a National Forest which the Secretary proposes to issue under this chapter shall be submitted to the Governor of each State within which the coal deposits subject to such lease are located. No such lease may be issued under this chapter before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the date the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary a statement of reasons why such lease should not be issued and the Secretary shall, on the basis of such statement, reconsider the issuance of such lease.

(3)(A)(I) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(II) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared,

TITLE 30

MINERAL LANDS AND MINING

CHAPTER 3A—LEASES AND PROSPECTING PERMITS

2. COAL

4. OIL AND GAS

5. OIL SHALE

State entities affected by shale development; other consistent leasing provisions applicable.

(e) Coordination of Federal and State planning processes, minimization of duplication of permits, avoidance of delays, and anticipation and mitigation of impacts of development; specific considerations affecting issuance; recommendations of Governor for guidance of Secretary: balance between national interest and State's interests; reasons for Secretary's determination: written communication to Governor and publication in Federal Register.

1. GENERAL PROVISIONS

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

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, approved March 1, 1911 (36 Stat. 961), and those 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, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this chapter.

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

The term "combined hydrocarbon lease" shall refer to a lease issued in a special tar sand area pursuant to section 226 of this title after November 16, 1981.

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

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

(As amended Nov. 16, 1981, Pub.L. 97–78, § 1(1), (4), 95 Stat. 1070.)

1981 Amendment. Pub.L. 97–78 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 three paragraphs which defined "oil", "combined hydrocarbon lease", and "special tar sand area", respectively.

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 Amendments. Section 1(a) of Pub.L. 94–377, 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, former section 201–1, 203 and former section 204 of this title] may be cited as the 'Federal Coal Leasing Amendments Act of 1976'."

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.

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."

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

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.
Multiple mineral development, see § 5328.

Notes of Decisions

Application for leases 35
Interpretation of contracts 28a

4. Purpose

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.

7. Aliens, disability of

In issuing decision barring Kuwaiti citizens and corporations from acquiring interests in oil and gas leases on public lands under this chapter, Secretary of the Interior departed from clear legislative purpose underlying the alien qualification provision of this chapter, this section being concerned about discrimination against the United States citizens by foreign countries. Santa Fe Intern. Corp. v. Watt, D.C.Del.1984, 591 F.Supp. 929.

Fact that Kuwait owned 200,000 shares of oil company which owned all the shares of another company which owned 26 percent of shares of corporation proposing to construct northern tier oil pipeline did not establish that Kuwait had "stock ownership" in corporation proposing to construct pipeline so as to violate provision of this chapter prohibiting grant of right-of-way across federal lands to foreigners. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

18. —— Generally

The Department of Interior's 1947 policy directive known as the Krug memorandum, which stated that lands located north of the eleventh standard parallel in Teton County, Wyoming, were withdrawn from leasing, with few exceptions, was not contrary to law but was a proper exercise of the Secretary's discretionary power and authority. Learned v. Watt, D.C.Wyo.1981, 528 F.Supp. 980.

23. Remedies of lessee

Where the United States reserves the mineral estate, together with the right to prospect for, mine, and remove the same, in a grant of the surface estate, there is a servitude laid on the surface estate for the benefit of the mineral estate. Transwestern Pipeline Co. v. Kerr-McGee Corp., C.A.N.M.1974, 492 F.2d 878, certiorari dismissed 95 S.Ct. 691.

Fact that lessee of mineral rights was granted exclusive right and privilege to mine, remove, and dispose of all potassium and associated deposits and fact that surface owner, a pipeline company which had originally been granted a right-of-way to build a compressor and which had subsequently acquired the land had taken the land in both instances subject to all valid existing rights defeated surface owner's claim that Congress intended that pipeline facilities have surface support and that it was entitled to lateral and subjacent support for its compressor station. Id.

Right of lessee of mineral rights to mine land prevailed over right of pipeline company which held the surface rights in a grant from the United States which reserved the mineral estate to the government, and lessee of mineral rights was empowered to remove the minerals and, if necessary, to subside the surface in so doing. Id.

25. Jurisdiction

District court had jurisdiction to determine whether complaint, which was founded on this chapter and regulations promulgated pursuant thereto, stated a claim under federal law upon which relief could be granted. Pullman v. Chorney, D.C.Colo.1981, 509 F.Supp. 162, affirmed 712 F.2d 447.

28a. Interpretation of contracts

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.

Note 35

35. Application for leases

Filing service's disclaimer of any interest it may have had in its client's oil and gas leases was valid for purposes of regulation which requires disclosure of all interests in lease, where filing service's unilateral waiver of its rights was most speedy and cost efficient way to protect interest of its clients, need for change was clear, and filing service was not coerced into relinquishing its rights under contract. Coyer v. Watt, C.A.Wyo.1983, 720 F.2d 626, certiorari denied 104 S.Ct. 2346, 80 L.Ed.2d 820.

Filing service company's "Amendment and Disclaimer" of illegal exclusive sales agency clause contained in standard agreements clients executed before filing applications for noncompetitive leases to be issued pursuant to this chapter was effective to waive any illegal interest of the company in filed lease applications, even though the company received no new consideration for such "Amendment and Disclaimer" and did not give its clients immediate notice of such waiver, and even though the "Amendment and Disclaimer" was conditional in form. Lowey v. Watt, 1982, 684 F.2d 957, 221 U.S.App.D.C. 435.

Right to be fairly and equally considered applies only among competing applicants for federal oil and gas leases filed under provisions of this chapter, and applicants for oil and gas leases on Alaska North Slope land ultimately allocated to Arctic Slope Regional Corporation under Alaska Native Claims Settlement Act of 1971, section 1601 et seq., of Title 43, therefore could not argue that they were not fairly treated vis-a-vis such corporation. Rowe v. U.S., D.C.Alaska 1979, 464 F.Supp. 1060, affirmed in part, reversed in part on other grounds 633 F.2d 799, certiorari denied 101 S.Ct. 2047, 451 U.S. 970, 68 L.Ed.2d 349.

Where applicant for federal oil and gas leases on Alaska North Slope lands filed simultaneous offers within preset deadline, fact that first-year rental payments under such offers were not returnable did not indicate that Department of Interior agreed to be bound to issuance of leases to successful drawees, and Secretary of Interior therefore was not prevented from rejecting offers and allocating lands in question to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971, section 1601 et seq., of Title 43. Id.

§ 182. Lands disposed of with reservation of deposits of coal, and so forth

The provisions of this chapter shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits.

(As amended Nov. 16, 1981, Pub.L. 97–78, § 1(1), 95 Stat. 1070.)

1981 Amendment. Pub.L. 97–78 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)".

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

West's Federal Practice Manual

Applicable lands, see § 5393.

§ 183. Cancellation of prospecting permits

West's Federal Practice Manual

Termination of leases and permits, see § 5401.

§ 184. Limitations on leases held, owned or controlled by persons, associations or corporations

(a) Coal leases or permits, acreage; regulations

(1) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, coal leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State and in no case greater than an aggregate of one hundred thousand acres in the United States: *Provided*, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of one hundred thousand acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: *Provided, further*, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings,

ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.

(2) Repealed. Pub.L. 94–377, § 11(b), Aug. 4, 1976, 90 Stat. 1090.

[See main volume for text of (b) and (c)]

(d) Oil or gas leases, acreage, Alaska; options, semiannual statements

(1) No person, association, or corporation, except as otherwise provided in this chapter, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska. *Provided, however*, That acreage held in special tar sand areas shall not be chargeable against such State limitations. In the case of the State of Alaska, the limit shall be three hundred thousand acres in the northern leasing district and three hundred thousand acres in the southern leasing district, and the boundary between said two districts shall be the left limit of the Tanana River from the border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth.

[See main volume for text of (2); (e) to (j)]

(k) Unlawful trusts; forfeiture

Except as otherwise provided in this chapter, if any lands or deposits subject to the provisions of this chapter shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in any wise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, optionee, or permittee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), gas, or sodium entered into by the lessee, optionee, or permittee or any agreement or understanding, written, verbal, or otherwise, to which such lessee, optionee, or permittee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this chapter, the lease, option, or permit shall be forfeited by appropriate court proceedings.

(l) Rules and regulations; notice to and consultation with Attorney General; application of antitrust laws; definitions

(1) At each stage in the formulation and promulgation of rules and regulations concerning coal leasing pursuant to this chapter, and at each stage in the issuance, renewal, and readjustment of coal leases under this chapter, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

(2) No coal lease may be issued, renewed, or readjusted under this chapter until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with subchapter II of chapter 5 of Title 5 and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this chapter, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this chapter, the antitrust laws, and the public interest.

(3) Nothing in this chapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(4) As used in this subsection, the term "antitrust law" means—

(A) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C.A. § 1 et seq.), as amended;

(B) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C.A. § 12 et seq.), as amended;

(C) the Federal Trade Commission Act (15 U.S.C.A. § 41 et seq.), as amended;

(D) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C.A. §§ 8 and 9), as amended; or

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C.A. §§ 13, 13a, 13b, and 21a).

(As amended Aug. 4, 1976, Pub.L. 94-377, §§ 11, 15, 90 Stat. 1090, 1091; Nov. 16, 1981, Pub.L. 97-78, § 1(2), (5), 95 Stat. 1070.)

References in Text. The date of enactment of this section, referred to in subsec. (a)(1), probably means the date of enactment of Pub. L. 94-377, which was Aug. 4, 1976.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, as amended, referred to in subsec. (*l*)(4)(A), is Act July 2, 1890, c. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables volume.

The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended, referred to in subsec. (*l*)(4)(B), is Act Oct. 15, 1914, c. 323, 38 Stat. 730, as amended, known as the Clayton Act, and is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables volume.

The Federal Trade Commission Act, referred to in subsec. (*l*)(4)(C), is Act Sept. 26, 1914, c. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (section 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables volume.

Sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894, as amended, referred to in subsec. (*l*)(4)(D), are sections 73 and 74 of Act Aug. 27, 1894, c. 349, 28 Stat. 509, popularly known as the Wilson Tariff Act, and are classified to sections 8 and 9 of Title 15.

The Act of June 19, 1936, chapter 592, referred to in subsec. (*l*)(4)(E), is Act June 19, 1936, c. 592, 49 Stat. 1526, known as the Robinson-Patman Anti-discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short title note set out under section 13 of Title 15 and Tables volume.

Codification. "Subchapter II of chapter 5 of Title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

1981 Amendment. Subsec. (d)(1). Pub.L. 97-78, § 1(5), added proviso that acreage held in special tar sand areas not be chargeable against State limitations.

Subsec. (k). Pub.L. 97-78, § 1(2), substituted "gilsonite (including all veintype solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, bituminous rock,".

1976 Amendment. Subsec. (a)(1). Pub.L. 94-377, § 11(e), added "or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation" preceding "shall take, hold, own or control", "and in no case greater than an aggregate of one hundred thousand acres in the United States" following "in any one State," the proviso relating to the non-relinquishment of leases or permits by an entity owning or controlling more than an aggregate of one hundred thousand acres, and the proviso prohibiting the ownership or control of further Federal leases or permits until reduction to below an aggregate of one hundred thousand acres.

Subsec. (a)(2). Pub.L. 94-377, § 11(b), struck out subsec. (a)(2) providing for application, hearing and granting of additional acreage, not to exceed 5120 acres in any one State, to a person, association or corporation requiring such extra acreage to carry on business economically, and the subsequent reevaluation of such entity's continuing need for such extra acreage.

Subsec. (*l*). Pub.L. 94-377, § 15, added subsec. (*l*).

Transfer of Functions. The functions of the Secretary of the Interior, referred to in subsec. (*l*), to promulgate regulations under this chapter relating to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97-100, Title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and the functions of the Secretary of Energy were returned to the Secretary of the Interior. See House Report No. 97-315, pp. 25, 26, Nov. 5, 1981.

Valid Existing Rights Unaffected by Repeal of Subsec. (a)(2) by Pub.L. 94-377. Section 11(b) of Pub.L. 94-377 provided in part that repeal by such section of subsec. (a)(2) of this section is subject to valid existing rights.

Legislative History. For legislative history and purpose of Pub.L. 94-377, see 1976 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 97-78, 1981 U.S.Code Cong. and Adm.News, p. 1740.

West's Federal Forms

Forfeiture proceedings, matters pertaining to, see § 5891 et seq.

West's Federal Practice Manual

Acreage limitations, see § 5395.
Coal acreage, see § 5429.
Lease option limitations, see § 5404.
Phosphate leases and permits, see § 5440.
Sodium leases and permits, see § 5436.

Notes of Decisions

1a. Purpose

The bona fide purchaser amendment to this section was added to protect bona fide purchasers of federal oil and gas leases who acquired their holdings in good faith from the possible consequences of violations of this chapter by their predecessors in title, to foster development of oil and gas resources on public lands and to protect innocent investors and operators. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

2. Contract rights generally

Applicants for federal oil and gas leases on Alaska North Slope had no cognizable contract or property interest in such leases or their issuance, and Secretary of Interior therefore was under no requirement to issue or reject such leases before upholding land selections and subsequent conveyances to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971, section 1601 et seq. of Title 43. Rowe v. U.S., D.C.Alaska 1979, 464 F.Supp. 1060, affirmed in part, reversed in part on other grounds 633 F.2d 799, certiorari denied 101 S.Ct. 2047, 451 U.S. 970, 68 L.Ed.2d 349.

2a. Power of Secretary

The Secretary of Interior has broad authority to cancel oil and gas leases for violations of this chapter and regulations thereunder, as well as for administrative errors committed before the lease was issued; however the Secretary's authority is limited by the bona fide purchaser amendment to this section. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

3. Private transactions

Defendant was a bona fide purchaser of federal oil and gas lease, without actual or implied knowledge of any facts which would have put him on notice of an unrecorded assignment by his vendor to another, or which would have created a further duty to inquire thereinto, where the price defendant paid was low but not unreasonably so in view of the short remaining lease term and the highly speculative nature of the investment, where the Bureau of Land Management records were not such as to create a duty of further inquiry into matters not of record at the Bureau, and where the vendor's statement that the assignment would be without warranty was not unusual but, in fact, was the expected course of conduct. O'Kane v. Walker, C.A.N.M.1977, 561 F.2d 207.

5. Cancellation of leases

Federal lease could not be cancelled administratively because it was a currently-producing oil and gas lease. Naartex Consulting Corp. v. Watt, 1983, 722 F.2d 779, 232 U.S.App.D.C. 293, certiorari denied 104 S.Ct. 2399.

7. Bona fide purchasers

Interior Board of Land Appeals' conclusion that Bureau of Land Management records did not furnish assignees of first drawees in simultaneous drawings for noncompetitive oil and gas leases on public land with notice that broker for first drawees might have impermissible interest in leases was supported by substantial evidence, and therefore assignees of first drawees were bona fide purchasers and assignee of second drawees could not contest issuance of leases to first drawees, even if first drawees were unqualified by broker's alleged interest and issuance was thus improper. Geosearch, Inc. v. Watt, C.A.Wyo.1983, 721 F.2d 694, certiorari denied 104 S.Ct. 2347, 80 L.Ed.2d 820.

Although actions of the Wyoming state office of the Bureau of Land Management in issuing oil and gas lease to second drawee prior to termination of 90-day appeal period and misdirected efforts of first drawee, whose application was rejected, in filing his appeal in the wrong state and thereafter omitting to file a stay or notice of lis pendens in the proper federal judicial district could not be condoned; such actions did not change the fact that the assignee of the lease, who took the assignment from the second drawee without exercising reasonable prudence, was not a "bona fide purchaser" within the meaning of this section. Winkler v. Andrus, D.C.Wyo.1980, 494 F.Supp. 946.

9. —— Examination of records

In order for an assignee of a federal mineral lease to be protected as a bona fide purchaser, examination of Bureau of Land Management records must be made; however, assignees are not required to go outside the records relating to the particular parcel of land assigned, which records are kept in the Bureau state office. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

9a. —— Date of assignment

For purpose of determining whether assignee of oil and gas lease was a bona fide purchaser within the meaning of this section, it was the date of the assignment which was critical as to the bona fides

Note 9a

of the assignee. Winkler v. Andrus, C.A.Wyo. 1980, 614 F.2d 707.

12a. Remand

Appeals from series of orders entered in controversy pertaining to drawing of noncompetitive oil and gas lease offers were remanded to permit district court to take evidence as to whether oil and gas lease assignee's constructive knowledge of the existence of administrative proceeding involving a contest between first drawee and the assignee's assignor, together with knowledge that the 90-day period to commence an action for judicial review had not run out served to disqualify the assignee from the status of bona fide purchaser under this section. Winkler v. Andrus, C.A.Wyo. 1980, 614 F.2d 707.

13. Review

Secretary of Interior's decision to review applications for oil and gas leases on Alaska North Slope lands and allocation of such lands to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971, section 1601 et seq., of Title 43, was well within his discretion and not subject to review in federal district court. Rowe v. U.S., D.C.Alaska 1979, 464 F.Supp. 1060, affirmed in part, reversed in part on other grounds 633 F.2d 799, certiorari denied 101 S.Ct. 2047, 451 U.S. 970, 68 L.Ed.2d 349.

§ 185. Rights-of-way for pipelines through Federal lands

(a) Grant of authority

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

(b) Definitions

(1) For the purposes of this section "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) "Secretary" means the Secretary of the Interior.

(3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

(c) Inter-agency coordination

(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

(d) Width limitations

The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and

campsites, and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

(e) Temporary permits

A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

(f) Regulatory authority

Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination.

(g) Pipeline safety

The Secretary or agency head shall impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.

(h) Environmental protection

(1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102(2)(C) [42 U.S.C.A. § 4332(2)(C)] or any other provision of the National Environmental Policy Act of 1969 [42 U.S.C.A. § 4321 et seq.].

(2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

(i) Disclosure

If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(j) Technical and financial capability

The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for

which the right-of-way or permit is requested in accordance with the requirements of this section.

(k) Public hearings

The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.

(l) Reimbursement of costs

The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

(m) Bonding

Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation of the Secretary or agency head.

(n) Duration of grant

Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

(o) Suspension or termination of right-of-way

(1) Abandonment of a right-of-way or noncompliance with any provision of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceeding pursuant to section 554 of Title 5, the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided*, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

(p) Joint use of rights-of-way

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

(q) Statutes

No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

(r) Common carriers

(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

(2)(A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.

(3)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act [15 U.S.C.A. § 717 et seq.] or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(B) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this chapter that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this chapter.

(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

(s) Right-of-way corridors

In order to minimize adverse environmental impacts and to prevent the proliferation of separate rights-of-way across Federal lands, the Secretary shall, in

consultation with other Federal and State agencies, review the need for a national system of transportation and utility corridors across Federal lands and submit a report of his findings and recommendations to the Congress and the President by July 1, 1975.

(t) Existing rights-of-way

The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) [42 U.S.C.A. § 4332(2)(C)] of the National Environmental Policy Act of 1970 (Public Law 90–190; 42 U.S.C.A. § 4321).

(u) Limitations on export

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C.App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

(v) State standards

The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

(w) Reports

(1) The Secretary and other appropriate agency heads shall report to the House and Senate Committees on Interior and Insular Affairs annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

(2) The Secretary or agency head shall notify the House and Senate Committees on Interior and Insular Affairs promptly upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty days (not counting days on which the House of Representatives or the Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

(4) The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Secretary of

Energy any potential dangers of or actual explosions, or potential or actual spillage on Federal lands and shall include in such report a statement of corrective action taken to prevent such explosion or spillage.

(x) Liability

(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this chapter shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(y) Antitrust laws

The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws.

(As amended Nov. 16, 1973, Pub.L. 93–153, Title I, § 101, 87 Stat. 576; Aug. 4, 1977, Pub.L. 95–91, Title III, §§ 301(b), 306, Title IV, § 402(a), (b), Title VII, §§ 703, 707, 91 Stat. 578, 581, 583, 584, 606, 607; July 12, 1985, Pub.L. 99–64, Title I, § 123(b), 99 Stat. 156.)

Unconstitutionality of Legislative Veto Provisions

The provisions of section 1254(c)(2) of Title 8, Aliens and Nationality, which authorize a House of Congress, by resolution, to invalidate an action of the Executive Branch, were declared unconstitutional in Immigration and Naturalization Service v. Chadha, 1983, 103 S.Ct. 2764. See similar provisions in subsec. (u) of this section.

References in Text. The National Environmental Policy Act of 1969, referred to in subsec. (h)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

The date of enactment of this subsection, referred to in subsec. (k), the effective date of this provision, referred to in subsec. (q), and the effective date of this subsection, referred to in subsec. (t), probably mean the date of approval of Pub. L. 93–153, which was Nov. 16, 1973.

The Natural Gas Act, referred to in subsec. (r)(3)(A), is Act June 21, 1938, c. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (section 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables volume.

The Export Administration Act of 1979, referred to in subsec. (u), is Pub.L. 96–72, Sept. 29,

1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

The Export Administration Act of 1969, referred to in subsec. (u), is Pub. L. 91–184, Dec. 30, 1969, 83 Stat. 841, as amended, which was formerly classified to sections 2401 to 2413 of Title 50, App., War and National Defense, and was terminated on Sept. 30, 1979, pursuant to the terms of that Act.

The federal antitrust laws, referred to in subsec. (y), are classified generally to section 1 et seq. of Title 15.

1985 Amendment. Subsec. (u). Pub. L. 99–64, § 123(b)(1), substituted "Export Administration Act of 1979 (50 U.S.C.App. 2401 and following)" for "Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841)".

Pub. L. 99–64, § 123(b)(2), substituted "Export Administration Act of 1979" for "Export Administration Act of 1969" following "enforcement provisions of the" and again following "accord with the provisions of the".

1973 Amendment. Pub.L. 93–153 completely rewrote the section substituting 25 subsecs. lettered (a) through (y) covering all aspects of the granting of rights-of-way for pipelines through Federal lands for the former single unlettered paragraph under which rights-of-way of 25 feet on each side of the pipeline could be granted and under which the pipeline was to be operated as a common carrier.

