ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4874 HRES ANWR REVENUE ISSUES... - ANWR: STATE AGENCY COMMENTS 446

> The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, 'anything in the constitution or laws of any state to the contrary notwithstanding." McCulloch v. The State of Maryland, 4 Wheat. 316, 405-406 (1819). (Emphasis added.)

Conversely, it is equally clear that a State has the authority under the Tenth Amendment to the United States Constitution to regulate those activities which occur within the State if Congress has not been granted such authority by the Constitution.

> "We choose rather to plant ourselves on what we consider impregnable positions. They are these: that a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of that, it is not only the right, but the bounden and solemn duty of a State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that consequently, in relation to these, the authority of a State is complete, unqualified and exclusive.
>
> We are aware that it is at all times difficult to define any subject with proper precision and accuracy; if this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one

> which we are now considering." New York v. Miln, 11 Pet. 102, 138 (1937). (Emphasis added.)

The State of Alaska is entitled to the same rights as other states under the United States Constitution by virtue of the Statehood Act, Section 1, which provides that the State is on an "equal footing with the other states in all respects whatever. . ."

The Alaska State Legislature has properly determined what oil royalty rate should be charged lessees of State lands. The rates specified by the Legislature have been embodied in the respective leases entered into the State and are a necessary condition of the State's contractual commitment. Neither Congress nor the Alaska State Legislature has the power to interfere with or ignore that commitment. Naturally, the Alaska Legislature can increase the royalty rates to be charged in future oil and gas leases, but it does not follow that Congress may do likewise. Congress may only supercede State legislation if it does not violate the Tenth Amendment to the United States Constitution.

There is no question that royalty legislation on State oil and gas leases is a matter within the paramount jurisdiction of the State. The conservation of oil and gas is a matter within the authority of the States.

> "The paramount public interest of the state in the conservation of these natural resources, the right of the Legislature to enact reasonable laws having reasonable relation to that end, and of the Commission under the authority of those laws to make regulations to carry them into effect, have been uniformly recognized and sustained in the numerous litigations that have arisen in state and federal courts, in connection with state enforcement." Griswold v. The President of the United States, 82 F.2d 922, 925 (C.A. 5, 1936).

The royalty provisions of a mineral leasing act are related to conservation of natural resources.

> "The purpose of the Mineral Leasing Act was not to obtain sales for the gas from these reserves on Government land at any price. The Act was intended to promote wise development of these natural resources and to obtain for the public a reasonable financial return on assets that "belong" to the public. The Secretary of the Interior is the statutory guardian of this public interest. He has a responsibility to insure that these resources are not physically wasted and that their extraction accords with prudent principles of conservation. To protect <u>the public's royalty interest</u> he may determine that minerals are being sold at less than reasonable value. Under existing regulations he can restrict a lessee's production to an amount commensurate with market demand, and thus protect the public's royalty interest by preventing depression of the market. <u>He may also establish "reasonable values" for royalty purposes</u>. Of course his duties have another aspect. The public does not benefit from resources that remain undeveloped, and the Secretary must administer the Act so as to provide some incentive for development. He has statutory power to prescribe regulations to effectuate the purposes of the Act." <u>California Company v. Udall</u>, 296 F.2d 384, 388 (C.A.D.C., 1961). (Emphasis added.)

The conservation rationale behind royalty provisions has also been recognized by the State courts.

> "That the operation may be conducted by a lessee required to pay royalties to the State does not destroy its public use character or render it a private enterprise. The end to be served is the conversion of public resources and the avoidance of waste thereof and the leasehold method must be viewed as no more than a means to that end." <u>Opinion of the Justices</u>, 216 A.2d 656, 660 (Me. 1966).

Furthermore, assuming for the purpose of argument that the royalty provision is a tax measure and not a conservation measure, the same principle of state sovereignity is applicable. "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests." Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526 (1959).

A diversion of revenues which may be due to the State by virtue of State law and State leases is a flagrant violation of the United States Constitution. It not only goes beyond the scope of the supremacy clause of the Constitution, but it also takes the property of the people of the State of Alaska in violation of the due process clause of the Fifth Amendment to the Constitution. A provision of that nature constitutes a serious threat to any state government because it apparently recognizes a right of the federal government to control the finances and treasury of state government.

In accordance with the principle that the paramount interest in conservation or local taxation is with the states, the United States, under the Tenth Amendment to the Constitution of the United States, has no authority to legislate on state royalty provisions and state oil and gas leases.

IV. FEDERAL LEASES

The 2% overriding gross royalty cannot apply to a federal lease on public lands within the State of Alaska. This is true whether or not the royalty is retrospective or prosepective from the effective date of the legislation.

The first case to examine is that of a 2% overriding gross royalty which would be supplementary to the current 12 1/2% federal royalty. This would result in a 14 1/2% royalty on federal oil and gas leases in Alaska, although 30 U.S.C. 226 provides for a minimum 12 1/2% royalty throughout the United States. It is apparent that such legislation would violate not only the "equal footing"

doctrine, but that it would also violate the equal protection and due process clauses of the U. S. Constitution to the extent that a lessee would not be accorded uniform treatment under federal legislation. It is true that federal legislation need not be uniform in its application throughout the United States, but it is equally true that the principle embodied within the legislation should be uniform.

> "So far as uniformity is concerned, there is no question that the act uniformly applies to the conditions which call its provisions into play,--that its provisions apply to all the states,--so that the question really is a complaint as to the want of uniform existence of things to which the act applies, and not to an absence of uniformity in the act itself. But, aside from this, it is obvious that the argument seeks to engraft upon the Constitution a restriction not found in it; that is, that the power to regulate conferred upon Congress obtains subject to the requirement that regulations enacted shall be uniform throughout the United States." James Clark Distilling Co. v. Western Maryland R. Co., 242 U.S. 311, 327, 37 S.Ct. 180, 185, 61 L.Ed. 326 (1917).

Also see St. Mary's Sewer P. Co. v. Director of U. S. Bureau of Mines (C.A.3, 1959), 262 F.2d 378. If there were no requisite that federal legislation be uniform throughout the United States, the result would be a gerrymandering of special legislation on not only minerals but also labor, banking, civil rights, and so forth.

The second case to examine is that of a 2% gross overriding royalty which would constitute a diversion of the current 12 1/2% federal royalty. Pursuant to the Alaska Statehood Act, Sec. 28(b), and 30 U.S.C. 191, the State of Alaska receives 37 1/2% and 52 1/2%, or a total of 90%, of "All money received from . . . royalties . . . of public lands under the provisions of sections . . . 226 . . . of this title . . ." If there were a diversion of 2% of the 12 1/2% royalty before the apportionment of the share of the State, the State would in effect be deprived of its 90% share of the 2% which had been diverted to the Alaska Natives. This is in conflict with the Alaska Statehood Act, and is discussed in the next section of this opinion.

V. THE ALASKA STATEHOOD ACT

The question which is raised by the conflict of the 2% royalty with the Alaska Statehood Act is the following. May the United States unilaterally enact legislation in direct conflict with the Statehood Act?

The answer to this is that the United States may not constitutionally enact effective legislation in direct conflict with compact provisions of the Statehood Act unless there is an amendment to the Constitution of the State of Alaska because a Statehood Act constitutes a compact in the nature of a contract between two sovereign governments.

First, the federal government may not unilaterally amend the Statehood Act. Beecher v. Wetherby (1877), 95 U.S. 440, held that the State of Wisconsin acquired title to lands formerly occupied by Indians by virtue of the grant of these lands to the State in the Statehood Act and that this title could not subsequently be divested by the federal government on the basis of other legislation. The court, at 441, with reference to the provision of the Statehood Act which granted the land to the State, said: "It was, therefore, an unalterable condition of the admission, obligatory upon the United States. . . ." Metlakatla Indian Com., Annette Island Res. v. Egan (Alaska 1961), 362 P.2d 901, reversed by 369 U.S. 45 on other grounds, held the Omnibus Act invalid to the extent it amended the Statehood Act. The court, at 911, stated: "Appellants argue that the amendment is part of the compact and merely clarified the original intent of Congress. We cannot accept this reasoning. It is our view that the amendment forms no part of the compact between Alaska and the United States."

Second, the state government may not unilaterally amend the Statehood Act. State v. Commissioners of the Land Office, (Okl. 1956), 301 P.2d 655, held that Oklahoma could not change by an amendment to its constitution and by statute a provision of the Statehood Act which provided for a trust fund of the proceeds of the sale of lands granted to the State for school purposes. The court, at 659, stated: "We hold the regulations in the Oklahoma Enabling Act . . . may not be modified, restricted or changed by an Act of the Oklahoma legislature or the people of Oklahoma in amendment of the Oklahoma Constitution."

Merrill v. Bishop (Wyoming 1955), 287 P.2d 620, held that the Wyoming Statehood Act legally abridged Indian water rights, and, at 625, said: ". . . the compact between the United States and Wyoming is unalterable and obligatory." Also see Boeing Aircraft Co. v. Reconstruction Finance Corp. (Wash. 1946) 181 P.2d 838, 842 (". . . each government was bound by the provisions of the Enabling Act."), State v. Reynolds, (N.M. 1963) 378 P.2d 622, 627. ("Section 10 of the Statehood Act became a part of our fundamental law to the same extent as if it had been directly incorporated into the Constitution when thus expressly consented to by the State and its people in Article XXI, Section 9 of the Constitution.") Opinion of the Judges (S.D. 1966) 140 N.W.2d 34, 36 ("It cannot be revoked without the consent of the United States.") United States v. 111.2 Acres of Land in Ferry County, Wash., 293 F.Supp. 1042 (1968). ("The consent of the United States has not been manifested by amendment of the Enabling Act or by legislation inconsistent with Section 11 of that Act.")

