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A second provision in section 28 amends the Mineral Leasing Act of 1920, as amended, by granting 52 1/2 percent per annum of the net proceeds realized from coal, phosphates, oil, oil shale, and sodium on the public domain in Alaska shall be paid to the State of Alaska for disposition by the legislature thereof.

The payment of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended. The Reclamation Act provides that in the 17 Western States 52 1/2 percent of the oil- and gas-lease revenues goes into the reclamation fund; 37 1/2 percent is returned to the respective States, and the remaining 10 percent is retained by the Federal Government for administration purposes.

H.R. Rep. No. 624, 85th Cong., 1st Sess. 7-8 (1957).

4. The same point is reiterated in the sectional analysis.

Subsection [28](b) amends the act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain approved February 25, 1920, by providing that 52 1/2 percent of the proceeds received therefrom shall be covered into the State treasury for disposition by the State legislature.

The payment of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended. The Reclamation Act provides that 52 1/2 percent of the oil and gas revenues goes into the reclamation fund; 37 1/2 percent is returned to the respective States and the remaining 10 percent is retained by the Federal Government for administration purposes.

Id. at 23.

5. A Senate Report made Alaska's entitlement to 90 percent of federal oil and gas leasing revenues even clearer.

Some of the additional costs connected with statehood will be met by granting the State a reasonable return from Federal exploitation of

resources within the new State. In the past the United States has controlled the lion[']s share of such resources and, in some instances, retained the lion's share of the proceeds. This situation, though it has not proved conducive to development of the Alaskan economy, may have been proper at times when the United States paid a large part of the expense of governing the Territory. However, the committee deems it only fair that when the State relieves the United States of most of its expense burden, the State should receive a realistic portion of the proceeds from resources within its borders. The divisions of proceeds established in the bill are determined by comparisons with other States and consideration of the geographic facts which apply to Alaska.

. . .

Section 22 of the bill extends to the State the provisions of Public Law 88, 85th Congress, which was approved July 10 of this year. Under this new law the Territory receives a total of 90 percent of the profits from government coal mines and 90 percent of the profits from operations under the Mineral Leasing Act. Prior to the 1957 law, Alaska received none of the proceeds from government coal mines and 37 1/2 percent of the proceeds from mineral leasing operations. Without section 22 in the bill, the new State would not be within the purview of the 1957 act.

S. Rep. 1163, 85th Cong., 1st Sess. 3 (1957).

6. During the floor debate on Alaska statehood in the House of Representatives, one congressman outlined the relationship between the extensive federal withdrawals and the entitlement to 90 percent of all mineral leasing revenues which, in addition to the land grant, would form the "foundation" of Alaska's entry into the Union.

Mr. DAWSON of Utah. . . .

Further, over 92-million acres -- both in and out of the defense area -- already have been withdrawn by the Federal Government, and these include much of the most valuable resources. They include, for example, nearly 21-million acres of the

best forest lands and nearly 49-million acres of oil and gas reserves.

. . .

As to that lion's share of lands which would remain under Federal control, Alaska would receive -- for the support of its public schools -- 5 percent of the net proceeds from the sale of any land by the Federal Government.

Additionally, Alaska would receive 90 percent of the proceeds from the operation of Government coal mines and from the production of coal, phosphates, oil, oil shale, and sodium from the public domain. Reflecting Alaska's exclusion from the Reclamatioin Act of 1902, these are the same provisions which this Congress approved -- by consent -- for the Territory of Alaska last year in Public Law 85-88.

. . .

These provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States. We cannot make Alaska a "full and equal" State in name and then deny her the wherewithal to realize that status in fact.

85 Cong. Rec. 9360-9361 (1958).

7. During the floor debate in the Senate, an opponent of statehood for Alaska argued that the sharing of mineral revenues with the new State of Alaska, as a means to "alleviate" the adverse effect of continued federal control of significant acreage and resources, would result in Alaska being too dependent on those federal revenues.

Mr. ROBERTSON. . . .

The uniqueness of the Alaska land situation is further emphasized in the committee report, which points out that on the occasion of admission of existing States land grants amounted to a maximum of 6 to 11 percent of the total land area, and much acreage already had passed into private taxpaying ownership, whereas in Alaska, even after

a grant of unprecedented propotions to the proposed State, the Federal Government would continue to control more than two-thirds of the total acreage and an even larger percentage of the resources.

To alleviate this situation to some extent, the bill proposes to share with the State profits from Government coal mines, mineral leases, and the fur monopoly, which, of course, would make the State government a pensioner dependent on the Central Government to a much greater extent than the existing States which already, in my opinion, have jeopardized their constitutional rights by too ready acceptance of Federal handouts for a variety of public works and welfare programs.

85 Cong. Rec. 12020 (1958).

8. A supporter of Alaska statehood introduced a Department of Interior memorandum outlining the "new sources of revenue available to Alaska," one of which was listed as "oil and gas leases (90 percent to the State)." Another supporter then pointed out that oil had just been discovered in Alaska, and that discovery "will have a tremendous impact on the ability of the new State to provide the essential resources to support itself."

Mr. CHURCH. . . .

Mr. President, I wonder if the Senator from Florida will permit me to offer at this point in his address a memorandum which I have received from the Department of the Interior, which is directed to the very subject on which the Senator is now elaborating, namely, the capacity of Alaska to support statehood.

We have heard in the course of this debate many exaggerated statements about how statehood would impose an impossible burden upon the undeveloped economy of Alaska. If one were to listen uncritically to such statements, one might be led to conclude that statehood would drive the Alaskan economy into insolvency and bring ruin upon the people there.

I think this memorandum effectively gives a rebuttal to that argument, in that it shows

precisely what the additional costs for statehood would be, and what the additional income to the newly formed State government would be, by virtue of the provisions contained in the pending bill.

. . .

The PRESIDING OFFICER. Without objection, the memorandum referred to by the Senator from Idaho will be printed in the Record.

The memorandum is as follows:

. . .

New Revenues Available to Alaska

Oil and gas leases (90 percent to the State).....$3,000,000

. . .

Mr. JACKSON. . . .

I should like to point out one further consideration in connection with the financial ability of the proposed new State to take care of its responsibilities. Just 11 months ago we witnessed the first oil strike of any substance in Alaska. A little more than a year ago about 5 million acres were under lease, or applications were pending with respect thereto. The most recent check, in May, showed 32 million acres covered by oil leases or lease applications.

The program involves all the major oil companies and numerous independent oil companies. We have been advised in the Committee on Interior and Insular Affairs, where some of the legislation on this subject is handled, that the signs are most hopeful for a tremendous oil development in the area which will become a State.

I add that one point because it will have a tremendous impact on the ability of the new State to provide the essential resources to support itself. This is a factor not indicated in the

Secretary's analysis of the ability of the new State to do the job.

85 Cong. Rec. 12207-12208 (1958).

9. An opponent of statehood again pointed to the 90 percent entitlement in the statehood bill as evidence of the "prevailing doubt" regarding the ability of the new state to support itself.

Mr. TALMADGE. . . .

The prevailing doubt of Alaska's ability to support itself is evidenced by the generous special considerations which are made for it in this statehood act.

. . .

In addition [to a large land grant], it would be granted:

. . .

Ninety percent of the profits from Government coal mines and operations under the Mineral Leasing Act, of which 37 1/2 percent of the latter would be earmarked for roads and schools.

. . .

These considerations have been referred to variously as a "dowry" and "the greatest giveway of natural resources in the history of this country."

85 Cong. Rec. 12297 (1957).

10. Finally, the permanent and irrevocable nature of the granting of statehood was described.

Mr. BUTLER. . . .

Despite all its complex features, the primary purpose of the bill is to grant statehood. 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 may not 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. . . .

. . .

My research has also developed that there is contained in the bill provisions which have the effect of giving away more revenue and more property than has ever been given to any State in its enabling act.

85 Cong. Rec. 12316-12317 (1958).

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

To: Rep. Sam Cotten, Co-Chair
Rep. Adelheid Herrmann, Co-Chair
Resources Committee members

From: Ned Farquhar, Staff Ned Farquhar

Subject: ANWR revenue issues

Date: March 2, 1987

BACKGROUND

This memorandum treats state-federal revenue issues related to proposed oil and gas activity in the Arctic National Wildlife Refuge (ANWR). The State of Alaska is entitled to 90% of the revenue derived by the federal government from mineral leasing activity (including oil and gas) on public lands in Alaska, including national wildlife refuge lands. Because of ANWR's oil and gas potential, the State of Alaska has a large stake in the federal decision regarding ANWR's status. Alaska's revenue entitlement is being discussed in Alaska and in Washington, and is mentioned in HJR 9 by the Resources Committee.

ISSUES

1. The coastal plain is presently closed to oil and gas leasing. Section 1002(i) of ANILCA closed the coastal plain of ANWR to oil and gas exploration and drilling by withdrawing it from the operation of mineral leasing laws, including the Mineral Leasing Act of 1920. Until Congress acts to reopen the coastal plain, public lands within ANWR cannot be made available for oil and gas leasing. (Attachment One - ANILCA Sec 1002(i).)

2. Congress intends to return 90% of the mineral leasing revenue from public lands to all states. During the early 1900's, when the federal government adopted policies favoring retention of public lands, Congress decided that the States and their political subdivisions should benefit fiscally from the presence of retained federal land not subject to property taxation. The Mineral Leasing Act of 1920, as amended, implemented this policy by requiring that 90% of leasable mineral revenues would be returned to the States. (Attachment Two - pertinent sections of the Mineral Leasing Act.)

3. Alaska and the other western states receive 90% of mineral leasing revenues, but on a different formulation. Western states participating in the Reclamation Fund, created by the Reclamation Act of 1902, receive 50% of leasable mineral revenues directly, and another 40% is invested in the Reclamation Fund. Alaska is not contiguous and has less need for irrigation/impoundment development; thus it does not participate in the Reclamation Fund and receives 90% of mineral leasing revenues directly.

4. Alaska receives 90% of public land mineral leasing revenues as part of the solemn compact between the United States and Alaska at Statehood. When Congress enacted the Alaska Statehood Act, it included a "major provision" (according to the Legislative History) returning 90% of the mineral leasing revenues from federal public land directly to the new State of Alaska. This was in the form of an amendment to the Mineral Leasing Act of 1920. According to the Attorney General, such provisions of a Statehood Act are "obligatory" upon the United States. Based on the nature of the Statehood compact, Alaska would have a "very strong (legal) argument" if Congress were to attempt to amend the formula unilaterally. (Attachment Three - Attorney General's opinion on ANWR issues.)

5. Participation in the Reclamation Fund has directly benefited the western states, except Alaska. The Reclamation Fund is a token mechanism for funding irrigation and impoundment projects in western states. In 1982, for instance, public land revenues to the Fund (mineral leasing, land and timber sales) from the participating western states totalled about $450 million, but expenditures on reclamation projects in the same states were about $800 million (including some general fund payments and revenue from reclamation projects). Through its history the Reclamation Fund has been fortified by large contributions of general fund dollars, in addition to public land and reclamation project revenues. (Attachment Four - Map showing western states Reclamation Fund contributions/receipts for 1982.)

6. Alaska public lands subject to 90% revenue-sharing include ANWR. In the Kenai Moose Range case (1981), the United States Supreme Court held that "(r)evenues generated by oil and gas leases on federal wildlife refuges consisting of reserved public lands...must be distributed according to the formula provided in...the Mineral Leasing Act of 1920." Thus ANWR public lands, if not closed to leasing by ANILCA 1002(i), would be subject to the Mineral Leasing Act of 1920, including the 90% revenue sharing provision.

7. The former Naval Petroleum Reserve No. 4 ("Pet-4") was exempt from the 90% revenue sharing provision; Alaska has never had a 90% entitlement on the Pet-4/NPRA acreage. In his recent speech before the Alaska Legislature, Senator Stevens stated: "Many in Congress remember that reduction of Alaska's share to 50% was part of the price of opening the 23 million acre National Petroleum Reserve-Alaska." In fact, naval petroleum reserves (including the former Pet-4) are specifically exempted from the leasing and revenue-sharing provisions of the Mineral Leasing Act of 1920. The State of

Alaska never enjoyed a 90% entitlement to revenues from production on Pet-4/NPRA acreage; thus there was never a "reduction of Alaska's share to 50%." Only if Pet-4 had been turned over to the Department of the Interior without special legislation affecting Alaska's revenue share could NPRA have been public land subject to the usual 90% revenue-sharing arrangement.

8. When Congress established the National Petroleum Reserve - Alaska (NPRA) in 1976, it raised Alaska's revenue share from 0% to 50%. Appearing before the Committee, U.S. Fish and Wildlife Service Alaska Region Director Bob Gilmore said that the Interior Department expects Congress to use the NPRA model (a 50% entitlement for Alaska) as a basis for opening ANWR, and that the Interior Department would use a similar mechanism if it agreed to an overriding revenue retention provision in the pending land trade contracts. In fact, the legislation which opened Pet-4 to oil and gas leasing, including revenue sharing, is a poor example for reduction of the State of Alaska's revenue share from ANWR. The State's revenue expectations for the affected acreage jumped from 0% to 50% with the passage of the NPRA Act in 1976, which removed the land from its exempt status under the Mineral Leasing Act of 1920.

9. If the United States proceeds with land trades affecting Alaska's 90% entitlement, would the State be able to challenge the exchanges on the basis of its prior existing right? In a recent letter to Asst. Interior Secretary Bill Horn, Rep. Cotten asked whether the Interior Department believes that it may trade Alaska's existing right without Alaska's concurrence. No response has been received. However, in the attached opinion, the Attorney General indicates little faith that the courts would accept the argument that the 90% entitlement in the Statehood compact

Rep. Cotten - ANWR revenues

"also constituted an implied promise not to convey federal lands to third parties..."

10. Congress must generally treat the States equally; can it create a new leasing mechanism, or segregate ANWR lands, with the purpose of reducing or eliminating Alaska's rightful share of mineral leasing revenues from ANWR? Rep. Cotten has asked the Attorney General whether there are "foreseeable circumstances under which federal lands in the coastal plain could be considered other than 'public land' subject to the Mineral Leasing Act and the 90/10 federal-state revenue-sharing arrangement."

SUMMARY

The State of Alaska has a strong case to support its contention that the 90% revenue sharing entitlement is part of the Statehood compact and that any oil and gas revenues derived from federal lands in ANWR must be subject to this provision as it exists. If Congress decides to open ANWR, and wishes to do so in a manner that will not be susceptible to legal challenge, Alaska's concurrence will be necessary on any reduction in the existing 90% entitlement.

Attachments

findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence as provided in section 706(2)(E) of title 5, United States Code.

(3) If any person fails to pay an assessment of a civil penalty against him under paragraph (1) after it has become final, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Secretary may compromise, modify or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection unless the matter is pending in court for judicial review or recovery of assessment.

(h) REPORT TO CONGRESS.—Not earlier than five years after the enactment date of this Act and not later than five years and nine months after such date, the Secretary shall prepare and submit to Congress a report containing—

(1) the identification by means other than drilling of exploratory wells of those areas within the coastal plain that have oil and gas production potential and estimate of the volume of the oil and gas concerned;

(2) the description of the fish and wildlife, their habitats, and other resources that are within the areas identified under paragraph (1);

(3) an evaluation of the adverse effects that the carrying out of further exploration for, and the development and production of, oil and gas within such areas will have on the resources referred to in paragraph (2);

(4) a description of how such oil and gas, if produced within such areas, may be transported to processing facilities;

(5) an evaluation of how such oil and gas relates to the national need for additional domestic sources of oil and gas; and

(6) the recommendations of the Secretary with respect to whether further exploration for, and the development and production of, oil and gas within the coastal plain should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish and wildlife, their habitats, and other resources are avoided or minimized.

(i) EFFECT OF OTHER LAWS.—Until otherwise provided for in law enacted after the enactment date of this Act, all public lands within the coastal plain are withdrawn from all forms of entry or appropriation under the mining laws, and from operation of the mineral leasing laws, of the United States.

PROHIBITION ON DEVELOPMENT

16 USC 3143. SEC. 1003. Production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress.

WILDERNESS PORTION OF STUDY

Report to President. 16 USC 3144. SEC. 1004. (a) As part of the study, the Secretary shall review the suitability or nonsuitability for preservation as wilderness of the

Federal lands described in section 1001 and report his findings to the President.

Presidential recommend. to Congress

(b) The President shall advise the Senate and the House of Representatives of his recommendations with respect to the designation of the area or any part thereof as wilderness together with a map thereof and a definition of its boundaries.

(c) Subject to valid existing rights and the provisions of section 1002 of this Act, the wilderness study area designated by this section shall, until Congress determines otherwise, be administered by the Secretary so as to maintain presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System. Already established uses may be permitted to continue, subject to such restrictions as the Secretary deems desirable, in the manner and degree in which the same were being conducted on the date of enactment of this Act.

WILDLIFE RESOURCES PORTION OF STUDY

16 USC 3145 SEC. 1005. The Secretary shall work closely with the State of Alaska and Native Village and Regional Corporations in evaluating the impact of oil and gas exploration, development, production, and transportation and other human activities on the wildlife resources of these lands, including impacts on the Arctic and Porcupine caribou herds, polar bear, muskox, grizzly bear, wolf, wolverine, seabirds, shore birds, and migratory waterfowl. In addition the Secretary shall consult with the appropriate agencies of the Government of Canada in evaluating such impacts particularly with respect to the Porcupine caribou herd.

Consultation with Canadian Government

TRANSPORTATION ALTERNATIVES PORTION OF STUDY

16 USC 3146 SEC. 1006. In studying oil and gas alternative transportation systems, the Secretary shall consult with [illegible] tation and shall consider—

(1) the extent to which environ[illegible] feasible alternative routes could be e[illegible]

(2) the prospective oil and gas prod[illegible] of Alaska for each alternative transp[illegible]

(3) the environmental and econo[illegible] associated with such alternative rout[illegible]

ARCTIC RESEARCH S[illegible]

SC 3147 SEC. 1007. (a) The Secretary, the Sec[illegible] Secretary of Energy shall initiate and [illegible] mission, facilities and administration of [illegible] Laboratory (NARL), at Point Barrow, Ala[illegible] the historical responsibilities carried out [illegible] bution to applied and basic Arctic resear[illegible] cally address and the Secretary shall mak[illegible] need for redirecting the United States Ar[illegible] role of the NARL facilities in developi[illegible] policy.

(b) The Secretaries shall assess the [illegible]

(1) developing relevant scientific [illegible] environment and utilizing applied re[illegible] unique problems the Arctic presents i[illegible]

(B) minimize the impact of resource d[illegible]

d Arctic arch ratory, ement.

ATTACHMENT ONE
ANILCA Sec. 1002(i), 1003

...rvation of helium-gas-bearing land on the public domain, see section 167a of Title ... and National Defense.
Resettlement lands for Navajo tribe, transfer of interests of United States or lessor under ... chapter, see section 640d-10 of Title 25, Indians.
Review of withdrawals in certain states which closed lands to appropriation under this chapter, see section 1714 of Title 43, Public Lands.
Revocation of reservation of certain lands in and around Taquina Head and restoration to public lands, except that such lands be withdrawn from entry under this chapter, see section 17... of Title 43.
Status of offers for noncompetitive oil and gas leases on lands conveyed to Alaska native corporations or individual Alaska natives, see section 1633 of Title 43.
Steese National Conservation Area, mineral exploration and development, see section 460mm-... of Title 16, Conservation.

SUBCHAPTER I—GENERAL PROVISIONS

§ 181. Lands subject to disposition; persons entitled to 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.