Change of Name. The Committee on Interior and Insular Affairs of the Senate was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Transfer of Functions. Enforcement functions of Secretary or other official in Department of Interior related to compliance with grants of rights-of-way and temporary use permits for Federal land and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of Department of Agriculture, related to compliance with associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

"Secretary of Energy or Federal Energy Regulatory Commission" was substituted for "Interstate Commerce Commission or Federal Power Commission" in subsec. (r)(5) pursuant to sections 301(b), 306, 402(a), (b), 703, and 707 of Pub.L. 95–91, which are classified to sections 7151(b), 7155, 7172(a), (b), 7293, and 7297 of Title 42, The Public Health and Welfare, and which transferred the functions vested in the Interstate Commerce Commission, and the Chairman and members thereof, relating to the transportation of oil by pipeline to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission within the Department of Energy), and terminated the Federal Power Commission and transferred its functions to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission).

"Secretary of Energy" was substituted for "Interstate Commerce Commission" in subsec. (w)(4) pursuant to sections 306 and 707 of Pub.L. 95–91, which are classified to sections 7155 and 7297 of Title 42, and which transferred the functions vested in the Interstate Commerce Commission, and the Chairman and members thereof, relating to the transportation of oil by pipeline to the Secretary of Energy (except for certain functions).

Legislative History. For legislative history and purpose of Pub.L. 93–153, see 1973 U.S.Code Cong. and Adm.News, p. 2417. See, also, Pub.L. 99–64, 1985 U.S.Code Cong. and Adm.News, p. 108.

West's Federal Forms

Bonds and undertakings, see §§ 1521 to 1524.

West's Federal Practice Manual

Claims Court—
Jurisdiction, see § 1840.
Limitations and laches, see § 1894.
Rights-of-way for pipe lines, see § 5449.

Notes of Decisions

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1. Construction

The historic authority of the Bureau of Land Management of the Department of Interior to issue special land use permits applies only if the uses to be made thereunder are really temporary and revocable. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

This chapter by the very terms of its preamble could not serve as basis for promulgation of fee regulations by the bureau of land management to reimburse government for costs in processing and monitoring applications of utilities for rights-of-way for electric transmission lines and related equipment across public lands. Public Service Co. of Colorado v. Andrus, D.C.Colo.1977, 433 F.Supp. 144.

2. —— With other laws

Evidence established that if preliminary injunction did not issue to enjoin Secretary from issuance of permit to oil pipeline company to construct haul road and to use gravel from public lands therefor in connection with construction of trans-Alaska pipeline system, conservation organizations would suffer irreparable injury. Wilderness Soc. v. Hickel, D.C.D.C.1970, 325 F.Supp. 422.

2a. Purpose

In enacting the right-of-way limitation of 25 feet on either side of oil pipeline, Congress intended that construction be limited within the right-of-way and did not intend that those building pipelines could make use of land outside statutory right-of-way for construction purposes. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

5. Generally

Administrative practice of the Department of the Interior of granting special land use permits for use of land adjoining statutory rights-of-way in the construction of pipeline across public lands is not entitled to deference in the construction of provision of this section limiting width of rights-of-way for oil pipelines. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

Nothing in provision of this section pertaining to grants of rights-of-way for oil pipelines bars resort to other specific statutory grants of rights-of-way, including rights-of-way for communications facilities. Id.

6a. Retroactive effect

This section which states that an applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application and that the holder of a right-of-way or permit shall reimburse the United States for monitoring costs, though it made pipeline service company and oil companies liable for additional costs incurred by the United States in connection with the construction and operation of the trans-Alaska pipeline after the effective date of this section, did not contain even a suggestion that pipeline service company and oil companies were liable to reimburse the United States for costs incurred by it prior to the enactment of this section. Alyeska Pipeline Service Co. v. U.S., 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

Even if this section could be construed as permitting the Secretary of the Interior, without first promulgating regulations, to require pipeline service company and oil companies to reimburse the government for expenses incurred in processing

permit to build and operate the trans-Alaska oil pipeline, this section still could not be applied retroactively to cover costs the government incurred before this section was enacted. Id.

7. Common carrier obligations

Pipelines are operated as common carriers and, as such, they are subject to the Interstate Commerce Act, section 1 et seq. of Title 49. Thomas v. Amerada Hess Corp., D.C.Pa.1975, 393 F.Supp. 58.

12. Objections

City which had leased property from federal government through which federal government had granted right-of-way for construction of northern tier oil pipeline could not maintain action for declaratory and injunctive relief. No Oilport v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

13. Determination of facts

Where pipeline construction company made no actual applications to federal and state authorities for permits and rights-of-way covering land on which it proposed to locate variety of facilities for the construction and operation of proposed pipeline, the legality of the permits and rights-of-way was not ripe or suitable for judicial determination and the issue of legality of such permits and rights-of-way would not be considered on appeal from order which denied permanent injunction against the construction of the pipeline. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

13a. Evidence

Issuance of permit for construction of northern tier oil pipeline which involved grant of right-of-way through federal lands was prima facie evidence that Secretary of Interior was satisfied as to applicant's financial capabilities. No Oilport v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

Evidence established that while pipeline companies' applications for permits to build haul road across public lands and to use gravel from public lands for oil pipeline right-of-way 54 feet in width which would run from South Pacific Coast of Alaska to North Arctic Coast constituted request for pipeline right-of-way in excess of width permissible under this section. Wilderness Soc. v. Hickel, D.C.D.C.1970, 325 F.Supp. 422.

14a. Reimbursement

The Secretary did not have authority under this chapter or applicable regulations to assess against a pipeline service company and the oil companies that formed the service company any part of a $12,253,730 fee paid to the Department of the Interior to reimburse the government for its expenses incurred in processing permit to build and operate trans-Alaska oil pipeline. Alyeska Pipeline Service Co. v. U.S., 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

Pipeline service company and oil companies that formed the service company to act as their agent in construction and maintenance of the trans-Alaska oil pipeline were entitled to a refund of a $12,253,730 fee that they paid to the Department of the Interior to reimburse the government for its expenses incurred in processing the permit to build and operate the pipeline even though the

Note 14a

service company and the oil companies had bound themselves contractually in a right-of-way agreement to make the payments. Id.

Bureau of Land Management's assessment of its environmental impact statement costs to applicant for oil pipeline right-of-way in the form of its fees was proper; the charges were not taxes. Sohio Transp. Co. v. U.S., 1984, 5 Cl.Ct. 620, affirmed 766 F.2d 499.

14b. Fair market rental value

Record in proceeding to block construction of northern tier oil pipeline which involved right-of-way through federal lands did not establish any abuse of discretion in determination that fair market rental value of right-of-way was $80,000. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

16. Permits

Special land use permits may not lawfully be granted by the Department of the Interior for the use of public lands outside the statutory right-of-way for purposes of construction of oil pipelines. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

Bureau of Land Management of the Department of Interior was not entitled to utilize special land use permits as means of avoiding provisions of this section which limit the extent of rights-of-way for oil pipelines. Id.

17. Pumping stations

Pumping stations are part of the "pipeline" within provision of this section relating to rights-of-way over public lands for the transportation of oil or natural gas and the statutory "right-of-way" provides not only for 25 feet on each side of the pipe, but also for 25 feet on each side of facilities which constitute part of "pipeline." Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App. D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

18. Limitations

Under this section, the Secretary of the Interior may require reimbursement of costs incurred by the government only if he acts pursuant to regulation and only for expenses incurred after the effective date of the amendment; these limitations are intended to give applicants and permittees the opportunity to be heard before the amount of reimbursement is fixed and to have advance notice of the expenses they will incur if their application is granted. Alyeska Pipeline Service Co. v. U.S., 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

Special land use permit for use of 46-foot-wide strip adjacent to and parallel with right-of-way for proposed trans-Alaska oil pipeline was "right-of-way" "for the transportation of oil" within meaning of provision of this section which places limitation on width of rights-of-way across public lands. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 441 U.S. 917, 36 L.Ed.2d 309.

19. Review

Court of appeals would not determine issues relating to adequacy of environmental impact statement in connection with construction of trans-Alaska pipeline where the pipeline could not be constructed because the illegality of special land use permit made it impossible to construct the pipeline until Congress could amend this chapter. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

20. Authorizations

In situations in which Secretary of Interior is authorized to grant or deny right-of-way, as opposed to situations in which an agency head is authorized to grant or deny right-of-way, only Secretary of Interior's consistency determination is relevant. No Oilport! v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

21. Indian or Indian tribe trusts

Provision of subsec. (b)(1) of this section prohibiting grant of right-of-way over lands held in trust for an Indian or Indian tribe applies to lands held in fee. No Oilport! v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

Indians' nonexclusionary easement which allows them access to their usual and accustomed fishing sites does not constitute "lands held in trust for an Indian or an Indian tribe" as such phrase is used in provision of subsec. (b)(1) of this section prohibiting granting of right-of-way over Indian lands. Id.

22. Coast Guard lands

Secretary of Interior did not act beyond his jurisdiction in granting right-of-way through portion of Coast Guard station. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

Statement by Secretary of Department of Transportation that grant of right-of-way through Coast Guard station would necessitate relocation of air rescue station presently located at station did not constitute determination that right-of-way was inconsistent with purpose of Coast Guard station. Id.

Record in proceeding to block construction of northern tier oil pipeline did not establish claim that Secretary of Department of Transportation, who headed agency having jurisdiction over Coast Guard lands, determined that grant of right-of-way through Coast Guard lands would be inconsistent with purposes of Coast Guard station. Id.

23. Plans

Plans submitted in connection with application for right-of-way over federal lands for construction of northern tier oil pipeline were sufficient to comply with requirement that applicant for right-of-way submit plan of construction, operation, and rehabilitation. No Oilport! v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

24. Situs

Where notice to proceed with construction would not be issued until exact location of right-of-way over federal lands was established, grant of right-of-way before exact location within two-mile corridor was established did not violate provisions of this chapter. No Oilport! v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

Where right-of-way granted over federal lands was within 50-foot width limitation, there was no violation of limitation even though exact site of right-of-way was not determined within two-mile corridor. Id.

25. Technical and financial capability

In considering application for construction of northern tier oil pipeline which would involve grant of right-of-way through federal lands, Secretary of Interior was not required to make finding as to applicant's technical and financial capability to construct, operate, maintain and terminate project but was required to be satisfied as to applicant's capability to do so. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

Fact that Secretary of Interior in considering proposal for construction of northern tier oil pipeline which involved grant of right-of-way through federal lands stated that if accepted applicant could not come up with financial backing within one year another proposal would be substituted did not rule out possibility that Secretary was satisfied that applicant had financial capability to complete project. Id.

26. State standards

Record in action to block construction of northern tier oil pipeline which involved right-of-way through federal lands established that there was compliance with requirement that state standards for right-of-way construction be considered. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

27. Hearings

Secretary of Interior has substantial discretion as to hearings to be conducted in connection with application for right-of-way through federal lands. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

28. Stipulations

Stipulations imposed in connection with grant of right-of-way over federal lands in connection with construction of northern tier oil pipeline were adequate except as to whether habitats of Indian tribe's treaty fishery had been adequately protected. No Oilport! v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

§ 186. Reservation of easements or rights-of-way for working purposes; reservation of right to dispose of surface of lands; determination before offering of lease; easement periods

Notes of Decisions

1. Action of Secretary

In absence of any unresolved factual issues, Secretary was not required to hold hearings before deciding to reject applications for federal oil and gas leases on Alaska North Slope Lands and allocating lands to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971. Rowe v. U.S., D.C.Alaska 1979, 464 F.Supp. 1060. Affirmed in part, reversed in part on other grounds 633 F.2d 799, certiorari denied 101 S.Ct. 2047, 451 U.S. 970, 68 L.Ed.2d 349.

Action of Secretary in making "deficiency withdrawals" of Alaska North Slope public lands, and denying applications for federal oil and gas leases as to lands affected by such withdrawals, allocating such lands instead to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971, section 1601 et seq., of Title 43, was not arbitrary, capricious or abuse of Secretary's discretion. Id.

§ 187. Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases for protection of diverse interests in operation of mines, wells, and so forth; State laws not impaired

No lease issued under the authority of this chapter shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

(As amended Oct. 30, 1978, Pub.L. 95-554, § 5, 92 Stat. 2074.)

1978 Amendment. Pub.L. 95-554 substituted "provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface" for "provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface".

Legislative History. For legislative history and purpose of Pub.L. 95-554, see 1978 U.S.Code Cong. and Adm.News, p. 4736.

West's Federal Practice Manual
Assignment generally, see § 5400.
General provisions in leases, see § 5401.5.
Oil and gas assignment, see § 5412.
Termination, see § 5401.
Wage and hour statutes, see § 1209.

Notes of Decisions

2. State power

In proviso of this section that none of "such provisions" shall be in conflict with laws of states in which leased property is situated, term "such provisions" means only provisions of preceding sentence, relating to employment practices, prevention of undue waste and monopoly, and diligence requirements, and not including land use planning controls, and, also, proviso assures only that Secretary of Interior shall observe state standards in drafting terms of lease, and proviso is not recognition of concurrent state jurisdiction. Ventura County v. Gulf Oil Corp., C.A.Cal.1979, 601 F.2d 1080, affirmed 100 S.Ct. 1593, 445 U.S. 947, 63 L.Ed.2d 782.

3. Assignments or subleases

Defendant, who declared a unit in order to protect sublessee's equity position by holding leases that were soon to expire and also to prevent wasteful drilling of unnecessary wells, acted in good faith in exercise of pooling option under mineral leases. Gorenflo v. Texaco, Inc., D.C.La. 1983, 566 F.Supp. 722.

§ 187a. Same; oil or gas leases; partial assignments

West's Federal Forms
Bonds and undertakings, see §§ 1521 to 1524.

West's Federal Practice Manual
Assignment, see § 5412.
Extension, see § 5411.

Notes of Decisions

2. Secretary of Interior—Powers and duties

Discretion of whether or not to grant oil and gas leases on public lands is not exercised by Secretary when mere notice is given inviting offers and delineating procedures to be followed. Rowe v. U.S., D.C.Alaska 1979, 464 F.Supp. 1060, affirmed in part, reversed in part on other grounds 633 F.2d 799, certiorari denied 101 S.Ct. 2047, 451 U.S. 970, 68 L.Ed.2d 349.

§ 187b. Same; oil or gas leases; written relinquishment of rights; release of obligations

West's Federal Forms
Bonds and undertakings, see §§ 1521 to 1524.

West's Federal Practice Manual
Assignment, see § 5412.

§ 188. Failure to comply with provisions of lease

(a) Forfeiture

[See main volume for text of (a)]

(b) Cancellation

[See main volume for text of (b)]

(c) Reinstatement

[See main volume for text of (c)]

(d) Reinstatement of terminated oil and gas leases

(1) Where any oil and gas lease issued pursuant to section 226(b) or (c) of this title or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as

oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease (A) occurs after the expiration of the primary term or any extension thereof, or (B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

(2) No lease shall be reinstated under paragraph (1) of this subsection unless—

(A) with respect to any lease that terminated under subsection (b) of this section prior to January 12, 1983;

(i) the lessee tendered rental prior to January 12, 1983, and the final determination that the lease terminated was made by the Secretary or a court less than three years before January 12, 1983, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any lease that terminated under subsection (b) of this section on or after January 12, 1983, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of—

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

(e) Reinstatement conditions

Any reinstatement under subsection (d) of this section shall be made only if these conditions are met:

(1) no valid lease, whether still in existence or not, shall have been issued affecting any of the lands covered by the terminated lease prior to the filing of such petition: *Provided, however*, That after receipt of a petition for reinstatement, the Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him;

(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future rentals at a rate of not less than $10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement that future rentals shall be at a rate not less than $5 per acre per year, all as determined by the Secretary;

(3)(A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future royalties at a rate of not less than 16⅔ percent computed on a sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royalty schedule then in force and used for royalty determination for competitive leases issued pursuant to such section as determined by the Secretary: *Provided*, That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

(B) payment of back royalties and inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement for future royalties at a rate not less than 16⅔ percent: *Provided*, That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the cancellation or termination of the original lease; and

(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the reinstatement.

A copy of said notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the Secretary deemed significant in making this determination to reinstate, shall be furnished to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on

Energy and Natural Resources of the Senate at least thirty days in advance of the reinstatement. The lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed $500. In addition the lessee shall reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement.

(f) Unpatented oil placer mining claims

Where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil and gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 1744 of Title 43, and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease, consistent with the provisions of section 226(e) of this title, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

(1) a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim, being filed with the Secretary—

(A) with respect to any claim deemed conclusively abandoned on or before January 12, 1983, on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any claim deemed conclusively abandoned after January 12, 1983, on or before the one hundred and twentieth day after final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim;

(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition: *Provided, however,* That after the filing of a petition for issuance of a lease under this subsection, the Secretary shall not issue any new lease affecting any of the lands covered by such abandoned oil placer mining claim for a reasonable period, as determined in accordance with regulations issued by him;

(3) a requirement in the lease for payment of rental, including back rentals accruing from the statutory date of abandonment of the oil placer mining claim, of not less than $5 per acre per year;

(4) a requirement in the lease for payment of royalty on production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the statutory date the claim was deemed conclusively abandoned, of not less than 12½ percent; and

(5) compliance with the notice and reimbursement of costs provisions of paragraph (4) of subsection (e) of this section but addressed to the petition covering the conversion of an abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease.

(g) Treatment of reinstated leases

(1) Except as otherwise provided in this section, a reinstated lease shall be treated as a competitive or a noncompetitive oil and gas lease in the same manner as the original lease issued pursuant to section 226(b) or (c) of this title.

(2) Except as otherwise provided in this section, the issuance of a lease in lieu of an abandoned patented oil placer mining claim shall be treated as a noncompetitive oil and gas lease issued pursuant to section 226(c) of this title.

(h) Minimum royalties

The minimum royalty provisions of section 226(j) of this title and the provisions of section 209 of this title shall be applicable to leases issued pursuant to subsections (d) and (f) of this section.

(i) Reduction of royalties

(1) In acting on a petition to issue a noncompetitive oil and gas lease, under subsection (f) of this section or in response to a request filed after issuance of such a lease, or both, the Secretary is authorized to reduce the royalty on such lease if in his judgment it is equitable to do so or the circumstances warrant such relief due to uneconomic or other circumstances which could cause undue hardship or premature termination of production.

(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes if, in his judgment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease after the rent had become due and had not been paid; or if in the judgment of the Secretary it is equitable to do so for any reason.

(j) Discretion of Secretary

Where, in the judgment of the Secretary of the Interior, drilling operations were being diligently conducted on the last day of the primary term of the lease, and, except for nonpayment of rental, the lessee would have been entitled to extension of his lease, pursuant to section 226—1 of this title, the Secretary of the Interior may reinstate such lease notwithstanding the failure of the lessee to have made payment of the next year's rental, provided the conditions of subparagraphs (1) and (2) of subsection (c) of this section are satisfied.

(As amended Jan. 12, 1983, Pub.L. 97–451, Title IV, § 401, 96 Stat. 2462.)

References In Text. The Mineral Leasing Act for Acquired Lands, referred to in subsec. (d)(1), is Act Aug. 7, 1947, c. 513, 61 Stat. 913, which is classified generally to chapter 7 (section 351 et seq.) of this title. For complete classification of this Act to the Code, see section 351 of this title and Tables volume.

1983 Amendment. Subsec. (d). Pub.L. 97–451 added subsec. (d). Former subsec. (d) was redesignated (j).

Subsecs. (e)–(i). Pub.L. 97–451 added subsecs. (e), (f), (g), (h), and (i).

Subsec. (j). Pub.L. 97–451 redesignated former subsec. (d) as (j).

Legislative History. For legislative history and purpose of Pub.L. 97–451, see 1982 U.S.Code Cong. and Adm.News, p. 4268.

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Forfeiture proceedings, matters pertaining to, see § 5891 et seq.

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Oil and gas lease termination, see § 5417.
Termination generally, see § 5401.

Notes of Decisions

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2. Cancellations

Federal lease could not be cancelled administratively because it was a currently-producing oil and gas lease. Naartex Consulting Corp. v. Watt, 1983, 722 F.2d 779, 232 U.S.App.D.C. 293, certiorari denied 104 S.Ct. 2399.

11. Liability for rentals

Secretary of Interior did not abuse his discretion in refusing to reinstate oil and gas leases, which were automatically terminated for failure to make timely rental payments, upon finding that lessee, who alleged that a particular employee who was responsible for mailing rental checks and who had satisfactorily performed a task in the past had failed to send in the rental payments on time and falsely told her supervisor that the payments had been mailed, failed to exercise reasonable diligence. Ram Petroleums, Inc. v. Andrus, C.A. Nev.1981, 658 F.2d 1349.

15a. Rules and regulations

Although narrow, Secretary of Interior's interpretation of provision of this section governing reinstatement where late payment of rental was either justifiable or not due to lack of reasonable diligence on part of lessee as being justifiable only where late payment is caused by factors outside lessee's control and as satisfying reasonable diligence standard only where rental payment is mailed sufficiently in advance to account for normal delays in mail delivery was not arbitrary or capricious or abuse of discretion and regulation was properly applied to deny reinstatement although late payment was due solely to employee negligence or misconduct. Ramoco, Inc. v. Andrus, C.A.Utah 1981, 649 F.2d 814, certiorari denied 102 S.Ct. 569, 454 U.S. 1032, 70 L.Ed.2d 475.

17. Reinstatement

Since oil and gas leases issued by United States Bureau of Land Management and state of Wyoming lapsed by their own terms because of failure of debtors in possession to make required delay rental payments the bankruptcy court in proceedings brought under former section 701 et seq. of Title 11 was powerless to order reinstatement. In re Trigg, C.A.N.M.1980, 630 F.2d 1370.

18. State orders

Under this chapter, state communitization order may not bind federally owned land, or extend leases of such land within unit, without consent of Secretary, and, therefore, in absence of approval,

Note 18

production from other property in unit cannot be attributed to federal property and thereby extend terms of federal oil and gas lease requiring production of oil or gas in paying quantities. Kirkpatrick Oil & Gas Co. v. U. S., C.A.Okl.1982, 675 F.2d 1122.