Third, the only constitutional method by which there can be enacted legislation which is in direct conflict with the Statehood Act is the approval by the people of the State of Alaska of such federal legislation. The Alaska Statehood Act, Sec. 8(b) provided that the people of the State approve the Statehood Act at an election, and stated that an affirmative vote on the question would constitute an amendment to the State Constitution:

> "In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed Constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly."

The Constitution of the State of Alaska, Art. XIII, provides that amendments to the Constitution must be ratified by the people. State v. Paul, 337 P.2d 33 (Wash. 1959), which held that the Washington Enabling Act could be amended by the State Legislature is distinguishable because the court explicitly noted that the Constitution of the State of Washington at the time of the Enabling Act provided for no initiative or referendum.

Fourth, the argument that Congress has the authority to enact Indian legislation in Alaska which will override the Statehood Act because of the "supremacy clause" principle is without merit. An inference of this argument is that the United States may be about to enter into a treaty with the Alaska Natives. The inference is unwarranted. "The use of the treaty lawmaking power to deal with Indians as dependent alien nationalities, and to adjust their problems, as proper matters of international concern, was halted by Congress in 1871." Federal Indian Law, U. S. Department of the Interior, 1958, p. 25. Another inference may be that the "plenary" federal power over Indian affairs places federal Indian law apart from the United States Constitution. Again, the inference is unwarranted.

> "Thus in United States v. Kagama the Supreme Court found that the protection of the Indians constituted a national problem and referred to the practical necessity of protecting the Indians and the withholding of such a power from the States. This is the basis for the so-called "plenary" power of Congress over the Indians, or, more qualifiedly, over "Indian tribes" or "tribal Indians," so frequently used in recent cases. It may seem captious to point out that there is authority for the view that Congress has no constitutional power over Indians except what is specifically conferred by the commerce clause and implied in other clauses of the Constitution. The most famous defender of Federal power over Indians, Chief Justice Marshall, declared:
>
> . . .That instrument [the Constitution] confers on congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several states, and with the Indian tribes. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions; the shackles imposed on this power, in the confederation, are discarded (p. 559).

> Whatever view be taken of the possibility or danger of Federal power arising from "necessity," it is clear that the powers mentioned by Chief Justice Marshall proved to be so extensive that in fact the Federal powers exercised over Indian affairs are as wide as State powers over non-Indians, and therefore one is justified in characterizing such Federal power as "plenary." This does not mean, however, that congressional power over Indians is not subject to express constitutional limitations, such as the Bill of Rights." Federal Indian Law, infra, p. 24. (Emphasis added.)

The "plenary" power doctrine simply means that the United States has extensive power over American Indians in certain circumstances, and it does not mean that the United States has an authority in Indian affairs that is so absolute that it may disregard the United States Constitution. The Congress, pursuant to the United States Constitution, Article IV, sec. 3, enacted the Alaska Statehood Act, and the State of Alaska is now on an "equal footing" with the other states. The "plenary" Indian power of the United States does not recognize in Congress the authority to abrogate the Statehood Act.

Fifth, the disclaimer clause of the Alaska Statehood Act, Section 4, does not constitute authority in Congress to legislate in derogation of the Statehood Act. That clause simply provides that the State disclaims all right and title to any lands or other property which "may" be held by Alaska Natives. The legal question which arises from that involves the selection by the State of lands claimed by Alaska Natives, and not the question of revenue sharing proposals which properly relate to monetary compensation alone. The legal question of the selection rights of the State of land claimed by Alaska Natives is discussed in Kake Village v. Egan, 369 U.S. 60, at 65-66 (1962).

> "Section 4 must be construed in light of the circumstances of its formulation and enactment. See Alaska Pacific Fisheries v. United States, 248 U.S. 78, 87. Congress was aware that few such rights existed in Alaska. Its concern was to preserve the status quo with

respect to aboriginal and possessory Indian claims, so that statehood would neither extinguish them nor recognize them as compensable. See, e.g., House Hearings, supra, 130, 384 (1955) (Delegate Bartlett); Hearings Before Senate Committee on Interior and Insular Affairs on S. 50, 83rd Cong., 2d Sess. 227 (Senator Jackson), 260-261 (1954). 1/

Discussion during hearings on the 1955 House bill affords further evidence that claims not based on federal law are included. Section 205 of that bill (like sec. 6 of the bill as enacted) authorized Alaska to select large tracts of United States land for transfer to state ownership. It was understood that the disclaimer provision left the State free to choose Indian "property" if it desired, but that such a taking would leave unimpaired the Indians' right to sue the United States for any compensation that might later be established to be due. See House Hearings, supra, 135 (1955) (Delegate Bartlett). Feeling that experience had shown this procedure too slow to give prompt relief to the Indians, Oklahoma's Representative Edmondson proposed to exempt Indian property from the State's selection. Id. at 381. This was rejected as virtually destroying Alaska's right to select lands. For, although Representative Edmondson pointed

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1/ In 1948 a statehood bill requiring disclaimer of "all lands . . . owned or held by any . . . natives, the right or title to which shall have been acquired through or from the United States or any prior sovereignty," was favorably reported with this explanation: "As proposed to be amended, this paragraph would preserve all existing valid native property rights in Alaska, including those derived from use or occupancy, together with all existing authority of the Congress to provide for the determination, perfection or relinquishment of native property rights in Alaska. It would neither add to nor subtract from such rights and such authority, but would simply maintain the status quo." H.R. Rep. No. 1731, 80th Cong., 2d Sess. 15 (1948).

To the same effect, see H.R. Rep. No. 255, 81st Cong., 1st Sess. 13 (1949).

> out that the disclaimer extended only to property owned by Indians or held in trust for them, four representatives clearly stated their belief that the disclaimer included not just the few Alaska reservations, but also the aboriginal or other unproved claims in dispute, which covered most if not all of Alaska. Id., at 383 (Representative Engle Dawson, Metcalf, Westland). (Emphasis added.)

There is, therefore, no merit to the argument that Congress may re-write the Statehood Act because of the Section 4 disclaimer clause. The inclusion of that clause in the Statehood Act did not make that Act an open-ended document which may be unilaterally amended by Congress. A contrary assertion ignores the basic significance of a statehood act. The precise question of the effect of the disclaimer clause has been considered by the U. S. Supreme Court, and that Court has said that the Congress only intended the disclaimer clause to leave unimpaired possible future rights of the Alaskan Natives to compensation from the United States. The method of the compensation, of course, must be within the principles of the United States Constitution.

VI. CONCLUSION.

The State of Alaska, pursuant to the Alaska Statehood Act, does have rights under the United States Constitution. The argument that the supremacy clause of the United States Constitution places rights in Congress over Indians of such an extent that Congress may enact legislation which abrogates the constitutional rights of a State or of any person is clearly erroneous. The ultimate criterion of legitimacy in the American system is not the supremacy clause in itself, but the supremacy clause in the context of the United States Constitution. The clearest and most forceful statement of the applicability of the supremacy clause in the present case is not that Congress may violate the Constitutional rights of a State, but that it might extinguish Indian title without compensation.

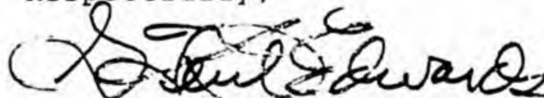
> "In 1941 a unanimous Court wrote, concerning Indian title, the following:

> 'Extinguishment of Indian title based on aboriginal possession is of course a different matter. The power of Congress in that regard is supreme. The manner, method and time of such extinguishment raise political, not justiciable, issues.' United States v. Santa Fe Pacific R. Co., 314 U.S. 339, 347, 86 L.ed. 260, 270, 62 S.Ct. 248.
>
> No case in this Court has ever held that taking of Indian title or use by Congress required compensation. The American people have compassion for the descendants of those Indians who were deprived of their homes and hunting grounds by the drive of civilization. They seek to have the Indians share the benefits of our society as citizens of this Nation. Generous provision has been willingly made to allow tribes to recover for wrongs, as a matter of grace, not because of legal liability. 60 Stat. 1050." Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 281 (1955). (Emphasis added.)

The real effect of the Section 4 disclaimer clause was to insure that Congress in no way affected whatever claims Alaska Natives might have against the United States for monetary compensation.

The State of Alaska supports the principle of compensation to Alaskan Natives, but only to the extent that there is no interference with the rights of the State under the Statehood Act. The 2% overriding gross royalty is in conflict with the Statehood Act and principles of constitutional law, and Congress has no authority under the United States Constitution to enact such legislation.

Respectfully,



G. Kent Edwards
Attorney General

GKE:jt

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).

> "(b) Section 35 of the Act entitled 'An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain', approved February 25, 1920, as amended (41 Stat. 450), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof". 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.

> "All money received from sales, bonuses, <u>royalties</u>, and rentals of public lands under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, and 261-263 of this title shall be paid into the Treasury of the United States; <u>37 1/2 per centum</u> thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year <u>to the State or the Territory of Alaska</u> within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State, Territory, or subdivision thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State or Territory may direct; and, excepting those from Alaska, 52 1/2 per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, <u>and of those from Alaska 52 1/2 per centum thereof</u>

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 sections 181-184. 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, and 261-263 of this title not otherwise disposed of by this section shall be credited to miscellaneous receipts. As amended May 27, 1947, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub.L. 85-508, Secs. 6(k), 28(b), 72 Stat. 343, 351." 30 U.S.C. 191. (Emphasis added.)

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.

"(a) All lands subject to disposition under sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, 261-263 of this title which are known or believed to contain oil or gas deposits may be leased by the Secretary.