(Feb. 25, 1920, c. 85, § 1, 41 Stat. 437; Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058; Aug. 8, 1946, c. 916, § 1, 60 Stat. 950; Sept. 2, 1960, Pub.L. 86–705, § 7(a), 74 Stat. 790; Nov. 16, 1981, Pub.L. 97–78, § 1(1), (4), 95 Stat. 1070.)

Historical Note

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

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

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

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

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

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

Short Title of 1976 Amendment. Pub.L. 94–377, § 1(a), Aug. 4, 1976, 90 Stat. 1083, as amended by Pub.L. 95–554, § 8, Oct. 30, 1978, 92 Stat. 2075, provided that: "This Act [enacting sections 202a, 208–1 and 208–2 of this title, amending sections 184, 191, 201, 203, 207, 209 and 352 of this title, repealing sections 201–1 and 204 of this title, and enacting provisions set out as notes under sections 184, 201, 201–1, 203, and 204 of this title] may be cited as the 'Federal Coal Leasing Amendments Act of 19...'."

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

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

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

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

Saving ... Land ... Pub.L. ... to be ... pla... etc., ... leased ... Act of ... title, ... out as ... Public ...

Sec... repeal... ing se... title, ... 209, 2... ing s... shall ... as it ... ment, ... law in ... any ... date ... stater... gover... Act in ... to."

Cut... Amer... 97–78 ...

"(It... 1981 ... shall ...

ATTACHMENT TWO

Mineral Leasing Act, affected lands

Note 12

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. 389, 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.

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.

(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 224 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 provision setting forth determination of am
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ATTACHMENT TWO, cont.
Mineral Leasing Act, revenue disposition

ATTACHMENT THREE

Attorney General's opinion on Alaska's 90% revenue entitlement in ANWR

MEMORANDUM

TO: Honorable Bill Sheffield
Governor
State of Alaska

DATE: April 28, 1986

FILE NO: 663-86-0339

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

By: G. Thomas Koester GTK
Assistant Attorney General
Department of Law

SUBJECT: ANWR issues -- federal 90 percent revenue sharing

As part of an overall analysis of potential oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"), you asked this department to prepare a preliminary analysis of two specific issues: (1) the effect of a possible land trade on the state's 90 percent royalty share of oil and gas production from federal lands in wildlife refuges; and (2) legal arguments which might be raised with respect to possible congressional consideration of a reduction in the state's current 90 percent royalty share.

In brief, we believe (1) a land trade would eliminate the state's 90 percent royalty share of production from the lands traded by the United States to third parties and probably would result in the state receiving no royalty from oil and gas produced on the exchange lands received by the federal government, and (2) there are both legal and policy arguments the state can make against a congressional reduction of the state's royalty share, but we cannot be certain that they would prevail.

I. Background

When the United States issues oil and gas leases for lands within wildlife refuges, distribution of the revenues received by the United States from that leasing depends on whether the refuge lands from which the revenues are derived are acquired lands or reserved public domain lands. "[A]cquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife

Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located.

Oil and gas leasing on public domain lands reserved for wildlife refuge purposes, on the other hand, is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 191 et seq. Under that Act, the state is entitled to 90 percent of the revenues from such lands in refuges in Alaska and 10 percent is paid into the United States Treasury. */ See generally Watt v. Alaska, 451 U.S. 259 (1981).

Congress extended the Mineral Leasing Act distribution formula for revenues from public domain lands, including reserved public domain lands in wildlife refuges, to Alaska in section 28(b) of the Alaska Statehood Act. Congress considered this one of the "major provisions" of the Act. H.R. Rep. No. 624, 85th Cong., 1st Sess. 3 (June 25, 1957) ("House Report"). Congress did so, in large part, because so much of Alaska was "tied up in the status of Federal reservations and withdrawals for various purposes," stating that this "practice has been carried to extreme lengths in Alaska." House Report at 7. One result of that "unhealthy situation," id. at 8, is that substantial mineral leasing revenues in Alaska are derived from public lands in federal withdrawals and reservations, including wildlife refuges, a situation unique to Alaska. See Watt, 451 U.S. at 261, n.1.

The Mineral Leasing Act, and its revenue distribution formula under which 90 percent of the revenues are dedicated to the state, represented a historic tradeoff in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined

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*/ States other than Alaska receive only 50 percent of public domain land mineral revenues. However, an additional 40 percent of those revenues are paid into the Reclamation Fund established under the Reclamation Act of 1902. Those funds, in turn, are used to fund reclamation projects in those states. Alaska is not covered by the Reclamation Act and receives no benefits under it. Congress considered it only fair that the additional 40 percent share of public domain land revenues be paid to Alaska "in return for Alaska not being covered by the Reclamation Act of 1902." See H.R. Rep. No. 624 (to accompany H.R. 7999), 85th Cong., 1st Sess. 23 (June 25, 1957).

that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the states' benefit. The 90-10 revenue distribution formula in the Mineral Leasing Act "was to compensate for the states' inability to tax the lands to pay for governmental services." Fairfax and Yale, The Financial Interest of Western States in Non-tax Revenues from the Federal Public Lands 19, published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy (1985).

In contrast, the Wildlife Refuge Revenue Sharing Act, under which 25 percent of certain wildlife refuge revenues are shared with the counties in which the refuges lie, was intended to reduce local opposition to federal acquisition of land for refuge purposes. The revenue sharing formula was intended to compensate localities for the loss of property tax revenue when the federal government acquired the land and, as a result, it was removed from the local tax roles. As a general proposition, this rationale would not fit federal acquisition of large tracts of either state land or undeveloped Native corporation land, neither of which currently are subject to local property taxes. See Alaska Const. art. IX, § 4; 43 U.S.C. § 1620(d).

Nonetheless, the distinction between acquired land in wildlife refuges and public domain land reserved for refuge purposes is central to resolution of the first question you asked us to discuss. The fact that Congress extended the Mineral Leasing Act to Alaska in the Statehood Act bears directly on your second question.

II. The Effect of a Land Trade on the State's 90 Percent Royalty Share

We understand that the Department of the Interior is contemplating certain land trades under which federal lands in ANWR would be exchanged for privately-owned Native corporation lands constituting inholdings in other federal conservation system units in Alaska. If such exchanges take place, and the exchanged ANWR lands are offered for oil and gas leasing, the Native corporations would be the lessors entitled to receive the revenues. The revenues would not be received by the federal government as result of leasing under the Mineral Leasing Act, and those revenues would not be subject to the Mineral Leasing Act's 90-10 distribution formula. Accordingly, there would be no basis for the state to claim any portion of the revenues derived. In other words, land trades would totally eliminate the state's 90 percent royalty share from such ANWR lands.

In addition, it should be noted that the state would have no right to any federal oil and gas revenues derived from the lands obtained by the United States from the Native corporations. Those lands would be acquired lands, not reserved public domain lands, and the revenue distribution from federal oil and gas leases on those lands would be governed by the Mineral Leasing Act for Acquired Lands. As noted earlier, revenues from oil and gas leasing of acquired lands in wildlife refuges are governed by Wildlife Refuge Revenue Sharing Act, which provides that 25 percent of any such revenues are to go to the county in which the refuge is located and 75 percent to the federal government. None of the revenues go to the state.

The state could argue that this should not be the result. The rationale for the Wildlife Refuge Revenue Sharing Act distribution scheme -- i.e., compensating municipalities for lost property tax receipts -- does not apply to undeveloped Native corporation lands, which are not subject to local property taxes under the Alaska Native Claims Settlement Act (at least until 1991). See 43 U.S.C. § 1620(d). Moreover, the state can argue that the United States cannot eliminate its 90 percent share of revenues from reserved public domain lands by trading them on the ground that doing so would violate the solemn compact memorialized in the Alaska Statehood Act.

However, we believe both arguments probably would be unavailing in court. The first argument appears to be more of a policy argument than a legal argument, more appropriately directed to Congress and not the courts. The second argument would require the court to find that the extension of the Mineral Leasing Act to Alaska also constituted an implied promise not to convey federal lands to third parties, which simply is not supported by the legislative history of section 28(b) of the Statehood Act.

III. Congressional Reduction of the State's 90 Percent Royalty Share

As noted in section I above, Congress extended the Mineral Leasing Act distribution formula for revenues from public domain lands, including reserved public domain lands in wildlife refuges, to Alaska in section 28(b) of the Alaska Statehood Act. Alaska accepted the provisions of the Statehood Act in article XII, section 13, of the Alaska Constitution. Provisions of a Statehood Act become obligatory on the United States upon acceptance of those provisions by the new state. See, e.g., Cooper v. Roberts, 59 U.S. (18 How.) 173 (1856); see generally 1981 Op. Att'y Gen. No. 3, at 3-5 (April 2). Particularly in light of

Congress' characterization of the extension of the Mineral Leasing Act to Alaska as one of the "major provisions" of the Alaska Statehood Act, the state has a very strong argument that continued application of the Mineral Leasing Act's distribution formula to oil and gas leasing revenues from reserved federal public domain lands in ANWR is required as part of Alaska's statehood compact (at least as long as those lands remain federally-owned).

At the same time, we must point out that the United States might successfully argue that Congress has the plenary authority to modify the distribution formula for oil and gas revenues from ANWR. In Watt v. Alaska, Justice Stevens (concurring in the Court's decision that the Mineral Leasing Act's 90-10 distribution formula applied to oil and gas revenues from the Kenai National Moose Range) stated:

> The question of how to divide the revenues from oil and gas leases on public lands in the Kenai Peninsula is clearly a matter for Congress to decide. If Congress is displeased with the decisions of this Court and the Court of Appeals [i.e., the decisions that Alaska is entitled to 90 percent of the revenues], it may promptly reverse them by revising the relevant statutes.

451 U.S. at 274. We did not make a statehood compact argument in that case and it was not before the Court. Nonetheless, Justice Stevens' comment undoubtedly will be cited by the United States in the event Congress changes the current 90-10 distribution formula in the Mineral Leasing Act or establishes a different distribution formula specifically for revenues from ANWR.

We hope this responds to your request. If we can provide additional information, please contact us at your convenience.

GTK:dlm
cc: John Katz
Office of the Governor
Washington, D.C.

ATTACHMENT FOUR

Reclamation funding for the western states, 1982

From Fairfax and Yale, 1985

Total For Region (Below) and By State (On Map)

a. Revenues Generated for Reclamation Fund by Mineral Leasing, Land and Timber Sales:

b. Estimate Distribution of Funds for BuRec Projects

a: $445,115,000
b: $797,998,000

Figure 11. Revenues Generated for Reclamation Fund, and Estimated Distribution of Funds for Bureau of Reclamation Projects (1982)

SENATE-HOUSE JOINT SUPPLEMENT

2/24/87 TUESDAY No. 5

A D D R E S S

By

THE HONORABLE TED STEVENS

UNITED STATES SENATOR

STATE OF ALASKA

Before a Joint Session

of the

First Session

Fifteenth Alaska State Legislature

February 24, 1987

Juneau, Alaska

SENATE-HOUSE JOINT S PPLEMENT

No. 5 2/24/87

REMARKS BY SENATOR TED STEVENS

TO THE FIRST SESSION OF THE 15TH ALASKA STATE LEGISLATURE

JUNEAU, ALASKA

TUESDAY, FEBRUARY 24, 1987

A FOUR-YEAR CELEBRATION OF THE BICENTENNIAL OF OUR NATION'S CONSTITUTION COMMENCES THIS SEPTEMBER. AS ALASKANS, WE HAVE PLENTY OF REASONS TO JOIN IN THE NATIONAL CELEBRATION.

THE CONSTITUTION NOT ONLY PROTECTS THE RIGHTS OF INDIVIDUALS. IT ALSO PROTECTS THE RIGHTS OF STATES WITH SMALL POPULATIONS IN OUR FEDERAL SYSTEM. AND, IT WAS THIS CONSTITUTIONAL SYSTEM THAT MADE STATEHOOD POSSIBLE, REQUIRED A JUST SETTLEMENT OF THE CLAIMS OF OUR NATIVE PEOPLE AGAINST THE FEDERAL GOVERNMENT, AND NOW PROTECTS OUR RIGHTS, LIBERTIES, AND FREEDOMS FROM ATTU TO TOK AND BARROW TO KETCHIKAN TO THE SAME EXTENT AS ALL OTHER AMERICANS.

I HOPE THAT WE WILL LINK THE CELEBRATION OF THE 30TH ANNIVERSARY OF ALASKA STATEHOOD WITH THE THIRD YEAR OF THE BICENTENTENNIAL CELEBRATION. THE CONSTITUTION OF THE UNITED STATES IS THE WORLD'S OLDEST CONSTITUTION IN FORCE, AND IT IS AS RELEVANT TO OUR LIVES TODAY AS IT WAS TO THE LIVES OF OUR FOUNDING FATHERS 200 YEARS AGO.

LAST YEAR, I REPORTED TO YOU THAT RESPECTED OIL ECONOMISTS PREDICTED WORLD CRUDE OIL PRICES WOULD COLLAPSE IN 1986. THAT PREDICTION BECAME FACT WITH ASTONISHING SWIFTNESS. THE DECLINE IN STATE OIL-RELATED REVENUES HAS CREATED A GREAT FISCAL AND ECONOMIC CRISIS FOR ALL OF US.

AT THE BEGINNING OF THIS YEAR, THOSE SAME ECONOMISTS PREDICTED WORLD OIL PRICES WOULD STABILIZE SOMEWHERE AROUND $18 DOLLARS A BARREL. — BUT REPORTS THIS PAST TEN DAYS INDICATE THAT NO ONE REALLY KNOWS WHAT'S HAPPENING IN THE OIL PATCH.

DOMESTIC OIL PRODUCTION HAS DECLINED FROM 9.1 MILLION BARRELS A DAY AT THE BEGINNING OF LAST YEAR TO 8.3 MILLION BARRELS A DAY IN JANUARY OF THIS YEAR, A LOSS OF NEARLY 800,000 BARRELS A DAY. DEMAND IS UP SOMEWHAT, BUT IMPORTS, PARTICULARLY FROM SAUDI ARABIA, ARE UP 25 PERCENT — MORE THAN 1.2 MILLION BARRELS A DAY FROM THIS TIME LAST YEAR.

OPEC'S DECEMBER AGREEMENT IS FRAGILE, AND COULD COLLAPSE AS A RESULT OF CHEATING BY OPEC MEMBERS SUCH AS IRAQ AND THE UNITED ARAB EMIRATES AND OTHER EVENTS. UNDER THESE CIRCUMSTANCES, OIL PRICES CANNOT RECOVER SOON ENOUGH TO SOLVE ALASKA'S CURRENT CRISIS.

WE ALASKANS ARE AT YET ANOTHER CROSSROADS. THOSE OF US WHO HOLD PUBLIC OFFICE LOOK FOR WAYS NOT ONLY TO DEAL WITH THE IMMEDIATE CRISIS BUT ALSO TO BUILD A STRONGER ECONOMY FOR ALASKA IN THE FUTURE.

SENATOR MURKOWSKI, CONGRESSMAN YOUNG, AND I HAVE BEEN WORKING TO BRING NEW INVESTMENT TO ALASKA TO HELP STABILIZE OUR BELEAGURED ECONOMY AND CREATE JOBS.

* MORE THAN 100 MILLION DOLLARS WILL BE SPENT THIS YEAR IN ALASKA ON CONSTRUCTION PROJECTS ASSOCIATED WITH THE NEW LIGHT INFANTRY DIVISION. MILLIONS MORE WILL BE SPENT ON MILITARY CONSTRUCTION AND OTHER MILITARY ACTIVITIES ELSEWHERE IN ALASKA.

OUR STRATEGIC LOCATION AND THE EXISTENCE OF UNDERUTILIZED MILITARY FACILITIES MAKES ALASKA A NATURAL OPTION FOR THE DEPARTMENT OF DEFENSE TO CONSIDER IN DEPLOYING OUR NATION'S MILITARY FORCES. MY STAFF AND I ARE WORKING TO SEE WHAT NATIONAL DEFENSE NEEDS MATCH UP WITH LOCATIONS IN ALASKA. THIS COULD LEAD TO STATIONING NEW MILITARY UNITS IN ALASKA.

THE LOCAL HIRE LEGISLATION WE SPONSORED SHOULD ENSURE THAT ALASKANS ARE GIVEN FIRST CRACK AT THE SERVICE AND CONSTRUCTION JOBS CREATED BY THIS MILITARY SPENDING.

* AT MY REQUEST, CONGRESS ADDED MILLIONS OF DOLLARS TO THE FISCAL YEAR 1987 INTERIOR APPROPRIATIONS ACT TO FUND THE CONSTRUCTION OF NEW VISITOR FACILITIES IN DENALI NATIONAL PARK, KENAI NATIONAL WILDLIFE REFUGE, AND OTHER FEDERAL CONSERVATION UNITS THROUGHOUT ALASKA. FUNDING FOR THE BLM'S LAND CONVEYANCE PROGRAMS WAS ALSO INCREASED BY NEARLY 8 MILLION DOLLARS.

AND NEARLY 25 MILLION DOLLARS WILL BE SPENT ON WATER RESOURCES AND HARBOR PROJECTS IN ALASKA, INCLUDING 10 MILLION DOLLARS ON CONSTRUCTION ASSOCIATED WITH THE CRAIG LAKE PORTION OF THE SNETTISHAM PROJECT HERE IN SOUTHEAST.

* CONGRESS INCLUDED IN THE 1986 TAX REFORM ACT MY AMENDMENT TO ALLOW ALASKA NATIVE CORPORATIONS TO SELL THEIR NET OPERATING LOSSES TO PROFITABLE CORPORATIONS. THAT PROVISION WILL BOOST LOCAL ECONOMIES AND GIVE MANY FINANCIALLY-TROUBLED NATIVE CORPORATIONS A NEW OPPORTUNITY TO CONTINUE TO PARTICIPATE WITH THE REST OF THE ALASKA ECONOMY. THOSE CORPORATIONS WILL BE ABLE TO PAY THEIR LOCAL DEBTS, REPAY LOCAL BANKS, AND CONTINUE TO BE MAJOR EMPLOYEES IN ALASKA.

* THIS YEAR, TENS OF MILLIONS OF FEDERAL DOLLARS WILL BE SPENT ON SALMON ENHANCEMENT, FISHERIES RESEARCH, FISHERIES MARKET DEVELOPMENT, AND SALMON TREATY IMPLEMENTATION. MOST OF THAT FUNDING WILL DIRECTLY BENEFIT OUR FISHING INDUSTRY.

CONGRESS ALSO APPROVED MY PROPOSAL TO CREATE A NATIONAL SEAFOOD PROMOTIONAL COUNCIL TO ENCOURAGE AMERICANS TO CONSUME MORE SEAFOOD. EXPANSION OF THE DOMESTIC MARKET FOR FISH AND SHELLFISH IS CRUCIAL TO THE FUTURE OF THE ALASKA FISHING INDUSTRY.

* ONE PROJECT THAT COULD GET STARTED IN THE NEAR TERM IS THE ALASKA GAS PIPELINE. MY POLICY IS TO WORK WITH BOTH COMPANIES SEEKING TO TRANSPORT NORTH SLOPE GAS TO MARKET. CURRENT FOREIGN EXCHANGE RATES, LOW INTEREST RATES, AND INCREASED PACIFIC RIM DEMAND HAS INJECTED REAL COMPETITION INTO THIS AREA -- AND, I HOPE YOU'LL AGREE WITH ME THAT WHICHEVER COMPANY CAN GET THE GASLINE GOING FIRST DESERVES OUR TOTAL SUPPORT.