§ 189. Rules and regulations; boundary lines; State rights unaffected; taxation

Transfer of Functions. The functions of the Secretary of the Interior to promulgate regulations under this chapter relating to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42. The Public Health and Welfare section 7152(b) of Title 42 was repealed by Pub.L. 97-100, Title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and the functions of the Secretary of Energy were returned to the Secretary of the Interior. See House Report No. 97-315, pp. 25, 26, Nov. 5, 1981.

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Mineral Leasing Act, see § 5392.

Notes of Decisions

Assignments 7a
Law governing 2a

2a. Law governing

For purposes of state income taxation, federal law was not determinative of the characterization of the interests of nonresidents who, under this chapter, were granted oil and gas leases for federal lands located in Colorado, who assigned their interest to various parties, and who, in consideration therefor, received, inter alia, future overriding royalties. Hagood v. Heckers, 1973, 513 P.2d 208, 182 Colo. 337.

4. State power

Nothing in proviso of this section governing federal mine leases stating that nothing in chapter would be construed or held to affect rights of states or other local authority to exercise any rights which they may have, including right to levy and collect taxes upon improvements, output of mine or other rights, property, or assets of any lessee of United States gives states any power over those lands which they do not already possess. Kirkpatrick Oil & Gas Co. v. U. S., C.A. Okl.1982, 675 F.2d 1122.

Saving clause of this section, preserving to states "any rights which they may have" was express recognition of right states to tax activities of government's lessee pursuant to lease, but did not give states or their subdivisions right to apply local regulations impermissibly conflicting with achievement of congressionally approved use of federal lands. Ventura County v. Gulf Oil Corp., C.A.Cal.1979, 601 F.2d 1080, affirmed 100 S.Ct. 1593, 445 U.S. 947, 63 L.Ed.2d 782.

6. —— Taxation

Even assuming that Montana's coal severance tax may reduce royalty payments to the federal government under leases executed in Montana, this fact alone did not demonstrate that the tax is inconsistent with this chapter; indeed, in this section, Congress expressly authorized the states to impose severance taxes on federal lessees without imposing any limits on the amount of such taxes, and there was nothing in the language or legislative history of this section to support an assertion that Congress intended to maximize and capture through royalties all "economic rents" from the mining of federal coal, and then to divide the proceeds with the state in accordance with formula. Commonwealth Edison Co. v. Montana, Mont.1981, 101 S.Ct. 2946, 453 U.S. 609, 69 L.Ed.2d 884, rehearing denied 102 S.Ct. 889, 453 U.S. 927, 69 L.Ed.2d 1023.

States have the power, under this section, to tax income generated from federal lands under the jurisdiction of the Mineral Leasing Act. Hagood v. Heckers 1973, 513 P.2d 208, 182 Colo. 337.

Lessees of federal lands under this chapter acquired interest in land and such lessees retained an interest in tangible property, for purposes of 1965 Perm.Supp., C.R.S. section 138-1-15 deeming nonresident's income to be derived from Colorado sources if it is attributable to ownership of such property in state, when they transferred their rights in such leases and permitted transferees to extract oil and gas but retained percentage interest in production, notwithstanding lessees' contention that their right to payment from production rested on contract and constituted intangible personal property right. Hagood v. Heckers, 1972, 502 P.2d 961, 31 Colo.App. 172, affirmed 513 P.2d 208.

7a. Assignments

Even assuming that an assignor's right to retain interests upon assignment is more restricted in the instance of federal oil and gas leases than is the case in private lease transfer, such restriction deals with the federal government's relationship with the assignor and the assignee, and is not germane to the state's exercise of its taxing power. Hagood v. Heckers, 1973, 513 P.2d 208, 182 Colo. 337.

§ 190. Oath; requirement; form; blanks

West's Federal Forms

Jurat, see § 1487.

§ 191. Disposition of moneys received

All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C.A. § 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C.A. § 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 U.S.C.A. § 1019], shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of Title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(As amended Apr. 21, 1976, Pub.L. 94-273, § 6(2), 90 Stat. 377; Aug. 4, 1976, Pub.L. 94-377, § 9, 90 Stat. 1090; Sept. 28, 1976, Pub.L. 94-422, Title III, § 301, 90 Stat. 1323; Oct. 21, 1976, Pub.L. 94-579, Title III, § 317(a), 90 Stat. 2770; Jan. 12, 1983, Pub.L. 97-451, Title I, § 104(a), 111(g), 96 Stat. 2451, 2466.)

References in Text. The Federal Oil and Gas Royalty Management Act of 1982, referred to in text, is Pub.L. 97-451, Jan. 12, 1983, 96 Stat. 2447, which is classified principally to chapter 29 (section 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note under section 1701 of this title and Tables volume.

The Geothermal Steam Act of 1970, referred to in text, is Pub.L. 91-581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (section 1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

The Reclamation Act, referred to in text, is Act June 17, 1902, c. 1093, 32 Stat. 388, as amended, which is classified generally to chapter 12 (section 371 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 371 of Title 43 and Tables volume.

Codification. "Section 7433(b) of Title 10" was substituted for "the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252)", which had been classified to section 524 of former Title 34, Navy, on authority of section 49(b) of Act Aug. 10, 1956, c. 1041, 70A Stat. 640, section 1 of which enacted Title 10, Armed Forces.

Provisions which authorized the payment of monies to the Territory of Alaska were omitted as superseded by the provisions authorizing the payment of monies to the State of Alaska.

1983 Amendment. Pub.L. 97-451, § 104(a), struck out provision which had directed that moneys received by the Treasury of the United States from sales, bonuses, royalties, interest charges, and rentals of public lands be paid out by the Secretary of the Treasury to the States "as soon as practicable after March 31 and September 30 of each year" and added provisions directing that payments to States be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, that warrants be issued by the Treasury not later than 10 days after receipt of the money by the Treasury, that moneys placed in a suspense account which are determined to be payable to a State be made not later than the last business day of the month in which a dispute is resolved, and that amounts placed in a suspense account pending resolution bear interest until the dispute is resolved.

Pub.L. 97-451, § 111(g), inserted reference to interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982.

1976 Amendments. Pub.L. 94-579 substituted provisions setting forth determination of amount, time for payments, and manner of expenditure by the States of all moneys received from sales, etc., under the provisions of this chapter and the Geothermal Steam Act of 1970, and proviso relating to naval petroleum reserve moneys, for provisions setting forth determination of amount and time for payment to the States of all moneys received from sales, etc., under the provisions of this chapter, and provisos relating to naval petroleum reserve moneys, additional moneys from sales, etc., under this chapter and the Geothermal Steam Act of 1970, and expenditure of State oil shale funds.

Pub.L. 94-422 added proviso that all moneys paid to any State from sales, bonuses, royalties, and rentals of oil shale in public lands may be used by any State for planning, construction, and maintenance of public facilities as legislature of State may direct.

Pub.L. 94-377 substituted "40 per centum thereof shall be paid into, reserved" for "52½ per centum thereof shall be paid into, reserved", added "and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof" preceding "shall be paid into the Treasury of the United States", "and the Geothermal Steam Act of 1970" preceding "from lands within the naval petroleum reserves" and preceding "not otherwise disposed of by this section", respectively, the proviso relating to the payment of an additional 12½ per centum of all money received from lands under the provisions of this chapter and the Geothermal Steam Act of 1970 to the State within whose boundaries the lands are located, to be used for construction of public facilities, and the proviso relating to the use of funds received by Colorado and Utah under the specified leases.

Pub.L. 94-273 substituted "March" for "December" and "September" for "June".

Effective Date of 1983 Amendment. Amendment by Pub.L. 97-451 applicable with respect to payments received by the Secretary of the Treasury after Oct. 1, 1983, unless the Secretary by rule, prescribes an earlier effective date, see section 104(c) of Pub.L. 97-451, set out as a note under section 1714 of this title.

Funds held by Colorado and Utah from Interior Department Oil Shale Test Leases. Section 317(b) of Pub.L. 94-579 provided that: "Funds now held pursuant to said section 35 [this section] by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C-A; C-B; U-A and U-B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services."

Savings Provisions. Amendment by Pub.L. 94-579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see note under section 1701 of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Pub.L. 94-273, see 1976 U.S.Code Cong. and Adm.News, p. 690. See, also, Pub.L. 94-377, 1976 U.S.Code Cong. and Adm.News, p. 1943; Pub.L. 94-422, 1976 U.S.Code Cong. and Adm.News, p. 2442; Pub.L. 94-579, 1976 U.S. Code Cong. and Adm.News, p. 6175; Pub.L. 97-451, 1982 U.S.Code Cong. and Adm.News, p. 4268.

Cross References

Reduction of payment for entitlement land by amounts received under this section, see section 6903 of Title 31, Money and Finance.

Notes of Decisions

1. Construction

Word "minerals" as used in section 715a of Title 16 providing for distribution of all revenues received by Secretary of Interior from "sale or other disposition of * * * minerals" in connection with operation of areas of National Wildlife Refuge System would be read restrictively so that such statute would govern distribution of mineral leasing revenues only from acquired land; therefore, distribution of mineral leasing revenues from wildlife refuge which was created by reservation of land in public domain was governed by this chapter. Kenai Peninsula Borough v. Andrus, D.C. Alaska 1977, 436 F.Supp. 288, affirmed 612 F.2d 1210, affirmed 101 S.Ct. 1673, 451 U.S. 259, 68 L.Ed.2d 80.

2. Standing to sue

Exploration company challenging the granting of oil company's application for oil and gas leases on military lands, as well as state in which such lands were located, had cause of action to challenge the agency action, since exploration company qualified as aggrieved party adversely affected by the challenged agency action, and state could attack allegedly capricious determinations by agency affecting the state's payments under this chapter. Arkla Exploration Co. v. Watt, D.C. Ark.1982, 548 F.Supp. 466.

3. Payment for exchanges

While Rattlesnake National Recreation Area and Wilderness Act of 1980, section 460*ll*-3 of Title 16, authorized exchange of Montana Power Company's lands for equal value of "bidding rights" for competitive Federal coal leases and proposed "Exchange Agreement" would require Treasury to pay State of Montana 50 percent share of total received, including bidding rights, this section provides for remitting "money" received by Treasury and since bidding rights are not money, State payment may not be based on their receipt. 1983, 62 Op. Comp.Gen. 102.

§ 192. Payment of royalties in oil or gas; sale of such oil or gas

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Payment of royalty in oil or gas, see § 5418.

Notes of Decisions

1. Construction with other laws

The geographical preference scheme for purchase of royalty oil from United States Department of Interior under this section is not in conflict with primary policy objectives of subsequently enacted Emergency Petroleum Allocation Act of 1973, section 751 et seq. of Title [illegible]nd thus both statutes could be given simul[illegible]s effect. Laketon Asphalt and Refining, [illegible] v. U.S. Dept. of Interior, D.C.Ind.1979, 476 F.Supp. 668, affirmed 624 F.2d 784.

9. Moot matters

Issues raised in action against Department of Interior and its Secretary by corporation which operated refinery and whose application for royalty oil was rejected did not become moot by virtue of transfer of authority to Secretary of Energy to promulgate regulations on the disposition of federal royalty interest. Plateau, Inc. v. Department of Interior, C.A.N.M.1979, 603 F.2d 161.

10. Rules and regulations

Use of geographic preference system by the Department of Interior to allocate royalty crude oil under this section was rationally related to purpose of amendment of this section to distribute royalty oil to refineries not having their own source of supply for crude oil. Laketon Asphalt Refining, Inc. v. U.S. Dept. of Interior, C.A.Ind. 1980, 624 F.2d 784.

Regulation which was adopted by Secretary of Interior and which limited distribution of royalty oil to small business enterprises was invalid. Plateau, Inc. v. Department of Interior, C.A.N.M. 1979, 603 F.2d 161.

11. Arbitrary and capricious determination—Generally

The so-called preference eligible refiners status, based solely on geographic location, for purchase of royalty oil from federal government was not arbitrary and irrational on asserted ground that it bore no relationship to governmental interest in furthering assistance to all eligible refiners including a refiner from outside the geographic area whose prior contracts for purchase of royalty oil were not renewed because it lacked the requisite preference eligibility. Laketon Asphalt and Refining, Inc. v. U.S. Dept. of Interior, D.C.Ind. 1979, 476 F.Supp. 668, affirmed 624 F.2d 784.

11a. —— Burden of proof

In action brought by independent refinery challenging regulations authorizing the Department of Interior to use geographic areas to allocate royalty crude oil under this chapter, refinery failed to carry its burden of showing that the geographic divisions, which had effect of limiting refinery's previously accorded ability to purchase royalty oil, was wholly arbitrary such as to constitute a denial of equal protection. Laketon Asphalt Refining, Inc. v. U.S. Dept. of Interior, C.A.Ind.1980, 624 F.2d 784.

12. Royalty oil exchange agreements

Royalty oil exchange agreements as authorized by the Department of Interior were not contrary to mandate of this chapter that the oil was to be sold to eligible refiners "not for resale in kind." Laketon Asphalt Refining, Inc. v. U.S. Dept. of Interior, C.A.Ind.1980, 624 F.2d 784.

§ 193. Disposition of deposits of coal, and so forth

The deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits in Lander, Wyoming, coal entries numbered 18 to 49, inclusive, shall be subject to disposition only in the form and manner provided in this chapter, except as provided in sections 1716 and 1719 of Title 43, and except as to valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

(As amended Oct. 30, 1978, Pub.L. 95-554, § 4, 92 Stat. 2074.)

1978 Amendment. Pub.L. 95-554 provided for disposition of minerals as provided in sections 1716 and 1719 of Title 43.

Legislative History. For legislative history and purpose of Pub.L. 95-554, see 1978 U.S.Code Cong. and Adm.News, p. 4736.

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Complaint, see § 1725 and Comment thereunder.

Notes of Decisions

½. Constitutionality

An attempt by the Board of Land Appeals or reviewing court to overrule 1927 decision holding that present development and marketability at a reasonable profit is not necessary for deposits of oil shale, which decision had been ratified by Congress, would be violative of congressional legislative authority and improper. Shell Oil Co. v. Kleppe, D.C.Colo.1977, 426 F.Supp. 894.

Note 3

3. Exceptions

Token assessment work, or assessment work that does not substantially satisfy requirements of section 2, of this title is not adequate to maintain claims to oil shale lands within meaning of this section. Hickel v. Oil Shale Corp., Colo.1970, 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d 193, mandate conformed to 370 F.Supp. 108.

Decisions that failure to maintain annual assessment work on placer oil shale claims, originally asserted under sections 22, 26, 28, and 29 of this title and sought to be matured under this section, does not require return to the government of full possessory rights to lands must be confined to situations where there had been substantial compliance with assessment work requirements of section 28 of this title. Id.

Every default in assessment work does not cause claim to oil shale lands under sections 22, 26, 28, and 29, of this title, as asserted under this section, to be lost; default, however, might be the equivalent of abandonment. Id.

4. Revocation of claims

Udall v. Oil Shale Corp., 406 F.2d 759 [main volume] reversed 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d 193, mandate conformed to 370 F.Supp. 108.

In enacting this chapter, Congress contemplated that preexisting oil shale claims could satisfy discovery requirement of section 22 et seq. of this title. Andrus v. Shell Oil Co., Colo.1980, 100 S.Ct. 1932, 466 U.S. 657, 64 L.Ed.2d 593.

Where oil shale mining claims, originally asserted under sections 22, 26, 28 and 29 of this title and sought to be matured under this section had not substantially met conditions of section 28 of this title respecting assessment work, default in doing such assessment work did not inure only to benefit of relocaters but, under sections 22, 26, 28 and 29 of this title, claims were subject to cancellation with return of full possessory rights to the government. Hickel v. Oil Shale Corp., Colo. 1970, 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d 193, mandate conformed to 370 F.Supp. 108.

6. Jurisdiction of land tribunals

Department of Interior had subject matter jurisdiction over contests involving performance of assessment work on oil shale mining claims, which were originally asserted under sections 22, 26, 28, and 29 of this title and sought to be matured under this section, and which Commissioner had cancelled for failure to perform annual assessment work required under section 193 of this title. Hickel v. Oil Shale Corp., Colo.1970, 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d 193, mandate conformed to 370 F.Supp. 108.

7. Estoppel

Interior Department was estopped from challenging validity of pre-1920 oil shale claims on ground that claims did not constitute discoveries of a valuable mineral deposit where prudent investors detrimentally relied upon the deliberate actions and statements of high government authorities. Shell Oil Co. v. Kleppe, D.C.Colo.1977, 426 F.Supp. 894.

§ 193a. Preference right of United States to purchase coal for Army and Navy; price for coal; civil actions; jurisdiction

The United States shall, at all times, have the preference right to purchase so much of the product of any mine or mines opened upon the lands sold under the provisions of this Act, as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the United States Claims Court for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

(As amended Apr. 2, 1982, Pub. L. 97-164, Title I, § 160(a)(10), 96 Stat. 48.)

1982 Amendment. Pub. L. 97-164 substituted "United States Claims Court" for "Court of Claims".

Effective Date of 1982 Amendment. Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub. L. 97-164, see 1982 U.S. Code Cong. and Adm. News, p. 11.

2. COAL

§ 201. Leases and exploration

(a) Division into tracts; bidding and award; negotiated sales on exercise of right-of-way permits; leases to public agencies; fair market value of leases; leases in National Forests; comprehensive land-use plans; notice of proposed lease offering

(1) The Secretary of the Interior is authorized to divide any lands subject to this Chapter which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by

competitive bidding: *Provided*, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary and incidental to the exercise of a right-of-way permit issued pursuant to Title I of the Federal Land Policy and Management Act of 1976 [43 U.S.C.A. § 1761 et seq.]. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease. He is authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants.

(2)(A) The Secretary shall not issue a lease or leases under the terms of this Chapter to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided for in section 207(b) of this title, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to August 4, 1976, shall not be counted.

(B) Any lease proposal which permits surface coal mining within the boundaries of a National Forest which the Secretary proposes to issue under this chapter shall be submitted to the Governor of each State within which the coal deposits subject to such lease are located. No such lease may be issued under this chapter before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the date the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary a statement of reasons why such lease should not be issued and the Secretary shall, on the basis of such statement, reconsider the issuance of such lease.

(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the

INFORMATION PACKET

House Resources Committee
February 4 & 5, 1987

Arctic National Wildlife Refuge
HJR 7 and HJR 9

Packet contains:

Position statement of Gov. Cowper
Administration Budget request

Maps and texts excerpted from U.S. Interior Department 1002(h) study (draft):

- Study area
- Geology/Oil and Gas
- Caribou movement/use
- Alternatives
- National Interest

"What's Best for Alaska" - Rep. Cotten's Office

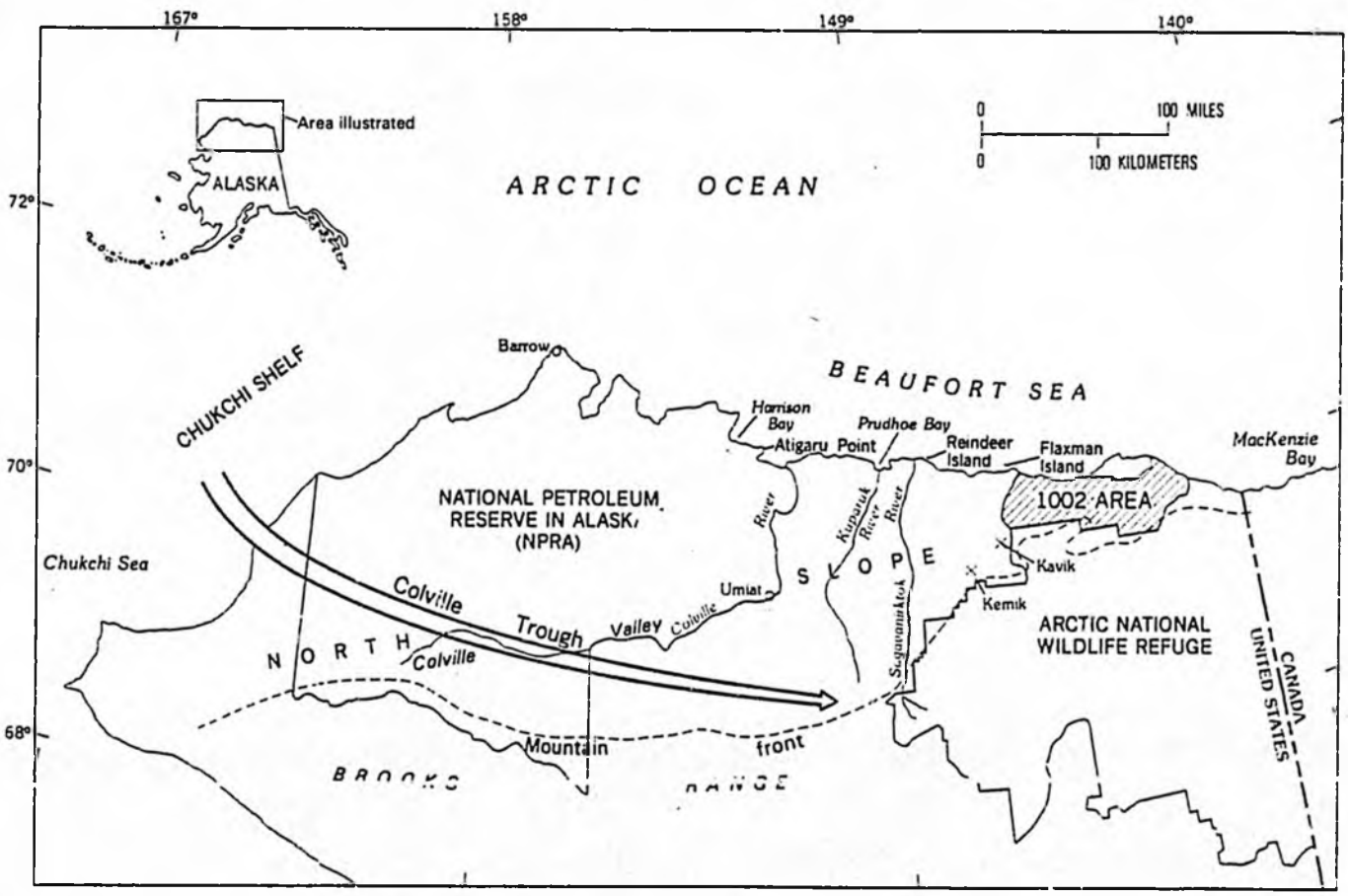


Figure I-1.—Index map of northern Alaska showing location of 1002 area in relation to the Arctic National Wildlife Refuge (Arctic Refuge), the National Petroleum Reserve in Alaska (NPRA), and Prudhoe Bay.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

STATE OF ALASKA'S

OFFICIAL POSITION ON THE

ARCTIC NATIONAL WILDLIFE REFUGE

Local Hire

There are two principal ways that the economy of Alaska receives benefits from oil and gas development in the state. The first is through taxes and royalties that are collected by the State of Alaska and then redistributed into the economy in various forms. The second is through salaries and wages that are paid directly to employees and then channeled into the economy through individual expenditures. The second benefit can only be achieved when all or a substantial portion of the employees engaged in work with ANWR are Alaska residents who live and make personal expenditures within the state. It is therefore a matter of prime importance that the State of Alaska support the hiring of Alaska residents on any development with ANWR.