Lands within known geologic structure of a producing oil or gas field; competitive bidding

(b) If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall not be less than 12 1/2 per centum in amount or value of the production removed or sold from the lease.

Lands not within geologic structure of a producing oil or gas field; first qualified applicant

(c) If the lands to be leased are not within any known geological structure of a

producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, 261-263 of this title shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12 1/2 per centum in amount or value of the production removed or sold from the lease." 30 U.S.C. 226. (Emphasis added.)

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.

"AS 38.05.180. OIL AND GAS. (a) All tide and submerged lands, mental health lands, school lands, and university lands shall be leased by competitive bidding, and whenever oil or gas is discovered in commercial quantities, the commissioner shall determine the extent of the area of lands in addition to tide, submerged, mental health lands, school, or university lands in the same general area of the discovery well which, by reason of the discovery, the commissioner reasonably believes to be capable of producing oil or gas and the additional lands shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not exceeding 2,560 acres (except that tide and submerged lands shall be leased in units of not exceeding 5,760 acres), which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the commissioner and of such royalty as may be fixed in the lease which shall not be less than 12 1/2 per cent in amount or value of the production removed or sold from the lease. However, the holder of a lease who drills and makes the first discovery of oil or gas in commercial quantities in a geologic structure shall pay a royalty on all production under the lease of five per cent for 10 years following the date of discovery and thereafter the royalty rate shall be not less

than 12 1/2 per cent unless the commissioner specifically provides that such royalty shall be less at the time such lands are offered for lease and in no event shall such royalty be less than five per cent. All lands other than those above provided to be leased by competitive bidding may be leased competitively or noncompetitively as determined by the commissioner to be in the best interests of the state. Noncompetitive leases shall be issued in units of not exceeding 2,560 acres in any one lease. Noncompetitive leases shall be conditioned upon the payment by the lessee of a royalty of 12 1/2 per cent in amount or value of the production removed or sold from the lease. However, the holder of a lease who drills and makes the first discovery of oil or gas in commercial quantities in a geologic structure shall pay a royalty on all production under the lease of five per cent for 10 years following the date of discovery and thereafter the royalty rate is 12 1/2 per cent. Competitive leases issued under this subsection shall be for a primary term of five years and shall continue so long thereafter as oil or gas is produced in paying quantities. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, such operations to include redrilling, sidetracking or other means necessary to reach the originally proposed bottom hole location, the lease shall continue in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities. If all or part of the lands covered by the lease are lands that have been selected by the state under laws of the United States granting lands to the state and a conditional lease was issued thereon, the term of the lease shall be extended for a period equal to the period during which the lease was conditional."

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

"Sec. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State

or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law, applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: And provided further, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation." Alaska Statehood Act, 72 Stat. 339, Sec. 4.

NOTE

OPINION NUMBER 6 OF 1969 WAS NEVER ISSUED.

MEMORANDUM State of Alaska

TO: Honorable Bill Sheffield
Governor
State of Alaska

DATE: April 28, 1986

FILE NO: 663-86-0339

TELEPHONE NO. 465-3600

SUBJECT: ANWR issues -- federal 90 percent revenue sharing

FROM: Harold M. Brown
Attorney General

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

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.

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.

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

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*/ 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

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02–576(2/77)

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.

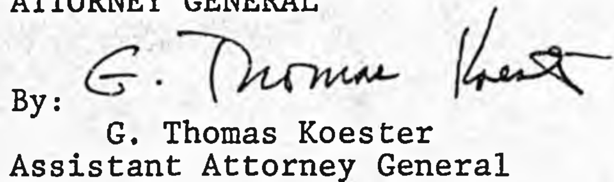
In other words, at the time of the historic compromise when the United States decided to retain large tracts of lands and share the benefits of mineral development with the states in which those lands were located, it expressly exempted from that sharing any benefits deriving from the naval petroleum 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
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

MEMORANDUM State of Alaska

TO: Rod Swope
Special Assistant
Office of the Governor

DATE: January 27, 1987

FILE NO: 465-3600

TELEPHONE NO:

SUBJECT: 90-10 revenue split on wildlife refuges

THRU: Ronald W. Lorensen
Acting Attorney General

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

Revenues received by the United States from mineral leasing on public lands are distributed under Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191. For federal lands in Alaska, we receive 90 percent of the revenues and 10 percent are deposited in the United States Treasury. This distribution formula applies to both unreserved public lands and reserved public lands in wildlife refuges, including the Arctic National Wildlife Refuge.

Congress extended the Mineral Leasing Act to Alaska in Section 28(b) of the Alaska Statehood Act, and considered this one of the "major provisions" of that Act. Provisions of a Statehood Act are obligatory on the United States, and any modification of the revenue distribution formula with respect to public lands (including reserved public lands in wildlife refuges) would probably violate the solemn compact between the United States and Alaska which formed the basis for Alaska's admission to the Union.

Congress incorporated this revenue distribution formula in the Statehood Act because so much land in Alaska was owned by the federal government, and almost one-fourth of it had been included in withdrawals and reservations prior to statehood. Modifying the distribution formula only for the reserved lands in the Arctic National Wildlife Refuge would discriminate against Alaska in relation to other states, in effect making Alaska the only state in which public land mineral revenues are not distributed under the Mineral Leasing Act. This would contrast with Congress' traditional practice of treating all states equally.

The Mineral Leasing Act represented a historic trade-off in the history of public land law. In enacting it, Congress terminated the historic policy of disposing of public lands; instead, it determined to retain the public lands in federal ownership but to use the revenues from those lands for the benefit of the states in which the lands were located. Changing

the revenue distribution formula would radically alter this historic compromise on which federal public land administration has been based for decades.

GTK:dlm
Attachment

8-19-83
Koester
Sent to Katz

MINERAL LEASE REVENUES FROM PUBLIC LANDS IN WILDLIFE REFUGES

Revenues received by the United States from mineral leasing activity on public lands are distributed under Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191. This includes revenues from both unreserved public lands and from reserved public lands in wildlife refuges. See Watt v. Alaska, 451 U.S. 259 (1981).

Alaska opposes legislation seeking to change that distribution for revenues from reserved public lands in wildlife refuges for three reasons. First, that distribution formula for revenues from public lands in Alaska, including reserved public lands in wildlife refuges, is required by the Alaska Statehood Act, and any modification of that formula would impermissibly violate the Statehood Compact between Alaska and the United States. Second, such a change would discriminate against Alaska because only in Alaska does a major share of such revenues come from reserved public lands in wildlife refuges. Finally, the policies underlying both the Mineral Leasing Act and the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, under which counties share revenues from wildlife refuges within their borders, require that mineral leasing revenues from public lands in wildlife refuges continue to be distributed under the Mineral Leasing Act formula.

I. The Statehood Compact.

Congress extended the Mineral Leasing Act distribution formula for revenues from public lands, including public 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. See H.R. Rep. No. 624 (to accompany H.R. 7999), 85th Cong. 1st Sess. (June 25, 1957) ("House Report") p. 3. 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). Accordingly, any modification of the Mineral Leasing Act formula with respect to public lands, including reserved public lands in wildlife refuges, would impermissibly violate the solemn compact between the United States and Alaska which formed the basis for Alaska's admission to the Union.

II. Discriminatory Effect.

Congress extended to Alaska the Mineral Leasing Act distribution formula for mineral leasing revenues from public lands, including public lands in federal reservations and

withdrawals, in large part because so much of Alaska was "tied up in the status of Federal reservations and withdrawals for various purposes," a "practice [which] has been carried to extreme lengths in Alaska." House Report, p. 7. One result of that "unhealthy situation," id., p. 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.

In fact, the only reserved public lands wildlife refuge producing oil and gas revenues is the Kenai Moose Range in Alaska. See Watt v. Alaska, 451 U.S. at 261 n. 1. As a result, modification of the Mineral Leasing Act formula with respect to reserved public lands in wildlife refuges would affect only Alaska. This would make Alaska the only State in which public land mineral revenues would not be distributed under the Mineral Leasing Act formula.

This would contrast with Congress' traditional practice of treating all States fairly. For example, in this context, the Mineral Leasing Act provides that 40 percent of the mineral revenues from public lands in other States is to be deposited into the reclamation fund under the Reclamation Act of 1902. Alaska is not covered by that Act and receives no benefits under it, and Congress considered it only fair that those revenues be paid to Alaska "in return for Alaska not being covered by the Reclamation Act of 1902." House Report, p. 23.

III. Policy Considerations.

Finally, the Mineral Leasing Act 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 to retain those public lands remaining in the States, but to use any mineral revenues from those lands for the States' benefit. As a result, the revenue distribution formula in the Mineral Leasing Act was designed to ensure that the public land States would reap the benefits of the resources within their borders, even if the lands containing those resources remained in federal ownership. This rationale is just as applicable to reserved public lands in wildlife refuges as it is to unreserved public lands elsewhere.

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 rolls. This rationale is wholly inapplicable to public lands which have never been in private

ownership and, therefore, have never been part of the local tax base. Indeed, modifying the formula under which such revenues from reserved public lands in wildlife refuges are distributed under the Mineral Leasing Act would result in an unjustified windfall to local communities at the expense of the States in contradiction of the original Congressional policy underlying the Mineral Leasing Act.

GTK:dlm

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

February 26, 1987

The Honorable William Horn
Assistant Secretary for
  Fish, Wildlife and Parks
U.S. Interior Department
Washington, D. C. 20240

Dear Secretary Horn:

I am writing on behalf of the House Resources Committee of the Alaska Legislature to present a set of questions about the possible Arctic National Wildlife Refuge land exchanges. The Committee appreciated the appearance of Bob Gilmore at our meeting February 13th on ANWR land exchanges. However, several issues remained unresolved at the hearing either because time ran out or because Mr. Gilmore was not prepared to discuss them. The Committee's next meeting on this issue is expected to occur during the week of March 9th; it would be our hope to have your responses in hand before this meeting occurs.