AT MY REQUEST, CONGRESS INCLUDED A PROVISION IN LAST YEAR'S TAX REFORM ACT TO PRESERVE IMPORTANT TAX BENEFITS FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM. I'M NOW WORKING WITH YUKON-PACIFIC TO CLEAR AWAY REGULATORY OBSTACLES THAT CONCERN POTENTIAL CUSTOMERS AND INVESTORS IN THE FAR EAST.

AS I AM SURE YOU ARE, I AM DEDICATED TO SECURING CONGRESSIONAL AUTHORIZATION FOR ENVIRONMENTALLY-SOUND OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ON THE COASTAL PLAIN OF THE ARCTIC NATIONAL WILDLIFE REFUGE. ANWR IS VITAL TO THE LONG-TERM ECONOMIC HEALTH OF ALASKA AND THE LONG-TERM SECURITY OF OUR NATION.

THE TRANS-ALASKA PIPELINE NOW TRANSPORTS 1.8 TO 1.9 MILLION BARRELS A DAY TO VALDEZ. BUT, UNDER CURRENT SCENARIOS, THE PIPELINE WILL MOVE ONLY 500,000 BARRELS A DAY BY THE YEAR 2000. IF THE COASTAL PLAIN WERE OPENED AND EXPLORATION EFFORTS WERE SUCCESSFUL, PRODUCTION FROM THE PLAIN WOULD COME ON LINE AT A CRUCIAL POINT IN THE HISTORY OF ALASKA AND THE NATION.

EARLY ON IN OUR FOUR-YEAR EFFORT TO PREPARE FOR THE ANWR DEBATE, I CAME TO THE REALIZATION THAT IT WOULD BE A MISTAKE TO CHARACTERIZE ANWR AS AN ALASKA ISSUE. UNLESS THE NATION IS PERSUADED THAT EXPLORING THE ANWR COASTAL PLAIN IS NECESSARY TO MAINTAIN OUR ENERGY SECURITY, ANY EFFORT TO OPEN ANWR IS DOOMED.

ALASKANS ALONE CANNOT CONVINCE THE NATION AND CONGRESS OF ANWR'S IMPORTANCE TO NATIONAL SECURITY. WE MUST WORK WITH ORGANIZATIONS AND INDIVIDUALS THROUGHOUT THE REST OF THE COUNTRY TO GET THAT MESSAGE ACROSS.

UNFORTUNATELY, DEBATE WITHIN ALASKA OVER THE MERITS OF LAND EXCHANGES AND POSSIBLE MODIFICATIONS OF THE 90-10 REVENUE SHARING FORMULA MAY INTERFERE WITH OUR EFFORTS TO ORGANIZE A NATIONAL ANWR MOVEMENT.

IF THE TIDE TURNS AGAINST US IN CONGRESS ON ANWR, A WELL-PLANNED SERIES OF ADMINISTRATIVE LAND EXCHANGES MAY ULTIMATELY PROVE TO BE THE ONLY OPTION WE HAVE TO FORCE A THOROUGH EXAMINATION OF THE COASTAL PLAIN'S OIL AND GAS RESOURCES.

I HAVE INDICATED BEFORE THAT IN THE INTERESTS OF GETTING THE COASTAL PLAIN OPENED, ALASKA MIGHT HAVE TO ACCEPT A MODIFICATION OF THE 90-10 REVENUE-SHARING FORMULA. ONE PROPOSAL ALREADY BEING DISCUSSED WOULD DEVOTE A SUBSTANTIAL PORTION OF THE REVENUE FROM ANWR TO FINANCE A NATIONAL WILDLIFE REFUGE AND NATIONAL PARK MANAGEMENT FUND, A MOVE THAT WOULD BROADEN SUPPORT FOR OPENING ANWR IN CONGRESS.

HAVING WORKED TO PUT THE 90-10 DISTRIBUTION INTO THE STATEHOOD ACT, I AM AS CONCERNED ABOUT PROTECTING THE STATE'S FISCAL INTEREST AS ANYONE.

UNDER THAT FORMULA, ALASKA RECEIVES 90 PERCENT OF ALL FEDERAL REVENUES FROM MINERAL DEVELOPMENT ON PUBLIC LANDS IN ALASKA INSTEAD OF THE 50 PERCENT SHARE THAT OTHER STATES RECEIVE. THE JUSTIFICATION FOR THAT SPECIAL TREATMENT WAS THAT ALASKA AGREED NOT TO SHARE IN THE FEDERAL RECLAMATION FUND WHICH RECEIVES 40 PERCENT OF FEDERAL MINERAL REVENUES FROM PUBLIC LANDS IN THE LOWER 48 STATES AND HAWAII.

IF THE ANWR COASTAL PLAIN COULD BE OPENED BY ADMINISTRATIVE ACTION, WE WOULD RECEIVE A 90 PERCENT SHARE OF FEDERAL RECEIPTS FROM OIL AND GAS LEASING. FULL-FLEDGED OIL AND GAS EXPLORATION AND PRODUCTION IN ANWR, HOWEVER, IS EXPRESSLY FORBIDDEN BY THE 1980 ALASKA LANDS ACT. ANWR LANDS ARE NO LONGER "PUBLIC LANDS" -- THE REFUGE WAS SPECIFICALLY SET ASIDE BY AN ACT OF CONGRESS.

OUR STATE WON'T RECEIVE A DIME OF REVENUE UNLESS CONGRESS OPENS THIS AREA TO OIL AND GAS DEVELOPMENT. AND, REGARDLESS OF OUR WISHES, SOME OF OUR MAJOR SUPPORTERS ON ANWR IN CONGRESS ARE ALREADY ADVOCATING AN ADJUSTMENT IN THE 90-10 SPLIT AS PART OF THE PRICE OF OPENING ANWR.

MANY IN CONGRESS REMEMBER THAT REDUCTION OF ALASKA'S SHARE TO 50 PERCENT WAS PART OF THE PRICE OF OPENING THE 23 MILLION ACRE NATIONAL PETROLEUM RESERVE--ALASKA. THAT CHANGE WAS NOT SUGGESTED BY THE ALASKA CONGRESSIONAL DELEGATION. IT WAS A TAKE IT OR LEAVE PROPOSITION. WE TOOK IT. AND, WE DID NOT HEAR ONE OBJECTION FROM THE LEGISLATURE, THE GOVERNOR, OR ANY OTHER ALASKAN. UNFORTUNATELY, DESPITE THE FACT THAT NPRA WAS SET ASIDE FOR FIFTY YEARS AS A PETROLEUM RESERVE, NO PRODUCTION HAS OCCURRED.

THE DEBATE OVER THE LAND EXCHANGES AND THE 90-10 SPLIT LEADS SOME ALASKANS TO ASSUME THAT THE ONLY BENEFIT TO ALASKA FROM OPENING ANWR WOULD BE DIRECT FEDERAL REVENUE SHARING PAYMENTS TO THE STATE TREASURY. YOU KNOW THAT ISN'T THE CASE.

FIRST OF ALL, ALTHOUGH THE STATE CANNOT TAX OIL AND GAS RESOURCES ON FEDERAL LAND WHILE THEY ARE IN THE GROUND, IT CAN, TAX THOSE RESOURCES ONCE THEY ARE SEVERED AND TRANSPORTED BY PRIVATE CORPORATIONS. FROM THE STARTUP OF PIPELINE IN 1977 TO MID-1986, SEVERANCE TAXES ON NORTH SLOPE CRUDE HAVE PRODUCED 8.9 BILLION DOLLARS IN REVENUES, ONLY ABOUT 10 PERCENT LESS THAN THE 9.9 BILLION DOLLARS PRODUCED BY THE STATE'S ROYALTY ARRANGEMENTS.

SECOND, THE STATE IS ALSO FREE TO TAX THE INCOME OF THE CORPORATIONS INVOLVED IN THE EXPLORATION AND DEVELOPMENT OF THE COASTAL PLAIN. STATE CORPORATE INCOME TAXES LEVIED ON THE NORTH SLOPE GAS PRODUCERS HAVE PRODUCED 3.1 BILLION DOLLARS IN REVENUES.

IN OTHER WORDS, IF THE ANWR COASTAL PLAIN DOES HOLD ANOTHER PRUDHOE BAY-SIZED FIELD, THE STATE OF ALASKA COULD EXPECT TO RECEIVE ROUGHLY 80 PERCENT OF THE REVENUES WE RECEIVED FROM PRUDHOE BAY EVEN IF ROYALTIES WERE SPLIT 50-50 WITH THE FEDERAL GOVERNMENT.

WE CAN'T AFFORD TO SAY WE WANT 90 PERCENT OR WE'LL OPPOSE OPENING ANWR -- NINETY PERCENT OF NO ROYALTY IS NOTHING. I HOPE WE WILL ALL FOCUS ON MAXIMIZING TOTAL INCOME ALASKA WILL RECEIVE FROM ANWR -- REVENUE SHARING, SEVERANCE AND CORPORATE TAXES, AND PRIVATE SECTOR ECONOMIC ACTIVITY.

I HASTEN TO ADD THAT I'M READY TO DISCUSS AND DEBATE HERE LAND EXCHANGES AND CHANGES IN THE 90-10 SPLIT. BUT, LET'S AVOID HARSH RHETORIC THAT MAY LEAD OUTSIDERS TO CONCLUDE THAT ALASKA ISN'T UNITED IN SEEKING TO OPEN THE COASTAL PLAIN TO OIL AND GAS EXPLORATION.

I'M PROUD TO HAVE HAD THE OPPORTUNITY TO WORK WITH YOU AND PAST MEMBERS OF THE ALASKA STATE LEGISLATURE ON FEDERAL ISSUES OF IMPORTANCE TO ALASKA. ANWR IS GOING TO BE A TOUGH BATTLE, TOUGHER THAN MOST EXPECT, BUT WE CAN WIN IF WE ARE UNITED.

I NOTED THE QUESTION PRESENTED TO SENATOR MURKOWSKI ABOUT THE NUCLEAR FREEZE ALASKA RESOLUTION. LET ME CLOSE BY COMMENTING ON THAT. FOR OVER FORTY YEARS, WE HAVE HELD A NUCLEAR UMBRELLA OVER THE FREE WORLD. I HAVE DEDICATED A GREAT PORTION OF MY LIFE THESE LAST FEW YEARS TO HELPING TO BRING ABOUT MAJOR REDUCTIONS IN NUCLEAR WEAPONS -- NOT LIMITATIONS ON FUTURE GROWTH BUT ACTUAL VERIFIABLE REDUCTIONS. AND, I HAVE SUPPORTED THE STRATEGIC DEFENSE INITIATIVE BECAUSE IT HOLDS THE HOPE OF A NON-NUCLEAR DEFENSE AGAINST NUCLEAR WEAPONS.

THE FACT REMAINS THAT WE AMERICANS STILL PROTECT THE FREEDOM OF THOSE WHO DO NOT LIVE UNDER COMMUNISM, AND ALASKANS HOLD A STRATEGIC POSITION, GEOGRAPHICALLY AND POLITICALLY, IN THE DEFENSE OF OUR NATION AND OUR ALLIES.

I AM FIGHTING TO ENSURE WE HAVE A CAPABILITY TO DEFEND ALASKA — AND I BELIEVE WE ARE SUCCEEDING IN THAT BATTLE. OFTEN, I AM ASKED WHETHER THERE ARE NUCLEAR WEAPONS IN ALASKA. THE SIMPLE ANSWER IS THAT THE LOCATION OF OUR NUCLEAR DEFENSES IS CLASSIFIED. EVEN IF I KNEW THE ANSWER TO THE QUESTION, I COULD NOT REPLY CONSISTENT WITH MY ROLE IN SHAPING DEFENSE POLICY IN THE CONGRESS.

BUT I CAN TELL YOU THAT EVERYTHING WE ARE DOING TO ASSURE OUR DEFENSE CAPABILITY HERE IN ALASKA IS INCONSISTENT WITH THE CONCEPT OF STATING ALASKANS OPPOSE ANY NUCLEAR PRESENCE -- EITHER AS PROPULSION MECHANISMS OF NUCLEAR-POWERED VEHICLES OR IN NUCLEAR WEAPONS -- HARMLESS UNTIL ARMED -- THAT ARE OUR CAPABILITY TO RETALIATE AND THEREFORE DETER AGRESSION AGAINST US OR OUR ALLIES. THAT DETERRANCE HAS WORKED AND CONTINUES TO WORK.

I BELIEVE WE WILL MAINTAIN OUR FREEDOMS IF WE MAINTAIN OUR CAPABILITY TO DEFEND OURSELVES. AMERIKA WAS A TELEVISION PROGRAM, NOT A PREDICTION OF THINGS TO COME. BUT, IF ALL STATES AND ALL ALLIES WERE TO PASS A RESOLUTION LIKE THE ONE BEFORE YOU, WHERE WOULD WE DEPLOY OUR DETERRENT FORCE? I HOPE YOU SERIOUSLY CONSIDER THE MESSAGE SECRETARY SHULTZ SENT TO YOUR LEGISLATURE.

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

TO: Judith M. Brady
Commissioner

THRU: James E. Eason
Director

FROM: Edward Phillips
Petroleum Economist

DATE: January 12, 1987

FILE NO:

TELEPHONE NO: 561-2020

SUBJECT: Arctic National Wildlife Refuge (ANWR) Land Trades and Potential State Revenue

DNR geologists and geophysicists are in unanimous agreement that lands within the coastal plain of ANWR represent the best remaining potential for major oil and gas discoveries in Alaska. This estimated potential substantially exceeds that of remaining unleased state lands. Under current law, federal leasing of ANWR lands for oil and gas development would yield 90 percent of any bonuses, rentals and royalty income to the state. In addition, the state would receive severance, corporate, property and conservation taxes from development of ANWR leases. However, the royalty share alone could constitute upwards of 70 percent of total state revenue from potential ANWR development.

Both past and proposed ANWR land trades with native corporations reduce the revenue potential to the state by eliminating the state's share of potential federal bonuses, rentals and royalties, but not state taxes. Although the state's overall severance tax revenues would increase from development of ANWR regardless of whether or not the royalty share is reduced by exchanges, this gain is inconsequential by comparison to the state's potential royalty loss from additional federal exchanges with third parties.

Given ANWR's oil and gas potential, these losses could be substantial. The attached table reflects the staff estimates of the relative state revenue impacts of ANWR development assuming no additional exchanges and no legislative reduction in the state's 90 percent share of revenues from leasing in ANWR. The revenue projections contained in Table 1 are derived from the geological, geophysical and economic information contained in the Draft ANWR Coastal Plain Resource Assessment (1002 Report). The draft report data and assumptions were used by the federal government to compute the Net National Economic Benefits (NNEB) from leasing ANWR and to provide the justification for the policy recommendations contained within the report.

Specific assumptions underlying the attached revenue projections are not crucial to the basic issue, which is one of relative shares, or how the potential pie is sliced rather than absolute amount(s) involved. No revenue projection or forecast that has the year 2000 as a base year can be treated as a likely outcome. It is more properly viewed as "one possible outcome." The use of federal revenue numbers just assures us that we are all speaking the same language.

The assumptions underlying the estimates of potential land trade-related revenue gains and losses to the state have geological, geophysical and economic components. The 1002 Report indicates that if oil is discovered, the average recoverable reserves are estimated at 3.2 billion barrels. This quantity was used for the MMS estimate derived by BLM for the draft 1002 report, and provides the "assumed" reserve base or recoverable reserves for this discussion. In our analysis, production would commence (from two fields) in 2000 at a 1984 dollar price of $33.00 per barrel, and escalate at one percent per year in real terms (production from one of the fields could be delayed for a year or two without substantially affecting the results). All estimates are in 1984 dollars, hence they are net of inflation, but they are not discounted to reflect the time value (time preference) of funds to the state.

The estimates are for the years 2000 through 2010. Production cannot realistically be expected much before that time, and the Department of Revenue currently does not provide estimates of Prudhoe Bay revenues embodying the federal price assumptions for periods beyond 2010.

As Table I illustrates, potential ANWR revenues to the state (even given current ASRC/KIC inholdings) could be substantial, exceeding those of Prudhoe Bay by the year 2003. By the year 2010, ANWR's revenue potential is almost double that of Prudhoe Bay using the federal price assumptions. This would be true of almost any set of prices exceeding the development threshold for ANWR. Based upon the assumptions we have analyzed, any further transfers of prospective ANWR lands from federal jurisdiction reduces the state's per-barrel revenue potential by about 70 percent as a result of loss to the state of potential royalties, bonuses and rentals. As can be seen from Table 1, the potential royalty revenue at stake exceeds six billion dollars.

We believe a significant transfer of revenue potential has already occured by virtue of ASRC's receipt of subsurface title to the two inholdings near Kaktovik. The Oil and Gas Section of DMGGS has estimated that up to 25% of ANWR's oil and gas reserve potential may be contained in lands already received by ASRC. Thus, this land trade could cost the state as much as $1.6 billion (1984 $) in lost royalty revenues if the assumptions used in the draft 1002 report and in this analysis are assumed. The volume of oil and gas discovered and its relative locations will ultimately determine the extent of the revenue "loss" associated with the previous ASRC/KIC land trades and any future land trades.

Attachment

0274P

TABLE I

ESTIMATED POTENTIAL INCOME 2000 TO 2010*
(10^6 1984$)

Year	Prudhoe Bay			ANWR (with current ASRC inholding)			ANWR Revenue as % of P.B. Revenue
	Royalty	Severance	Total	Royalty	Severance	Total	
2000	1056	670	1726	155	0 ?	155	9
2001	923	573	1496	528	234	762	51
2002	814	488	1302	767	412	1179	85
2003	711	419	1130	779	418	1197	106
2004	625	362	987	790	425	1215	123
2005	534	313	847	711	431	1142	135
2006	430	266	696	629	341	970	139
2007	359	223	582	560	266	826	142
2008	294	179	473	506	206	712	151
2009	235	138	373	448	148	596	160
2010	159	100	259	406	105	511	197
	6140	3731	9871	6279	2986	9265	

Assume 5/00

3485 2986 6485

this reduction to 50% results in a total revenue reduction of 30% over this period of time

* using federal price assumptions

0273P

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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March 2, 1987

The Honorable Sam Cotten
Co-Chairman
Resources Committee
P.O. Box V
Juneau, AK 99811

Re: 90-10 Revenue distribution
for federal lands

Dear Representative Cotten:

In a February 26, 1987 memorandum, you asked a number of questions regarding federal-state sharing of oil and gas revenues in the event of oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"). You asked:

> 1) If the Congress were to repeal the provisions of ANILCA closing the ANWR coastal plain to oil and gas exploration and drilling, without amending the Mineral Leasing Act of 1920 or the Statehood Act, would the State be entitled to 90 percent of the federal oil and gas revenues derived from Refuge lands? Are there foreseeable circumstances under which federal lands in the coastal plain could be considered other than "public land" subject to the Mineral Leasing Act and the 90-10 federal-state revenue sharing arrangement?
>
> 2) Was PET 4 (the former Naval Petroleum Reserve) "public land" subject to the same 90-10 revenue sharing arrangement as other public land in Alaska? When the NPRA Act passed in 1976, did it reduce or expand the state's revenue entitlement from the affected acreage?

Before answering your specific questions, it may be helpful briefly to review the background of the 90-10 revenue sharing arrangement which currently exists. The distribution of oil and gas revenues from federal lands depends on whether they are "acquired lands" or "public domain lands." In general, "acquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Pet. Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for acquired lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located. The rationale for this distribution formula is that the lands were on local tax roles while in private ownership, and giving some of the receipts from the lands to the local county compensates the county for the loss of those property tax revenues.