90/10 Revenue Share

Revenues received by the United States from mineral leasing on public lands are distributed under Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C., Statute 191. Other states receive 50 percent of such revenues, with an additional 40 percent of such revenues benefitting those states through projects paid for out of the reclamation fund created in the Reclamation Act, approved June 17, 1902. Because Alaska is not covered by the Reclamation Act and no projects in Alaska are paid for out of the reclamation fund, we receive 90 percent of the revenues. Ten percent of such revenues from all states are deposited in the United States Treasury. This distribution formula applies to both unreserved public lands and reserved public lands in wildlife refuges, including the ANWR.

Congress extended the Mineral Leasing Act to Alaska in Section 28(b) of the Alaska Statehood Act, and considered this one of the "major provisions" of that Act. Provisions of a Statehood Act are obligatory on the United States, and any modification of the revenue distribution formula with respect to public lands (including reserved public lands in wildlife refuges) would probably violate the solemn compact between the United States and Alaska which formed the basis for Alaska's admission to the Union.

Congress incorporated this revenue distribution formula in the Statehood Act because so much land in Alaska was owned by the federal government, and almost one-fourth of it had been included in withdrawals and reservations prior to statehood. Modifying the distribution formula only for the reserved lands in the ANWR would discriminate against Alaska in relation to other states, in effect making Alaska the only state in which public land mineral revenues are not distributed under the Mineral Leasing Act. This would contrast with Congress' traditional practice of treating all states equally.

The Mineral Leasing Act represented a historic tradeoff in the history of public land law. In enacting it, Congress terminated the historic policy of disposing of public lands; instead, it determined to retain the public lands in federal ownership but to use the revenues from those lands for the benefit of the states in which the lands were located. Changing the revenue distribution formula would radically alter this historic compromise on which federal public land administration has been based for decades.

National Advocacy

State relations with the Congress and relevant federal agencies is an important component of any advocacy effort. The all encompassing nature of this issue and the necessity of dedicating large amounts of personnel time indicate that existing resources of the state probably will not be sufficient to effectively advocate the state's position on ANWR at the national level. Acquisition of the services of law and consulting firm in Washington, D.C., pursuant to a carefully structured procurement process, will probably be necessary. It may also be necessary to supplement our Washington, D.C. Governor's Office with another person to engage in day-to-day lobbying, assist in liaison with Washington, D.C. interest groups, attend hearings and meetings, help coordinate various elements of the Washington, D.C. advocacy program, and maintain communications with agency personnel and others in Alaska.

The Department of the Interior's "1002 Report"

Congress is to consider whether the coastal plain of the ANWR ought to be open for oil and gas exploration, development, and production. We concur with the finding of the Department of the Interior's 1002 report that there is substantial oil and gas potential in the coastal plain and that exploration should proceed to determine the extent of that potential. Given current world oil consumption trends, oil under the coastal plain may soon be needed to meet America's demands and help ensure its energy security.

The development of the coastal plain will alter the environment, and to some degree affect the Porcupine Caribou herd. This herd, which numbers some 180,000 animals, annually migrates between Canada's Northwest Territories and Alaska's arctic coastal plain where it spends a portion of each summer. The Porcupine herd, the second largest in the U.S., uses the coastal plain as its calving area. Therefore, any oil and gas exploration there must be done in a manner that is consistent with the chief purpose of the refuge - preservation of wildlife values.

Similarly, we are concerned about the potential impacts to land, air, and water quality, including the proper disposal of waste products that result from drilling activities. Our past experience in Prudhoe Bay and other North Slope petroleum developments will be helpful in determining appropriate measures to avoid potential problems. However, the draft 1002 report does not adequately address these environmental issues.

The state will be providing specific comments and recommendations to the Secretary of the Interior regarding the 1002 report. The Department of Interior's deadline for providing those comments is February 6, 1987.

BUDGET REQUIREMENTS

The following budget requests/needs were identified by the indicated agency as being necessary to effectively deal with various aspects of ANWR decision making. This budget request would be presented to the Legislature as a request by the Governor's Office for a supplemental appropriation.

Department of Law

- FY 87

Three trips to Washington, D.C., to consult with Washington officials (air fare $1,204, per diem $558).	$5,186
Outside counsel with Charles Meyers of Gibson, Dunn & Crutcher, author of Williams & Meyers, Oil & Gas Law. (This contract would continue into FY 88).	$25,000

- FY 88

Based on the ANILCA experience, an equivalent of ten trips to Washington, D.C., would likely be necessary.	$17,620
TOTAL	$47,806

Department of Natural Resources

- FY 87

Three trips to Washington, D.C., to consult with Washington officials (air fare $1,204, per diem $558).	$5,186
Charter flights for appraisal staff to field inspect @ 900,000 acres of state land (selected and TA's).	$12,500
Aerial photos, USGS maps, printing, reproductions, films, etc., for land appraisal work.	$1,500
Seven trips from Anchorage to Juneau for DLWM staff to participate in legislative briefings, interagency discussion, etc. (air fare $328, per diem $210).	$3,766

° FY 88

Three trips to Washington, D.C., to consult with Washington officials to work on land exchanges.	$5,186
Seven trips from Anchorage to Juneau for DLWM and DOG staff to participate in legislative briefings, interagency discussions, etc.	$3,766
Title litigation reports, insurance, reproductions, printings.	$2,500
TOTAL	$34,404

Department of Fish and Game

° FY 87

Three trips to Washington, D.C., to consult with Washington officials (air fare $1,204, per diem $558).	$5,186

° FY 88

Three trips to Washington, D.C., to consult with Washington officials to work on land exchanges.	$5,186
TOTAL	$10,372

Department of Environmental Conservation

° FY 87

Two full time equivalents at the Environmental Engineer III level will be needed. One would serve as the prime organizer and reviewer. The second would take the lead in preparing description of past management practices. Staff in all areas of the agency would be drawn upon as well. Both positions would be stationed in Fairbanks. The cost per position is approximately $70,000 per year (including salary and associated costs). This can be prorated for FY 87, depending on a starting date.	$140,000
Two trips to ANWR per year for field work.	$4,000
Six meetings in Anchorage per year to consult with regional staff.	$1,500

Four trips to Washington, D.C., for technical consultations with Washington officials.	$5,186
TOTAL	$150,686

Governor's Office, Washington, D.C.

° FY 87

Full-time position to lobby, assist in liaison with Washington, D.C., interest groups, attend hearings and meetings, help coordinate various elements of an advocacy program, and maintain contact with agency personnel and others in Alaska.	$40,000
Lobbying firm (eight months effort @ $9,000 per month).	$72,000
Public relations/media firm (eight months effort @ $9,000 per month).	$72,000
TOTAL	$184,000

In summary based on input from the indicated agency, the following additional money would be needed for the state to deal effectively with the various aspects of ANWR:

FY 87 Supplemental	Governor's Office	$184,000
	Law	30,186
	DNR	22,952
	DFG	5,186
	DEC	150,686
	TOTAL	$393,010

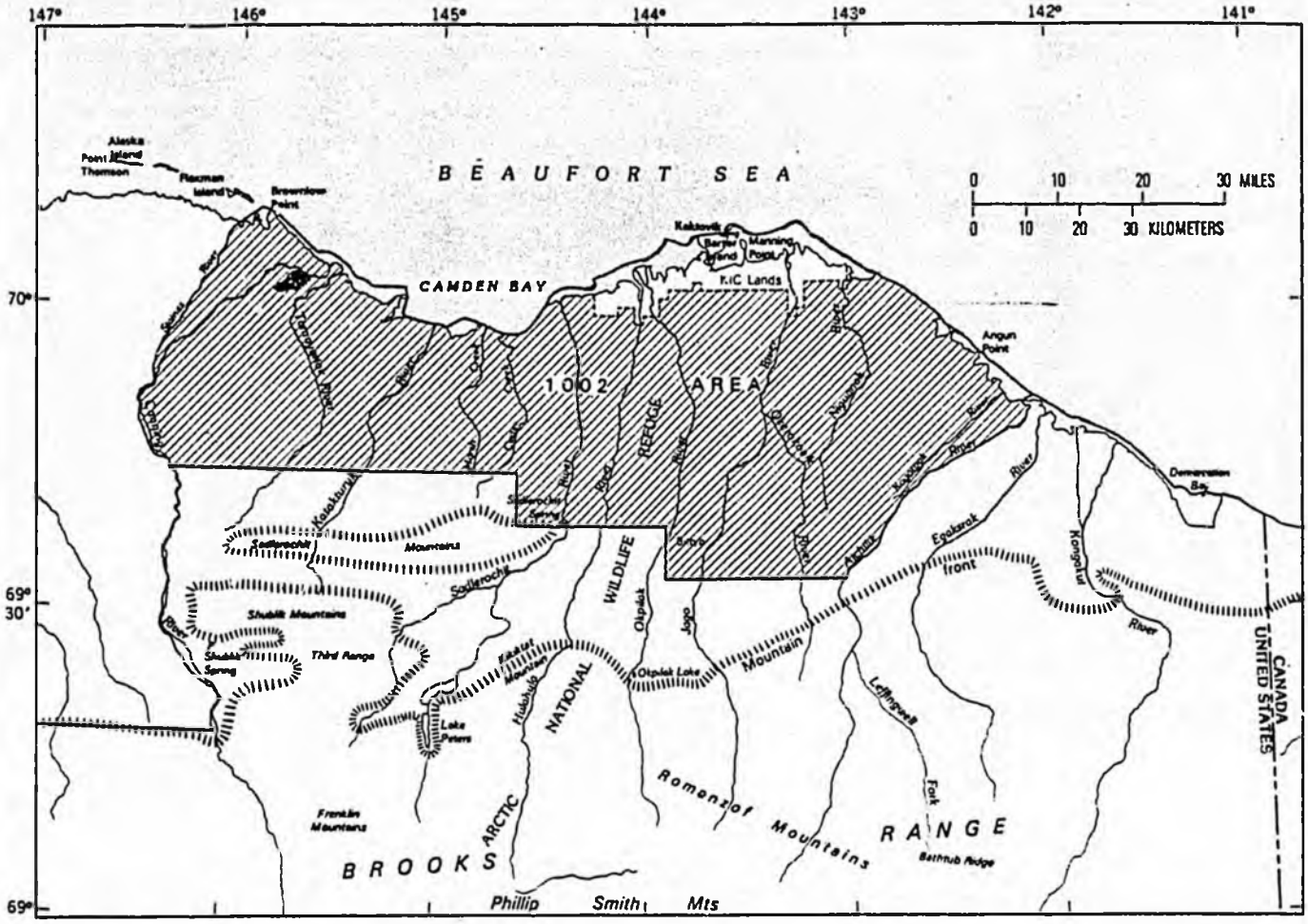


Figure II-1.—Map of northeastern Alaska showing the 1002 area and important nearby geographic features.

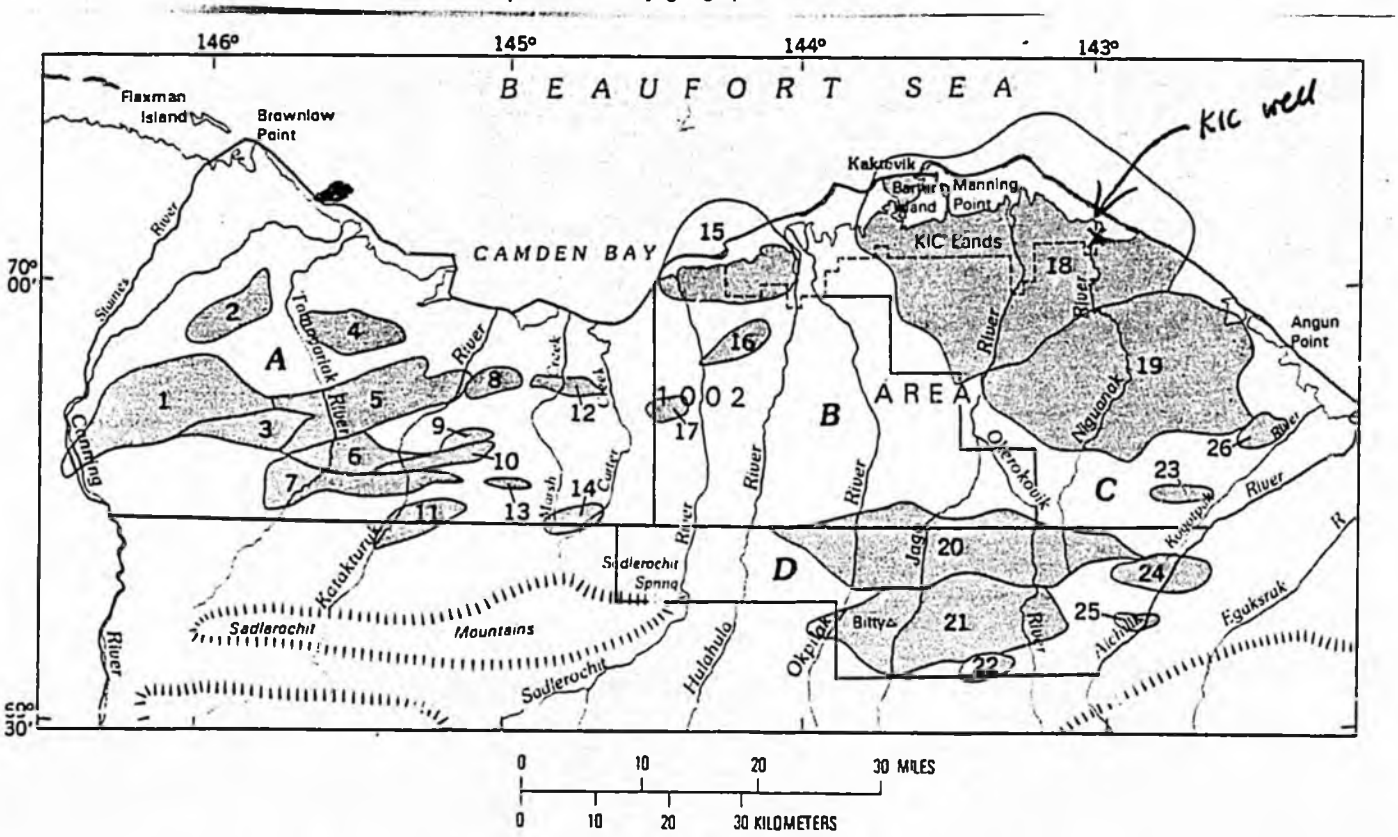


Figure III-1.—Seismically mapped prospects (1-26) and resource blocks (A-D) in the 1002 area.

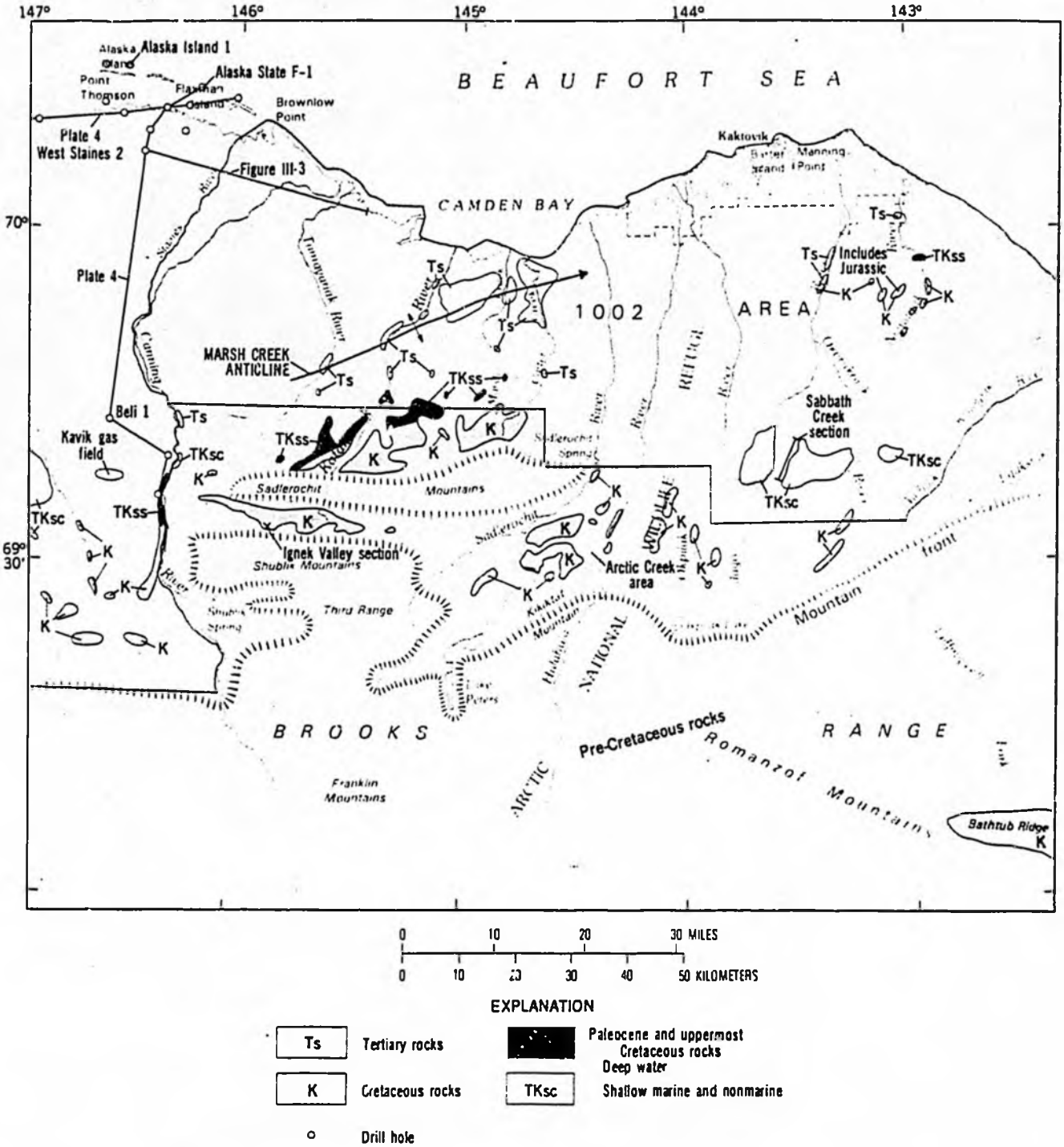


Figure III-3.—Map of the 1002 area and adjacent mountains showing locations of Cretaceous and Tertiary outcrops and lines of sections of figure III-8 and plate 4.

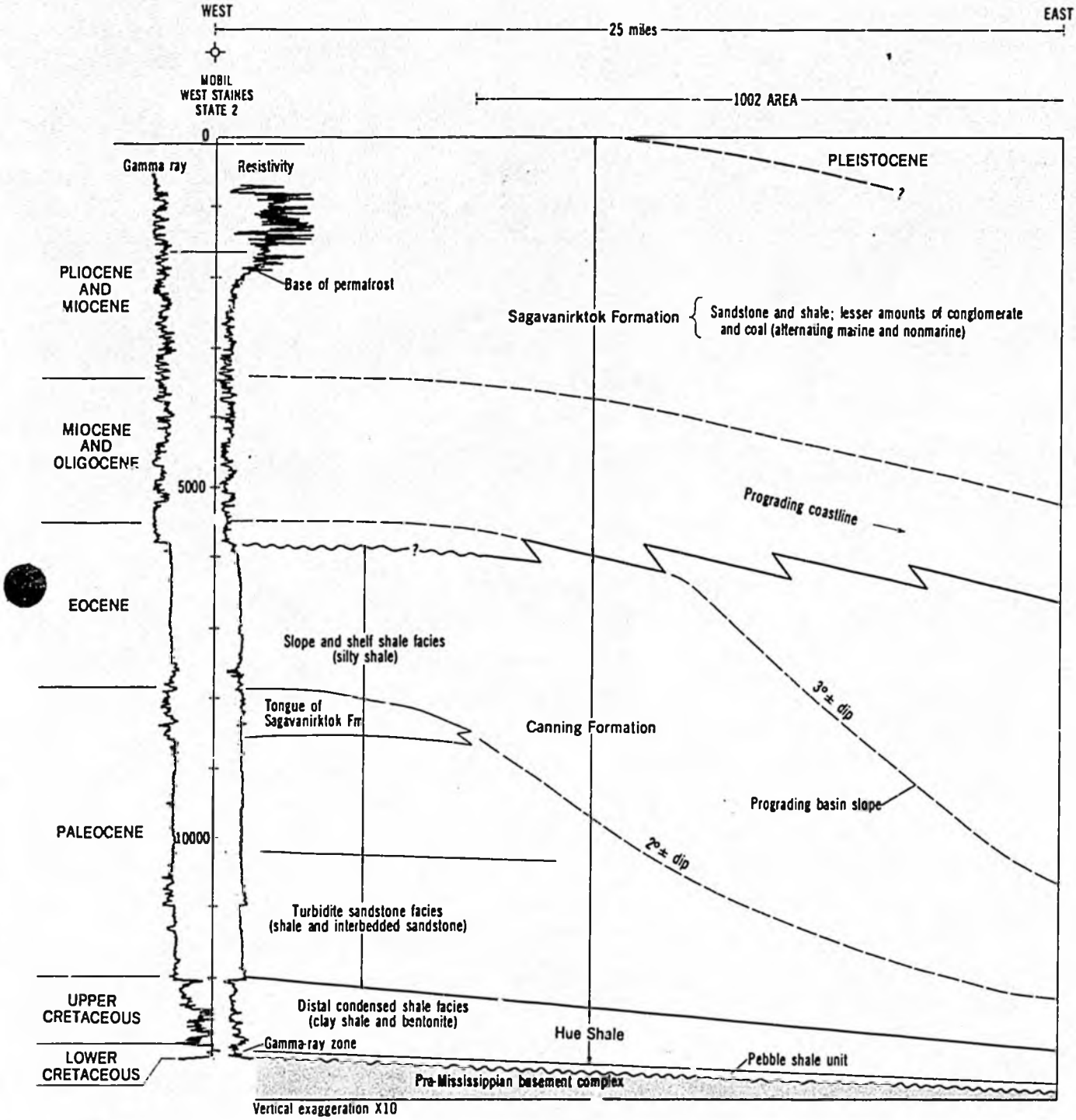


Figure III-8.—Diagrammatic section showing stratigraphic relations of the Brookian sequence between the Mobil West Staines State 2 well and the northwest corner of the 1002 area. Dashed lines represent time lines as inferred from seismic reflections. Depths on well logs are in feet. Ages based on micropaleontologic data correlated from wells to the west. See figure III-3 for location of section.