<u>Land Exchange Contracts</u>

With regard to the exchange contracts, we understand that a negotiating session is occurring in Washington this week, and that the documents produced so far are not available for public distribution. We also are led to understand that the contracts will not be made available to the public until after they are completed and perhaps signed. I encourage you to allow the release of current draft documents related to the exchange proposals, as repeatedly requested by representatives of the State of Alaska.

From our review of the state's comments on the draft contracts, and from discussion at the committee meeting last week, there appear to be major unresolved issues that should be considered in the negotiations. These include:

(a) Overriding revenue retention for the State of Alaska. According to Mr. Gilmore the negotiations would have to be redirected, and draft agreements and appraisals would have to be adjusted, to protect the State's existing entitlement to oil and gas revenues from public lands in Alaska. Senator Murkowski has supported the concept of retained revenue for the State. The State should not be expected to agree to land exchanges that could remove the best geologic structures from public ownership unless the State is assured of revenue protection. Has the Interior Department revised the agreements and appraisals to include this provision; if not, why?

(b) We understand that Interior is proceeding with the exchange of ANWR lands claimed by the State of Alaska on grounds of navigability, and that some lands claimed by the State may be included among trade packages offered by Refuge inholders. What consideration is being provided for these claims in the contracts?

(c) The issue of ANCSA 7(i) subsurface revenue sharing has been raised with regard to trade lands already acquired by the Arctic Slope Regional Corporation in ANWR. Will the trade lands within the proposed ANWR coastal plain exchanges be subject to 7(i)? Will any provision be made in these contracts for subsurface revenue sharing? If not, how will disputes be resolved in the future?

(d) The agreement is reported to contain a provision allowing the original inholder to retain a subsistence easement. What are the reasons for including this provision? How does it affect the value of the inholdings? Does it protect other hunting and fishing interests?

(e) Mr. Gilmore was unable to describe a reported contractual provision allowing some corporations to rescind an exchange after exploring ANWR tracts for oil and gas. The inclusion of such a provision seems contradictory, if the purpose of the exchanges is to acquire and hold valuable Refuge inholdings in perpetuity. What is the reason for the rescission clause? How is it structured?

(f) Mr. Gilmore stated that the contract will waive ANILCA Title XI standards for access across ANWR lands. How will access rights and needs be protected, particularly on lands that lie in important transportation corridors?

Public Process

As one legislator stated at the House Resources Committee meeting, there appears to be a stampede underway to accomplish

the proposed land trades, even though basic documentation, planning, and public review are incomplete or unavailable. Proponents of the land exchanges, including representatives of ANCSA corporations and Interior, have said that there are political advantages to moving forward with the land trades now so that they can be put before Congress soon after the 1002(h) study is presented. What public process does Interior intend for the proposed agreements?

Appraisals

The appraisal process for affected lands is very unclear, but information provided to date indicates that the process allows for a large amount of discretion and guesswork in the establishment of both subsurface ANWR values and the value of surface acreage of other Refuge inholdings. Mr. Gilmore stated that the BLM's ANWR subsurface appraisal "needs to go through several levels of approval (at Interior) in Washington" before it will be available. He also said inholdings cannot be appraised by standard procedures alone because these do not allow for consideration of wildlife (i.e. public interest) values, and that "any value over and above (the standard appraised value) will be determined by negotiation between the Department and the Native corporations." Mr. Gilmore said that the Department expects to "know precisely" what the inholdings are worth based on highest and best use and future value, as opposed to present value for ANWR subsurface. Please describe the appraisal process for both surface acreage and subsurface oil and gas values, including the discretion that may be exercised within the Secretary's Office. Will the appraisal process and negotiations be documented? Is there a written appeal process for participants? What considerations and criteria will guide the Department in the negotiations to establish surface values?

Inclusion of National Park Inholdings

Mr. Gilmore stated that the exchanges have proceeded "a long way down the road," but that he doesn't think it is too late to include National Park lands in this exchange proposal. The State of Alaska has been approached by the Park Service numerous times since the passage of ANILCA toward the purpose of eliminating state-owned inholdings in Alaska parks, including Denali and Wrangells-St. Elias. Acquisition of some of these lands by the Interior Department would appear to be in the national interest. Can you explain why the Department's only interest at this time centers on acquisition of Refuge inholdings? Has the Department established a priority list for Refuge and Park inholdings throughout Alaska, ranking them as a single group? Has the Department

reviewed all inholdings in Alaska parks and refuges to be certain that this apparent opportunity to acquire state or private inholdings is best used? Are the planned acquisitions consistent with applicable Refuge management plans?

Tract Selection

Even though tract selection may occur in the next four to six weeks, it seems that the ANWR tracts have not yet been identified. Mr. Gilmore stated that virtually all of the coastal plain would be available for exchange. In the past, we have heard that anywhere from 25,000 to 250,000 acres may be exchanged and we are informed that Senator Stevens has pressed for agreement that no geologic structure will be traded in its entirety. Obviously, the location of the trade tracts will be very important; 250,000 acres would more than encompass the Prudhoe Bay Unit Participating Area, and spread across the coastal plain could segregate the most promising geologic structures. When will the public know which tracts may be traded? Why has the Department chosen to keep the tract identification and selection process secret? How will conflicts be resolved between parties which nominate and seek to obtain the same tract?

State of Alaska Participation

When asked whether he regarded the State of Alaska as a supporter or advocate of the exchanges, Mr. Gilmore stated that it is "my impression from the sincerity of the negotiations and the people involved in the negotiations...that the state is proceeding as an active, interested participant in the exchange." On the other hand, the State has indicated that it is not committed to the exchange process and does not at this time endorse the concept of trading ANWR subsurface to eliminate inholdings in other Refuges. Is Interior fully aware of the State's land trade statute (AS 38.50), which requires legislative approval of any exchange agreement before it can be finalized?

Prior Existing Rights

One committee member raised the question of the State of Alaska's prior existing rights to the ANWR subsurface. As you know, the State regards its entitlement to 90% of oil and gas revenues produced in Alaska refuges as part of the solemn compact between Alaska and the United States leading to Alaska Statehood. This revenue entitlement is very important to the people of the State. Mr. Gilmore stated that he believes that Congress will attempt to reduce this entitlement to 50% on the basis of the NPRA model, and that this would serve as the basis for any retention mechanism preserving the State's

entitlement. Is it the Interior Department's view that this existing right may be traded away without the State of Alaska's concurrence?

Again, we appreciate the willingness of Interior Department officials to respond to the Legislature's questions and concerns. We will contact you when the Committee schedules its next meeting on the proposed ANWR trades.

Sincerely,

Representative Sam Cotten
Co-Chairman, House Resources Committee

cc: Governor Steve Cowper
Senator Frank Murkowski
Senator Ted Stevens
Representative Don Young
Bob Gilmore, USFWS
Boyd Evison, USNPS

Public Law 96-487
96th Congress

An Act

To provide for the designation and conservation of certain public lands in the State of Alaska, including the designation of units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes.

Dec. 2, 1980
[H.R. 39]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Alaska National Interest Lands Conservation Act".

Alaska National Interest Lands Conservation Act.
16 USC 3101 note.

TABLE OF CONTENTS

TITLE I—PURPOSES, DEFINITIONS, AND MAPS

Sec. 101. Purposes.
Sec. 102. Definitions.
Sec. 103. Maps.

TITLE II—NATIONAL PARK SYSTEM

Sec. 201. Establishment of new areas.
Sec. 202. Additions to existing areas.
Sec. 203. General administration.
Sec. 204. Native selections.
Sec. 205. Commercial fishing.
Sec. 206. Withdrawal from mining.

TITLE III—NATIONAL WILDLIFE REFUGE SYSTEM

Sec. 301. Definitions.
Sec. 302. Establishment of new refuges.
Sec. 303. Additions to existing refuges.
Sec. 304. Administration of refuges.
Sec. 305. Prior authorities.
Sec. 306. Special study.

TITLE IV—NATIONAL CONSERVATION AREA AND NATIONAL RECREATION AREA

Sec. 401. Establishment of Steese National Conservation Area.
Sec. 402. Administrative provisions.
Sec. 403. Establishment of White Mountains National Recreation Area.
Sec. 404. Rights of holders of unperfected mining claims.

TITLE V—NATIONAL FOREST SYSTEM

Sec. 501. Additions to existing national forests.
Sec. 502. Mining and mineral leasing on certain national forest lands.
Sec. 503. Misty Fjords and Admiralty Island National Monuments.
Sec. 504. Unperfected mining claims in Misty Fjords and Admiralty Island National Monuments.
Sec. 505. Fisheries on national forest lands in Alaska.
Sec. 506. Admiralty Island land exchanges.
Sec. 507. Cooperative fisheries planning.

79-139 O - 80 (323)

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 area, 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

43 USC 1611.

12(a) of the Alaska Native Claims Settlement Act by the amount of acreage determined by the Secretary to be conveyed by Kaktovik Inupiat Corporation to the United States pursuant to subsection (g)(1) of this section.

(6) The Secretary shall charge against the entitlement of Kaktovik Inupiat Corporation pursuant to section 12(a) of the Alaska Native Claims Settlement Act the lands conveyed by the Secretary to Kaktovik Inupiat Corporation pursuant to subsection (g) (2) and (3) of this section.

(7) The Secretary shall charge against the entitlement of Ukpeagvik Inupiat Corporation pursuant to section 12(a) of the Alaska Native Claims Settlement Act the lands conveyed by the Secretary to Ukpeagvik Inupiat Corporation pursuant to subsection (i) of this section.