Oil and gas leasing on public domain lands is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 et seq. Under that Act, 90 percent of the revenues are dedicated to the benefit of the states */ and 10 percent are paid into the United States Treasury.

This 90-10 revenue distribution formula applies to both vacant, unappropriated and unreserved public domain

---

*/ For lower 48 states, 50 percent of federal oil and gas revenues from public domain lands are paid directly to the states and 40 percent is deposited into the Reclamation Fund created by the Reclamation Act of 1902. Because Alaska is not covered by the Reclamation Act and receive no benefits from the Reclamation Fund, we receive the full 90 percent of such revenues from federal public domain lands in Alaska.

lands and (with limited exceptions not applicable here) public domain lands withdrawn and reserved for specific purposes, including withdrawals and reservations for wildlife refuges. I represented Alaska in Watt v. Alaska, 451 U.S. 259 (1981), in the United States Supreme Court. The precise issue in that case was whether the 90-10 revenue distribution formula applied to the withdrawn and reserved lands of the Kenai National Moose Range. The Supreme Court, over the United States' objection, held that it did.

Like the lands in the Moose Range, the lands in ANWR were withdrawn and reserved from the public domain for refuge purposes; they are not acquired lands. There is no substantive distinction between the Moose Range lands and the lands in ANWR, and there is no substantive legal basis for concluding that federal oil and gas leasing revenues from ANWR would be distributed differently than those from the Moose Range under existing law.

The revenue distribution formula in the Mineral Leasing Act represented an historic trade-off in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the state's benefit. See generally, Fairfax and Yale, The Financial Interest of Western States in Non-Tax Revenues From the Federal Public Lands (manuscript copy published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy in 1985). This historic compromise has governed distribution of mineral revenues from federal lands, particularly in the western states, since 1920, and we can see no foreseeable circumstances under which that fundamental compromise would be changed at this time.

Accordingly, the answers to your first set of questions are: (1) The state would be entitled to 90 percent of the federal oil and gas revenues derived from ANWR lands if Congress repealed the closure of the ANWR coastal plain in ANILCA without amending the Mineral Leasing Act of 1920 or the Statehood Act; and (2) we see no foreseeable circumstances under which the ANWR coastal plain would not be subject to the Mineral Leasing Act.

As noted briefly above, there are a few limited exceptions in the Mineral Leasing Act. One of these is for

"lands within the naval petroleum and oil-shale reserves." 30 U.S.C. § 181. The revenue distribution provisions of the Mineral Leasing Act provide that all monies which may accrue to the United States "from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts' ..." 33 U.S.C. § 191.

In other words, at the time of the historic compromise when the United States decided to retain large tracts of lands and share the benefits of mineral development with the states in which those lands were located, it expressly exempted from that sharing any benefits deriving from the naval petroleum and oil-shale reserves. Former Naval Petroleum Reserve No. 4 ("PET 4"), now known as the National Petroleum Reserve in Alaska ("NPRA"), accordingly has never been subject to the Mineral Leasing Act of 1920 and the 90-10 revenue distribution formula had no application to any revenues from NPRA. In section 11 of the Alaska Statehood Act, Congress retained the exclusive legislative authority over PET 4 as long as it remained a naval reserve, so its status as far as federal-state relations has always been somewhat different than other federal lands. When Congress finally opened NPRA to competitive leasing in 1980, it did so independently of the Mineral Leasing Act. It was that separate congressional action in 1980 -- not the Mineral Leasing Act -- which resulted in the state receiving 50 percent of revenues from oil and gas leasing in NPRA. See 42 U.S.C. § 6508. Absent that congressional action, the state would have been entitled to none of the revenues from NPRA.

Summarizing, the answers to your second set of questions are: (1) PET 4 was never subject to the same 90-10 revenue sharing arrangement; instead, it was a specific (and single) exception to the 90-10 revenue sharing formula; and (2) when Congress authorized leasing in NPRA, it provided that the state was to receive 50 percent of the revenues instead of none of those revenues which is what the current law at that time would have provided in the absence of congressional action.

I hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK/dlm
cc: Lieutenant Governor Stephen McAlpine
Commissioner Judy Brady, DNR
Commissioner Don W. Collinsworth, F&G
Commissioner Dennis Kelso, DEC
John Katz, Office of the Governor
Bob Grogan, Office of the Governor
Rod Swope, Office of the Governor

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

P.O. BOX 296, EAGLE RIVER, AK 99577
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

MEMORANDUM

To: Tom Koester, AGO

From: Rep. Sam Cotten, Co-Chair NF for SC
House Resources Committee

Subject: ANWR revenue entitlements

Date: February 26, 1987

There are several questions the Resources Committee may need addressed before it takes a position on the issue of federal-state revenue sharing of oil and gas revenues derived from prospective oil and gas production on public lands within the Arctic National Wildlife Refuge.

1) If the Congress were to repeal the provision of ANILCA closing the ANWR coastal plain to oil and gas exploration and drilling, without amending the Mineral Leasing Act of 1920 or the Statehood Act, would the State be entitled to 90% of the federal oil and gas revenues derived from Refuge lands? Are there foreseeable circumstances under which federal lands in the coastal plain could be considered other than "public land" subject to the Mineral Leasing Act and the 90/10 federal-state revenue sharing arrangement?

2) Was Pet 4 (the former Naval Petroleum Reserve) "public land" subject to the same 90/10 revenue sharing arrangement as other public land in Alaska? When the NPRA Act passed in 1976, did it reduce or expand the state's revenue entitlement from the affected acreage?

If you have questions please contact my staff. We are having a hearing in House Resources on the issue of ANWR revenue entitlements on Tuesday March 2 and would like to have any comments back from you by Friday or Monday. Many thanks.

TO: Rep. Cotten
Attn: Ned

2-18-87

Ned —

NPR statutes attached {Sec 6502 + 6508
No apparent Legis. history in U.S. Code Congressional + Administrative News on 50% split.

Statutory update att'd. at back
See 6502 & 6508

CHAPTER 78—NATIONAL PETROLEUM RESERVE IN ALASKA

Sec.

§ 6501. Definition

As used in this chapter, the term "petroleum" includes crude oil, gases including natural gas), natural gasoline, and other related hydrocarbons, oil hale, and the products of any of such resources.

Pub.L. 94–258, Title I, § 101, Apr. 5, 1976, 90 Stat. 303.)

Historical Note

References in Text. "This chapter", referred to in text, was in the original "this title", meaning Title I of Pub.L. 94–258, which enacted this chapter and amended section 6244 of this title. For distribution of Pub.L. 94–258 in the Code, see Short Title note set out hereunder and Tables volume.

Short Title. Section 1 of Pub.L. 94–258 provided "That this Act [enacting this chapter and section 7420 of Title 10, Armed Forces, and amending section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10] may be cited as the 'Naval Petroleum Reserves Production Act of 1976'."

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

Code of Federal Regulations

National Petroleum Reserve in Alaska, management and protection of, see 43 CFR 2360 et seq.

Library References

Mines and Minerals ⇐1 et seq. C.J.S. Mines and Minerals §§ 4 to 6.

§ 6502. Designation of National Petroleum Reserve in Alaska; reservation of lands; disposition and conveyance of mineral materials, lands, etc., preexisting property rights

The area known as Naval Petroleum Reserve Numbered 4, Alaska, established by Executive order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344, dated April 24, 1961, shall be transferred to and administered by the Secretary of the Interior in accordance with the provisions of this Act. Effective on the date of transfer all lands within such area shall be redesignated as the "National Petroleum Reserve in Alaska" (hereinafter in this chapter referred to as the "reserve"). Subject to valid existing rights, all lands within the exterior boundaries of such reserve are hereby reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts; but the Secretary is authorized to (1) make dispositions of mineral materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended [30 U.S.C.A. § 601 et seq.], for appropriate use by Alaska Natives, (2) make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be nec-

promulgate such rules and regulations as he deems necessary and appropriate for the protection of such values within the reserve.

(c) Contract responsibilities and functions

The Secretary of the Interior shall, upon the effective date of the transfer of the reserve, assume the responsibilities and functions of the Secretary of the Navy under any contracts which may be in effect with respect to activities within the reserve.

(d) Equipment, facilities, and other properties used in connection with operation of reserve; transfer without reimbursement

On the date of transfer of jurisdiction of the reserve, all equipment, facilities, and other property of the Department of the Navy used in connection with the operation of the reserve, including all records, maps, exhibits, and other informational data held by the Secretary of the Navy in connection with the reserve, shall be transferred without reimbursement from the Secretary of the Navy to the Secretary of the Interior who shall thereafter be authorized to use them to carry out the provisions of this chapter.

(e) Unexpended funds previously appropriated for use in connection with reserve and civilian personnel ceilings assigned to management and operation of reserve

On the date of transfer of jurisdiction of the reserve, the Secretary of the Navy shall transfer to the Secretary of the Interior all unexpended funds previously appropriated for use in connection with the reserve and all civilian personnel ceilings assigned by the Secretary of the Navy to the management and operation of the reserve as of January 1, 1976.

(Pub.L. 94–258, Title I, § 103, Apr. 5, 1976, 90 Stat. 303.)

Historical Note

References in Text. "This chapter", referred to in subsec. (d), was in the original "this title", meaning Title I of Pub.L. 94–258, which enacted this chapter and amended section 6244 of this itle. For distribution of Pub.L. 94–258 in the Code, see Short Title note set out under section 6501 of this title and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

§ 6504. Administration of reserve

(a) Congressional authorization as precondition for production and development of petroleum

Except as provided in subsection (e) of this section, production of petroleum from the reserve is prohibited and no development leading to production of petroleum from the reserve shall be undertaken until authorized by an Act of Congress.

(b) Conduct of exploration within designated areas to protect surface values

Any exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any signif-

essary to carry out his responsibilities under this Act, and (3) convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.]. All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Naval Petroleum Reserve shall remain in full force and effect to the extent not inconsistent with this Act.

(Pub.L. 94–258, Title I, § 102, Apr. 5, 1976, 90 Stat. 303.)

Historical Note

References in Text. This Act, referred to in text, is Pub.L. 94–258, Apr. 5, 1976, 90 Stat. 303, which enacted this chapter and section 7420 of Title 10, Armed Forces, and amended section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10. For complete classification of this Act to the Code, see Short Note set out under section 6501 of this title and Tables volume.

"This chapter", referred to in text, was in the original "this title", meaning Title I of Pub.L. 94–258, which enacted this chapter and amended section 6244 of this title. For distribution of Pub.L. 94–258 in the Code, see Short Title note set out under section 6501 of this title and Tables volume.

The public land laws, referred to in text, are classified generally to Title 43, Public Lands.

The mining laws, referred to in text, are classified generally to Title 30, Mineral Lands and Mining.

Mineral leasing laws, referred to in text, have been defined in sections 505, 530, and 541e of Title 30, Mineral Lands and Leasing, to mean Acts Oct. 20, 1914, c. 330, 38 Stat. 741; Feb. 25, 1920, c. 85, 41 Stat. 437; Apr. 17, 1926, c. 158, 44 Stat. 301; and Feb. 7, 1927, c. 66, 44 Stat. 1057. The Act of Oct. 20, 1914, was repealed by Pub.L. 86–252, § 1, Sept. 9, 1959, 73 Stat. 490. The Act of Feb. 25, 1920, is popularly known as the Mineral Lands Leasing Act and is classified generally to subchapters I to VII (section 181 et seq.) of chapter 3A of Title 30. The Act of Apr. 17, 1926, is classified generally to subchapter VIII (section 271 et seq.) of chapter 3A of Title 30. The Act of Feb. 7, 1927, is classified principally to subchapter IX (section 281 et seq.) of chapter 3A of Title 30. For complete classification of these Acts to the Code, see Tables volume.

The Act of July 31, 1947 (61 Stat. 681), as amended, referred to in text, is classified generally to subchapter I (section 601 et seq.) of chapter 15 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables volume.

The Alaska Native Claims Settlement Act, referred to in text, is Pub.L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (section 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

§ 6503. Transfer of jurisdiction, duties, property, etc., to Secretary of Interior from Secretary of Navy

(a) Transfer of jurisdiction over reserve; date of transfer

Jurisdiction over the reserve shall be transferred by the Secretary of the Navy to the Secretary of the Interior on June 1, 1977.

(b) Protection of environmental, fish and wildlife, and historical or scenic values; promulgation of rules and regulations

With respect to any activities related to the protection of environmental, fish and wildlife, and historical or scenic values, the Secretary of the Interior shall assume all responsibilities as of April 5, 1976. As soon as possible, but not later than the effective date of transfer, the Secretary of the Interior may

amendments on competition. Such plans or amendments shall not be implemented until sixty days after they have been submitted to such committees; and

(3) shall report annually to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives on the progress of, and future plans for, exploration of the reserve.

(e) Development and continuation of operation by Secretary of Navy prior to transfer of reserve of gas fields supplying villages, etc., at or near Point Barrow, Alaska; rates; continuation of service by Secretary of Interior after transfer

Until the reserve is transferred to the jurisdiction of the Secretary of the Interior, the Secretary of the Navy is authorized to develop and continue operation of the South Barrow gas field, or such other fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska. After such transfer, the Secretary of the Interior shall take such actions as may be necessary to continue such service to such village, communities, installations, and agencies at reasonable and equitable rates.

(Pub.L. 94–258, Title I, § 104, Apr. 5, 1976, 90 Stat. 304.)

Historical Note

References in Text. This Act, referred to in subsec. (b), is Pub.L. 94–258, Apr. 5, 1976, 90 Stat. 303, which enacted this chapter and section 7420 of Title 10, Armed Forces, and amended section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10. For complete classification of this Act to the Code, see Short Note set out under section 6501 of this title and Tables volume.

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

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.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S Code Cong. and Adm.News, p. 492.

Code of Federal Regulations

Oil and gas leasing, see 43 CFR 3130.0–1 et seq.

§ 6505. Executive department responsibility for studies to determine procedures used in development, production, transportation, and distribution of petroleum resources in reserve; reports to Congress by President; establishment of task force by Secretary of Interior; purposes; membership; report and recommendations to Congress by Secretary; contents

(a)(1) The President shall direct such Executive departments and/or agencies as he may deem appropriate to conduct a study, in consultation

icant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.

(c) Continuation of ongoing petroleum exploration program by Secretary of Navy prior to date of transfer of jurisdiction; duties of Secretary of Navy prior to transfer date

The Secretary of the Navy shall continue the ongoing petroleum exploration program within the reserve until the date of the transfer of jurisdiction specified in section 6503(a) of this title. Prior to the date of such transfer of jurisdiction the Secretary of the Navy shall—

(1) Cooperate fully with the Secretary of the Interior providing him access to such facilities and such information as he may request to facilitate the transfer of jurisdiction;

(2) provide to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives copies of any reports, plans, or contracts pertaining to the reserve that are required to be submitted to the Committees on Armed Services of the Senate and the House of Representatives; and

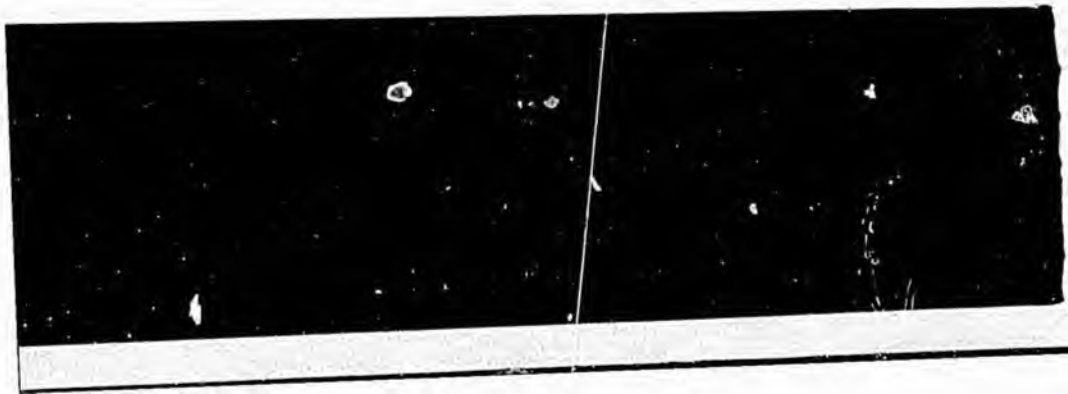
(3) cooperate and consult with the Secretary of the Interior before executing any new contract or amendment to any existing contract pertaining to the reserve and allow him a reasonable opportunity to comment on such contract or amendment, as the case may be.

(d) Commencement of petroleum exploration by Secretary of Interior as of date of transfer of jurisdiction; powers and duties of Secretary of Interior in conduct of exploration

The Secretary of the Interior shall commence further petroleum exploration of the reserve as of the date of transfer of jurisdiction specified in section 6503(a) of this title. In conducting this exploration effort, the Secretary of the Interior—

(1) is authorized to enter into contracts for the exploration of the reserve, except that no such contract may be entered into until at least thirty days after the Secretary of the Interior has provided the Attorney General with a copy of the proposed contract and such other information as may be appropriate to determine legal sufficiency and possible violations under, or inconsistencies with, the antitrust laws. If, within such thirty day period, the Attorney General advises the Secretary of the Interior that any such contract would unduly restrict competition or be inconsistent with the antitrust laws, then the Secretary of the Interior may not execute that contract;

(2) shall submit to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives any new plans or substantial amendments to ongoing plans for the exploration of the reserve. All such plans or amendments submitted to such committees pursuant to this section shall contain a report by the Attorney General of the United States with respect to the anticipated effects of such plans or



Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

Cross References

Studies prepared and transmitted to Congress pursuant to this section as satisfying requirements for studies of certain rivers designated for potential addition to national wild and scenic river system, see section 1276 of Title 16, Conservation.

§ 6506. Applicability of antitrust provisions; plans and proposals submitted to Congress to contain report by Attorney General on impact of plans and proposals on competition

Unless otherwise provided by Act of Congress, whenever development leading to production of petroleum is authorized, the provisions of subsections (g), (h), and (i) of section 7430 of Title 10 shall be deemed applicable to the Secretary of the Interior with respect to rules and regulations, plans of development and amendments thereto, and contracts and operating agreements. All plans and proposals submitted to the Congress under this chapter or pursuant to legislation authorizing development leading to production shall contain a report by the Attorney General of the United States on the anticipated effects upon competition of such plans and proposals.

(Pub.L. 94–258, Title I, § 106, Apr. 5, 1976, 90 Stat. 306.)

Historical Note

References in Text. "This chapter", referred to in text, was in the original "this title", meaning Title I of Pub.L. 94–258, which enacted this chapter and amended section 6244 of this title. For distribution of Pub.L. 94–258 in the Code, see Short Title note set out under section 6501 of this title and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

§ 6507. Authorization of appropriations; Federal financial assistance for increased municipal services and facilities in communities located on or near reserve resulting from authorized exploration and study activities

(a) There are authorized to be appropriated to the Department of the Interior such sums as may be necessary to carry out the provisions of this chapter.

(b) If the Secretary of the Interior determines that there is an immediate and substantial increase in the need for municipal services and facilities in communities located on or near the reserve as a direct result of the exploration and study activities authorized by this chapter and that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities, then he is authorized to assist such communities in meeting the costs of providing increased municipal services and facilities. The Secretary of the Interior shall carry out the provisions of this section through existing Federal programs and he shall

with representatives of the State of Alaska, to determine the best overa procedures to be used in the development, production, transportation, an distribution of petroleum resources in the reserve. Such study shall includ but shall not be limited to, a consideration of—

(A) the alternative procedures for accomplishing the developmen production, transportation, and distribution of the petroleum resourc from the reserve, and

(B) the economic and environmental consequences of such altern tive procedures.