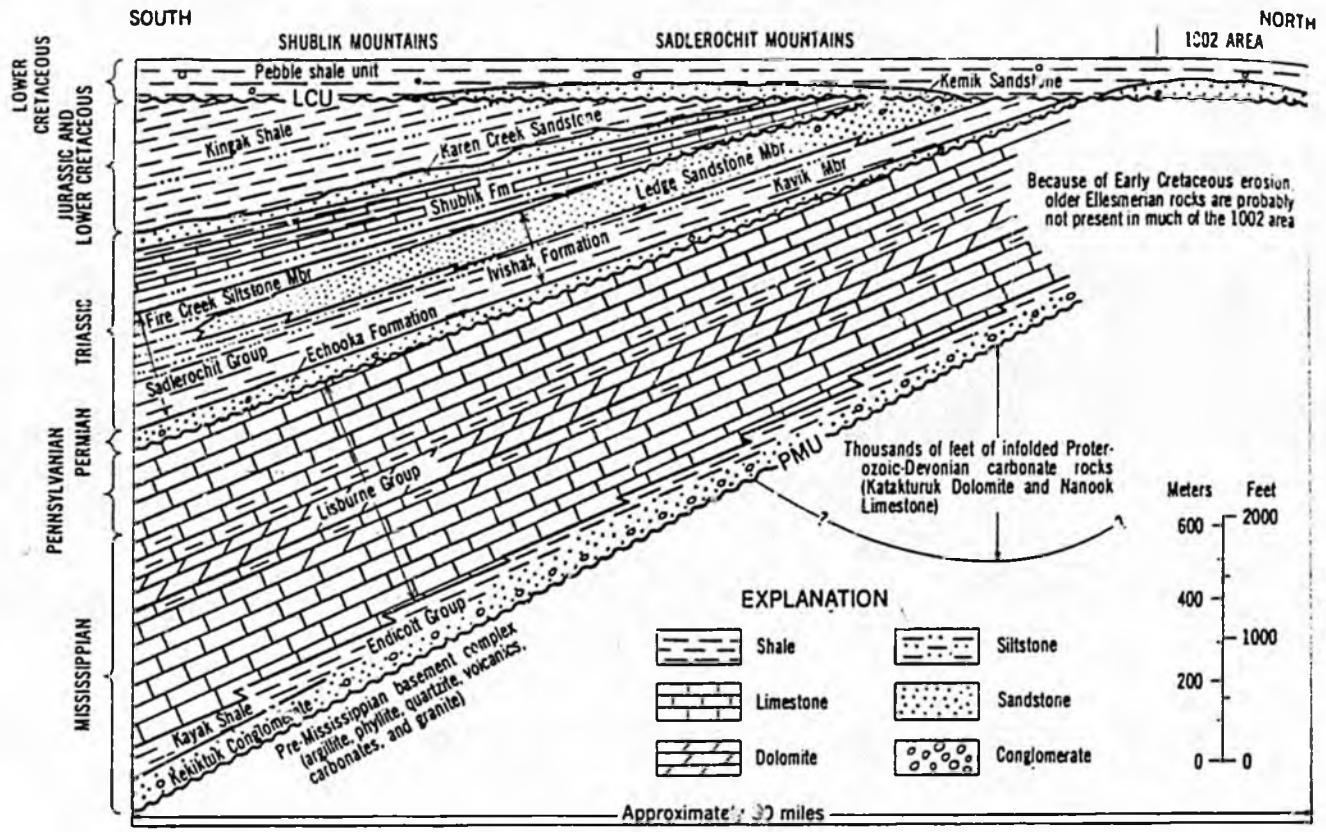


Figure III-5.—Diagrammatic section showing stratigraphic relations of the Ellesmerian sequence along the mountain front south of the 1002 area.

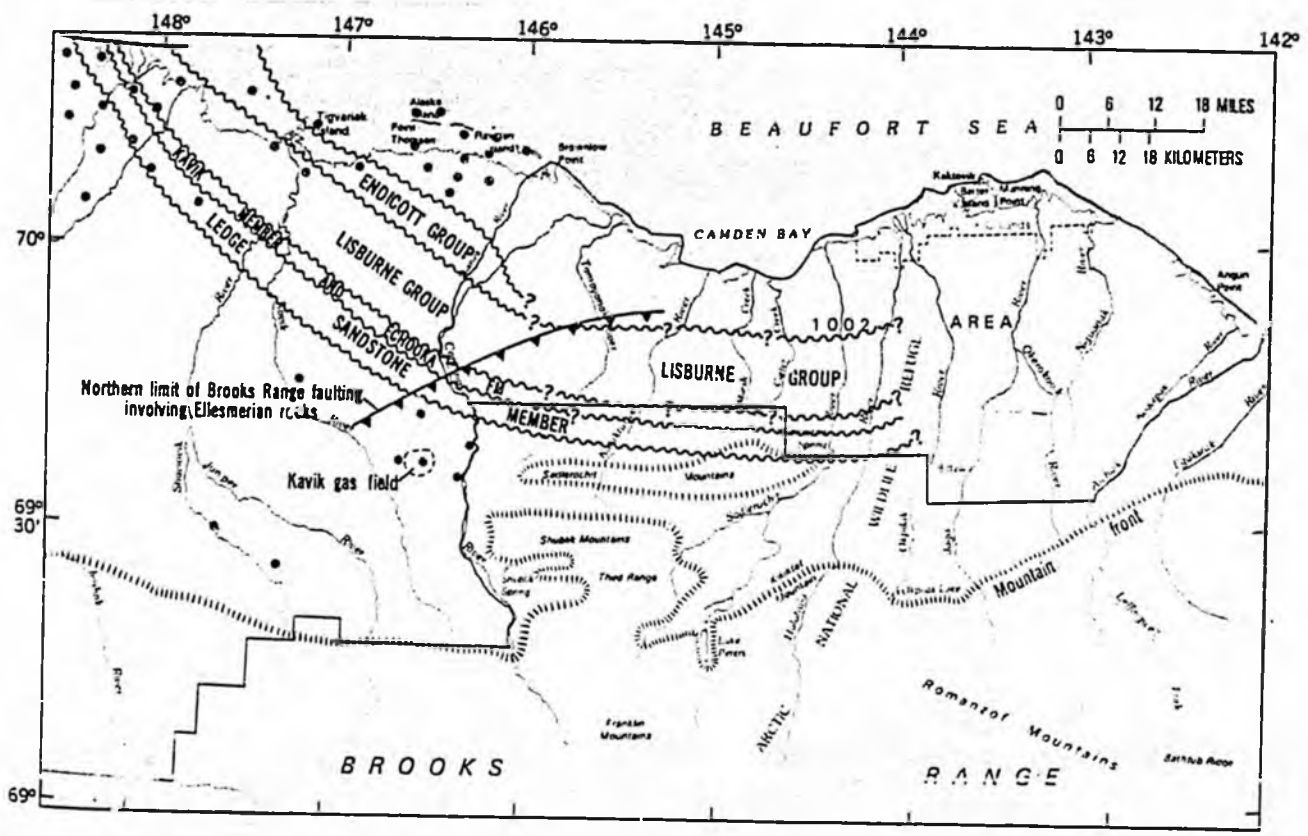


Figure III-6.—Map summarizing the northern limits of the Ellesmerian potential reservoir rocks preserved under the Lower Cretaceous unconformity. (Based on regional control.)

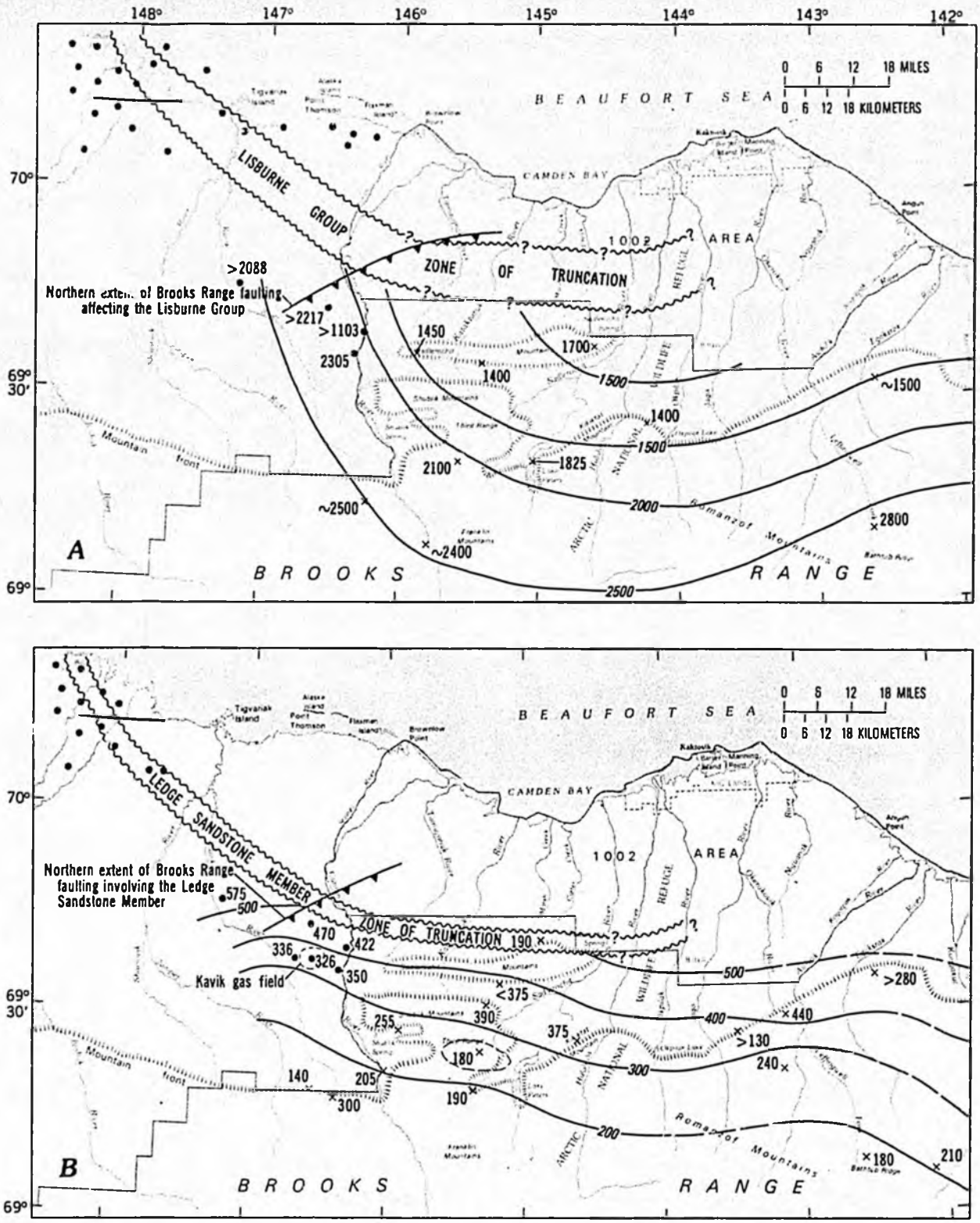


Figure III-7.—Maps (facing and above) summarizing regional and local geologic trends of the Lisburne Group (A), Ledge Sandstone Member of the Ivishak Formation (B), and Kemik Sandstone and Thomson sand (C).

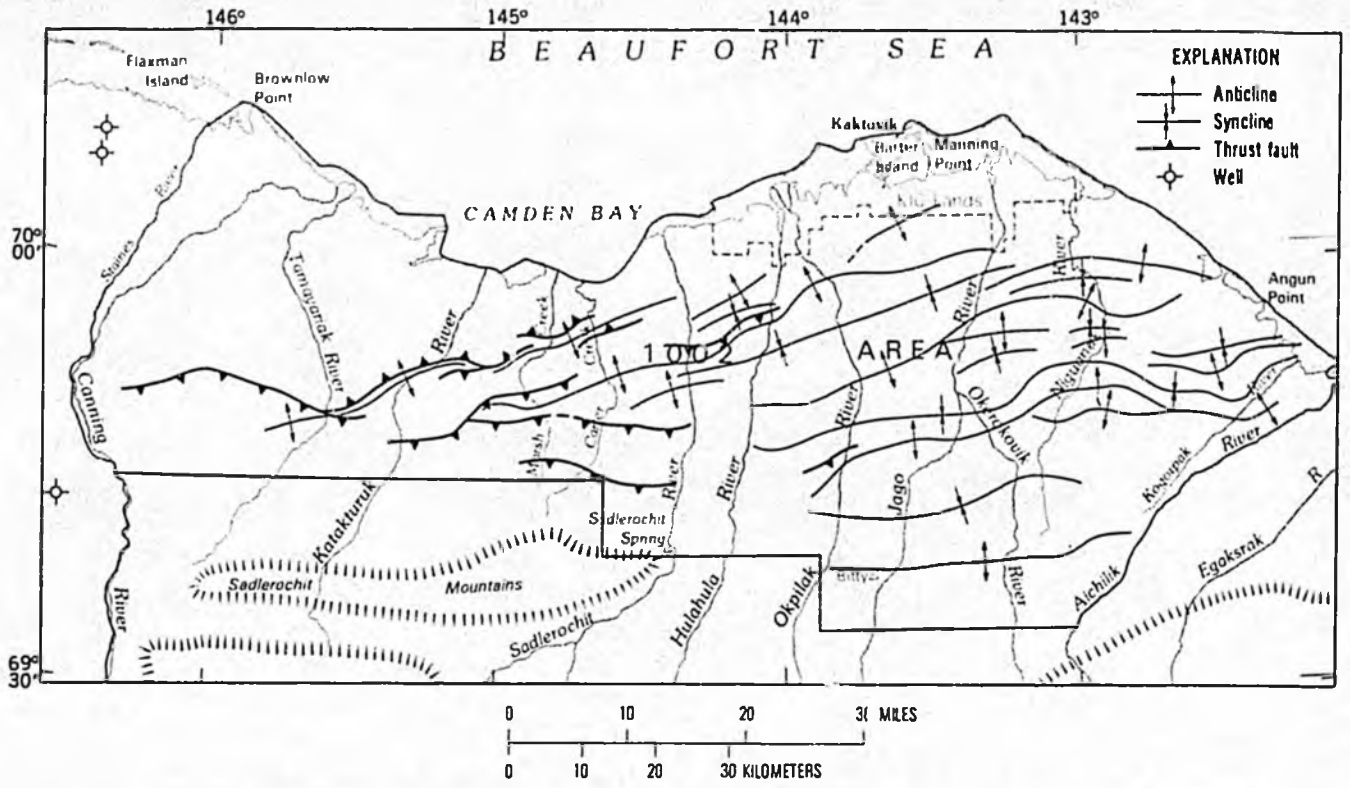


Figure III-9.—Generalized near-surface structural trends in Brookian rocks, based on seismic data. Because of structural complexity, not all features are shown, particularly in the east part of the 1002 area.

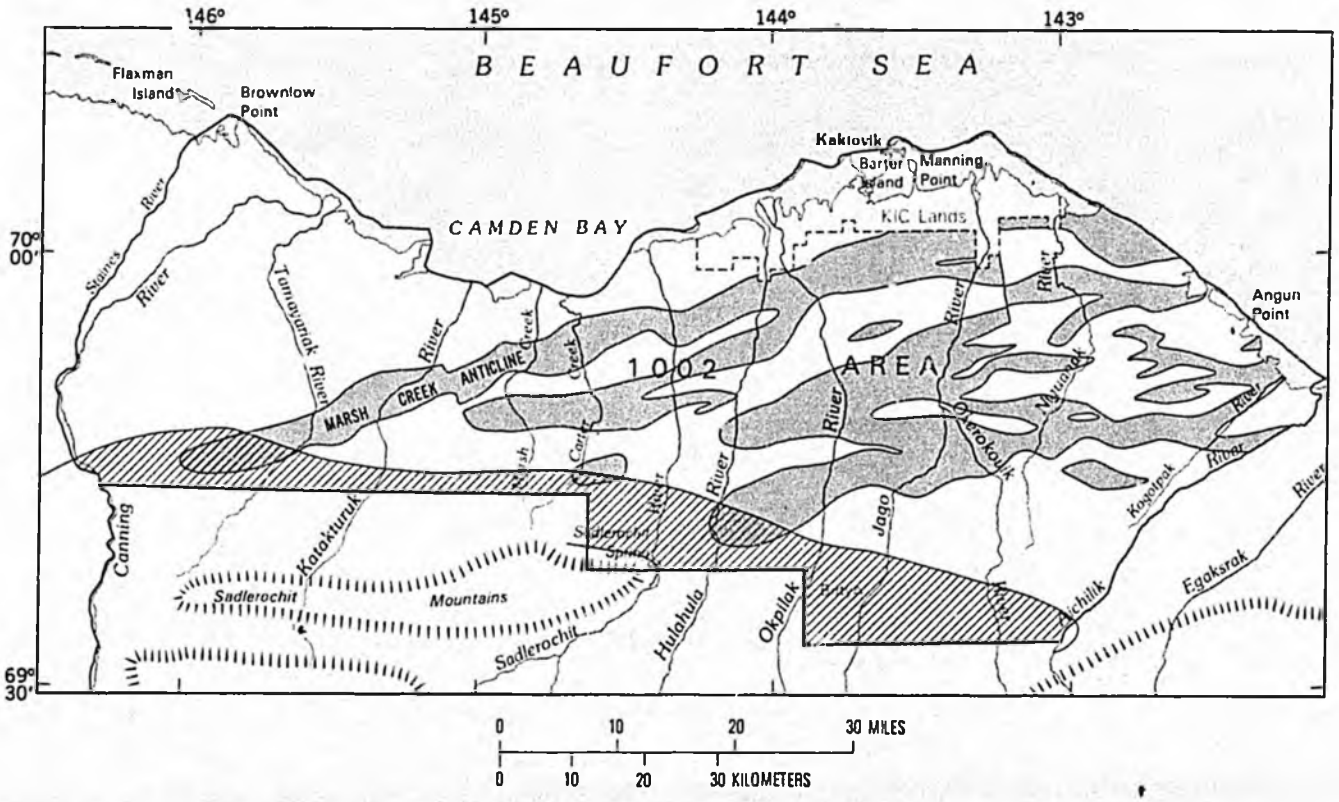
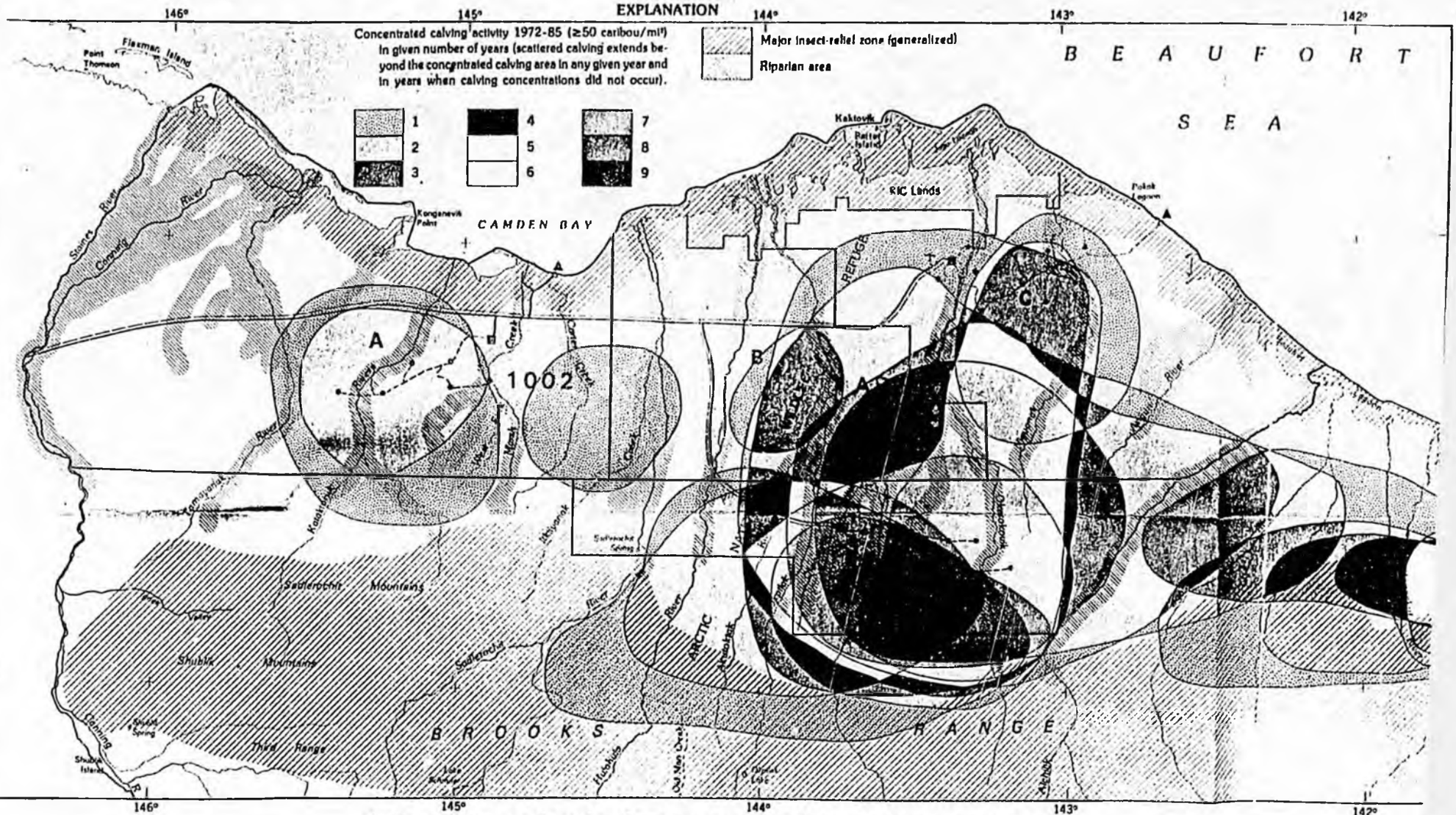


Figure III-10.—Trends of structural culminations in highly deformed Mesozoic and Tertiary rocks (shaded) and area of monoclinal north-dipping strata (line pattern) that may have petroleum potential in the 1002 area.