43 USC 1601 note.

(8) In no event shall the conveyances issued by the Secretary to Arctic Slope Regional Corporation, Kaktovik Inupiat Corporation, and Ukpeagvik Inupiat Corporation pursuant to the Alaska Native Claims Settlement Act and this section exceed the total entitlements of such Corporations under the Alaska Native Claims Settlement Act, except as expressly provided for in subsection (g) of this section.

43 USC 1613.

(n) Reserved Lands.—(1) Congress finds that it is in the public interest to reserve in public ownership the submerged lands in the bed of the Colville River adjacent to lands selected by Kuupik Corporation and in the beds of the Nechelik Channel, Kupigruak Channel, Elaktoveach Channels, Tamayayak Channel, and Sakoonang Channel from the Colville River to the Arctic Ocean, and (2) notwithstanding any other provision of law, conveyance of the surface estate of lands selected by Kuukpik Corporation pursuant to section 12 (a) and (b) of the Alaska Native Claims Settlement Act and associated conveyance of the subsurface estate to Arctic Slope Regional Corporation pursuant to section 14(f) of such Act shall not include conveyance of the beds of the Colville River and of the channels named in this subsection, and the acreage represented by the beds of such river and of such named channels shall not be charged against the land entitlement of Kuukpik Corporation and Arctic Slope Regional Corporation pursuant to the provisions of the Alaska Native Claims Settlement Act.

43 USC 1611.

(o) Future Option To Exchange, Etc.—(1) Whenever, at any time within forty years after the date of enactment of this Act, public lands in the National Petroleum Reserve—Alaska or in the Arctic National Wildlife Range, within seventy-five miles of lands selected by a Village Corporation pursuant to the provisions of section 12(a)(1) of the Alaska Native Claims Settlement Act, are opened for purposes of commercial development (rather than exploration) of oil or gas, Arctic Slope Regional Corporation shall be entitled, at its option, within five years of the date of such opening, to consolidate lands by exchanging the in-lieu subsurface lands which it selected pursuant to the provisions of section 12(a)(1) of the Act for an equal acreage of the subsurface estate, identified by Arctic Slope Regional Corporation, beneath the lands selected by the Village Corporation. Prior to the exercise of such option, Arctic Slope Regional Corporation shall obtain the concurrence of the affected Village Corporation. The subsurface estate identified for receipt by Arctic Slope Regional Corporation pursuant to this subsection shall be contiguous and in reasonably compact tracts, except as separated by lands which are unavailable for selection, and shall be in whole sections and, wherever feasible, in units of not less than five thousand seven hundred and sixty acres.

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(2) Arctic Slope Regional Corporation shall not be entitled to exchange, pursuant to the provisions of paragraph (1) of this subsection, any in-lieu subsurface estate which the corporation has developed for purposes of commercial extraction of subsurface resources; unless the Secretary determines such an exchange to be in the national interest.

(3) The Secretary shall take such steps as may be necessary to effectuate an exchange sought by Arctic Slope Regional Corporation in accordance with the provisions of paragraph (1).

(4) With regard to subsurface estates acquired by Arctic Slope Regional Corporation pursuant to this subsection, the Secretary may promulgate such regulations as may be necessary to protect the environmental values of the Reserve or Range and consistent with the regulations governing the development of those lands within the Reserve or Range which have been opened for purposes of development, including, but not limited to, regulations issued pursuant to section 22(g) of the Alaska Native Claims Settlement Act.

43 USC 1621.

(p) Conditions.—All lands or interests in lands conveyed by the Secretary in subsections (d), (f)(1), (g)(2), (g)(3), (h), and (i) of this section to Arctic Slope Regional Corporation or a Village Corporation, as the case may be, shall be subject to valid existing rights, and in accordance with, and subject to, the provisions of the Alaska Native Claims Settlement Act, as amended, as though the lands were originally conveyed to such corporation under the provisions of such Act.

43 USC 1601 note.

COOK INLET VILLAGE SETTLEMENT

Sec. 1432. The Secretary is directed to:

(a) Terminate the review of the eligibility of Salamatof Native Association, Incorporated and withdraw any determination that said village corporation is not eligible for benefits under section 14(a) of this Act.

(b) Implement the agreement among the Secretary, Cook Inlet Region, Incorporated and Salamatof Native Association, Incorporated, which agreement dated August 17, 1979, had been filed with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs in the House of Representatives, the terms of which are hereby authorized.

(c) Remove from the Kenai National Moose Range the surface estate of any land, therein to be conveyed to Salamatof and the subsurface estate of any lands therein conveyed or to be conveyed to Cook Inlet Region, Incorporated, pursuant to the agreement authorized to be implemented under subparagraph (ii) of this paragraph.

(d) Implement an agreement among Cook Inlet Region, Incorporated, the corporation representing the Village of Alexander Creek, the corporation representing the group of Alexander Creek and the United States, if such agreement is filed with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives prior to December 18, 1979, the terms of which are hereby authorized, and upon performance of the conditions precedent set forth in said agreement, certify Alexander Creek, Incorporated, as a group corporation, eligible for land and other benefits under the Alaska Native Claims Settlement Act and this Act.

(e) Treat lands conveyed to Alexander Creek as lands conveyed to Village Corporations for the limited purpose of calculating the acreage to be charged against the entitlement of Cook Inlet Region under section 4 of Public Law 94-456.

43 USC 1611 note.

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

February 6, 1987

The Honorable Bill Horn
Assistant Secretary for
Fish, Wildlife and Parks
U. S. Interior Department
Washington, D. C. 20240

Dear Secretary Horn:

I am writing with regard to the draft 1002(h) study which presents alternatives for management of the coastal plain of the Arctic National Wildlife Refuge (ANWR).

The interest shared by Alaskans in the decisions about ANWR are fairly clear: we need to maintain a clean, healthy environment and provide jobs and revenue for Alaska's people. These are national interests as well.

Toward achieving these goals, the U. S. Congress should promptly open the coastal plain of the ANWR to oil and gas exploration, production, and transportation under conditions that are in the interest of the nation and the state; reserving the leasing of land in the core caribou calving grounds until a later date. Although, at this time, there is some controversy about the location of the calving ground, we are hopeful that the research data can be put to good use in the near term to define it. Protection of the Porcupine herd is in the interest of American and Canadian citizens. Other environmental issues such as air and water quality, waste management and disposal, and development coordination also need attention.

The Interior Department should desist from discussing land trades that would eliminate the State of Alaska's revenue share from oil and gas activity in the Refuge and that could reduce the ownership influence of the state and federal governments.

Unless the state concurs, the U. S. Congress should not allow measures or actions that reduce the state's entitlement to oil

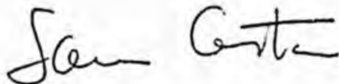
and gas revenue from the Refuge. The Congress should require the protection of the environmental and subsistence resources of the Refuge, including habitat, air, and water, in the event of oil and gas development on the coastal plain of the Refuge.

In recognition of Alaska's economic situation and the need for long-term economic development in the state, the Congress should require that exploration and development activity in the Refuge be conducted by Alaska work forces.

The Congress also should amend the Export Administration Act to reduce America's trade problem and energy costs by allowing the export of new production from Alaska's North Slope.

Thank you for considering these concerns. I hope that the Interior Department will work toward accomplishing these objectives during the Congressional debate on ANWR.

Sincerely,



Representative Sam Cotten
co-Chairman, House Resources Committee
(907) 465-3711/15/99

SC:smc

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

MEMORANDUM October 1, 1980

TO: Representative Sam Cotten

FROM: Jack Kreinheder
Issues Analyst

RE: The Transfer of State Gas Leases to the Cook Inlet Regional Corporation
Research Request No. 167

It appears that the State of Alaska has traded land to the Cook Inlet Regional Corporation which includes producing natural gas reserves. You have asked that we determine whether the State can rescind the trade of these producing gas leases, and if so, what action would be necessary to do so. Because of delays in obtaining information from the Division of Minerals and Energy Management and other commitments by the Division of Legal Services, we have not yet been able to reach conclusive answers to your questions. Billy Berrier, the Director of the Legal Services Division and the person most familiar with the Cook Inlet lands trade, is now out of town for a week, so it looks as though it will be another 10 days to two weeks before we can fully respond to your request. However, we have been able to gather some preliminary information which should be of interest to you.

The producing gas leases which were apparently traded to Cook Inlet cover portions of two tracts in the Kenai and Kenai Deep units. These leases are located on the west side of the Kenai Peninsula a few miles southwest of Soldotna and cover most of four sections of land (a section being 640 acres). A map showing the location of the leases is attached. State legislators and officials were aware that some oil and gas leases were included in the lands to be traded to Cook Inlet, but my review of the legislative history of the trade indicates that no one was aware that producing leases were involved. The apparent oversight was discovered when staff from the Division of Minerals and Energy Management (DMEM) were going through the adjudicating process to determine what annual rentals and minimum royalties were due to the Cook Inlet Corporation from the traded non-producing leases. All oil and gas leases generate

these rentals and minimum royalties, but for non-producing leases the amounts involved are very small. During this process, DMEM staff determined that the lands traded to Cook Inlet included parts of the Kenai and Kenai Deep leases. Although it is not clear at this time how much gas is involved in the apparent oversight, Jan Williams of the Department of Law estimated that the traded lands produce $400,000 to $500,000 in annual royalties. The responsibility for the oversight is also not known, but we will attempt to determine just how the mistake occurred.