(2) The President shall make semiannual progress reports on the impl mentation of this subsection to the Committees on Interior and Insular A fairs of the Senate and the House of Representatives beginning not late than six months after April 5, 1976, and shall, not later than one year afte the transfer of jurisdiction of the reserve, and annually thereafter, report an findings or conclusions developed as a result of such study together witl appropriate supporting data and such recommendations as he deems desira ble. The study shall be completed and submitted to such committees, to gether with recommended procedures and any proposed legislation necessa ry to implement such procedures not later than January 1, 1980.

(b)(1) The Secretary of the Interior shall establish a task force to conduct a study to determine the values of, and best uses for, the lands contained in the reserve, taking into consideration (A) the natives who live or depend upon such lands, (B) the scenic, historical, recreational, fish and wildlife, and wilderness values, (C) mineral potential, and (D) other values of such lands.

(2) Such task force shall be composed of representatives from the government of Alaska, the Arctic slope native community, and such offices and bureaus of the Department of the Interior as the Secretary of the Interior deems appropriate, including, but not limited to, the Bureau of Land Management, the United States Fish and Wildlife Service, the United States Geological Survey, and the Bureau of Mines.

(3) The Secretary of the Interior shall submit a report, together with the concurring or dissenting views, if any, of any non-Federal representatives of the task force, of the results of such study to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives within three years after April 5, 1976, and shall include in such report his recommendations with respect to the value, best use, and appropriate designation of the lands referred to in paragraph (1).

(Pub.L. 94–258, Title I, § 105(b), (c), Apr. 5, 1976, 90 Stat. 305.)

Historical Note

Codification. In the original, subsecs. (a) and (b), respectively, were subsecs. (b) and (c) of section 105 of Pub.L. 94–258 and have been redesignated as (a) and (b) for codification purposes. Section 105(a) of Pub.L. 94–258 amended section 6244 of this title.

Change of Name. The Committee on Interior and Insular Affairs of the Senate was abolished and rep'aced 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

consult with the heads of the departments or agencies of the Federal Government concerned with the type of services and facilities for which financial assistance is being made available.

(Pub.L. 94–258, Title I, § 107, Apr. 5, 1976, 90 Stat. 306.)

Historical Note

References in Text. "This chapter", referred to in text, was in the original "this title", meaning Title I of Pub.L. 94–258, which enacted this chapter and amended section 6244 of this title. For distribution of Pub.L. 94–258 in the Code, see Short Title note set out under section 6501 of this title and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

§ 6508. Competitive leasing of oil and gas

There shall be conducted, notwithstanding any other provision of law and pursuant to such rules and regulations as the Secretary may prescribe, an expeditious program of competitive leasing of oil and gas in the National Petroleum Reserve in Alaska: *Provided,* That (1) activities undertaken pursuant to this section shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska (the Reserve); (2) the provisions of section 202 and section 603 of the Federal Lands Policy and Management Act of 1976 (90 Stat. 2743) [43 U.S.C.A. §§ 1712, 1782] shall not be applicable to the Reserve; (3) the first lease sale shall be conducted within twenty months of December 12, 1980: *Provided,* That the first lease sale shall be conducted only after publication of a final environmental impact statement if such is deemed necessary under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4332); (4) the withdrawals established by section 102 of Public Law 94–258 [42 U.S.C.A. § 6502] are rescinded for the purposes of the oil and gas leasing program authorized herein; (5) bidding systems used in lease sales shall be based on bidding systems included in section 205(a)(1)(A) through (H) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629) [43 U.S.C.A. § 1337(a)(1)(A)-(H)]; (6) lease tracts may encompass identified geological structures; (7) the size of lease tracts may be up to sixty thousand acres, as determined by the Secretary; (8) each lease shall be issued for an initial period of up to ten years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities, or as drilling or reworking operations, as approved by the Secretary, are conducted thereon; and (9) all receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this section shall be paid into the Treasury of the United States: *Provided,* That 50 per centum thereof shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: *Provided further,* That in the allocation of such funds, the State shall give priority to use by subdivisions

of the State most directly or severely impacted by development of oil and gas leased under this section.

Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the National Petroleum Reserve in Alaska which do not interfere with operations under any contract maintained or granted previously. Any information acquired in such explorations shall be subject to the conditions of 43 U.S.C. 1352(a)(1)(A).

Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve-Alaska shall be barred unless brought in the appropriate District Court within 60 days after notice of the availability of such statement is published in the Federal Register. Any proceeding on such action shall be assigned for hearing at the earliest possible date and shall be expedited by such Court.

The detailed environmental studies and assessments that have been conducted on the exploration program and the comprehensive land-use studies carried out in response to sections 105(b) and (c) of Public Law 94–258 [42 U.S.C.A. § 6505] shall be deemed to have fulfilled the requirements of section 102(2)(c) of the National Environmental Policy Act (Public Law 91–190) [42 U.S.C.A. § 4332(2)(C)], with regard to the first two oil and gas lease sales in the National Petroleum Reserve-Alaska: *Provided,* That not more than a total of 2,000,000 acres may be leased in these two sales: *Provided further,* That any exploration or production undertaken pursuant to this section shall be in accordance with section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 304; 42 U.S.C. 6504).

(Pub.L. 96–514, Title I, § 100, Dec. 12, 1980, 94 Stat. 2964.)

Historical Note

References in Text. "This section" referred to the first three times it appears in the original read "this Act" meaning Pub.L. 96–514, Dec. 12, 1980, 94 Stat. 2957. For complete classification of this Act to the Code, see Tables volume.

The National Environmental Policy Act of 1969, referred to in text, 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 this title. Section 102 of such Act is classified to section 4332 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables volume.

Section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 304), referred to in text, is section 104(b) of Pub.L. 94–258, Title I, § 104, Apr. 5, 1976, 90 Stat. 304, which is classified to section 6504(b) of this title.

Codification. Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1981, and not as part of the Naval Petroleum Reserves Production Act of 1976 which enacted this chapter.

TITLE 42

THE PUBLIC HEALTH AND WELFARE

CHAPTER 78—NATIONAL PETROLEUM RESERVE IN ALASKA

§ 6502. Designation of National Petroleum Reserve in Alaska; reservation of lands; disposition and conveyance of mineral materials, lands, etc., preexisting property rights

The area known as Naval Petroleum Reserve Numbered 4, Alaska, established by Executive Order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344, dated April 24, 1961, shall be transferred to and administered by the Secretary of the Interior in accordance with the provisions of this Act. Effective on the date of transfer all lands within such area shall be redesignated as the "National Petroleum Reserve in Alaska" (hereinafter in this chapter referred to as the "reserve"). Subject to valid existing rights, all lands within the exterior boundaries of such reserve are hereby reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts; but the Secretary is authorized to (1) make dispositions of mineral materials pursuant to the Act of July 31, 1947(61 Stat. 681), as amended [30 U.S.C.A. § 601 et seq.], for appropriate use by Alaska Natives and the North Slope Borough, (2) make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under this Act, (3) convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.], and (4) grant such rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 [43 U.S.C.A. § 1761 et seq.] or section 28 of the Mineral Leasing Act, as amended [30 U.S.C.A. § 185], as may be necessary to permit the North Slope Borough to provide energy supplies to villages on the North Slope. All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Naval Petroleum Reserve shall remain in full force and effect to the extent not inconsistent with this Act.

(As amended Pub.L. 98–366, § 4(a), July 17, 1984, 98 Stat. 470.)

References in Text. Title V of the Federal Land Policy and Management Act of 1976, referred to in cl. (4), is Title V of Pub.L. 94–579, Oct. 21, 1976, 90 Stat. 2776, which is classified generally to subchapter V (§ 1761 et seq.) of chapter 35 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

Section 28 of the Mineral Leasing Act, referred to in text, cl. (4), is classified to section 185 of Title 30, Mineral Lands and Mining.

1984 Amendment. Pub.L. 98–366 added "and the North Slope Borough" after "Alaska Natives".

Pub.L. 98–366 struck out "and" after "responsibilities under this Act,".

Pub.L. 98–366 inserted ", and (4) grant rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 or section 28 of the Mineral Leasing Act, as amended, as may be necessary to permit the North Slope Borough to provide energy supplies to the villages on the

North Slope" preceding the period following "Alaska Native Claims Settlement Act".

Legislative History. For legislative history and purpose of Pub.L. 98–366, see 1984 U.S. Code Cong. and Adm. News, p. 692.

§ 6504. Administration of reserve

[See main volume for text of (a) to (d)]

(e). Repealed. Pub.L. 98–366, § 4(b), July 17, 1984, 98 Stat. 470.

(As amended Pub.L. 98–366, § 4(b), July 17, 1984, 98 Stat. 470.)

1984 Amendment. Subsec. (e). Pub.L. 98–366 struck out subsec. (e) which had read: "Until the reserve is transferred to the jurisdiction of the Secretary of the Interior, the Secretary of the Navy is authorized to develop and continue operation of the South Barrow gas field, or such other fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska. After such transfer, the Secretary of the Interior shall take such actions as may be necessary to continue such service to such village, communities, installations, and agencies at reasonable and equitable rates."

Effective Date of 1984 Amendment. Section 4(b) of Pub.L. 98–366 provided in part that the repeal of subsec. (e) of this section is effective Oct. 1, 1984.

Legislative History. For legislative history and purpose of Pub.L. 98–366, see 1984 U.S. Code Cong. and Adm. News, p. 692.

§ 6505. Executive department responsibility for studies to determine procedures used in development, production, transportation, and distribution of petroleum resources in reserve; reports to Congress by President; establishment of task force by Secretary of Interior; purposes; membership; report and recommendations to Congress by Secretary; contents

(a) Omitted

(b)(1) The President shall direct such Executive departments and/or agencies as he may deem appropriate to conduct a study, in consultation with representatives of the State of Alaska, to determine the best overall procedures to be used in the development, production, transportation, and distribution of petroleum resources in the reserve. Such study shall include, but shall not be limited to, a consideration of—

(A) the alternative procedures for accomplishing the development, production, transportation, and distribution of the petroleum resources from the reserve, and

(B) the economic and environmental consequences of such alternative procedures.

(2) The President shall make semiannual progress reports on the implementation of this subsection to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives beginning not later than six months after April 5, 1976, and shall, not later than one year after the transfer of jurisdiction of the reserve, and annually thereafter, report any findings or conclusions developed as a result of such study together with appropriate supporting data and such recommendations as he deems desirable. The study shall be completed and submitted to such committees, together with recommended procedures and any proposed legislation necessary to implement such procedures not later than January 1, 1980.

(c)(1) The Secretary of the Interior shall establish a task force to conduct a study to determine the values of, and best uses for, the lands contained in the reserve, taking into consideration (A) the natives who live or depend upon such lands, (B) the scenic, historical, recreational, fish and wildlife, and wilderness values, (C) mineral potential, and (D) other values of such lands.

(2) Such task force shall be composed of representatives from the government of Alaska, the Arctic slope native community, and such offices and bureaus of the Department of the Interior as the Secretary of the Interior deems appropriate, including, but not limited to, the Bureau of Land Management, the United States Fish and Wildlife Service, the United States Geological Survey, and the Bureau of Mines.

(3) The Secretary of the Interior shall submit a report, together with the concurring or dissenting views, if any, of any non-Federal representatives of the task force, of the results of such study to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives within three years after April 5, 1976, and shall include in such report his recommendations with respect to the value, best use, and appropriate designation of the lands referred to in paragraph (1).

Codification. Subsec. (a) of this section amended section 6244 of this title.

§ 6508. Competitive leasing of oil and gas

[See main volume for text of first and second undesignated paragraphs]

Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve-Alaska shall be barred unless brought in the appropriate District Court within 60 days after notice of the availability of such statement is published in the Federal Register.

[See main volume for text of fourth undesignated paragraph]

(As amended Pub.L. 98-620, Title IV, § 402(41), Nov. 8, 1984, 98 Stat. 3360.)

1984 Amendment. Pub.L. 98-620 struck out provision in the third paragraph that required that any proceeding on such action be assigned for hearing at the earliest possible date and be expedited by the Court.

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-620 not to apply to cases pending on Nov. 8, 1984, see section 403 of Pub.L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub.L. 98-620, see 1984 U.S.Code Cong. and Adm.News, p. 5708.

Notes of Decisions

1. Discovery

In action challenging certain oil and gas lease sales by the Bureau of Land Management within the Alaska national petroleum reserve, in view of statutory mandate to expedite, district court did not abuse its discretion in foreclosing discovery and setting an abbreviated briefing schedule. Kunaknana v. Clark, C.A.Alaska 1984, 742 F.2d 1145.

CHAPTER 79—SCIENCE AND TECHNOLOGY POLICY, ORGANIZATION AND PRIORITIES

SUBCHAPTER I—NATIONAL SCIENCE, ENGINEERING, AND TECHNOLOGY POLICY AND PRIORITIES

§ 6601. Congressional findings; priority goals

EXECUTIVE ORDER NO. 12039

Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, set out in the credit of this Executive Order, was superseded by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in Appendix 2 to Title 5, Government Organization and Employees.

SUBCHAPTER II—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

§ 6614. Policy planning; analysis; advice; establishment of Advisory Panel

[See main volume for text of (a)]

(b)(1) The Director shall establish an Intergovernmental Science, Engineering, and Technology Advisory Panel (hereinafter referred to as the "Panel"), whose purpose shall be to (A) identify and define civilian problems at State, regional, and local levels which science, engineering, and technology may assist in resolving or ameliorating; (B) recommend priorities for addressing such problems; and (C) advise and assist the Director in identifying and fostering policies to facilitate the transfer and utilization of research and development results so as to maximize their application to civilian needs.

Syllabus

WATT, SECRETARY OF THE INTERIOR, ET AL. v. ALASKA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 79–1890. Argued January 13, 1981—Decided April 21, 1981*

The Kenai National Moose Range was created in 1941 as a national wildlife refuge by withdrawing acreage from public lands in Alaska. Commercially significant quantities of oil underlie the Range, and the Secretary of the Interior issued oil and gas leases for the Range, beginning in the 1950's. The Secretary has distributed revenues from these leases according to the formula provided in § 35 of the Mineral Leasing Act of 1920, whereby 90% of the revenues are paid to Alaska and 10% to the United States Treasury. In 1964, § 401 (a) of the Wildlife Refuge Revenue Sharing Act was amended so as to add the word "minerals" to the list of refuge resources, the revenues from which were to be distributed according to the formula provided in § 401 (c) of that Act, whereby 25% of the revenues are paid to counties in which the wildlife refuge lies, and the remaining funds are used by the Department of the Interior for public purposes. The Department's Solicitor then made a determination, in which the Comptroller General concurred, that the amended § 401 (a) superseded § 35 of the Mineral Leasing Act of 1920, with the result that the formula under § 401 (c) was to be applied to oil and gas lease revenues from wildlife refuges. Petitioner Kenai Peninsula Borough, the "county" within which Moose Range lies, thereafter brought suit in Federal District Court, seeking a declaration that the amended § 401 (a) governed the distribution of oil and gas revenues from the Range. Alaska also filed suit in the same court, seeking a declaration that § 35 still governed such distribution, and the suits were consolidated. The District Court granted summary judgment for Alaska, and the Court of Appeals affirmed.

Held: Revenues generated by oil and gas leases on federal wildlife refuges consisting of reserved public lands, as here, must be distributed according to the formula provided in § 35 of the Mineral Leasing Act of 1920. Absent any expression of congressional intention to repeal

*Together with No. 79–1904, *Kenai Peninsula Borough* v. *Alaska et al.*, also on certiorari to the same court.

§ 35 by implication, the term "minerals" in § 401 (a) of the Wildlife Refuge Revenue Sharing Act applies only to minerals on land acquired for wildlife refuges. Pp. 265–273.

612 F. 2d 1210, affirmed.

POWELL, J., delivered the opinion of the Court, in which BRENNAN, WHITE, BLACKMUN, REHNQUIST, and STEVENS, JJ., joined. STEVENS, J., filed a concurring opinion, *post*, p. 273. STEWART, J., filed a dissenting opinion, in which BURGER, C. J., and MARSHALL, J., joined, *post*, p. 276.

Deputy Solicitor General Claiborne argued the cause for petitioners in No. 79–1890. With him on the briefs were *Solicitor General McCree, Assistant Attorney General Moorman,* and *Dirk D. Snel. Charles K. Cranston* argued the cause and filed briefs for petitioner in No. 79–1904.

G. Thomas Koester, Assistant Attorney General of Alaska, argued the cause for respondents in both cases. With him on the brief was *Wilson L. Condon,* Attorney General.

JUSTICE POWELL delivered the opinion of the Court.

The narrow issue presented by these cases is which of two federal statutes provides the formula for distribution of revenues received from oil and gas leases on national wildlife refuges reserved from public lands.

I

The Kenai National Moose Range was created in 1941 by the withdrawal of nearly two million acres from public lands on the Kenai Peninsula in Alaska. See Exec. Order No. 8979, 3 CFR 1043 (1938–1943 Comp.). See also Public Land Order No. 3400, 29 Fed. Reg. 7094–7095 (1964) (adjusting the boundaries). The Kenai Moose Range, as its name suggests, provides a refuge and breeding ground for moose. The Fish and Wildlife Service in the Department of the Interior administers it as part of the national wildlife refuge system.

Commercially significant quanties of oil underlie the Kenai Moose Range.[1] Pursuant to authority under the Mineral Leasing Act of 1920, 30 U. S. C. § 181 *et seq.*, the Secretary of the Interior has issued oil and gas leases for the Kenai Moose Range. beginning in the mid-1950's. See *Udall* v. *Tallman*, 380 U. S. 1 (1965). The United States has received substantial revenues from these leases.[2] From first receipt in 1954, the Secretary has distributed these revenues according to the formula provided in § 35 of the Mineral Leasing Act of 1920, 41 Stat. 450, as amended, 30 U. S. C. § 191. This formula prescribes that 90% of the revenues be paid to the State of Alaska and 10% to the United States Treasury.[3]

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[1] Today, the Kenai Moose Range is the only national wildlife refuge created from public lands where oil is being pumped. See Brief for Federal Petitioners 4, n. 4. Substantial quantities of oil, however, are thought to underlie other reserved refuge lands in Alaska.

[2] Between 1966 and 1976, Kenai Range generated more than $57 million in oil lease revenues. App. 64. In 1964 Kenai Range generated more than $3.8 million in revenues from oil and gas leases. In that same year, refuges on reserved public land in the contiguous 48 States generated $3,143 in oil and gas revenues. App. to Brief for Federal Petitioners 1a–2a. In interpreting Congress' directions for distribution of oil revenues from reserved refuge lands, it should be remembered that historically Kenai alone has generated such revenues.

[3] In pertinent part, the current § 35, as set forth in 30 U. S. C. § 191, provides:

"All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this chapter . . . shall be paid into the Treasury of the United States; . . . of those from Alaska . . . 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature . . . ."

States other than Alaska receive only 50% of public land mineral revenues under the Act. *Ibid.*

By its terms, the Mineral Leasing Act applies to specified minerals, including oil and gas, on all lands owned by the United States, except those lands excluded by the Act. 30 U. S. C. § 181. See *Udall* v. *Tallman*, 380 U. S. 1, 4, and n. 3 (1965).