A. Porcupine caribou herd concentrated calving and insect-relief areas

CARIBOU IMPACTS - conclusion
Fr. 1002(h) study

Conclusion

Surface geologic exploration and study conducted throughout the year would be controlled by specific time and area closures to avoid conflicts with caribou calving and movements during the insect-relief period. Seismic activity would be confined to winter work only. Based upon experience from the 1983-1985 exploration program in the 1002 area, only negligible effects would occur. Localized avoidance and disturbance of a minor nature may occur in the area of exploration wells if caribou entered the area while well drilling activities were underway. Because human activity would be low, effects would most likely result from some avoidance and displacement around well pads.

The expanding population trend for the CAH in the past decade would indicate that the CAH is not at carrying capacity (the number of healthy animals that can be maintained by habitat on a given unit of land). However, the point at which cumulative effects and expanding developments all modify suitable displacement habitat is unknown. Also unknown is carrying capacity of the PCH. Given the geography of the calving areas and current densities in those areas, the availability of suitable alternative habitats is not apparent.

A major change in distribution as an adverse result of displacement of both that portion of the CAH using the 1002 area as well as the entire PCH could occur if the 1002 area were fully developed. The main oil pipeline would bisect the 1002 area between the western and northeastern boundaries. Disturbance would occur from the presence and activities of up to 6,000 people, hundreds of vehicles, and major construction and production activities scattered throughout the 1002 area, including sensitive caribou calving areas. Use of approximately 25 percent of the total PCH core calving area and 29 percent of the coastal insect-relief habitat could be reduced or eliminated. Potentially a much larger portion, nearly 80 percent of coastal insect-relief habitat, could be affected if development proves to be a barrier to caribou movements. Loss of calving habitat, barriers to free movement causing reduced access to insect-relief and other areas, disturbance, stress, and other factors would cumulatively reduce both available habitat and habitat values on remaining areas, resulting in caribou population declines.

These changes in habitat availability and value, combined with increased harvest, could result in a major population decline and change in distribution of 20-40 percent, based on the amount of calving and insect-relief habitats to be adversely affected. Because of the many variables involved and lack of relevant experience in estimating impacts on this herd and because of the difficulty in quantifying impacts, this estimate is uncertain.

For the CAH, a moderate change in distribution or decline in that portion of the CAH using the 1002 area could occur. The effect on the entire CAH population throughout its range may also be moderate. Those effects on the segment of the CAH within the 1002 area would be similar to those on the PCH that occur from disturbance, displacement, barriers to free movement. The population or distribution change would be 5-10 percent of the CAH throughout its range.

CHAPTER V

ALTERNATIVES

ALTERNATIVE A–FULL LEASING OF THE 1002 AREA

Under the alternative of full leasing, it is assumed that Congressional action would allow all Federal subsurface ownerships of the 1002 area to be available for development through a leasing program administered by the Department of the Interior. This action would also open to oil and gas development and production the private lands within the refuge. The exact terms of the leasing program would be developed in response to specific legislation passed by the Congress. If the Congress chooses to authorize leasing in the entire 1002 area, the legislation would probably contain the important elements of the Mineral Leasing Act and the NPRA legislations, with special provisions to meet the unique needs of the Arctic Refuge.

Presumably, major portions of the 1002 area would be leased and additional geophysical exploratory work would take place on all leased areas before exploration wells are drilled. Leaseholders would likely focus first on those areas and geologic structures believed to have the highest probability of containing commercial quantities of oil. It is feasible for phased development to occur.

The 1002 area contains a combination of identified potential petroleum prospects having a mean conditional estimated total of 3.2 billion barrels of economically recoverable oil under current and foreseeable economic conditions (Chapter III). These prospects are grouped into 4 geographic areas (blocks) of the 1002 area to facilitate an analysis of the effects of oil development on the environment. These blocks are depicted in Chapter III (fig. III-16).

Alternative A assumes that:

1. Although both oil and gas would be leased, initially only oil will be developed and transported to market. Associated gas will be reinjected and/or used for field operations in the manner similar to other North Slope fields, until it becomes economical and adequate markets are identified.

2. Oil production will start about the year 2000.

3. Development will be unitized within the 1002 area and on privately owned subsurface resources in the vicinity of Kaktovik.

4. A single trunk oil pipeline will transport oil from Federal leases and from any private lands in the 1002 area to Pump Station 1 of the Trans-Alaska Pipeline System (TAPS).

5. Development, production, and transportation of oil from the 1002 area are considered to be independent of any offshore production; however, infrastructure could be shared.

6. The State of Alaska will allow a trunk oil pipeline to cross State lands between the western boundary of the 1002 area and Pump Station 1 at Prudhoe Bay (a distance of about 50 miles).

7. Once the Congress approves leasing, but prior to lease sales, industry will be allowed to conduct additional geophysical and surface geological exploration work.

8. Surface occupancy for oil and gas purposes will not be permitted within areas formally designated by the Congress as Wilderness.

According to the size, number, and characteristics of prospects described in Chapter III, and production and transportation scenarios described in Chapter IV, the number and types of facilities likely to be required for development and production of oil resources in the 1002 area are listed in table V-1. Figure V-1 shows a conceptual placement of production and transportation facilities based on typical North Slope prospect characteristics for three localities within the 1002 area.

Actual placement of oil production facilities and marine facilities on the 1002 area, or location of the trunk pipeline from producing fields to TAPS Pump Station 1, depends upon site-specific geotechnical, engineering, environmental, and economic data that can be determined only after a specific prospect has been drilled, and a discovery made and confirmed.

Chapter IV describes the types and numbers of facilities that might be necessary for oil production in the 1002 area. Typically, these include for each developed prospect: central processing facility (CPF) and initial pump station for the oil pipeline, all-weather airfield, consolidated production and reinjection well pads, and an internal network of roads and gathering lines connecting pads and the CPF. A trunk oil pipeline would connect the CPF to Pump Station 1. From Pump Station 1, oil from the 1002 area would move through the existing TAPS to Valdez and then by tanker to market. Depending on the amount of final throughput, one or several additional pump stations may be required.

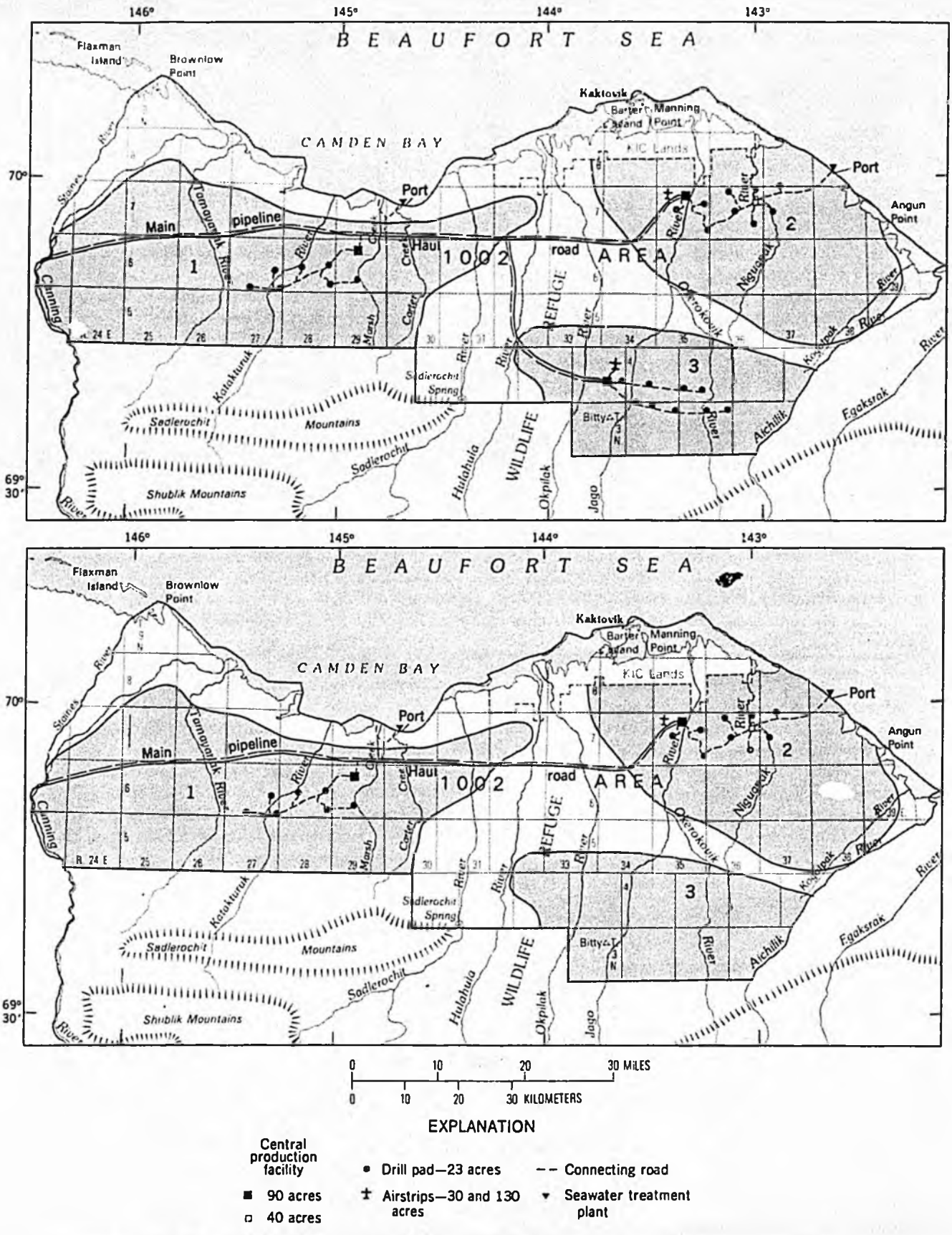


Figure V-1.—Hypothetical generalized development of the 1002 area under full leasing (upper) or limited leasing (lower) if economic quantities of oil are discovered. Numbers indicate three localities (shaded) having typical prospect characteristics.

Table V-1.—Number and area of in-place oil-related facilities assumed to be associated with development of estimated mean conditional recoverable oil resources made available by full leasing or limited leasing of the 1002 area.

[mi, miles; cu yds, cubic yards; ac, acres]

Facility	Approximate units[1] Full leasing	Limited leasing
Main oil pipeline within the 1002 area[2]	100 mi (610 ac)	80 mi (490 ac)
Main road paralleling main pipeline and from marine facilities[2]	120 mi (730 ac)	100 mi (610 ac)
Spur roads with collecting lines within production fields	160 mi (980 ac)	120 mi (730 ac)
Marine and salt water treatment facilities	2 (200 ac)	2 (200 ac)
Large central processing facilities	7 (630 ac)	6 (540 ac)
Small central processing facilities	4 (160 ac)	3 (120 ac)
Large permanent airfields	2 (260 ac)	2 (260 ac)
Small permanent airfields	2 (60 ac)	1 (30 ac)
Permanent drilling pads	50-60 (1,200-1,600 ac)	30-40 (700-1,000 ac)
Borrow sites	10-15 (500-750 ac)	8-13 (400-650 ac)
Gravel for construction, operation, and maintenance	40 million-50 million cu yds	35 million-40 million cu yds
Major river or stream crossings	Maximum 25	Maximum 15

[1]Figures given in miles refer to linear miles of the facilities. Areas were calculated on the basis of 50-foot widths each for the main oil pipeline and main road, totaling a 100-foot right-of-way for the main transportation corridor. A 50-foot right-of-way was assumed for spur roads with collecting lines. The numbers of nonlinear units are also provided.

[2]The distance from the 1002 western boundary to TAPS Pump Station 1 is approximately 50 miles, across State of Alaska land. This 50 miles is not included in the mileage estimates.

ALTERNATIVE B—LIMITED LEASING OF THE 1002 AREA

This alternative discusses a leasing program that would develop if the Congress chose to pass legislation, based on environmental considerations, that would limit the amount of the 1002 area available for leasing. There would be no leasing, exploration, development, or transportation of oil from or through the traditional core calving area of the Porcupine caribou herd (Chapter II and pl. 2A). The remainder of the 1002 area would be offered for leasing; presumably, all potentially economic prospects would be leased, explored, and developed. The assumptions in this alternative are the same as for full leasing, including the opening of the KIC and ASRC lands. Approximately 2.4 billion barrels (800 million barrels less than in Alternative A) of economically recoverable oil are estimated as the mean conditional resource which might be available for development under this alternative.

A conceptual placement of production and transportation facilities under the limited leasing alternative is also shown on figure V-1.

Production and transportation facilities were described in the full leasing alternative. Under limited leasing, facilities would not be constructed in the core caribou calving area. All other facility requirements would be virtually the same (table V-1).

ALTERNATIVE C--FURTHER EXPLORATION

Under this alternative, the Secretary would recommend additional exploration, to include exploratory drilling, to permit acquisition of more data to aid the Secretary and the Congress in their decision of whether or not to authorize leasing of the 1002 area. Acquisition of additional data could be by the Government, or industry, or both.

Section 1002 of ANILCA has afforded the Department of the Interior the opportunity to acquire a substantial amount of exploration data in the 1002 area. During two winter field seasons, private industry obtained 1300 line miles of seismic data on a 3x6-mile seismic grid over a large part of the 1002 area. A substantial amount of gravity, magnetic, geochemical, paleontological, and shallow stratigraphic data was also collected. The BLM and GS acquired additional data through in-house research and field investigations over several field seasons.

Analysis of the available geological and geophysical data has revealed that the 1002 area is a very complex geological terrane, and additional geological and geophysical data might provide a basis for a more defined assessment of the oil and gas potential of the 1002 area. Additional seismic data could better define some of the more complex geologic structures that have been identified. It is expected that if a decision was made to allow leasing of the 1002 area, industry would want to obtain more detailed seismic data over particular areas of interest in order to make a more accurate determination of oil and gas potential prior to a lease sale. These data would also be made available to the Department for its use in determining the fair market value of tracts to be leased.

The location and size of geologic structures have been generally defined. However, the nature of the rocks present remains virtually unknown, owing to a lack of deep stratigraphic, paleontological, and geochemical data specific to the 1002 area. Therefore, only indirect inferences based on surface and near-surface geological data and on well data outside the 1002 area can be made as to the nature of source and reservoir rock and the type of hydrocarbon present. A program to drill off-structure test wells would provide subsurface geological information on the 1002 area and eliminate some of the uncertainties in the oil and gas assessment such as the probability of the occurrence of adequate source and reservoir rocks, and also the probable mix of hydrocarbons. This type of information might better define the more prospective parts of the 1002 area that should be considered for leasing.

Four deep test wells could be drilled off-structure similar to the stratigraphic test wells (COST wells) drilled in the Outer Continental Shelf. These wells would provide more definitive data on the stratigraphy, paleontology, geophysics, and geochemistry of the rock formations present. Core samples would be taken to determine the quality of the source rocks, the characteristics of the reservoir rocks, and the availability of seals to trap hydrocarbons. Possible locations for stratigraphic test wells are:

1. East of the Canning River in the northwest block (Block A, fig. III-16) to test primarily for geologic conditions similar to those of the Prudhoe Bay field.

2. Near the Hulahula River between the Marsh Creek anticline to the west and larger mapped geologic structure to the east (Block B, fig. III-16 and fig. III-9).

3. In the northeastern part of the 1002 area north of the large mapped geologic structure and south of the Kaktovik lands (Block C, fig. III-16, and fig. III-9).

4. Near the large mapped geologic structure in the southern foothills (Block D, fig. III-16, and fig. III-9).

ALTERNATIVE D--NO ACTION

This alternative describes the probable future management of the 1002 area if the Congress chose to take no further legislative action regarding the 1002 area of the Arctic Refuge. According to the provisions of sections 1002 and 1003 of ANILCA, an act of the Congress would be prerequisite to leasing or other development leading to oil and gas production on the Arctic Refuge. If the Congress chose instead to designate all or part of the 1002 area as wilderness, that too would take legislative action. If instead, the Congress chose to allow the management of the 1002 area to continue under existing legal authorities guided by the Arctic Refuge comprehensive conservation planning (CCP) process outlined by section 304(g) of ANILCA, no additional Congressional action would be required.

The management goals of the Arctic National Wildlife Refuge, until further defined by the CCP process, are to maintain the existing availability and quality of refuge habitats with natural forces governing fluctuations in fish and wildlife populations and habitat change; provide the opportunity for continued subsistence use of natural resources by local residents, in a manner consistent with sound natural resource management; and provide recreational and economic opportunities compatible with the purposes for which the refuge was established.

Section 304(g) of ANILCA mandates that management of the 16 National Wildlife Refuges in Alaska, including the Arctic Refuge, be assessed through the CCP process. This process requires that the plan: (1) designate areas within the refuge according to their respective resources and values; (2) specify the programs proposed for conserving fish and wildlife and maintaining the values for which the refuge was established; and (3) specify uses which may be compatible with the major purposes of the refuge. The preferred alternatives identified in this process

would establish the long-term basic management direction for each refuge. This planning process allows for the evaluation of a range of alternatives for refuge management and consultation with the appropriate State agencies and Native Corporations. The FWS is using the environmental impact statement (EIS) process to implement the CCP's. Following a series of public scoping activities and a comment period on a draft EIS, a preferred alternative would be chosen by the Alaska FWS Regional Director, described in a final EIS, and documented by a Record of Decision.

Currently, the CCP process for the Arctic Refuge is in the first or scoping and data-collection phase and calls for completion of the CCP by the spring of 1988. The 1002 area has been deleted from this planning process, pending the decision of the Congress as to its future management. If this no-action alternative were selected by the Congress, the 1002 area would be added to the planning process as an integral part of the Arctic Refuge. Depending on the stage of planning, at least the CCP, and perhaps some step-down management plans, would need to be amended or supplemented to include management of the 1002 area.

Under section 1008 of ANILCA, a policy was established to permit certain oil and gas activities, including leasing and development, on Alaska refuges in areas where such activities are deemed to be compatible with the major purposes for which a particular refuge was established. Because of the provisions of sections 1002 and 1003, section 1008 does not apply to any part of the Arctic Refuge. Selection of Alternative D would preclude production of oil and gas from the Arctic Refuge, and leasing or other develoment leading to oil and gas products.

Step-down management plans for the Arctic Refuge would be developed for specific activities once the CCP was completed. These management plans might address activities such as public use, wildlife inventories and other scientific research, wild and scenic rivers, wilderness management, and fire management. Harvest of fish and wildlife would generally be conducted in accordance with the State of Alaska Department of Fish and Game regulations, and subsistence use of the refuge would continue.

The Arctic Refuge would be managed under the legal authorities found in ANILCA and the National Wildlife Refuge System Administration Act of 1966 (Public Law 89-669). Other laws and their amendments that affect the management of the 1002 area and the Arctic Refuge in general include but are not limited to the Migratory Bird Treaty Act, Endangered Species Act, Antiquities Act, Clean Air Act, Clean Water Act, Coastal Zone Management Act, Fish and Wildlife Act of 1956, Marine Mammal Protection Act, National Environmental Policy Act, National Historic Preservation Act, Refuge Recreation Act, Refuge Revenue Sharing Act, and the State of Alaska Fish and Game Regulations. Provisions of the Wilderness Act would apply to those 8 million acres of the Arctic Refuge outside the 1002 area.

Activities proposed for the 1002 area would be subject to a compatibility determination as required by ANILCA section 304(b) and the Refuge Administration Act. Permissible activities could include hunting, fishing, subsistence harvest, river trips, hiking, photography, and certain other forms of recreation and compatible scientific research. Guiding for recreational activities, trapping, and other commercial activities determined to be compatible with refuge purposes also would be allowed. These commercial activities could conceivably include activities as diverse as onshore support and transportation facilities for offshore oil and gas activities. Any proposed activity would be reviewed for compatibility before it could be permitted. Because compatibility determinations are very site-specific, and the list of probable activities long and speculative, effects of specific activities are not assessed in Chapter VI.

The establishment of aids to navigation and facilities for national defense would be authorized under ANILCA section 1310. Weather, climate, and research facilities could also be permitted.

Title XI of ANILCA governs access on Federal lands in Alaska. Authorized forms of access on the Arctic Refuge include snowmachines (during periods of adequate snow cover), aircraft, motorboats, and other means if found compatible.