Although it appears fairly certain from the legislative history and the text of the legislation authorizing the Cook Inlet land trade that the legislature did not intend to trade the producing gas leases to the Cook Inlet Corporation, it is unclear whether the State has sufficient legal grounds to rescind the trade or specific aspects of the agreement. As you know, the Cook Inlet Corporation did receive substantial proven mineral values from the trade in the form of Beluga coal reserves. Section 6(i) of the Alaska Statehood Act prohibits the State from conveying mineral rights to private owners, but this provision was waived by the passage of HR 6644 by the 94th Congress. HR 6644 amended several provisions of the Alaska Native Claims Settlement Act, waived Section 6(i), and set forth the terms and conditions of the Cook Inlet trade. Even though the Section 6(i) waiver was intended to facilitate the trade of the Beluga coal reserves, it appears that the legislation covered all types of minerals, including natural gas reserves. Therefore, it is unlikely that the State could cite the constitutional prohibition against the alienation of mineral rights as grounds for the return of the Kenai gas leases traded to the Cook Inlet Corporation. A copy of the passage waiving 6(i) is attached.

Alaska law also contains a prohibition against the alienation of mineral rights (Sec. 38.05.125). However, this statute was waived by the legislature when it approved the Cook Inlet trade in March, 1976. In addition, the legislation (CSHB 784) stated specifically that "the conveyance shall pass all the state's right, title, and interest in the land, <u>including the mineral subsurface estate notwithstanding any other provisions of law</u>" (emphasis added). As in the federal law, the purpose of this language was to allow the transfer of the Beluga coal lands to Cook Inlet, but the legislation would also seem to give Cook Inlet full rights to any natural gas reserves it received in the trade, even if they were transferred unintentionally. A copy of CSHB 784 is attached.

It also appears doubtful that the legislative history or intent of the legislation approving the trade form a legal basis for the return of the lands in question. Although Mr. Berrier indicated that this issue would require legal research into the background of the Cook Inlet land trade, his initial impression was that it would be difficult for the State to recover the lands containing the producing gas leases on the basis of legislative history or intent. We plan to ask Mr. Berrier to pursue this question in more detail as soon as he returns to Juneau.

One important point which Jan Williams raised is that it may not be necessary for the State to have a strong legal case for the return of the lands containing the producing gas leases. The Cook Inlet Corporation may not be aware that these producing gas leases were included in the lands they received in the trade, and although the corporation would no doubt like to have the producing gas leases in its control, the corporation may consider simply returning or exchanging the lands in question to the State, rather than entering a protracted legal dispute over the ownership of the lands. The Cook Inlet land trade, as you know, was quite controversial at the time it was approved, and Cook Inlet may wish to avoid reopening that controversy if it can be clearly shown that the legislature had no intent to transfer these leases to the Cook Inlet Corporation.

We apologize that we were not able to complete your request as soon as we had anticipated, but we will forward the results of the Legal Services Division's research as soon as possible. We will also provide you with information on the amount of gas involved, projected royalties, and other relevant material as soon as these figures are available. Please contact us if you have any questions in the meantime.

JK/bf
Attachment

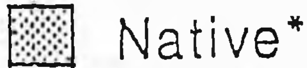
cc: Representative Hugh Malone

MARCH [illegible]76 ALASKA

PROPOSED

COOK INLET LAND EXCHANGE

SETTLEMENT


Native*

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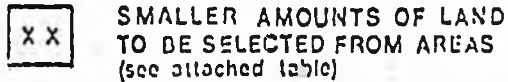
SMALLER AMOUNTS OF LAND TO BE SELECTED FROM AREAS (see attached table)

* 29.66 Townships to be selected outside region by Cook Inlet, Inc.

FEDERAL STATE LAND USE PLANNING COMMISSION

COOK INLET REGION

NATIVE TO STATE

STATE TO NATIVE

NATIVE TO FEDERAL

STATE TO NATIVE

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HOMER

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LEASES APPARENTLY TRACED TO COOK INLET

ALASKA NATIVE CLAIMS ACT
P.L. 94-204

(HR 6644)

SECTION 16

Section 16 is intended to prevent the Village Corporation for the Village of Tatitlek from losing part of its land entitlement as a result of a misunderstanding. Tatitlek relied on a consultant firm's advice and the apparent approval of the Interior Department in selecting two townships of its five township entitlement in an area withdrawn by the Secretary pursuant to section 17(d)(2) of the Settlement Act. Subsequently, however, the Bureau of Land Management disapproved the selection of the two townships. Because Tatitlek assumed that its selection had Departmental approval, it did not over-select other lands to provide alternate lands for selection in case its first selections were not approved. The deadline for village selections has passed and the Department has advised Tatitlek that no administrative remedy exists to allow re-selection of the two townships elsewhere. This amendment provides that Tatitlek can select the remainder of its entitlement—40,000 acres—from within the village deficiency area originally withdrawn for its selection.

SECTION 17

Section 17 amends subsection (f) of section 22 of the Settlement Act which provides certain authorities for land exchanges by Federal agencies with other land owners in Alaska.

In order to facilitate the Cook Inlet Area agreement provided for in section 12, the Department of the Interior advised that additional authorities for land exchanges would be needed.

The existing language of the subsection would not permit direct exchanges of land between the State and with Native corporations.

Secondly, section 6(i) of the Alaska Statehood Act prohibits the State from transferring the mineral interest to third parties in patents of lands selected by it under the Statehood Act.

[page 35]

Finally, the existing language of subsection (f) requires exchanges to be on the basis of equal value.

The amended language will permit direct exchanges of land between the State and Native corporations. It will permit the State or transfer mineral interests, notwithstanding section 6(i) of the Statehood Act, to Federal agencies in such exchanges. Finally, it will permit exchanges under the subsection to be on a basis other than equal value if the parties agree to the exchange and the Secretary deems it to be in the public interest.

SECTION 18

Section 18 is merely a savings clause which provides, that except as specifically provided in this legislation, the provisions of the Settlement Act are fully applicable to this legislation and nothing herein shall be construed to alter or amend those provisions.

TERMS AND CONDITIONS FOR LAND CONSOLIDATION AND MANAGEMENT IN THE COOK INLET AREA

Section 12 of H.R. 6644, as amended by the Committee, implements an agreement reached among the United States, the State of Alaska,

LAWS OF ALASKA

1976

Source

CSHB 784

Chapter No.

19

AN ACT

Relating to the Cook Inlet land exchange; and providing for an effective date.

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

* Section 1. PURPOSE. The purpose of this Act is to provide for settlement of certain claims and in so doing to consolidate land ownership among the United States, the Cook Inlet Region, Incorporated, and the State of Alaska in order to facilitate land management, to create land ownership patterns which encourage settlement and development in appropriate areas, to facilitate implementation of the Alaska Native Claims Settlement Act by resolving problems created in context of the Act by the concentration of state patented land selected within the Cook Inlet region and to preclude the need for regional selections that would impact important state interests. The legislature finds the Cook Inlet land exchange is a matter of statewide significance, is in the general public interest, will accomplish the purposes set out and will both settle existing litigation and foreclose possible protracted and devisive litigation.

* Sec. 2. APPROVAL OF TRANSFER. The governor is authorized to convey to the United States for exchange with Cook Inlet Region, Incorporated, that land described in Appendix C of the agreement entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, December 10, 1975" set out in House of Representatives Report No. 74-729, 94th Congress, First Session in accordance with the conditions of that agreement. The conveyance shall pass all the state's right, title and interest in the land, including the mineral subsurface estate notwithstanding any other provisions of law.

* Sec. 3. WAIVERS. The provisions of AS 38.05.125 and 38.95.060(c) do not apply to a conveyance made under this Act.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c).

Approved by governor: March 11, 1976

Actual effective date: [illegible]

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

October 30, 1980

TO: Representative Sam Cotten

FROM: Jack Kreinheder JK

RE: Cook Inlet Land Trade
Research Request No. 167

This is a brief status report on our research concerning the transfer of producing State gas leases on the Kenai Peninsula to the Cook Inlet Regional Corporation (CIRI) as part of the Cook Inlet Land Trade approved in 1976. Although we have not been able to determine a firm answer to your question as to whether the State can recover these leases, we have identified what the State would have to prove to have a legal case for the return of the gas leases. It appears that the State's legal case is weak and that negotiations for the return of the leases are more likely to be successful than legal action. In addition, this memo summarizes the available information on the responsibility for the unintentional conveyance of the producing leases.

The two producing leases which were conveyed to CIRI are ADL #00460, in the Kenai unit, and ADL # 22330, which overlaps the Kenai and Kenai Deep units. All of ADL #00460 which covers one section or 640 acres of land, was deeded to CIRI, with the exception of two small lakes in the lease area. ADL #22330 which produces over 95 percent of the total gas from the two leases, includes four sections, three of which were deeded to CIRI. The combined annual royalties to the State from the leases are slightly under $400,000.

We explained the situation to Billy Berrier, Director of the Division of Legal Services, and asked whether he believed the State had any legal grounds for the return of the producing gas leases. Mr. Berrier emphasized that he could not provide a legal opinion on the matter without essentially preparing all the documentation for a court case, which time did not allow. However, he was able to identify the important questions which pertain to the issue.

According to Mr. Berrier, the legislative history or intent of the legislation does not provide a legal basis for the return of the conveyed gas leases. Although all of the committee testimony and supporting reports that I have found on the Cook Inlet Land Exchange indicate strongly that the legislature did not intend to convey producing gas leases to CIRI, this intent apparently has no legal merit and does not invalidate in any way the transfer of the producing leases.

Mr. Berrier believes that the State's only legal basis for recovering the leases would be to thoroughly document that the conveyance of the producing leases was a result of a "mutual mistake of fact" on the part of both the State and CIRI. Proof would be required that neither the State as a whole nor CIRI were aware that producing leases were contained in the lands being conveyed. An important point is that it is not sufficient to document that the legislature alone lacked knowledge of the producing leases, because the State acted as a single entity in conveying the lands transferred to CIRI. If the Division of Lands, which actually deeded the lands to CIRI, was aware of the producing leases, then no mutual mistake of fact could be demonstrated, regardless of legislative intent or knowledge.