In 1975, the Director of the Fish and Wildlife Service inquired of the Solicitor of the Department of the Interior whether revenues from oil and gas leases in wildlife refuges created by withdrawal of public lands should be distributed according to § 401 (c) of the Wildlife Refuge Revenue Sharing Act, 49 Stat. 383, as amended, 16 U. S. C. § 715s (c), rather than under the Mineral Leasing Act of 1920. The Director's inquiry was prompted by the 1964 amendments to § 401 (a), which added the word "minerals" to a list of refuge resources, the revenues from which were to be distributed according to the statutory formula.[4] Pub. L. 88–523, 78 Stat. 701. According to this formula, 25% of the revenues are paid to counties wherein the refuge lies, and remaining funds are used by the Department of the Interior for public purposes.[5]

[4] Prior to 1964, § 401 governed distribution of revenues from "the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges." Act of June 15, 1935, ch. 261, 49 Stat. 378, 383. The current version of § 401 (a) is given in the text, *infra*, at 265.

[5] Section 401 (c) currently provides:

"(1) The Secretary shall pay out the fund, for each fiscal year . . . , to each county in which is situated any fee area whichever of the following amounts is greater:

"(A) An amount equal to the product of 75 cents multiplied by the total acreage of that portion of the fee area which is located within such county.

"(B) An amount equal to three-fourths of 1 per centum of the fair market value, as determined by the Secretary, of that portion of the fee area . . . which is located within such county.

"(C) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with operation of and management of such fee area during the fiscal year . . . .

"(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year . . . ." 16 U. S. C. § 715s (c) (1976 ed., Supp. III).

Section 401 (b) allows the Secretary to pay any expenses related to revenue production or distribution from this fund. Section 401 (e) pro-

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State sought a
Leasing Act.

The Solicitor ruled that the 1964 amendment governed, superseding § 35 of the Mineral Leasing Act of 1920. App. to Pet. for Cert. in No. 79–1890, p. 26a. The Comptroller General concurred in the view of the Solicitor. 55 Comp. Gen. 117 (1975). Upon request for reconsideration by the State of Alaska in 1976, the Comptroller General affirmed his initial decision. See Op. Comp. Gen. in File: B–118678, June 11, 1976, reprinted in App. to Pet. for Cert. in No. 79–1890, p. 42a.

The Kenai Peninsula Borough then brought suit against the Secretary of the Interior in the United States District Court for the District of Alaska, seeking a declaration that the amended § 401 (a) of the Wildlife Refuge Revenue Sharing Act governed the distribution of oil and gas revenues from the Kenai Moose Range. Kenai Borough is the "county" within which the Moose Range lies. If § 401 (a) governs, it will receive 25% of the revenues and the State none. The State of Alaska then filed suit in the same court against the Secretary and various federal officials, seeking a declaration that § 35 of the Mineral Leasing Act still governed distribution of these same oil and gas revenues. If that provision applies, the State will continue to receive 90% of the funds and, so far as federal law is concerned, Kenai Borough none. The District Court consolidated the lawsuits.[6]

The District Court granted summary judgment for the State of Alaska. 436 F. Supp. 288 (1977). Upon exami-

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vides that funds remaining after expenses and the States are paid are transferred to the Migratory Bird Conservation Fund, established for the laudable purpose of purchasing migratory bird refuges.

[6] Since this litigation commenced in 1976, 90% of oil and gas revenues from the Kenai Range has been paid into an escrow account that now contains more than $23 million. Brief for Federal Petitioners 4, n. 4. In addition to declaratory relief, Kenai Borough sought an accounting of revenues paid to the State since 1964 under the Mineral Leasing Act of 1920 but allegedly due the Borough, and recovery of such payments. The State sought a resumption of accustomed payments under the Mineral Leasing Act.

nation of the apparently conflicting statutes, the court held that the term "minerals" in the amended Wildlife Refuge Revenue Sharing Act referred only to oil and gas found on land *acquired* for wildlife refuges. *Id.*, at 292. Distribution of oil and gas revenues from leases on public land *reserved* for wildlife refuges, it held, continues to be determined by § 35 of the Mineral Leasing Act of 1920.[7] *Ibid.* The court viewed the legislative history of the 1964 amendments as demonstrating that Congress was concerned primarily with the difficulties of acquiring land for refuges and that Congress expected no increase in revenues from the Kenai Moose Range to result from the amendments. *Id.*, at 291–292.

The Court of Appeals for the Ninth Circuit affirmed. 612 F. 2d 1210 (1980). That court found the legislative history largely ambiguous. *Id.*, at 1213. It refused to find that the addition of the word "minerals" to the amended Wildlife Refuge Revenue Sharing Act had repealed by implication the Mineral Leasing Act of 1920 without a clear showing that this was the intent of Congress. See *Morton* v. *Mancari*, 417 U. S. 535, 549–551 (1974). The court further approved the District Court's holding because it gave effect to each statute. 612 F. 2d, at 1214–1215.

We granted certiorari. 449 U. S. 818 (1980).[8] We now affirm.

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[7] In general, "acquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." *Wallis* v. *Pan American Pet. Corp.*, 384 U. S. 63, 65, n. 2 (1966). The Mineral Leasing Act of 1920 applies only to public lands. *Id.*, at 65.

[8] In 1978, Congress rejected new amendments to § 401 (a) that would have defined minerals as "including, but not limited to, crude petroleum and nautral gas." H. R. 8394, 95th Cong., 2d Sess. (1978). The House Report recommending this bill stated that the language was added to "insure" that after the effective date oil and gas revenues from Kenai would be distributed according to the formula in § 401 (c). H. R. Rep. No. 95–1197, p. 8 (1978). The Report disclaims any intention to affect

II

The Secretary and the Kenai Borough rely primarily on the "plain language" of § 401 (a) of the Wildlife Refuge Revenue Sharing Act. They contend that it provides without ambiguity that mineral resources from all national wildlife refuges be distributed according to the formula described in § 401 (a) of the Act. As currently phrased, § 401 (a) provides:

> "[A]ll revenues received by the Secretary of the Interior from the sale or other disposition of animals, salmonoid carcassas [*sic*], timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, [or] from other privileges . . . shall be . . . reserved in a separate fund for disposition as hereafter prescribed." 16 U. S. C. § 715s (a) (1976 ed., Supp. III).

The provision defines the wildlife refuge system to include lands "acquired or reserved" for conservation and protection of certain fish and wildlife. No restriction is placed upon the common meaning of "minerals." Given this clarity, it is argued, resort to the legislative history is unnecessary or improper.

We agree with the Secretary that "[t]he starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S.

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the outcome of these cases, then pending in the Court of Appeals. *Ibid.* The Sentate then rejected even this amendment, Members stating that it would be inappropriate to make any judgment about the proper allocation of these resources while these cases were still in the courts. 124 Cong. Rec. 31436–31440. (1978) (remarks of Sen. Culver and Sen. Gravel).

The sole issue that has been before the courts during this five years of litigation is the intent of Congress in adding the single term "minerals" to the statute in 1964. Congress declined to clarify its intent in 1978. Accordingly, we are left to resolve by judicial construction what should be addressed as a question of legislative policy judgment: the appropriate distribution among federal, state, and local government of natural resource revenues.

723, 756 (1975) (POWELL, J., concurring). See *Rubin* v. *United States*, 449 U. S. 424 (1981). But ascertainment of the meaning apparent on the face of a single statute need not end the inquiry. *Train* v. *Colorado Public Interest Research Group*, 426 U. S. 1, 10 (1976); *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 543–544 (1940). This is because the plain meaning rule is "rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists." *Boston Sand Co.* v. *United States*, 278 U. S. 41, 48 (1928) (Holmes, J.).[9] The circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have their literal effect. *E. g., Church of the Holy Trinity* v. *United States*, 143 U. S. 457, 459 (1892); *United States* v. *Ryan*, 284 U. S. 167, 175 (1931).

Sole reliance on the "plain language" of § 401 (a) would assume the answer to the question at issue. These cases involve two statutes, each of which by its literal terms applies to the facts before us. Restatement of the terms of § 401 (a) cannot answer which statute Congress intended to control. Recognizing this, the Secretary invokes the maxim of construction that the more recent of two irreconcilably conflicting statutes governs. 2A C. Sands, Sutherland on Statutes and Statutory Construction § 51.02 (4th ed. 1973). Without depreciating this general rule, we decline to read the statutes as being in irreconcilable conflict without seeking to ascertain the actual intent of Congress. Our examination of the

[9] "Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." *Cabell* v. *Markham*, 148 F. 2d 737, 739 (CA2) (L. Hand, J.), aff'd, 326 U. S. 404 (1945).

legislative history is guided by another maxim: " 'repeals by implication are not favored,' " *Morton* v. *Mancari*, 417 U. S., at 549, quoting *Posadas* v. *National City Bank*, 296 U. S. 497, 503 (1936). "The intention of the legislature to repeal must be 'clear and manifest.' " *United States* v. *Borden Co.*, 308 U. S. 188, 198 (1939), quoting *Red Rock* v. *Henry*, 106 U. S. 596, 602 (1883). We must read the statutes to give effect to each if we can do so while preserving their sense and purpose. *Mancari*, *supra*, at 551; see *Haggar Co.* v. *Helvering*, 308 U. S. 389, 394 (1940).

III

Congress gave extensive consideration to the purpose and probable effect of the 1964 amendments to the Wildlife Refuge Revenue Sharing Act. Pub. L. 88–523, 78 Stat. 701. Nonetheless, and we think it significant, there is no explanation in the legislative history for the addition of the single word "minerals" to the list of refuge resources subject to the Act. See H. R. Rep. No. 1753, 88th Cong., 2d Sess. (1964) (hereinafter 1964 H. R. Rep.); S. Rep. No. 1096, 88th Cong., 2d Sess. (1964) (hereinafter 1964 S. Rep.); 110 Cong. Rec. 19882–19883 (1964) (remarks of Rep. Ostertag). Our study of the few legislative materials pertinent to the insertion of "minerals" persuades us that Congress intended to work no change in the pre-existing formula for distribution of mineral revenues from federal wildlife refuges.

A

Prior to 1964, § 35 of the Mineral Leasing Act of 1920 governed distribution of revenues from mineral leases on wildlife refuges withdrawn from public lands. This conclusion cannot be seriously questioned. First, from the time the first mineral revenues were generated on such lands until well after 1964, the Secretary invariably distributed the revenues as provided in the Mineral Leasing Act. Second, the Comptroller General long ago ruled that the only other arguably

applicable statute, the then unamended Wildlife Refuge Revenue Sharing Act, Act of June 15, 1935, ch. 261, 49 Stat. 383 (hereinafter 1935 Refuge Act), see n. 4, *supra*, did not govern the disposal of revenues from mineral leases on wildlife refuges. 21 Comp. Gen. 873 (1942). See also Comp. Gen., B-105133, Oct. 10, 1951, App. 82.[10]

Third, our opinion in *Udall* v. *Tallman*, 380 U. S. 1 (1965), strongly suggests that the Mineral Leasing Act of 1920 governed the distribution of revenues from reserved refuge lands prior to 1964. That case involved the authority of the Secretary to issue oil leases on the Kenai Moose Range after the lands had been withdrawn from the public domain by

[10] The Secretary speculates that Congress in 1964 probably assumed that oil and gas revenues from refuges on reserved lands were governed by the 1935 Refuge Act. The basis for this argument is language in the 1935 Refuge Act, continued today, that the Act governed the disposition of "shell, sand, or gravel, and from other privileges on refuges." See n. 4, *supra*. It sometimes was contended that "other privileges" included oil and gas leases. See Memorandum of July 6, 1951, Chief Counsel of the Fish and Wildlife Service, App. 87.

As noted, the Comptroller General rejected this contention in 1942 and 1951. For the reasons elaborated in the text, we believe that it was understood by Congress that the 1935 Refuge Act did not govern the leasing of minerals. Indeed, even the 1946 opinion of the Solicitor of the Department of the Interior that the provision authorized oil leases on acquired refuge lands, App. 68, is contradicted by Congress' passage of the Mineral Leasing Act for Acquired Lands, Act of Aug. 7, 1947, ch. 513, 61 Stat. 913, 30 U. S. C. § 351 *et seq.*, which subsequently conferred this very authority on the Department. See also 40 Op. Atty. Gen. 9 (1941).

The dissent also speculates—inconsistently, we think—that Congress embraced this often discredited interpretation of the 1935 Refuge Act. *post*, at 279–280, n. 3. The dissent criticizes the Court for concluding that Congress' insertion of "minerals" in § 401 (a) did not change pre-existing law. *Post*, at 278–279. The dissent then explains that Congress added "minerals" in 1964 not to change the law, but to reaffirm that the 1935 Refuge Act already governed disposition of oil revenues from reserved refuge lands. *Post*, at 279–280, n. 3. In other words, the dissent contradicts itself and joins us in positing that the addition of "minerals" was never intended to work a substantive change, but disagrees merely about what the law provided prior to the 1964 amendments.

Executive Order. In holding that the Executive Order did not deprive the Secretary of this power, this Court held that the Mineral Leasing Act of 1920 conferred the necessary statutory authorization on the Secretary to grant the leases. "The Act excluded from its application certain designated lands, but did not exclude land within wildlife refuge areas." *Id.*, at 4 (footnote omitted).[11] Because § 35 of the Mineral Leasing Act prescribes the distribution formula for revenues received from all leases issued "under the provisions of this chapter," we think it an inescapable deduction from *Tallman* that, prior to 1964, the Act continued to provide the formula for disposition of revenues generated by leases on public lands after the lands were withdrawn for wildlife refuges.

Neither the Mineral Leasing Act of 1920 nor the 1935 Refuge Act authorized the Secretary to issue leases for mineral extraction from refuges created from acquired lands. 40 Op. Atty. Gen. 9 (1941) (Attorney General Jackson); 21 Comp. Gen. 873 (1942). Congress responded by passing the Mineral Leasing Act for Acquired Lands, Act of Aug. 7, 1947, ch. 513, 61 Stat. 913, 30 U. S. C. § 351 *et seq.* See n. 10, *supra*. In addition to conferring authority on the Secretary to issue leases for specified minerals, including oil and gas, it provided that revenues from the leases be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U. S. C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that mineral revenues be distributed according to the formula in the 1935 Refuge Act.

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[11] The Secretary argues that *Tallman*'s construction of the Mineral Leasing Act should not now be binding, because the Court did not need to construe the Act. This is incorrect. The Court was required to determine that the Secretary had statutory authority to issue oil leases on refuges withdrawn from public lands, before it could reach the question whether the Executive Orders withdrawing the refuge lands limited that authority. The Court examined the language of § 1 of the Act and found that it gave the Secretary the requisite authority. See 380 U. S., at 4, n. 3.

Thus, when Congress amended the Wildlife Refuge Revenue Sharing Act in 1964, the disposition of oil and gas revenues was reasonably clear. Such revenues from reserved refuge lands were distributed according to the Mineral Leasing Act of 1920. Revenues from acquired refuge lands were distributed according to the formula in the 1935 Refuge Act, not by its own terms, but by operation of the 1947 Mineral Leasing Act for Acquired Lands.

B

The question presented by these cases is whether Congress intended to alter this program of revenue distribution when it amended the 1935 Refuge Act in 1964. The impetus for proposals leading to the passage of the amendments was the difficulty the Department had experienced in acquiring new refuge lands. See 1964 S. Rep. 5; 1964 H. R. Rep. 2. Localities resisted having land removed from local tax roles. The purpose of the amendments was to "provide a more equitable formula for payments to counties as compensation for loss of taxable properties that have been acquired by the Federal wildlife refuge system." 1964 S. Rep. 2. See 1964 H. R. Rep. 2–3. Public Law 88–523 met this problem by changing the formula for distribution of revenues from refuges consisting of acquired lands. § 401 (c)(1), 78 Stat. 701. The new formula provided that counties within which acquired refuge lands lay could receive, at their option, a payment based on the adjusted cost of the lands rather than on revenues produced.[12] Congress intended the Department to pay more to counties under the new law than it had under the old.

There is no explanation in the legislative history of Pub. L. 88–523 for the insertion of "minerals" in the list of resources

[12] The 1964 payment formula was liberalized further in 1978. Pub. L. 95–469, § 1 (a)(3), 92 Stat. 1319. See n. 5, *supra* (quoting present law).

subject to the Wildlife Refuge Revenue Sharing Act. Such silence is suggestive, because Congress was concerned that the Department have sufficient funds to make the increased payments mandated by the amendments.[13] See 1964 S. Rep. 12 (statement of Secretary Udall); 1964 H. R. Rep. 11. Congress might be expected to have mentioned a change wrought through the amendments which would increase refuge revenues by amounts exceeding total existing refuge revenues.[14]

During deliberations on the amendments, the Fish and Wildlife Service presented to Senate and House Committees tables showing present payments to counties containing refuges, and payments estimated under the proposed amendments. 1964 S. Rep. 13; 1964 H. R. Rep. 3. The relevant table shows no change in the expected payments to the Borough of Kenai Peninsula. This table assumed that oil and gas revenues were governed by the Mineral Leasing Act of 1920 both before and after the amendments.[15]

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[13] The silence of Congress may provide a treacherous guide to its intent. *Scripps-Howard Radio, Inc.* v. *FCC*, 316 U. S. 4, 11 (1942). Here, however, it is almost inconceivable that Congress knowingly would have changed substantially a longstanding formula for distribution of substantial funds without a word of comment. In 1978, Congress inserted "salmonoid carcass[e]s" into the list of resources governed by § 401 (a) of the Wildlife Refuge Revenue Sharing Act. Pub. L. 95–469, § 1 (a)(1), 92 Stat. 1319. Even for this comparatively trivial addition, Congress explicitly stated, "[s]almonoid carcasses have been included to allow for the sale of salmon used in hatchery operations." H. R. Rep. No. 95–1197, p. 8 (1978).

[14] In 1963, net receipts from the national wildlife system totaled $2,350,000. 1964 H. R. Rep. 11. In 1964, revenues from oil and gas leases in the Kenai Moose Range exceeded $3,800,000. App. to Brief for Federal Petitioners 2a.

[15] The table indicated that 1963 payments to the Kenai Peninsula Borough under the Wildlife Refuge Revenue Sharing Act, amended or unamended, totaled $1,768. 1964 H. R. Rep. 3. This figure cannot include 25% of the revenues from oil and gas leases. See n. 14, *supra*.

The inference seems inescapable that Congress in 1964 did not intend by the insertion of "minerals" in § 401 (a) of the Wildlife Refuge Revenue Sharing Act to subject revenues from oil leases on reserved refuge lands to its distribution formula. The more reasonable explanation for the intended effect of including minerals" is provided by the Department of the Interior. The insertion of "minerals" appears first in 1962 in proposed bills supported by the Department as substitutes for other bills then pending before the House and Senate to increase payments to counties. S. 2138, 87th Cong., 1st Sess. (1961); H. R. 13176, 87th Cong., 2d Sess. (1962). In its report to the Committees, the Department offered no particular explanation for this new term, but the Secretary here concedes that this change was included within the proposal's descriptive category of "various perfecting . . . provisions." See Letter from Frank P. Briggs, Assistant Secretary of the Interior, June 20, 1962, in S. Rep. No. 1919, 87th Cong., 2d Sess., 13 (1962); H. R. Rep. No. 2499, 87th Cong., 2d Sess., 4 (1962).

The insertion of "minerals" in § 401 (a) could both leave the mineral revenues from reserved lands subject to the Mineral Leasing Act of 1920 and "perfect" § 401 (a) by incorporating prior changes. The 1947 Mineral Leasing Act for Acquired Lands subjected mineral revenues from lands acquired for wildlife refuges to the distribution formula in the 1935 Refuge Act. We hold that Congress inserted "minerals" in the amended § 401 (a) to recognize the effect of the 1947 Act and to make clear that the amended distribution formula applied to mineral revenues from acquired lands. This conclusion draws support from the evident fact that Congress was concerned almost exclusively with problems related to acquired refuge lands in adopting the 1964 amendments.