Refuge management could include activities such as wildlife surveys, reintroduction of native fish and wildlife species, fisheries management, prescribed burning for habitat enhancement, and construction of public use facilities where appropriate. Although these activities are allowed by law, their actual implementation and the extent of implementation would be decided through the CCP process and the subsequent management plans.

Implementation of Alternative D would preclude the development of estimated oil resources, as discussed in Chapters III and VII.

ALTERNATIVE E--WILDERNESS DESIGNATION

Under this alternative, the Congress would designate the 1.55-million-acre 1002 area as wilderness, within the meaning of the 1964 Wilderness Act (Public Law 88-577).

No further study or public review is necessary for the Congress to designate the 1002 area as wilderness. Previous studies and public debate have sufficiently covered the issue. A wilderness review of the Arctic Refuge was conducted in the early 1970's pursuant to the provisions of the Wilderness Act. A draft report was prepared in 1973; however, the draft was never made final nor was public comment obtained.

The issue of wilderness designation for all of the Arctic Refuge, including the 1002 area, was debated extensively by the Congress and the public in widely held hearings from 1976 through 1980 during the development and passage of ANILCA (Eastin, 1984). The House of Representatives generally favored designation of the 1002 area as wilderness, whereas the Senate generally did not. The Senate view was that designating the area as wilderness was premature until a resource assessment of the oil and gas potential was completed and reviewed by the Congress. The Senate view prevailed and became the section 1002 portion of Title X of ANILCA.

The draft report resulting from the original wilderness study recommended that all of the original 8.9 million acres of the Arctic Refuge be designated as wilderness, with the exception of 74,516 acres consisting of tracts at Camden Bay (456 acres), Beaufort Lagoon (420 acres), Demarcation Point (10 acres), Lake Peters (10 acres), the village of Kaktovik (141 acres), the military withdrawal on Barter Island (4,359 acres), and land in the vicinity of Barter Island that was to be selected by the Kaktovik Inupiat Corporation (KIC) under the Alaska Native Claims Settlement Act (ANCSA) (69,120 acres). Section 702(3) of ANILCA ultimately designated approximately 8 million acres of wilderness on the Arctic Refuge which encompassed all of the pre-ANILCA refuge with the exception of the 1002 area.

This alternative considers wilderness designation of the entire 1.55-million-acre 1002 area, except for the abandoned DEW line sites at Beaufort Lagoon and Camden Bay, native allotments, and land owned by KIC. The 1002 area would still be included in the CCP process, as described in Alternative D, but would be managed as wilderness under the provisions of the Wilderness Act, the National Wildlife Refuge System Administration Act, and ANILCA.

Permitted uses in wilderness include hunting, fishing, backpacking, river trips, and photography. Commercial activity would be restricted to commercial guiding for such activities. These activities may be restricted or eliminated if necessary in designated wilderness areas under the provisions of other laws or regulations. Motorized equipment would generally be prohibited. Exceptions would include operation of aircraft, including landing. Wilderness designation would not affect the air space over the area. The use of motorboats and snowmachines (during periods of adequate snow cover) would be authorized for traditional activities--for example, subsistence uses or for access to inholdings such as native allotments. Cabins could be constructed in wilderness areas if they were necessary for subsistence trapping, public safety, or administration of the area.

In contrast to the "no-action" alternative, use of motorized equipment by the FWS in administering the area would only be allowed consistent with the minimum-tool concept. (Minimum-tool concept is use of the minimum action or instrument necessary to successfully, safely, and economically accomplish wilderness management objectives.) Situations for which motorized access might be used include emergencies involving public health or safety and search-and-rescue operations. Landing of aircraft would be permitted. Other government agencies (local, State, and Federal) would also be allowed to use motorized equipment in carrying out legitimate activities in wilderness consistent with the minimum-tool concept. An example would be the use of helicopters by the Department of the Interior to carry out the ANILCA section 1010 Alaska Mineral Resource Assessment Program (AMRAP). Management activities such as wildlife control, prescribed burning, habitat rehabilitation, predator control, reintroduction of native fish and wildlife species, and wildlife surveys would be permissible, though not necessarily practiced, in the designated wilderness area. The appropriateness of these activities would be addressed in the CCP.

As in the "no-action" alternative, placement and maintenance of navigation aids, communication sites and related facilities, and facilities for national defense could be permitted (ANILCA section 1310). Facilities for weather, climate, and fisheries research could also be permitted.

Implementation of this alternative precludes the development of estimated oil resources, as discussed in Chapters III and VII.

REFERENCE CITED

Eastin, K. E. 1984, Wilderness review for Arctic National Wildlife Refuge's 1002 area: U.S. Department of the Interior, Office of the Solicitor, 21 p.

CHAPTER VII

OIL AND GAS--NATIONAL NEED FOR DOMESTIC SOURCES AND THE 1002 AREA'S POTENTIAL CONTRIBUTION

INTRODUCTION

Section 1002(h)(5) of ANILCA requires an evaluation of how hydrocarbon resources in the 1002 area of the Arctic Refuge relate to the national need for additional domestic sources of oil and gas. This chapter discusses this national need, and describes the potential contribution of oil from the 1002 area. Benefits which would accrue to the nation are described. They include gains in national income, reduced vulnerability to disruptions in the world market, and improvements in the balance of payments and national security. The analysis focuses only on oil because it is not anticipated that natural gas from the 1002 area will become economic to produce and transport to market within the timeframe considered.

The estimates used in this chapter depend on many variables. If the 1002 area were opened and leased in a timely manner, production would not be expected until about the year 2000. Therefore, the refuge's contribution to U.S. energy needs has been determined by comparing its production potential against projected energy needs, beginning about 15 years from now and extending perhaps 30 years out to the year 2030, possibly beyond. It is difficult to anticipate world oil prices beyond the year 2000 and the rate of real growth of the U.S. economy--two important determinants of the future demand for energy. Nevertheless, potential production from the 1002 area can be compared against various forecasts about future U.S. energy demand and supply. This chapter relies mainly on the Department of Energy's (DOE) long-term projections contained in its 1985 National Energy Policy Plan, but also considers several private forecasts.

THE 1002 AREA'S POTENTIAL CONTRIBUTION TO U.S. NEEDS

The unique geologic features underlying the 1002 area create the potential for discoveries which would make a very substantial contribution to domestic oil reserves. Despite the area's remote location and hostile environment, it is the most attractive petroleum exploration target in the onshore U.S. Data from outcropping rocks within the area and from nearby wells, combined with seismic information gathered from 1983 to 1985, indicate geologic conditions which would be extremely favorable for major discoveries.

The billions of barrels of oil that may exist in the 1002 area could make an important contribution to the national need for domestic sources of oil. Alaska North Slope crude oil, especially that from Prudhoe Bay, now contributes almost 20 percent of domestic production. Production from Prudhoe Bay has peaked and a decline is expected no later than 1988. Arctic Refuge oil could help moderate this decline and substantially reduce the need for increased imports.

The oil resources and possible production capability of the larger potential oil fields in the 1002 area are substantial by U.S. standards. Estimates of oil in place range from 4.8 billion barrels (BBO) to more than 29.4 BBO. Recoverable resource estimates range from 0.6 BBO to 9.2 BBO. In some cases, the potential recoverable reserves of the 1002 area's fields may sizably exceed 1 BBO. Only 13 domestic fields with total reserves greater than 1 BBO have been discovered in this country. Their original reserves, remaining reserves, current production rate, and year of discovery are displayed in table VII-1.

If productive, the 1002 area's fields could be the largest domestic fields discovered since Prudhoe Bay and Kuparuk River in 1968 and 1969. Except for these, no U.S. field with reserves exceeding 1 BBO has been discovered since 1948. The size of the 1002 area's structures and their potential for oil accumulations are geologically the Nation's best onshore targets for the discovery of very large oil fields. If productive, the large fields would join the list of "giant" oil fields which have contributed over two-thirds of total domestic oil production. The previously discovered giants, except for the two Alaskan fields, are over 75 percent depleted (table VII-1), and even the Prudhoe Bay field is almost half depleted.

For purposes of assessing the 1002 area's possible contribution, the conditional mean recoverable resource estimate of 3.2 BBO has been used. The estimate for limited leasing is 2.4 BBO. These figures do not consider resources that may occur in undefined but potential stratigraphic traps (see Chapter III).

Contribution to Domestic Oil Demand and Supply

It is important to assess the 1002 area's potential contribution to the national need for domestic oil production in light of supply and demand conditions. Oil consumption in the U.S. has exceeded domestic production for more than 20 years. Using the daily production estimates for the 1002 area, table VII-2 compares the area's contribution with the Department of Energy's (DOE) reference case projections for domestic oil supply and demand, taken from the 1985 DOE National Energy Policy Plan, to illustrate the magnitude of the contribution 1002 area oil production

Table VII-1.–U.S. oil fields having ultimate recovery exceeding 1 billion barrels of oil.

[BBO, billion barrels of oil; MBO/Y, million barrels of oil per year. From Oil and Gas Journal (1986) and Roadifer (1986)]

Field	Year discovered	Original reserves (BBO)	Remaining reserves (BBO)	Current production (MBO/Y)
Prudhoe Bay, AK	1968	9.47	5.10	568
East Texas	1930	6.00	1.11	48
Wilmington, CA	1932	2.55	.36	41
Midway-Sunset, CA.	1894	2.16	.45	54
Kern River, CA	1899	1.99	.92	51
Yates, TX	1926	1.95	.90	45
Wasson, TX	1936	1.68	.57	33
Kuparuk River, AK	1969	1.59	1.30	79
Elk Hills, CA	1911	1.47	.70	47
Panhandle, TX	1921	1.46	.07	11
Kelly-Snyder, TX	1948	1.35	.15	19
Huntington Beach, CA	1920	1.12	.07	8
Slaughter, TX	1936	1.03	.06	24

could make in the face of increasing demand and steadily declining domestic production.

The U.S. has stabilized its oil production capability and temporarily moderated the decline in domestic reserves since 1974. This is largely due to successful exploration and intensive exploitation of known fields, including the use of improved and enhanced oil recovery (EOR) technology, and to the 1.5 million barrels per day produced at Alaska's Prudhoe Bay.

U.S. crude oil production peaked at 9.64 million barrels per day (MBO/D) in 1970 and has been relatively constant over the last decade, being 8.90 MBO/D in 1985. However, in February 1986, the Department of Energy (DOE, 1986) predicted that domestic oil production would decrease by about 3 percent per year beginning in 1987, declining to about 8.05 MBO/D in 1990 and to 6.53 MBO/D by 1995. These estimates represent a substantial reduction from previous DOE forecasts. In June 1986, the Chevron Corporation predicted that production would decrease to 8.8 MBO/D in 1986 and steadily decline to 6.2 MBO/D by the year 2000 (Chevron, 1986). Other recent estimates suggest levels as low as 4.0 MBO/D by the year 2000. The lower forecasts are largely the result of reduced oil and gas prices, price uncertainty, consequent reduced drilling levels and discovery rates, higher annual production declines in known fields, and decreased emphasis on production stimulation projects (Spaulding, 1986, Doscher and Kostura, 1986; Kuuskraa, 1986).

Table VII-2.—The 1002 area's potential contribution to U.S. oil demand, production, and imports.

[In thousands of barrels per day. U.S. demand, production, and import data from U.S. Department of Energy, 1985d, tables 4-6 and 4-7]

Year	2000	2005	2010
U.S. OIL DEMAND	16,100	15,800	15,700
1002 area oil production:			
Full leasing	147	659	404
Percent of U.S. total demand	.91	4.17	2.57
Limited leasing	105	473	300
Percent of U.S. total demand	.65	2.99	1.91
U.S. OIL PRODUCTION	8,600	8,200	7,400
1002 area oil production:			
Full leasing	147	659	404
Percent of U.S. total production	1.71	8.04	5.46
Limited leasing	105	473	300
Percent of U.S. total production	1.22	5.77	4.05
U.S. OIL IMPORTS	7,500	7,600	8,300
1002 area oil production:			
Full leasing	147	659	404
Percent of U.S. total imports	1.96	8.67	4.87
Limited leasing	105	473	300
Percent of U.S. total imports	1.40	6.22	3.61

Oil reserves decreased over 27 percent, about 11 billion barrels from 1970 to 1985 and declined annually during 14 of these 15 years despite extensive exploration and active field exploitation programs.

J. P. Riva (Riva, 1984; Riva and others, 1985; Gall, 1986), of the Science Policy Research Division of the Library of Congress, predicted that shrinking American oil reserves will plunge by 1990 to their lowest levels since shortly after World War II, based on current drilling rates. Riva predicts a decline from the 1985 reserve figure of 28.4 BBO to 25.1 BBO in 1990, and perhaps to as low as 23.2 BBO in 1995. The most significant declines in reserves will occur in the older, traditional oil-producing areas of the western United States, Texas, the Gulf Coast, and the Midcontinent. In the frontier regions of Alaska and offshore California, prospects are better for substantial reserve additions.

If current production and reserves in known fields are assumed (the reserves/production ratio), theoretically the Nation's oil reserves would be exhausted in about 9 years. But because oil-field production conventionally declines about 10 percent per year compounded, in practice it will take about 30 years to exhaust known reserves.

Production capability and reserves can be increased by (1) exploring for new fields; (2) extending or finding new reservoirs in known fields; (3) producing more of the total oil-in-place by enhanced recovery methods, infill drilling, well stimulation, etc.; and (4) developing improved production technology. Use of each technique depends on projected prices of oil and gas, economics, and relative costs of the technique.

From 1977 through 1985, a period of high oil prices and the greatest boom in domestic exploration history, an average of 930 million barrels of new reserves were discovered each year (MBO/Y). Revisions and adjustments added an average of 1483 MBO/Y. Consumption during the same period averaged almost 3000 MBO/Y. Reserves therefore decreased by an average of 565 MBO/Y. Approximately 7 percent of the increase resulted from discovery of new fields; 31 percent from the discovery of extensions and new zones in known fields; and 62 percent from EOR, other increased recovery methods, and statistical revisions. Oil is being consumed faster than it is being discovered, and the Nation is reducing its oil inventory.

The historical quantities of petroleum discovered per foot of exploratory drilling dramatically demonstrate the increasing difficulty in finding large oil and gas fields (table VII-3). No reversal of the trend has occurred since 1979.

Oil fields with recoverable reserves exceeding 100 (MBO) are frequently described as national class giants. Giant fields with reserves exceeding 500 MBO are supergiants or world class giants. Giants and supergiants are few in number, but contribute the bulk of the world's oil production. In fact, fewer than 300 supergiant oil fields (out of 30,000 oil fields worldwide) contain more than 80 percent of the world's known oil reserves. Over 40 supergiants have been discovered in the U.S., almost all prior to 1939. Only one was discovered from 1977 to 1985. More significantly, only five have been discovered since 1951: McArthur River (1965), Prudhoe Bay (1968), and Kuparuk River (1969), all in Alaska; Jay in Florida (1970); and East Anschutz Ranch in the Overthrust Belt in Wyoming (1981). Point Arguello in the Outer Continental Shelf (OCS) off California may be added to this list once the reserves are fully defined.

Table VII-3.—Historical recoverable U.S. oil and natural gas finding rates.

[Modified from U.S. Geological Survey]

Period during which footage was drilled	Increment feet of exploratory drilling (billions)	Finding rate per foot exploration drilling	
		Oil (barrels)	Gas (MCF)
1859-1949	0.0-0.5	236	916
1949-1958	0.5-1.0	51	347
1958-1967	1.0-1.5	21	252
1967-1977	1.5-2.0	20	186
1977-1979	2.0-2.1	9	134

Discovery patterns for giant oil fields are only slightly more favorable. About two-thirds of the U.S. giants were found before 1940, 94 since, and the number of such discoveries decreases in each successive decade.

The onshore basins in the U.S. that hold the greatest potential for very large discoveries have already been explored, except for the 1002 area. While there are some very attractive offshore areas yet to be explored, the 1002 area is particularly promising because it contains extensions of other producing trends, and wells on adjacent properties show highly favorable evidence of petroleum deposits. These evidences, when combined with the structural traps mapped or inferred for the area, indicate that the 1002 area is currently the unexplored area in the U.S. with the greatest potential to contain giant and supergiant fields.

Not only might discovery of a supergiant field in the 1002 area make a significant contribution to domestic reserves and production, it could do so at a relatively low average cost per barrel because of economies of scale. The combination of high production and low average costs makes the total net economic value much higher for large fields. Moreover, because average costs are lower, larger fields can be produced economically and can contribute to the economy even when world oil prices are lower.

Contribution to National Objectives

The potential contribution from the 1002 area's production goes well beyond that of simply providing a certain percentage of U.S. domestic oil needs that might otherwise have to be obtained from foreign sources of supply. Production of oil from the 1002 area can also help achieve this Nation's national economic and security objectives as well.

FOSTERING ADEQUATE ENERGY SUPPLIES AT REASONABLE COSTS

DOE's 1985 National Energy Policy Plan has as its general goal fostering adequate energy supplies at reasonable costs. Adequate supply requires "a flexible energy system that avoids undue dependence on any single source of supply, foreign or domestic, and thereby contributes to national security (and) implies freedom of choice about the mix and measure of energy needs to meet our industrial, commercial, and personal requirements." The National Energy Policy Plan also recognizes leasing Federal lands as important in the Nation's effort to ensure long-term energy supplies.

REDUCING DEPENDENCE ON IMPORTED OIL

Since 1970 this Nation has been heavily dependent on foreign petroleum supplies to meet domestic demand. The prospect is for continued U.S. dependence on foreign oil. Imports in 1985 were expected to average about 5 MBO/Y, to supply about one-third of domestic oil needs. DOE's latest forecasts show that U.S. dependence on foreign oil is expected to increase significantly by the end of the century and beyond. Table VII-2 compares the percent of the 1002 area oil contribution to U.S. oil imports.

The Nation's oil imports come from two general sources: members of the Organization of Petroleum Exporting Countries (OPEC), such as Saudi Arabia, Venezuela, Indonesia; and non-OPEC nations, such as Mexico, Canada, the United Kingdom.

Because of decreasing production in the U.S. and other non-OPEC nations it is likely that this Nation will become significantly more dependent on imports from the oil-rich Persian Gulf OPEC nations no later than the mid-1990's. If so, oil prices will also increase as supply competition decreases, and the Persian Gulf OPEC nations regain market leverage and control of the international oil market.

As imports have increased, the U.S. has become vulnerable to the actions of oil-exporting countries and has essentially become a price taker in the international oil market. The cost of imported oil to the U.S. economy is not only the price paid for the oil but also the losses caused by a disruption in supply, should one occur. Because domestic production substitutes for oil imports, the Nation benefits not only from the savings that result when the costs of producing additional domestic oil are less than the world price, but also benefits from the reduction in the economy's vulnerability to supply disruptions. The potential contribution of the 1002 area's oil resources should be gauged as a displacement of potentially costly and insecure imported oil by less costly, more secure production from domestic fields. The costs of a price change or a supply disruption will be less if the economy relies more on less expensive domestic supplies than on imported oil. U.S. oil reserve and production trends suggest a shift toward greater vulnerability, possibly exacerbated by the declines of 1985-86. Thus, the 1002 area's oil may be able to significantly reduce the economy's vulnerability to world oil market changes.

ENHANCING NATIONAL SECURITY

Continued dependence on imports for a substantial part of U.S. oil consumption creates many national security concerns. The potential for a supply disruption limits the flexibility of U.S. foreign/national security policy, including the ability to respond to security threats. There is also potential for the U.S. to be drawn into dangerous political and military situations involving import nations. Dependence on oil imports entails dependence on extended supply lines (tanker routes), which are targets for attack; this adds to the defense burden. Key weapons systems in the Nation's current arsenal and under development are designed to use hydrocarbon fuel. The most secure sources of supply for such fuel are clearly domestic sources.

Secure oil supply lines can have a direct bearing on the achievement of national economic goals that depend on uninterrupted economic activity. Interruption of these supply lines, on the other hand, disrupts the production and consumption of goods and reduces economic activity. This occurred, for example, in the aftermath of the OPEC oil embargo in 1973 when a recession resulted.

ACHIEVING A MORE FAVORABLE BALANCE OF INTERNATIONAL TRADE

The deficit in the U.S. international trade balance has increased significantly in the last decade. In 1984, it totaled a record $123 billion. In that same year, the gross cost of importing crude oil and refined petroleum products amounted to more than $59 billion, almost 50 percent of the deficit. If oil imports increase as projected, achieving a favorable trade balance will be even more difficult. The deficit trade balance in recent years has meant that more U.S. dollars are spent on foreign goods, leaving fewer dollars available to consumers and businesses for buying U.S. goods and services. Production from the 1002 area reduces not only the need for imported oil but also the amount of foreign exchange required to pay for imports, bringing a more favorable trade balance. Using the mean estimate of the 1002 area's anticipated production amounts, oil from the 1002 area could result in U.S. dollar savings

spent on imports of $1.7 billion in the year 2000, $8.1 billion in 2005, and $5.8 billion in 2010.

PROVIDING ECONOMIC BENEFITS TO THE NATION

The importance of oil in the economy is widely recognized. In 1985, 42 percent of the energy used in the U.S. came from oil, of which approximately 9 MBO/Y was produced domestically and 6.8 MBO/Y was imported.

The cost of a resource that is so widely consumed in our economic system has a strong effect on economic productivity. The higher the cost of oil, the more other resources (labor, materials, energy) must be used or given up in acquiring it. As a result, these other resources are no longer available in the economy to help produce the income and the goods and services that support the American standard of living. Thus, the higher the cost of the oil used, the lower the productivity of the U.S. economy. The national need for oil is a need for the economic productivity and the gains in income that result when lower-cost oil is used to produce goods and services.