It is unclear at present whether the Division of Lands had knowledge of the producing gas leases. I spoke with Bill Beaty, the principal negotiator for the CIRI conveyances about the leases. He stated that the Division of Lands had circulated all of the CIRI selections among State departments, including the Division of Minerals and Energy Mangement, and at no time had DMEM or other agencies identified the producing leases on the selected lands or recommended against conveyance.

The DMEM staff apparently believe that the selections containing the leases in question were not circulated to DMEM for erview, so there appears to be some disagreement between the two divisions as to which division was responsible for the unintentional conveyance. In any case, a claim of mutal misunderstanding of fact must prove that no State agency was aware that the producing leases were included in the CIRI selections.

The State would also need to demonstrate that CIRI was not aware of the leases, either, which may be a difficult task. Some support for this case might be derived from the fact that the State is still collecting royalties on the leases and CIRI has made no claim for the royalties, even though they have received full title to the land. However, Mary Halloran, special assistant to the Commissioner in the Department of Natural Resources, is fairly sure that CIRI had full knowledge of the producing wells before the selections were made. The failure of CIRI to collect the royalty payments may simply reflect CIRI's desire to keep the issue quite. If CIRI can demonstrate prior knowledge of the producing leases, the State has no case for a mutual mistake of fact.

It therefore appears that the State's legal grounds for the return of the leases are very weak. Mary Halloran indicated that DNR has still not decided how to resolve the issue, but that the department is much more likely to enter into negotiations with CIRI than to pursue legal action. We will inform you of DNR's actions on the recovery of the leases as soon as more information is available. Please contact us if you have any questions.

JK/dp

cc: Hugh Malone

MEMORANDUM State of Alaska

TO: Esther C. Wunnicke
Commissioner
Department of Natural Resources

DATE: November 28, 1986

FILE NO: 661-86-0648

TELEPHONE NO:

FROM: Harold M. Brown
Attorney General

SUBJECT: Implementation of the 1979 MOU
Re: Kachemak Bay State Park

By: Elizabeth J. Barry EJB
M. Francis Neville MFN
Assistant Attorneys General
Natural Resources - Anchorage

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PRIVILEGE

You have requested our review of the Memorandum of Understanding between the State of Alaska, Kenai Peninsula Borough (Borough), Seldovia Native Association (Seldovia), and Cook Inlet Region, Inc. (CIRI) dated May 7, 1979 (1979 MOU or Kachemak MOU) to determine if the state is obligated to convey to CIRI land specified in Appendix E which is valuable for oil and gas, including land erroneously conveyed by the Bureau of Land Management (BLM) to the state.

I. BACKGROUND

The Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601, et. seq., was enacted on December 18, 1971. Under §§ 11(a)(1) and 11(a)(2) of ANCSA, federal land and land selected by or tentatively approved (but not yet patented) to the state was withdrawn surrounding each eligible Native village. If this land was insufficient to satisfy village and regional corporation ANCSA entitlements, the Secretary of the Interior was authorized by § 11(a)(3) of ANCSA to make additional withdrawals of unappropriated and unreserved federal land.

1/ Under the T&C and the 1979 MOU, the state has already conveyed valuable oil and gas leases to CIRI, and concurred in federal conveyances of lands subject to oil and gas leases. Section 14(g) of ANCSA has also allowed CIRI to receive oil and gas revenues not contemplated by the parties to the T&C.

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Although the provisions of §§ 11(a)(1) and (2) of ANCSA made adequate land available for Native selection in most areas of the state, a combination of factors resulted in severe land availability problems in the Cook Inlet region. Because the Cook Inlet region encompassed the most populous areas of the state, much of the land was unavailable under ANCSA, including land conveyed prior to ANCSA to both the state and private individuals, and land used by federal agencies or withdrawn for national defense purposes. In addition, most of the Native villages in the Cook Inlet region were located along the shores of Cook Inlet and, as a result, much of the area withdrawn by § 11(a)(1) of ANCSA was located in the waters of Cook Inlet. Thus, the statutory ANCSA withdrawals did not make a sufficient amount of land available to satisfy the entitlement of CIRI and its villages, and additional withdrawals under § 11(a)(3) were necessary.

Immediately after ANCSA passed, the state selected 77 million acres of its Statehood Act entitlement, much of it located in the Cook Inlet region. The validity of these selections was questioned in Alaska v. Morton, Civ. No. A-48-72, which was settled in September 1972. The settlement, which recognized the validity of some selections in the Cook Inlet Region, was later challenged by CIRI in a suit against the Secretary.

CIRI also pursued an administrative resolution of its land selection problems. In 1974, the solicitor of the Department of the Interior offered CIRI a settlement of the pending litigation under which CIRI would receive land in the Kenai National Moose Range, including the Swanson River oil field which provided much of the state's revenue. The offer also included valuable tracts in the Anchorage area at Point Woronzof, Point Campbell and a portion of the Campbell Airstrip. CIRI initially rejected the offer and, after the state became aware of its terms, it was withdrawn by Interior.

CIRI began seeking a Congressional resolution of its problems as the deadline for ANCSA selections approached. It became clear that a workable solution required state participation, and members of Congress urged the state to enter into the settlement discussions. The state began serious negotiations with CIRI and Interior in April 1975.

An agreement, the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area ("T&C"), was signed on December 10, 1975, by representatives of Interior, CIRI, and the state. The agreement required ratification by Congress and the State of Alaska. The major elements of the

complex and controversial trade were: 1) CIRI would receive more than half of its ANCSA entitlement outside of its boundaries; 2) the United States would convey approximately 50 townships to the state in excess of the Statehood Act entitlement as well as key tracts in the Anchorage area in exchange for 20.5 townships in the Cook Inlet area that the state would convey to the United States to be made available under ANCSA; and 3) the United States would convey 10,000 acres in fee and 220,000 acres of subsurface rights in the Kenai National Moose Range to CIRI.

Congress approved the T&C in December 1975 (P.L. 94-204, 89 Stat. 1156). The Alaska legislature approved the trade in March 1976 (Ch. 19, SLA 1976). The T&C was extremely controversial and the Alaska legislature was presented with conflicting testimony concerning the wisdom and likely results of approving the trade. The legislative history indicates that although land known to be valuable for oil and gas might be conveyed to CIRI under the T&C, both CIRI and DNR understood and told the legislature that no revenue producing oil and gas leases would be transferred to CIRI.

As with ANCSA itself, the process for implementing the T&C has taken longer than anticipated. The timeframes set out in the original agreement have been extended several times.

II. THE 1979 KACHEMAK BAY STATE PARK MEMORANDUM OF UNDERSTANDING

The Kachemak MOU was designed to resolve a number of long-standing land entitlement and land management issues. The state's incentive for entering the agreement was to restore land within the Kachemak Bay State Park (KBSP) to state ownership.

KBSP was established by the legislature in 1970. AS 41.21.131. At that time most of the land was selected by or tentatively approved to the state. With the passage of ANCSA in 1971, much of the land within the park was withdrawn for the Native village of Seldovia. As early as 1974, Seldovia Native Association, Inc. (Seldovia) and the state expressed mutual interest in exchanging Seldovia land within the park boundaries for developable state land outside the park.

Of particular interest to Seldovia was a parcel within the village's core township known as Barbara Point. This land was tentatively approved to the state under the Statehood Act and, prior to passage of ANCSA, Barbara Point had been approved by the state for conveyance to the Kenai Peninsula Borough as

part of its municipal entitlement. Legal disputes regarding the status of approved municipal selections of land tentatively approved to the state which were withdrawn for Native selection by Section 11(a)(2) of ANCSA, clouded the Borough's claim to the land at Barbara Point. Seldovia wanted the parcel for a subdivision for its shareholders and made its acquisition the sine qua non of its participation in any land exchange with the state. Negotiations were expanded to include the Borough.

The Borough's goal in the negotiations was acquisition of a port and industrial site for the shipment of liquified natural gas to Pacific Rim countries. The logical sites were at Nikiski and Stariski Creek, and were unavailable due to selections by CIRI. CIRI was brought into the Kachemak trade to acquire those sites for the Borough. 2/ In addition, CIRI's participation was necessary if the state was to acquire the subsurface estate in the park. CIRI's primary goals in the 1979 MOU were to speed up conveyance of land in fulfillment of its entitlement and to replace its subsurface estate in the park with more useable acreage elsewhere. Due to litigation over the legality of the T&C, conveyances from the state to CIRI had been delayed for over two years.

In 1977, and possibly earlier, Seldovia's president, Fred Elvsaas, and state employees from the division of parks (Parks), began serious discussions in an attempt to agree upon a land exchange. The state's negotiating efforts were under the general direction of Michael C. T. Smith, then Assistant Commissioner and Director of the division of lands, although after the first few meetings it appears Smith did not directly participate in the negotiations. Neil Johannsen, then Chief of Planning at Parks, and Ron Swanson from the title administration section of the division of forest, land and water management were the initial negotiating team. Sandy Rabinowitch of Parks later replaced Johannsen. Beginning in 1978, Chip Dennerlein, a special assistant to the Commissioner of Natural Resources, became the primary negotiator for the state, with assistance from Swanson and Rabinowitch. Tom Meacham and later Shelley Higgins of the Department of Law provided legal advice for the state. In addition, Clem Tillion and Hugh Malone, then Kenai Peninsula

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2/ According to Chip Dennerlein, the Borough and CIRI reached their own agreement while the state was still negotiating primarily with Seldovia, and simply presented it to DNR.

state legislators, were periodically advised regarding the negotiations. Borough Mayor Don Gilman negotiated for the Borough with legal assistance from Andrew Sarisky. Fred Elvsaas, and Robert Hahn, attorney for Seldovia, represented the village corporation, and Margie Sagerser, Carl Marrs and George Kriste were the principle participants for CIRI.