Finally, the Department of the Interior interpreted the amendments when passed, and for 10 years thereafter, as not altering the distribution formula. The Department's con-

temporaneous construction carries persuasive weight. *Udall* v. *Tallman*, 380 U. S., at 16. Such attention to contemporaneous construction is particularly appropriate in these cases, because the Department first proposed the amendment. See *SEC* v. *Sloan*, 436 U. S. 103, 120 (1978). The Department's current interpretation, being in conflict with its initial position, is entitled to considerably less deference. See *General Electric Co.* v. *Gilbert*, 429 U. S. 125, 143 (1976). In these cases, we find it wholly unpersuasive.

IV

In summary, we hold that revenues generated by oil and gas leases on federal wildlife refuges consisting of reserved public lands must be distributed according to the formula provided in § 35 of the Mineral Leasing Act of 1920. Finding no "clearly expressed congressional intention" to repeal this provision by implication, *Morton* v. *Mancari*, 417 U. S., at 551, we conclude that the term "minerals" in § 401 (a) of the Wildlife Refuge Revenue Sharing Act applies only to minerals on acquired refuge lands. Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE STEVENS, concurring.

My colleagues periodically criticize the way the Court manages its docket. Most frequently, such criticism takes the form of a dissent from the denial of certiorari. See, *e. g.*, *Brown Transport Corp.* v. *Atcon, Inc.*, 439 U. S. 1014 (WHITE, J., dissenting). Although I consider the practice of dissenting from denials of certiorari counterproductive, see *Singleton* v. *Commissioner*, 439 U. S. 940, 942–946 (opinion of STEVENS, J.), in the context of the present cases it may be appropriate to suggest that the Court may misuse its scarce resources not only by occasionally denying certiorari in cases deserving plenary consideration, but also by granting certio-

rari without adequate justification.[1] As long as the Court creates unnecessary work for itself in this manner, its expressions of concern about the overburdened federal judiciary will ring with a hollow echo.

In these cases, the Court of Appeals for the Ninth Circuit should have been permitted to provide the final answer to the unique question of statutory construction presented by the petitions for certiorari. The decision of the Court of Appeals did not conflict with any other judicial decision, and there is no reason to anticipate that a comparable issue will arise in another Circuit in the foreseeable future.[2] I fully agree with the majority's explanation of why the Court of Appeals correctly read these ambiguous statutes, but even if I were persuaded that JUSTICE STEWART had the better of the argument, I still would feel that the public interest would have been better served by allowing this litigation to terminate in the Court of Appeals.

The question of how to divide the revenues from oil and gas leases on public lands in the Kenai Peninsula is clearly a matter for Congress to decide. If Congress is displeased with the decisions of this Court and the Court of Appeals, it may promptly reverse them by revising the relevant statutes. If that is its view, it no doubt would have acted more promptly if we had simply denied certiorari.[3] On the other

[1] Of course, these two problems are not wholly independent of one another. In light of the ever-increasing number of petitions for certiorari and the severe practical constraints on our ability freely to grant certiorari, it is certainly safe to assume that whenever we grant certiorari in a case not deserving plenary review, we increase the likelihood that certiorari will be denied in other, more deserving, cases.

[2] Neither of the petitions for certiorari filed in these cases suggested that the Court of Appeals' decision conflicted with any other judicial decision. In addition, the Solicitor General, in the petition filed on behalf of the federal parties, observed that the question of statutory construction presented here was unlikely to arise in the foreseeable future in another Circuit. See Pet. for Cert. in No. 79–1890, p. 18.

[3] In fact, Congress declined to clarify its intention with respect to the

hand, if we have correctly perceived the intent of the legislature, nothing has been gained by protracting this litigation. Admittedly, a significant amount of money was at stake, see *ante*, at 263, n. 6, but the offsetting costs associated with holding the funds in escrow pending our review, as well as the costs associated with the expenditure of this Court's material and human resources, are also significant.

The federal judicial system is undergoing profound changes. Among the most significant is the increase in the importance of our Courts of Appeals. Today they are in truth the courts of last resort for almost all federal litigation. Like other courts of last resort—including this one—they occasionally render decisions that will not withstand the test of time. No judicial system is perfect and no appellate structure can entirely eliminate judicial error. Most certainly, this Court does not sit primarily to correct what we perceive to be mistakes committed by other tribunals. Although our work is often accorded special respect because of its finality,[4] we possess no judicial monopoly on either finality or respect. The quality of the work done by the Courts of Appeals merits the esteem of the entire Nation, but, unfortunately, is not nearly as well or as widely recognized as it should be. Indeed, I believe that if we accorded those dedicated appellate judges the deference that their work merits, we would be better able to resist the temptation to grant certiorari for no reason other than a tentative prediction that our review of a case may produce an answer different from theirs. In my opinion, that is not a sufficient reason for granting certiorari.[5]

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distribution of the Kenai oil and gas leasing revenues in part because of the concerns of some of its Members that such legislative action would be inappropriate while these cases were still pending in the federal courts. See *ante*, at 264–265, n. 8; *post*, at 285, n. 10.

[4] Indeed, as Justice Jackson once noted, "[w]e are not final because we are infallible, but we are infallible only because we are final." *Brown* v. *Allen*, 344 U. S. 443, 540 (concurring in result).

[5] The possibility that a lower court may have incorrectly decided a federal question is, of course, a relevant factor when this Court decides

Because no other reason for reviewing this case is apparent, a simple denial of certiorari would have been an appropriate and efficient disposition.

My disagreement in these cases with the Court's management of its docket does not, of course, prevent me from joining JUSTICE POWELL's opinion for the Court on the merits.

JUSTICE STEWART, with whom THE CHIEF JUSTICE and JUSTICE MARSHALL join, dissenting.

Today the Court strains to conclude that Congress did not mean what it said, and judicially repeals a reasonable [1]

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whether to exercise its discretionary certiorari jurisdiction. However, as Rule 17.1 of the Rules of this Court makes plain, our certiorari jurisdiction is designed to serve purposes broader than the correction of error in particular cases:

"A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

"(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

"(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

"(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

By its own terms, Rule 17.1 "neither control[s] nor fully measur[es]" the extent of our discretion to grant or to deny certiorari. Nonetheless, it is surely significant that none of the factors identified in the Rule can fairly be said to be present in this case.

[1] There is nothing unreasonable, or even unusual, about a system of revenue sharing that returns a portion to the locality most immediately

and specific legislative provision because the provision announced a change in the law the Court divines to have been unintended.

A

The Wildlife Refuge Revenue Sharing Act, as amended in 1964, expressly provides that "all revenues received by the Secretary of the Interior from the sale or other disposition of . . . minerals . . ." within federal wildlife refuges administered by the Fish and Wildlife Service shall be "reserved in a separate fund for disposition as hereafter prescribed." 16 U. S. C. § 715s (a) (1976 ed., Supp. III). At the end of each fiscal year, a portion of these revenues are to be distributed to the counties in which the refuges are located. In the case of "any reserve area," expressly defined as "land withdrawn from the public domain" for wildlife refuge purposes, § 715s (g)(3), the allocation to the county is 25% of net receipts. § 715s (c)(2). Alternative formulas are specified for refuges created out of "fee areas." § 715s (c)(1). Net receipts remaining after the payments to counties "shall be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges." § 715s (e). The statute draws no distinction between mineral revenues and receipts from other natural resources or between revenues from "acquired" lands and those from "reserved" lands. The statutory scheme is therefore clear: receipts from mineral leases, like all other revenues generated from wildlife refuges, whether the refuge is comprised of reserved or acquired lands, are to be apportioned between the

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affected rather than to the State at large. The payment of 25% of the revenues to the county in which the refuge is situated compensates the county for tax revenue lost because of the public status of the lands and for any local services made necessary because of the refuge, and the payment of 75% to the special fund provided for in 16 U. S. C. § 715s (1976 ed., Supp. III) satisfies the need to provide a source of revenue for refuge management and maintenance.

counties and the federal Migratory Bird Conservation Fund. No receipts are to go to the State itself.

The Court argues that the addition of the word "minerals" to the Wildlife Refuge Revenue Sharing Act must be read to apply only to acquired refuge lands and not to reserved refuge lands. But there is no support, in law or legislative history, for exempting mineral revenues from refuges consisting of reserved public lands from the distribution formula of the Wildlife Refuge Revenue Sharing Act. The District Court concluded that "there is nothing in 16 U. S. C. § 715s which would support a restrictive construction of the word 'minerals.'" and that "a literal approach of statutory construction would dictate an expansive definition including both reserved and acquired lands." 436 F. Supp. 288, 291. Similarly, the Court of Appeals found that "under the plain meaning of minerals and of the other provisions of § 715s, its language fairly brings the Kenai Moose Range oil and gas revenues within it scope." 612 F. 2d 1210, 1213. It was a mistake for either court to proceed further.

The addition of the word "minerals" to the Wildlife Refuge Revenue Sharing Act in 1964 would be meaningless if it reached only leases of acquired lands. And, "[i]n construing a statute we are obliged to give effect, if possible, to every word Congress used." *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 339. Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U. S. C. § 355, already provided that mineral leases of acquired lands "shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease." Accordingly, any allocation scheme established for wildlife refuges encompassing acquired lands would automatically apply to mineral revenues, as well as those from the resources specified in the Refuge Act. As there was no ambiguity on that point, there was no useful purpose for Congress to declare once again how mineral revenues from acquired lands within wildlife refuges would be allocated.[2]

[2] But see n. 3, *infra*.

The suggestion, therefore, that the 1964 amendment reached only acquired lands presumes that the design of Congress in adding the word minerals was to accomplish precisely nothing.

B

The Court concludes that the statute does not mean what it says because the Wildlife Refuge Revenue Sharing Act of 1964 is in conflict with the Mineral Leasing Act of 1920,[3]

[3] While it is clear there is a conflict, it is not at all clear that the conflict is even relevant to these cases. The Court assumes that the 1964 amendment, if given its plain meaning, changed the allocation of oil and gas lease revenues to affected counties. Although, as the Court of Appeals correctly noted, "the legislative history of the 1964 amendments to 16 U. S. C. § 715s sheds no direct light on the issue here," 612 F. 2d 1210, 1213, it is arguable that before 1964, oil and gas lease receipts generated from lands in federal wildlife refuges were subject to § 401 of the Wildlife Refuge Act of 1935, ch. 261, 49 Stat. 383, and *not* to the Mineral Leasing Act of 1920, despite the vigorous contentions of today's Court. See *ante*, at 267–268.

Section 401 of the 1935 Act established a distribution scheme for refuge revenues "from the sale or other disposition" of natural resources and receipts "from other privileges." Although oil and gas leases are not mentioned, the provision was intended to give the administering agency broad authority to make "disposition of surplus . . . products on these reservations or refuges upon such terms and conditions as [it] shall determine to be for the best interests of the Government." H. R. Rep. No. 886, 74th Cong., 1st Sess., 3 (1934). In 1946, the Interior Department ruled that oil and gas leases could be granted on wildlife refuge lands under the 1935 Act. Op. Solic. Interior Dept. M. 34516 (Aug. 5, 1946). Under the 1964 amendments to the Wildlife Refuge Revenue Sharing Act, 25% of oil and gas lease revenues are apportioned to the affected counties embracing reserved refuge lands. Accordingly, Congress may have intended that the addition of the word "minerals" in 16 U. S. C. § 715s (1976 ed., Supp. III) was merely a "perfecting provision," S. Rep. No. 1919, 87th Cong., 2d Sess., 2 (1962); H. R. Rep. No. 2499, 87th Cong., 2d Sess., 4 (1962), and not an amendment of existing law at all.

Indeed, Interior Department spokesmen in the 1962, 1963, and 1964 congressional hearings described the existing law for receipts collected from both reserved public lands and acquired lands as generally subject to § 401 of the 1935 Act. See S. Rep. No. 1919, *supra*, at 2, 13;

and because "repeals by implication are not favored." *Ante*, at 267. But that canon of construction has no force in this context. The challenged section in the 1964 Act, far from "repealing" the 1920 Act, merely established a limited and specific exception to one of the provisions in the earlier law. When the text of a new statute, dealing with a discrete subject, is unambiguous, it should be given effect even if it alters a previous law that dealt with the same general subject.

The maxim that "repeals by implication are disfavored" has force when the argument is made that a general statute, wholly occupying a field, eviscerates an earlier and more specific enactment of limited coverage but without an indication of congressional intent to do so. In such a case, it may be reasonable to presume that Congress had not antici-

H. R. Rep. No. 2499, *supra*, at 4; H. R. Rep. No. 1753, 88th Cong., 2d Sess., 14 (1964); S. Rep. No. 1096, 88th Cong., 2d Sess., 25 (1964). The Secretary of the Interior stated that "[u]*nder existing law, enacted in 1935*, the counties in which our refuges are located receive 25 percent of the net revenue from operations on national wildlife refuges, such as *oil production*, grazing, timber harvest, and the like." More Equitable Payments To Counties Having Wildlife Refuges: Hearings on S. 179, S. 1363, S. 1720, and S. 2498 before the Senate Committee on Commerce, 88th Cong., 2d Sess., 19 (1964) (emphasis added). Participation By Counties In Refuge Receipts: Hearings on H. R. 1127, H. R. 2393, H. R. 5596, H. R. 9030 and H. R. 11008 before the Subcommittee on Fisheries and Wildlife Conservation of the House Committee on Merchant Marine and Fisheries, 88th Cong., 2d Sess., 34 (1964) (emphasis added).

But it is not important to decide today what the true rule for apportionment of mineral resources from refuge lands was before 1964. And, contrary to the Court's assertion, I do not do so here, and "explai[n] that Congress added 'minerals' . . . to reaffirm" that the 1935 Act already controlled the disposition of oil revenues from reserved refuge lands. *Ante*, at 268, n. 10. In 1964, Congress did not have to resolve the question of what the law had been before; its concern was properly with the future. Ideally, it could have prefaced § 715s with the language "notwithstanding any other provision of law." But it did not. Instead, it introduced an entirely unambiguous prospective rule with the phrase: "Beginning with the next full fiscal year and for each fiscal year thereafter . . . ." At least for me, it needed to do no more.

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pated that its broad pronouncement would have serious implications in a peripheral, or even quite different area, and that had it recognized that a specific earlier law would be rendered meaningless by a new enactment, it would have expressly indicated its intent to repeal or amend.

Thus, in *Morton* v. *Mancari*, 417 U. S. 535, the Court refused to find a repeal where the words of the Equal Employment Opportunity Act of 1972, if taken literally, would have worked a repeal of an Indian preference policy consistently recognized by Congress for almost 40 years. The Court's description of *Mancari* as "a prototypical case where an adjudication of repeal by implication is not appropriate," *id.*, at 550, is instructive: "The preference is a longstanding, important component of the Government's Indian program. The anti-discrimination provision, aimed at alleviating minority discrimination in employment, obviously is designed to deal with an entirely different and, indeed, opposite problem." *Ibid.*; see also *Fussell* v. *Gregg*, 113 U. S. 550. The contrast with this case is obvious. The provision in the more recent enactment deals specifically with the *same* subject—distribution of revenue from leases on federal lands—that had been the object of an earlier, and more general[4] statute.[5] In any case, there is more than enough evidence

[4] While the Mineral Leasing Act of 1920 covers in general terms the distribution of revenue from federal lands, the later Wildlife Refuge Revenue Sharing Act, as amended in 1964, embraced new provisions that apply with particularity to wildlife refuges, without distinction between those reserved or acquired. To that extent, the later Act must constitute a repeal of the former. "[T]he narrowly drawn, specific . . . provision . . . must prevail over the broader . . . provisio. . . . ." *Radzanower* v. *Touche Ross & Co.*, 426 U. S. 148, 158.

[5] These cases do not involve an apparent limitation on an important and pervasive statute, such as the Sherman Act. See, *e. g.*, *United States* v. *Borden Co.*, 308 U. S. 188. In such a case, as in *Mancari*, implied repeals are not found because it would be unreasonable to assume Congress would alter fundamental policy without an unambiguous expression of its intent to do so. But it is equally unreasonable to expect

to indicate that Congress was aware of what it was doing when the word "minerals" was added to the Wildlife Refuge Revenue Sharing Act.

The legislative history of the 1964 amendments to 16 U. S. C. § 715s (1976 ed., Supp. III) discloses that Congress had before it numerous bills from which to choose to compensate counties in which wildlife refuges were located, some of which omitted any reference to "minerals," S. 2138, 87th Cong., 1st Sess. (1961); S. 2678, 2770, 2927, 3201, 87th Cong., 2d Sess. (1962); H. R. 12144, 12143, 11535, 11525, 10714, 87th Cong., 2d Sess. (1962); S. 1720, 88th Cong., 1st Sess. (1963); and some that did, H. R. 2393, 1004, 1127, 9030, 5996, 88th Cong., 1st Sess. (1963); H. R. 11008, 88th Cong., 2d Sess. (1964); S. 179, 1363, 88th Cong., 1st Sess. (1963); S. 2498, 88th Cong., 2d Sess. (1964). Presumably when Congress adopted a bill containing the term, it was aware of the difference. Moreover, the 1964 amendment was not a "technical" amendment, nor was it a last-minute addition from the floor. See *United States* v. *Batchelder*, 442 U. S. 114, 120. The suggestion that the word "minerals" be added to 16 U. S. C. § 715s (1976 ed., Supp. III) was raised in June 1962 when the Interior Department submitted a substitute bill for those pending in the House and Senate. Report of the Department of the Interior dated June 20, 1962, in S. Rep. No. 1919, 87th Cong., 2d Sess., 13, 15 (1962); Report of the Department of the Interior of June 22, 1962, in Authorize Increased Payments to Counties for Wildlife Refuges: Hearings on H. R. 10714, H. R. 11525, H. R. 11535, H. R. 12143, and H. R. 12144 before the Subcommittee on Fisheries and Wildlife Conservation of the House Committee on Merchant Marine and Fisheries, 87th Cong., 2d Sess., 7, 9 (1962).

Congress to specify, or indeed even to consider, the effect of a new statutory provision on all earlier provisions affecting the same subject that may be swept away by the enactment, particularly if the old provisions are unclear. See n. 3, *supra*.

The amendment was not highlighted, but it is unlikely that it escaped notice.[6] Later the same year, the relevant committees of both the House and the Senate adopted the language, S. Rep. No. 1919, *supra*, at 19; H. R. Rep. No. 2499, 87th Cong., 2d Sess., 9 (1962), and the text was before Congress for the following two years.

It is therefore very difficult to conclude that the addition was inadvertent or unnoticed.[7] But, in any case, nothing in the legislative history demonstrates congressional intent different from that reflected in the words of the statute. " 'The most that can be said for the legislative history is that it is on the whole inconclusive. Certainly, it contains nothing that requires the court to reject the construction which the statu-

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[6] The Court makes much of the fact that a statistical table comparing revenues actually received by counties with those estimated to result from the amendment showed no change in the amounts from the Kenai Range, and if the amendment meant what a plain reading of it indicates, an increase should have been reflected. *Ante*, at 271. That straw of evidence scarcely compels the conclusion that the amendment does not mean what it says. It would hardly be surprising if the legislators overlooked a single disparity in a single entry in a lengthy exhibit. And it is noteworthy that the table the Court refers to appeared in the 1964 Reports only, while the addition of the word "minerals" to § 715s was proposed in 1962, when the comparable statistical table did not include any indication of the anticipated payments to counties from public land areas under the proposed amendment. See S. Rep. No. 1919, 87th Cong., 2d Sess., 11, nn. 1 and 2 (1962).