If oil can be produced from the 1002 area at a cost lower than the revenues generated from its sale, it will result in a net increase in national income and the Nation will realize a net economic benefit. The "net national economic benefit" (NNEB) is the expected net value of oil production, or the difference between revenues from sale of oil and the costs of exploration, development, production, and transportation. The NNEB includes economic benefits expected to accrue as bonuses, royalties, rental fees, taxes, and after-tax business profits. The NNEB expected from the mean potential oil production of 3.2 BBO from the 1002 area for full leasing is $79.4 billion in undiscounted 1984 dollars, and $14.6 billion discounted (10 percent real) dollars. Assuming production from a 9.2-billion-barrel field, a more optimistic economic assumption, and oil prices of $40 per barrel, the undiscounted NNEB would exceed $325 billion (1984 dollars). Potential oil production from limited leasing would contribute $54.0 billion undiscounted, and $9.4 billion discounted. (The discounted value was derived by using a discounted cash flow simulation model, in which annual revenues and annual costs for projected years of production are discounted to the present.)

PROVIDING FEDERAL, STATE, AND LOCAL REVENUES

Lease production from the 1002 area could be expected to generate revenues to the public as lease bonus payments and rentals, royalties, Federal corporate income taxes, severance tax payments to the State of Alaska, and State corporate income taxes. The revenues expected from providing this return to the public are shown in table VII-4 for the full leasing and limited leasing alternatives. Federal revenues include royalties, lease rental payments, and corporate income taxes. State and local revenues include property, severance, conservation, and corporate income taxes. Transfer payments from the Federal Government are not included, and the figures do not include Federal revenue sharing.

Table VII-4.—Estimated revenues, in billions of dollars, from full leasing and limited leasing.

[Bonuses, royalties, and lease rental payments are shown as Federal revenues. Portions of some of the seismically mapped structures lie outside the 1002 area. If these non-Federal subsurface areas are leased by others (for example, the State of Alaska or Native Corporations), portions of bonus, rent, and royalty income shown here as Federal revenue would accrue to those organizations]

	Full leasing	Limited leasing
Federal revenues:		
Undiscounted 1984 dollars..	$ 38.9	$ 25.9
Discounted dollars (10% real).....	8.0	5.1
State and local revenues:		
Undiscounted 1984 dollars..	16.1	11.0
Discounted dollars (10% real).....	3.6	2.4

CONTINUED USE OF THE TRANS-ALASKA PIPELINE SYSTEM

The Trans-Alaska Pipeline System (TAPS) is already in place and has been assumed as available to transport oil from the 1002 area. Oil from the 1002 area could play an important role in helping to offset the production declines slated for the Alaska North Slope, thereby reducing the per barrel transportation costs for oil from existing fields. Inclusion of the 1002 area's oil is, therefore, likely to prolong the useful life of TAPS and to permit additional production from North Slope fields which would otherwise be uneconomical.

THE 1002 AREA'S OIL POTENTIAL COMPARED TO U.S. PROVED OIL RESERVES

Table VII-5 compares the 1002 area's estimated conditional economically recoverable oil resource to U.S. proved reserves. DOE's Energy Information Administration has estimated total U.S. proved oil reserves to be 28.446 BBO as of January 1, 1985. The 1002 area's oil potential equals 11.7 percent of this. The DOE National Energy Policy Plan (NEPP) has estimated that U.S. proved reserves will be only 11.602 BBO in the year 2000, thus making the 1002 area's oil resources 28.8 percent of the total. For limited leasing, the 1002 area's estimated recoverable resource would equal 8.4 percent of proved U.S. reserves in 1985, and 20.6 percent in the year 2000. These

comparisons should be used with caution, however, because of differences in the items being compared. "Proved reserves" are those that have been demonstrated with reasonable certainty to be recoverable from known reserves. The 1002 area's economically "recoverable resources," on the other hand, are, by definition, speculative and less precise. The 1985 reserves figure is based on current oil prices at the time of the estimates. The recoverable resources figure for the year 2000 is based on DOE's NEPP reference case assumptions regarding world oil prices.

Table VII-5.—The 1002 area's conditional, economically recoverable oil resources compared with total U.S. proved oil reserves.

[In billions of barrels. Year 1985 data from Department of Energy (1985, p.5); year 2000 data, for lower 48 States only, from Department of Energy (1985e, table 3-15]

	Year	
	1985	2000
U.S. proved reserves	28.5	[illegible].60
1002 area's recoverable resources:		
Full leasing	3.23	3.23
Percent of U.S. total	11.35	27.80
Limited leasing	2.36	2.36
Percent of U.S. total	8.30	20.34

ANTICIPATED MARKETS FOR THE 1002 AREA'S OIL

Assuming that potential oil production from the 1002 area is similar in quality to current North Slope production, the marketing location for the 1002 area's oil could be expected to follow similar marketing patterns. Crude oil markets are already established for production from the Alaskan North Slope (ANS), and this system could probably be used for oil from the 1002 area. Oil produced from Prudhoe Bay and Kuparuk is transported via TAPS to Valdez and from Valdez by tankers to ports on the West, Gulf, and East coasts. The Trans-Panama Pipeline at the Panama Canal is used extensively to transport crude oil from the Pacific Ocean to the Atlantic. Crude oil is off-loaded on the Pacific side and loaded onto tankers on the Atlantic side for shipment to Gulf of Mexico, East Coast ports, Puerto Rico, and the Virgin Islands.

Significant discoveries have been made in California's OCS areas in the Santa Barbara Channel and Santa Maria Basin, and elsewhere. This potential production could effectively back-out a portion of the future ANS production that would otherwise be marketed on the West Coast. However, production from known ANS fields is projected to begin declining in 1987 and fall to approximately 29 percent of 1984 production by the year 2000 (Alaska Department of Revenue, Petroleum Revenue Division, 1985). At the same time, crude oil production from any discoveries in the 1002 area is not projected to be on-line until the late 1990's or after the year 2000. Therefore, the market opportunities for the 1002 area's oil could conceivably be available in roughly the same proportions as current ANS markets.

Because of the statutory ban on export of U.S. oil, the West Coast market is well established as the primary area for ANS crude oil; this is logical if viewed solely on the basis of transportation cost. Shipments to the West Coast increased to a peak of 0.9 MBO/D in 1980. Over the period 1980-84, an average 52 percent of ANS crude oil was marketed on the West Coast. Alaskan crude oil in excess of West Coast demand is transported to the Panama Canal for shipment to other markets.

CONCLUSION

In summary, the 1002 area has a very significant potential to contribute to the national need for oil. Despite the degree of uncertainty, there is some chance that the area may contain a field the size of Prudhoe Bay. There is an even better chance of one or more smaller fields, still supergiants, totaling more than 3 billion barrels. Only actual exploration can provide the information needed to determine the extent and distribution of the resources, and, therefore, the potential benefit to the economy.

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file 90/10
ANWR

February 12, 1988

Sam:

The history of the 90/10 goes like this.

The Reclamation Act was passed in 1902, and projects were funded by appropriation.

The Mineral Leasing Act passed in 1920, and included the provision that states would receive 37.5% of the proceeds of federal leasing within their boundaries. Another 52.5% would go to the Reclamation Fund, and 10% to the federal treasury.

The Statehood Act incorporated this provision by reference. except that Alaska was not given access to the Reclamation Fund and therefore was entitled to receive the 90% entitlement directly.

(Note: Murkowski's presentation was rather confusing and sounds like rationalization for inadequate performance on his part. The arguments at Statehood were that 1) Alaska should receive some large measure of compensation for the amount of federal land reserved and withdrawn from economic development and state selection; and 2) Alaska should not participate in the Reclamation Fund because it would qualify for too many projects, if projects were assigned on basis of need. Other western states might have supported the measure in part to remain in control of the Reclamation Fund and in part to create precedent for a state receiving 90% directly.)

In 1976 Congress passed amendments to the Mineral Leasing Act that included the adjustment to Reclamation formula funding. As a result the western states are to receive 50% of the proceeds directly and only 40% goes into the Reclamation Fund. Tom Koester doesn't know why this change was made but there are several reasons that might make sense: 1) Congress was trying to increase incentives for oil and gas development on federal lands; 2) western states, recognizing the diminished need for reclamation, wanted to increase their direct take from public land development.

TESTIMONY OF G. THOMAS KOESTER ON S. 735
BEFORE THE SENATE SUBCOMMITTEE ON PUBLIC LANDS
July 14, 1987

Thank you, Mr. Chairman.

My name is G. Thomas Koester. I am an Assistant Attorney General for the State of Alaska.

The State of Alaska opposes S. 735 on both legal and policy grounds. As a legal matter, we view S. 735 as an impermissible attempt to amend a major component of the statehood compact under which Alaska was admitted to the Union. As a matter of policy, S. 735 would abrogate the historic compromise in public land law under which the United States changed its policy of disposing of federally owned lands to one of retaining title but dedicating the proceeds of those lands to the states in which the lands are located.

Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, currently governs the distribution of revenues from oil and gas leasing of federal public domain lands. Under that statute, 90 percent of those revenues are dedicated to the benefit of the states in which the lands are located. In the lower 48 states, this dedication takes the form of a direct grant of 50 percent of the revenues and deposit of an additional 40 percent in the Reclamation Fund, established under the Reclamation Act of 1902, 43 U.S.C. §§ 372 et seq. Because Alaska is not covered by the Reclamation Act, Alaska receives the full 90 percent under the statute.

This dedication of federal oil and gas revenues to the states represented a historic compromise in the history of public

land law. Around the turn of the century, there was a major change in federal land policy. The traditional practice of federal land disposal to encourage development and western migration was abandoned, and a new policy of federal land retention was instituted. To compensate the states for this continued federal ownership, which in many cases precludes economic development and in all cases precludes state and local taxation, Congress dedicated 90 percent of the mineral leasing revenues from those lands to the states.

During Congressional consideration of statehood for Alaska, considerable attention was given to the distribution of mineral leasing revenues from federal lands in Alaska. The result of those lengthy deliberations was that the revenue distribution provisions of the Mineral Leasing Act of 1920 were expressly incorporated into the Alaska Statehood Act.

The provisions of a statehood act admitting a new state to the Union constitute a compact -- a legally enforceable contract -- between the citizens of the new state and the United States. Such a compact does not impose obligations only on one of the parties; instead, obligations are imposed on both the new state and the United States. The specific terms of such a compact are obligatory and subsequently cannot be unilaterally amended by either party. As the United States Supreme Court once noted with respect to the Act admitting Wisconsin to the Union, a statehood act provision is "an unalterable condition of the admission, obligatory upon the United States." Beecher v. Wetherby, 95 U.S. (5 Otto) 517, ___ (1877).

Congress incorporated the Mineral Leasing Act of 1920 into the compact under which Alaska was admitted to the Union in section 28(b) of the Alaska Statehood Act. In part, this undoubtedly was no more than Congressional recognition of the long-standing policy, applicable to virtually all of the western states, of dedicating 90 percent of the proceeds of public lands to the states in which the lands are located -- i.e., the historic compromise adopted in 1920.

At the same time, however, the legislative history of the Alaska Statehood Act makes clear that Congressional incorporation of the Mineral Leasing Act in the statehood compact also was Congress' way of partially compensating Alaska for the substantial amount of federal land which had been withdrawn and reserved by the federal government for various purposes, and the attendant loss of economic productivity caused by those withdrawals and reservation. Ironically, a number of those withdrawals and reservations were for wildlife refuges, the specific federal lands for which S. 735 seeks to change the revenue distribution formula.

To fully appreciate Congress' incorporation of the Mineral Leasing Act's 90 percent entitlement for Alaska in the statehood compact under which Alaska was admitted, one must look at the facts confronted by Congress at that time. A significant concern during the deliberations on Alaska statehood was whether the Alaska economy was sufficient to support a new state and the essential government services which the new state would have to provide. Much of that concern was a result of the fact that more

than 99 percent of all the land in Alaska was owned by the federal government. Little or no development had taken place because of federal land management practices, and federal land therefore was not contributing to the economic development of the territory. In addition, because it was federally owned, it would be exempt from any taxes which might be levied by a new state government.

To ensure that the new State of Alaska would have sufficient economic resources to meet the necessary expenses of state government, Congress included a substantial land grant in the Alaska Statehood Act. In doing so, however, Congress discovered that more than one-fourth of the land in Alaska -- more than 95 million acres -- was included in federal withdrawals and reservations, several of which were wildlife refuges. Those withdrawn and reserved lands appeared to include most of the valuable resources in Alaska.

As a partial remedy to this situation, which one committee report characterized as "the problem of federal reservations," Congress consciously granted Alaska 90 percent of the oil and gas leasing revenues from federal lands in Alaska. Characterizing this as one of the "major provisions" of the Alaska Statehood Act, Congress concluded that this would minimize the adverse impact of federal withdrawals on the new state's economic viability and would ensure that the new state would benefit from any development of the substantial resources which might be found within those federal withdrawals.

Attached to the printed text of my testimony are a number of excerpts from the legislative history of the Alaska Statehood Act which demonstrate that both supporters and opponents of Alaska Statehood were well aware that Congress was including, as part of Alaska's statehood compact, an entitlement to 90 percent of all oil and gas lease revenues from federal lands in Alaska in perpetuity. While it would serve no purpose to go over all of them in detail, a few examples illustrate the broader Congressional understanding.

Senator Barrett of Wyoming, a supporter of statehood for Alaska, authored the language of what became section 28(b) of the Alaska Statehood Act, the section that incorporates the Mineral Leasing Act into the statehood compact. During a Senate hearing on statehood for Alaska, he remarked: "So I think it would be eminently fair and just and right and proper, when we write this bill up, that we . . . let the Federal Government retain the title to the minerals except such public lands as are granted to you, but give the Territory now and the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in from now on out." Later in the hearing, he introduced the language that now appears as section 28(b) of the Alaska Statehood Act with the words: "I propose to insert a new section 21 on the last page of the bill and provide in here that 90 percent of the income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska." He noted that the Secretary of

Interior had suggested such a provision be included in the statehood bill.

Representative Dawson of Utah, also a supporter of statehood for Alaska, commented on the House floor that "[t]hese [revenue sharing] provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States."

Senator Talmadge of Georgia, an opponent of statehood, noted during the Senate floor debate that the Statehood Act land grant and the various revenue sharing measures, specifically including the entitlement to 90 percent of oil and gas leasing revenues, "have been referred to variously as a 'dowry' and 'the greatest giveaway of natural resources in the history of this country.'"

Finally, and perhaps most significantly, Senator Butler of Maryland, a statehood opponent, reminded his Senate colleagues that grants made in statehood legislation are irrevocable and cannot be changed by a subsequent Congress:

> A bill which grants statehood is not some minor piece of legislation, but is a major function of the national legislature. We cannot undertake to perform that function without reminding ourselves that we are asked to make a grant which cannot be revoked. We cannot, therefore, consider these bills as we would ordinary legislation in the sense that ordinary legislation may be amended or changed in subsequent years as experience dictates.

When placed in its proper historical perspective, it is not surprising that Congress included an entitlement to 90 percent of the proceeds from federal oil and gas leasing in the

Alaska Statehood Act. The Mineral Leasing Act, and its revenue distribution formula under which 90 percent of the revenues from federal lands are dedicated to the states in which the lands are located, represents a historic trade-off in the development of public land law. In enacting it, Congress terminated its traditional policy of disposing of the public lands. Instead, it determined that the federal government should retain those public lands, but should dedicate most of the mineral revenues from those lands to the benefit of the states in which the lands are located.

Virtually all of the public land states were admitted to the Union prior to the enactment of the Mineral Leasing Act, and its dedication of 90 percent of public land revenues to the states, in 1920. As a result, the statehood acts admitting those states do not include a provision similar to the one incorporated in the Alaska Statehood Act. However, incorporation of the Mineral Leasing Act in the Alaska Statehood Act simply reflects the Congressional understanding that the Mineral Leasing Act indeed was a historic compromise and, as a result of that compromise, the public land states are to receive the benefit of 90 percent of the revenues from federal lands within their borders in return for the continued federal ownership and management of those lands.

Passage of this bill would significantly alter one of the carefully considered terms and conditions under which Alaska was admitted to the Union. It would be an impermissible unilateral attempt to amend the solemn compact between the national

government and the citizens of Alaska. Alaska has not agreed to this modification of the compact between Alaska and the United States and, without such agreement, it would have no force or effect.

It also would signal a marked departure from the historic compromise, under which Congress dedicated 90 percent of the proceeds of the public lands to the states in return for continued federal ownership, which has guided federal public land policy throughout the United States for more than six decades.

Alaska supports the goals of the Land and Water Conservation Fund. At the same time, the state is concerned that such a laudable goals not be accomplished at the cost of a fundamental change in the provisions of the solemn compact under which Alaska entered the Union and the historic compromise which has guided federal public land policy for more than two generations.

Thank you very much for the opportunity to testify on this bill. We hope that we can work constructively with this subcommittee and the Congress to improve the effectiveness of the Land and Water Conservation Fund without sacrificing Alaska's statehood birthright and more than sixty years of federal public land policy. Again, thank you very much.

ALASKA STATEHOOD ACT LEGISLATIVE HISTORY: CONGRESSIONAL INCORPORATION OF MINERAL LEASING ACT 90% REVENUE SHARING FORMULA IN ALASKA STATEHOOD COMPACT

1. During Senate hearings on Alaska Statehood, one senator explained that he thought the new State of Alaska should get all of the lands within its boundaries but, because that probably was not possible, the Statehood Act should include a grant of 90 percent of Mineral Leasing Act revenues "from now on out."

> Senator BARRETT. . . .
>
> . . .
>
> So I think it would be eminently fair and just and right and proper, when we write this bill up, that we provide here that the [Mineral] Leasing Act of 1920, as amended, and let them retain title to the lands up there, except that which is granted -- personally I hate to see that done, but to be realistic we probably have to do that -- let the Federal Government retain the title to the minerals except such public lands as are granted to you, but give the Territory now and the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in from now on out.

Hearings on S. 49 and S. 35 before the Senate Committee on Interior and Insular Affairs, 85th Cong., 1st Sess. 30-31 (1957).

2. Later in those hearings, the same senator offered an amendment to the proposed statehood legislation under consideration which would provide that "90 percent of the income from the leasing act minerals shall go to the new State of Alaska," noting that the Secretary of Interior supported a bill under consideration in the House of Representatives which would do precisely that but "suggested that the statehood bill was the proper place to insert such a provision." The language of the proposed amendment is identical to the language of what ultimately was enacted as section 28(b) of the Alaska Statehood Act. Both the author of the proposed amendment and one of his colleagues hoped that giving Alaska a 90 percent entitlement might ultimately result in their states getting the same thing. Whether that would result or not, however, they agreed that Alaska should receive such an entitlement as part of its statehood act.

> Senator ANDERSON. . . . As far as I am concerned, I hope you [Alaska's non-voting Delgate Bartlett] would agree with me that what we tried to do was to make it possible for Alaska to come

in as a State and live self-respectingly among the States.

We did not strip her of every dollar she could get, but tried to give her all the money to make Alaska a good and fine progressive State. I believe the bill does that.

. . .

Senator BARRETT. . . . I am offering an amendment here for the consideration of the committee. I think this is probably as good a time as any to do it.

I discussed this amendment this morning when you were absent, Senator Anderson. I propose to insert a new section 21 on the last page of the bill and provide in here that 90 percent of the income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska.

When I mentioned that this morning, Delegate Bartlett told me that the House committee had considered a bill doing precisely that and had reported it out favorably. Since then I have looked up the record and I find that the Secretary of the Interior has filed a favorable report on the bill and agreed that it should be enacted into law but suggested that the statehood bill was the proper place to insert such a provision.

Maybe it would be well to have in these hearings a copy of the report that the Secretary of the Interior made on the House bill.

Senator JACKSON. Without objection, the report and the amendment of the Senator from Wyoming will be included in the record at this point, if that is agreeable. The report and the amendment should go together.

(The documents referred to are as follows:)

BARRETT AMENDMENT TO S. 49

Sec. 22. . . .

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, as amended (30 U.S.C. 191) is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ",and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

[Secretary of Interior's Report]

DEAR MR. ENGLE [Chairman of the House Committee on Interior and Insular Affairs]: This is in reply to your request for the views of this Department on H. R. 3477, a bill relating to moneys received from mineral lands in Alaska.

We recommend that H. R. 3477 be enacted. We believe, however, that the subject matter of the bill would be more appropriately covered in statehood legislation.

. . .

Senator ANDERSON. Do you not think Senator Barrett, that supplements the statement I made, that whatever makes it possible for the State to exist is a good bill?

I think Senator Barrett should be commended for that proposal. I thing there are some other States that the proposal could be applicable to but we may get our rights some time if Alaska does.

Senator JACKSON. That may be a good precedent for the other 11 Western States.

Senator ANDERSON. It happens that Wyoming and New Mexico are the 2 principal contributors to the Federal Treasury on this particular section, $100 million in Wyoming and $130 million or $140 million in New Mexico which we could have used very nicely in our State.

Senator JACKSON. We may have some problems with the other 37 States on this issue.

Senator BARRETT. I do not think so, particularly. I think we would be remiss a bit if we did not include it here, particularly since the Bureau of the Budget and the Secretary of the Interior and everyone interested has approved this.

Hearings on S. 49 and S. 35 before the Senate Interior and Insular Affairs Committee, 85th Cong., 1st Sess. 66-67 (1957).

3. A House committee report, in a section entitled "The Problem of Federal Reservations," noted that a partial solution to the depressing effect of federal withdrawals on the economic viability of a new Alaska state government would be to specify that the act of admission would grant Alaska 52 1/2 percent of Mineral Leasing Act revenues. This would be in addition to the 37 1/2 percent that all other public land states receive because, while those states were covered by the Reclamation Act, Alaska would not be.

As previously noted, tremendous acreages of land in Alaska have been tied up in the status of Federal reservations and withdrawals for various purposes. The committee feels strongly that this practice has been carried to extreme lengths in Alaska, to a point which has hampered the development of such resources for the benefit of mankind. As a result, a long list of potential basic industries in the territory, including the forest industry, hydroelectric power, oil and gas, coal, various other minerals, and the tourist industry, can exist in Alaska only as tenants of the Federal Government, and on the sufferance of the various Federal agencies. The committee considers that to be an unhealthy situation.

The failure of these industries to grow under such a restrictive policy is a proof of its unwisdom. The committee feels that this policy must be changed if statehood for Alaska is to be a success.

In its approach to the statehood issue, the committee has attempted to make a start toward such a change by various specific provisions in the bill. . . .