[7] That Congress explained the addition of "[s]almonoid carcasses," see *ante*, at 271, n. 13, hardly supports the inference that Congress would also have explained the addition of the word "minerals." By the Court's strained logic, premised on the notion that "[t]he silence of Congress may provide a treacherous guide to its intent," *ibid.*, Congress is put on notice that any time it explains one provision of a statute, no matter how trivial, it does so at its peril. For if it fails similarly to explain all provisions, no matter how important, a court would be free to strike those unexplained provisions as unintended. That, in my view, leads to far more "treacherous" results than those feared by today's Court.

tory language clearly requires.'" *Ullman* v. *United States*, 350 U. S. 422, 433.

The Court today is bothered because the literal meaning of a statute altered prevailing law.[3] But usually the very point of new legislation is to alter prevailing law. "Every act is made, either for the purpose of making a change in the law, or for the purpose of better declaring the law; and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment." T. Sedgwick, The Interpretation and Construction of Statutory and Constitutional Law 104 (2d ed. 1874). Congress does not have the affirmative obligation to explain to this Court why it deems a particular enactment wise or necessary, or to demonstrate that it is aware of the consequences of its action.[3] See *Harrison* v. *PPG Industries, Inc.*, 446 U. S. 578, 592. And "[i]t

[3] This is not a case where the plain meaning of statutory language would lead to an absurd or futile result, see, *e. g.*, *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corp.*, 305 U. S. 315, or to an unreasonable result at variance with the policy of the legislation as a whole. See, *e. g.*, *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534. See also *Shapiro* v. *United States*, 335 U. S. 1, 31.

[3] The Court relies on the fact that the Department of the Interior ignored the 1964 amendment for a decade with respect to oil and gas revenues from the Kenai Range. *Ante*, at 272–273. But administrative errors are not self-validating. See *SEC* v. *Sloan*, 436 U. S. 103, 117–119; *Adamo Wrecking Co.* v. *United States*, 434 U. S. 275, 287–288, n. 5; *Dixon* v. *United States*, 381 U. S. 68, 73. Unauthorized payments from the federal Treasury are not immune from correction, and the United States can retrieve money mistakenly dispersed by its officials. *United States* v. *Wurts*, 303 U. S. 414, 415–416; *Wisconsin Central R. Co.* v. *United States*, 164 U. S. 190, 212. In any case, there is no indication that the administrative practice until 1975 was the result of considered evaluation of the 1964 amendments. Instead it appears that it was the inertial continuation of earlier practice. A much more reliable indication of the administrative construction of the 1964 amendment is the "detailed and comprehensive" re-evaluation by the Department in 1975, confirmed by the Comptroller General. *Andrus* v. *Sierra Club*, 442 U. S. 347, 358. See also *NLRB* v. *Iron Workers*, 434 U. S. 335, 351.

is not a function of this Court to presume that 'Congress was unaware of what it accomplished.'" *Alberna*z v. *United States*, 450 U. S. 333, 342 (quoting *U. S. Railroad Retirement Board* v. *Fritz*, 449 U. S. 166, 179).

Rather than join the Court in its speculative efforts to deal with the doctrine of implied repeal, I would rest decision of this case upon an established rule of statutory construction: *leges posteriores, priores contrarias abrogant.* Sedgwick describes this rule with approval as follows: "'If two inconsistent acts be passed at different times, the last,' said the Master of the Rolls, 'is to be obeyed; and if obedience cannot be observed without derogating from the first, it is the first which must give way.'" Sedgwick, *supra*, at 104. See *District of Columbia* v. *Hutton*, 143 U. S. 18, 26–27; *Henderson's Tobacco*, 11 Wall. 652, 657; *United States* v. *Tynen*, 11 Wall. 88, 92. Observation of this rule also allows the Court to respect the most basic of all canons of statutory construction: that statutes mean what they plainly say.[10] As Chief Justice Marshall said more than a century and a half ago: "[T]he intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words there is no room for construction. The case must

[10] Of course, if I am wrong, and Congress did not intend that oil revenues from reserved refuge lands be distributed according to the scheme of the 1964 Act, Congress is always free to revise the statute. It would be far more appropriate, given the constitutional allocation of lawmaking power to Congress and not to the courts, if this Court were to respect the plain meaning of the statute, and leave it to Congress to make any changes it thinks necessary. The Court's readiness to rewrite legislation contributes, I am afraid, to undue congressional willingness to leave it to the courts to do its redrafting. Indeed, the Senate Committee on Environment and Public Works, when confronted with the dispute involved in this case chose to "tak[e] no position as to whether disposition of mineral revenues should be made pursuant to the Mineral Leasing Act or the Refuge Revenue Sharing Act." S. Rep. No. 95–1174, pp. 4, 8 (1978). See also *ante*, at 264–265, n. 3.

be a strong one indeed, which would justify a court in departing from the plain meaning of words . . . in search of an intention which the words themselves did not suggest." *United States* v. *Wiltberger*, 5 Wheat. 76, 95–96.

I respectfully dissent.

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MEMORANDUM

State of Alaska

TO: To The File

DATE: April 13, 1982

FILE NO:

TELEPHONE NO:

FROM: Wilson L. Condon
Attorney General

SUBJECT: 1969 Opinions of the Attorney General No. 6

From time to time questions arise over whether 1969 Formal Opinion No. 6 was ever issued. This memorandum is written to answer those questions. Opinion No. 6 was a letter dated September 5, 1969, from G. Kent Edwards, the then Attorney General, to The Honorable Wayne N. Aspinall, Chairman of the Committee on Interior and Insular Affairs in the United States House of Representatives. That opinion was supplemented by a letter dated October 3, 1969, which is styled 1969 Opinions of the Attorney General No. 6 Supplemental. Together those documents opine that if the Congress enacted a settlement of the then pending Alaska Native land claims, it would be unconstitutional for such a settlement to require the State to pay a two per cent overriding royalty from mineral production on certain State lands to Alaskan Natives.

When the formal opinions for the period 1963 through 1969 were duplicated and bound sometime after December 1970, John Havelock was the Attorney General. Formal Opinion No. 6 from 1969 was withdrawn from the collection of opinions that were bound. In place of Opinion No. 6 a sheet was inserted which states "Note Opinion Number 6 of 1969 Was Never Issued."

I do not know precisely the date when this Opinion was "withdrawn". I only know that it was withdrawn sometime after John Havelock became the Attorney General. As everyone knows, the Alaska Native Claims Settlement Act which was finally enacted in December of 1971, in fact, imposed a two per cent overriding royalty on mineral production from State selected lands. The constitutionality of that provision was never challenged by the State of Alaska. Had the State of Alaska continued to follow the legal position taken in so-called 1969 Opinions of the Attorney General No. 6, it presumably would have challenged the constitutionality of the Alaska Native Claims Settlement Act.

cc: Case Management

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K, STATE CAPITOL — JUNEAU 99801

1969 Opinions of the Attorney
General No. 6 Supplemental

October 3, 1969

The Honorable Wayne N. Aspinall, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington, D. C. 20510

Dear Congressman Aspinall:

Certain assertions made by counsel for the Alaska Federation of Natives in their memorandum of September 10, 1969, regarding the legality of an overriding royalty for Alaska natives, appear to require further comment by the State of Alaska in order to place the issues in their proper perspective. In furtherance of this end, I have appended hereto excerpts from the State's brief on file in the case of State of Alaska v. Stewart L. Udall, now pending in the United States Court of Appeals for the 9th Circuit. These excerpts, comprising pages 15-21 and 54-58 of our brief, will shed light on certain questions relevant to A.F.N.'s contentions.

The controversy does not center upon whether Alaskan natives may be compensated for taking of their claimed ancestral lands, but whether the United States may compensate them by taking a royalty out of lands already granted in fee to the State of Alaska by enactment of Section 6 of the Statehood Act and, as to federal lands, by reducing the portion of royalty granted to the State in such lands by the Statehood Act.

The A.F.N. asserts that such royalty may be taken from the State in order to compensate Alaskan natives. The basis of this position is not clear, however. At pages 16-17 of its memorandum A.F.N. appears to conclude that the disclaimer provision of Section 4, Statehood Act, prevents the State from selecting land claimed by natives until Congress extinguishes aboriginal title. Of course, this is plainly untenable. Committee hearings leading to passage of the Statehood Act, as well as the interpretation of that Act by the U. S. Supreme Court in Organized Village of Kake v. Egan, 369 U.S. 60 (1962), make it clear

that lands claimed by natives were included in the grant of lands to the State in the Act. This is discussed at pages 15-21 of the attached brief.

Elsewhere, at pages 19 and 22 of its memorandum, A.F.N. seeks to reach this same result by interpreting the disclaimer as a retention by the United States of the absolute power to take back from the State a royalty in native-claimed lands granted to the State and selected under the Act, or even to take back the whole fee title in order to satisfy native claims. A.F.N. contends (at page 39 of its memorandum) that this power exists as to lands already patented to the State as well as to tentatively approved or unapproved but selected lands. This conclusion is fundamentally misconceived. It would virtually destroy the right of the State to select native-claimed land (which includes nearly all the land in Alaska), a result not intended by Congress as already noted.

The ambiguity of A.F.N.'s position springs from its misunderstanding of Section 4 of the Statehood Act which is quoted in pertinent part at pages 15-16 of the attached brief. Under that section the State and its people "forever disclaim all right and title" to native-claimed lands. This was very definitely not intended to prevent the State from selecting land claimed by natives, nor was it intended to reach that result by vesting in Congress the prerogative to act in total or partial derogation of its own grant of such lands to the State. Lands cannot be granted to and selected by the State and at the same time be <u>totally</u> and <u>perpetually</u> disclaimed by the State. Disclaimer of native-claimed land operates only as to such land if it is "not granted or confirmed to the State" by the Act. It logically follows, as Section 4 provides, that as to both federal lands and native-claimed lands not granted to the State, the federal government retains "absolute jurisdiction and control." This preserves the power of Congress to dispose of the lands it has not previously disposed of by grants to the State. It does not empower the federal government to dispose of the same land twice and in inconsistent ways. The power of Congress to determine the manner and extent of compensation for the taking of native-claimed land is likewise preserved in the first proviso of Section 4, that nothing in the Act should affect such claims.

At what point did Congress make such a grant of Alaskan lands that it cannot thereafter convey a royalty

or other interest therein to natives? Such a grant was made to Alaska by the Statehood Act as of its effective date. The State of Alaska maintains that this grant also effects an extinguishment of aboriginal title if such title is found to exist in lands passed by the grant, and that cases relied on by A.F.N. for a contrary conclusion rest on factual elements distinguishable from the present situation (see pages 55-58 of attached brief). There is sound authority, however, for the conclusion that aboriginal title in Alaska was extinguished in 1867 by the treaty which transferred Alaska from Russia to the United States. Miller v. U. S., 159 F.2d 997, 1001-1002 (9th Cir. 1947). Native claims for taking of their lands, however, are specifically left in exact status quo by Section 4 of the Act. Organized Village of Kake v. Egan, supra, states that while aboriginal lands may be subjected to the grant of land to the State, the effect of the Act is to leave unimpaired the natives' right to seek compensation therefor if any were found to be due (see pages 19-20 of attached brief).

But whether or not aboriginal title exists or is extinguished by the grant, the plenary power of Congress to determine the time, manner and terms of such extinguishment does not encompass the power to act in derogation of its own previous grant of the land. Beecher v. Wetherby, 95 U.S. (5 Otto) 517, 24 L.Ed. 441 (1877), wherein Indian title was not extinguished at the time of the grant, holds this very clearly:

> . . . [T]he lands which might be embraced within those sections [granted by the federal government to Wisconsin in its statehood act] were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of lands in Wisconsin could be construed to embrace them, although they were not specially excepted. All that afterwards remained for the United States to do with respect to them, and all that could be legally done under the compact, was to identify the sections by appropriate surveys; . . . With this

> identification of the section, the title of the State, upon the authority cited, became complete, unless there had been a sale or other disposition of the property by the United States previous to the compact with the State. No subsequent sale or other disposition, as already stated, could defeat the appropriation.

The grant of lands to Alaska under the Statehood Act, Section 6(b), operates in praesenti. Use of the words "is hereby granted" signifies a present grant of lands to be thereafter identified by selection. By virtue of that grant the State became at once vested with the right of property in selected lands. It cannot be thereafter divested of such right. The U. S. Supreme Court has so held. (See page 25 of attached brief, and Noble v. Union River Logging R. R., 147 U.S. 165, 176 [1892].) Thus, it is immaterial whether the land has been tentatively approved or patented. Selection identifies the land as to which a binding grant was already made by enactment of the Statehood Act.

Honor and fairness would impel Congress to impart full effectiveness and validity to its own land grants to the State even if the law did not require it. Thus, Senate Committee hearings leading to passage of the Statehood Act showed the concern of Congress that it should be able to exercise its customary right to extinguish aboriginal title in order

> "to assure a clear title to the State on all land grants . . . . Without some such guaranty of a clear title, the committee feels that the grants of land might be of little value." S.Rep. No. 1028, 83rd Cong., 2d Sess. 4.

It is this same consideration which underlies the question of reducing the State's royalty on federal lands in order to compensate Alaskan natives. And here, also, the law likewise prevents such a solution. Section 6 of the Statehood Act, by its own terms, provides that the Alaska Constitution is amended by the vote of the people of the State, consenting to all provisions of the Act

"prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska. . . ."

Those terms and conditions include the oil royalty granted to Alaska in federal lands (Section 28). Such vote of consent cannot be considered a "veto power" by the State over congressional action, as contended by A.F.N. (p. 37 of A.F.N. memorandum). The Act itself requires the State's consent to its terms in order to be effective. For Congress to unilaterally rewrite those terms would be to dishonor its grant of the royalty and to breach one of the conditions on which Alaska consented to be bound by the Statehood Act. This arrangement cannot be otherwise viewed than as a solemn compact between Alaska and the United States, which is entitled to the same constitutional protection afforded all such obligations.

As noted at the outset, the question herein concerns not whether or to what extent Alaskan natives should be compensated for lands taken, but whether such compensation may be taken out of land and property rights already granted by Congress to the State. A solution supported by legal authority would be one which honors the substantial and binding commitments already made by Congress to the State of Alaska.

Sincerely,

G. Kent Edwards
Attorney General

GKE:jt

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K, STATE CAPITOL — JUNEAU 99801

1969 Opinions of the
Attorney General No. 6

September 5, 1969

The Honorable Wayne N. Aspinall, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington, D. C. 20510

Dear Mr. Aspinall:

This opinion is in response to the request of the Committee during the recent hearings on Alaska Native Land claims for a legal memorandum of the Department of Law of the State of Alaska on certain issues which were raised by the Position Paper of the Alaska Federation of Natives ("A.F.N.").

The A.F.N. proposed "an overriding gross royalty of 2% of all proceeds from any state and federal lands. . ." See A.F.N. Position Paper, p. 10.

Governor Miller stated during his testimony that "the 2 per cent proposal conflicts with the Statehood Act and the province of the Alaska State Legislature. . ." The purpose of this memorandum is to explain the legal basis of the statement of Governor Miller.

The questions to be answered in this memorandum are several. First, does the 2% overriding gross royalty provision conflict with the provisions of the Alaska Statehood Act? Second, if there is such a conflict, would incorporation of such a royalty provision into a settlement enacted into law by Congress conflict with the United States Constitution?

The overriding gross royalty of 2% will be looked at both from the perspective of 2% of the current 12 1/2% of oil royalty and as 2% on top of the current 12 1/2%. The A.F.N. has stated that the memorandum should be presented in that light.

I. STATUTORY CITATIONS

The citations to pertinent provisions of the Alaska Statehood Act and other legislation are the following (the statutes are quoted in Appendix A).

1. The grant to the State of 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska. The Alaska Statehood Act, 72 Stat. 339, Sec. 28(b).

2. The federal legislation which was confirmed and amended by the Statehood Act, Sec. 28(b). It provides that the State receives 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska, 37 1/2% thereof for the construction of public roads or schools and 52 1/2% for the disposition of the State Legislature. 30 U.S.C. 191.

3. The federal legislation applicable to oil and gas leases of the United States provides for a minimum 12 1/2% royalty. 30 U.S.C. 226.

4. The state legislation applicable to oil and gas leases of the State of Alaska provides for a basic minimum 12 1/2% royalty, although, in the case of first discovery, there is a royalty of 5%. AS 38.05.180.

5. The disclaimer clause of the Alaska Statehood Act. 72 Stat. 339, Sec. 4.

II. DEFINITIONS

The logical point to begin the discussion of the question is with a definition of the term "overriding gross royalty." A leading text in the field describes the term in the following way.

> "Perhaps the only safe way to define the term 'overriding royalty' is to say that it is a fractional interest in the gross production of oil and gas, in addition to the usual royalties paid to the lessor. The term my (sic) be used in referring to a nonparticipating royalty interest in perpetuity or for a term of years created by the land or mineral owner

> prior to a lease for oil and gas. Grants by a lessee of a share of per cent of tne production from a lease are sometimes called overriding royalties. A prospective lessee may agree to pay an overriding royalty, a certain share of the production, to another person as consideration for his services in procuring a lease on certain lands. Perhaps the most common use of the term is to indicate a share of the oil or gas produced reserved in an assignment, part assignment or sublease of an oil and gas lease, and payable to the assignor by the assignee, over and above the royalty reserved in the lease payable to the lessor." Summers Oil and Gas, Vol. 3, Sec. 554, pp. 624-626.

It is also necessary to note the following distinction between a "royalty" and an "overriding royalty."

> "The question presented here is not who is entitled to a 'royalty' but who is entitled to an 'overriding royalty'. There is a difference. 'Royalty' generally means that fractional interest in the production of oil or gas which was created by the owner of the land either by reservation when the mineral lease was entered into or by direct grant to a third person. An 'overriding royalty' is a given percentage of the gross production payable to some person other than the lessor or persons claiming under him. Such interest develops where an owner of the working interest (as Texaco is here) contracts to deliver a part of the gross production to another, usually his assignor (the Trustee here)." Texaco v. Pigott, 235 F.Supp. 458, 464 (D.C. Miss. 1964).

III. STATE LEASES

The 2% overriding gross royalty cannot apply to a State of Alaska oil and gas lease issued pursuant to AS 38.05.180. This is true whether or not the 2% is a diversion of State revenues from the present 12 1/2% royalty or if the 2% is added to the present 12 1/2% royalty to make it a 14 1/2% royalty.

The real conflict between the 2% overriding gross royalty and the 12 1/2% royalty stated in AS 38.05.180 and included as a provision of state oil and gas leases is readily apparent. This is the case regardless of whether the 2% overriding royalty is retrospective so as to affect leases in existence at the time of the effective date of the settlement legislation or if it is prospective so as to affect only leases issued subsequent to the effective date of the legislation.

It is clear that Congress has no authority under the United States Constitution to amend State legislation and State contracts on matters within the province of State law. It is a fundamental principle of American jurisprudence that the supremacy clause of the United States Constitution is applicable only if the particular act of Congress is within the jurisdiction of Congress.

> "In discussing these questions, the conflicting powers of the general and state governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.
>
> If any one proposition could command the universal assent of mankind, we might expect it would be this--that the government of the Union, though limited in its powers, is <u>supreme within its sphere of action</u>. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the state legislatures, and the officers of the executive and judicial departments of the states shall take the oath of fidelity to it.