The final agreement, embodied in the MOU, appeared at the time to meet the needs of all participants and settled or derailed three legal disputes. 3/ The Kachemak MOU is divided into three articles. In Article I, the Borough relinquished its Barbara Point selection (paragraph 1) and Seldovia relinquished selections in Sadie Cove and elsewhere in KBSP (paragraphs 4 and 5). The Borough also relinquished its selection of land in Section 9, T.4 N., R.11 W., S.M. (paragraph 8) and the state agreed to notify the Bureau of Land Management that that section was available for conveyance to CIRI (paragraph 9). This land included a producing gas lease with an estimated discounted value in February 1979 of $10,000,000. In return, CIRI relinquished its Nikiski and Stariski selections (paragraph 10) and, in addition, in paragraph 11 CIRI agreed to relinquish one-third of its subsurface estate within the park boundary as identified in Appendix D.

In paragraph 12 of Article I the state agreed "to approve and expedite the conveyance [of]... land...as identified in Appendix E." The acreage conveyed by the state was to be credited to the state's Kenai pool obligation to CIRI under Appendix C of the T&C. The total acreage to be conveyed to CIRI was to be equivalent to the total acreage relinquished by CIRI in paragraph 11.

In Article II of the MOU the parties agreed to settle certain litigation, and Article III obligates the parties to enter future land exchanges to transfer land within the park boundary to the state. Because the MOU itself was not

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3/ The legal disputes were: (1) Seldovia v. U.S., A77-207, U.S. District Court -- Native selection of mental health land; (2) Appeal of State of Alaska, ANCAB VLS Nos. 78-42 and 77-10 -- the prohibition in Section 22(1) of ANCSA of selections within two miles of first class cities; and (3) the question of whether approved borough selections on state tentatively approved lands were valid existing rights under ANCSA.

technically a land exchange (although it provided for future land exchanges under AS 38.50) and it settled litigation, legislative approval was not required.

Appendix E contains land valuable for oil and gas, some of which has already been conveyed to CIRI. Appendix E was a list of land we believe was provided by CIRI which had been previously selected by CIRI under the T&C. 4/ Dennerlein recalls that he initially assumed the land had been previously approved by the state under the T&C, but did not check. 5/

Appendix E lists 9398 acres of surface estate and 9131.12 acres of subsurface estate. 6/ The state has still not received title to all the land in Appendix E. In addition to land already conveyed, Appendix E includes almost 190 acres in or adjacent to the Cannery Loop Unit Initial Participating Area to which the state has now received title. The division of oil and gas has recently estimated the value of these lands at approximately $5,640,000. 7/ The state has recently received title to additional oil and gas land included in Appendix E (1530 acres)

4/ Rabinowitch, Swanson, and Dennerlein all think that the list of state land to be conveyed to CIRI was provided by Margie Sagerser of CIRI.

5/ Bill Beaty, former Chief of DNR's Resources Allocation Section which was responsible for review and approval of lands for conveyances to CIRI under the T&C, stated that he was never asked to review land specifically for conveyance under the Kachemak MOU or identified as Appendix E. He could not say whether the parcels were reviewed earlier for possible inclusion in the Kenai Pool. On May 2, 1979, one day after DNR Commissioner Robert E. LeResche signed the Kachemak MOU, DMEM was asked to evaluate the subsurface estate listed in Appendix E. On May 4, 1979, DMEM replied with a memorandum estimating the value at between $50,000,000 and $120,000,000.

6/ These acreage figures were approximate and subject to revision as the land is surveyed.

7/ Memorandum from Cass Ariey, Petroleum Engineer, to Kay Brown, Director Division of Oil and Gas, dated May 20, 1986.

worth an estimated $51,900,000. 8/ You have requested advice regarding the state's legal obligation to convey this land.

Anchorage Daily News

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State mistakes cost millions

Native corporation got oil, gas worth as much as $500 million

By RONNIE CHAPPELL
Daily News reporter
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Mistakes by state officials executing a land swap 10 years ago have cost the state at least $35 million in oil and gas revenues, an examination by the Daily News reveals.

The cost of these oversights by state resource managers is growing by $5 million or more a year, and one day may exceed $500 million.

In response to inquiries by the Daily News, state officials have begun looking for ways to recover the lost oil and gas land and revenue. They also are drafting new land disposal rules designed to prevent the kind of errors that resulted in:

• The transfer of 11 valuable state-owned leases on the Kenai Peninsula to Cook Inlet Region Inc., the Anchorage-area Native regional corporation.

• The loss to CIRI of nearly half the state's ownership interest in one of the largest gas fields in the United States.

• The conveyance of more than 2,000 acres in the Cannery Loop gas field without knowing that it was worth $50 million to $120 million. Today, because of increases in the price of natural gas, the land could be worth $300 million to $720 million.

• The overlooking of a section of the Alaska Native Claims Settlement Act that allowed CIRI to take a third of state revenue from [illegible] oil and gas fields.

The land CIRI has obtained is among the most valuable in Alaska. Over the past five years, the company has grown into a financial powerhouse that earns millions of dollars a year, and pumps millions more into 11 other Native regional corporations.

The engine of CIRI's success is the oil and gas income unwittingly turned over by the state.

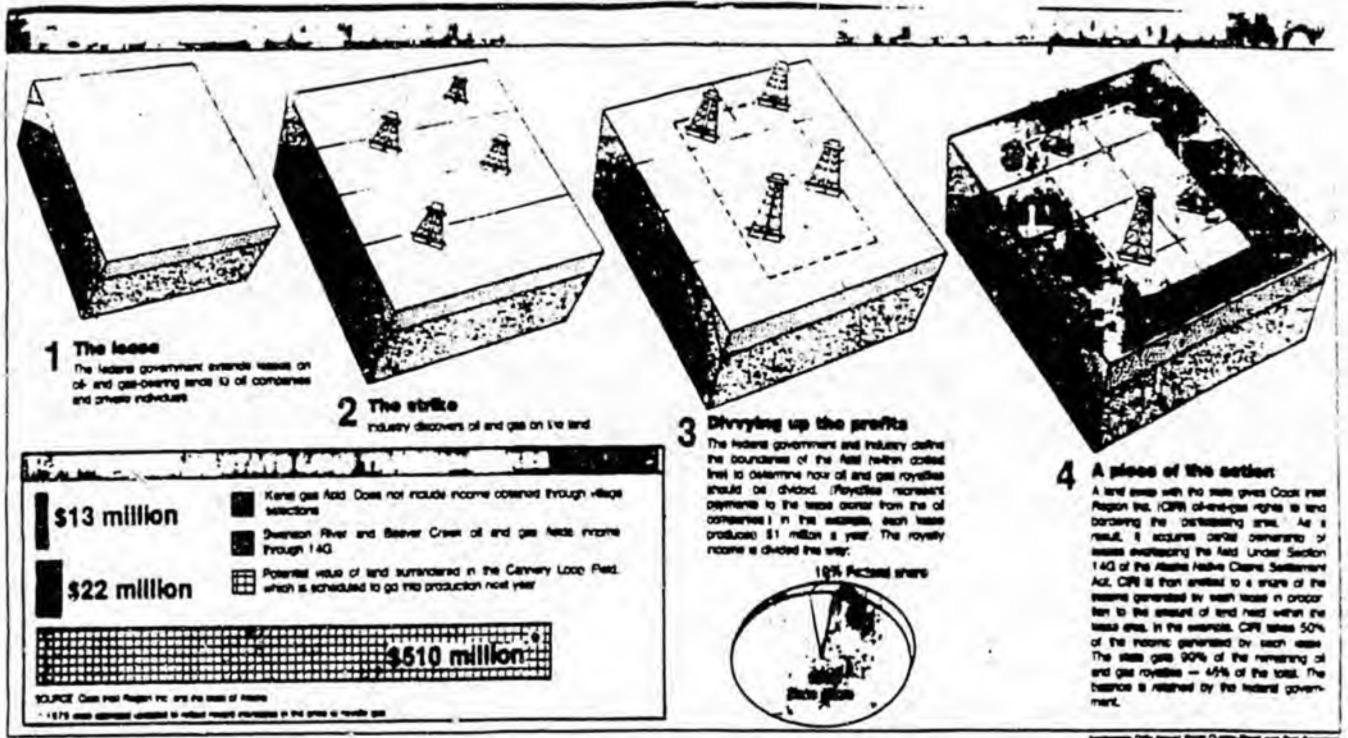
Under federal law, the state receives 90 percent of all oil and gas royalties from federal land in Alaska. Under that system, the state once earned up to $7 million a year from the Swanson River oil field.

CIRI used the land trade to take a 35.1 percent cut of the income from Swanson River. The state's share fell from 90 to 58.4 percent; the federal government gets 6.5 percent.

The loss to the state was even greater in the Kenai gas field, one of the largest in the country. The field heats most of Anchorage, supplies raw material for a world-class fertilizer plant and fuels the only liquified natural gas export facility in the U.S.

Before 1976, the state collected more than 90 percent of the royalty income from the Kenai field. Through the land trade, CIRI acquired 65 percent, worth more than $10 million a year beginning in 1986, and the state share fell to 31.5 percent, with the balance going to the federal government.

See Page A-14, STATE



Mistakes in land deals with Native corporation cost state millions in oil and gas revenue

Continued from Page A-14

state's a big boy too."

Smith admits he erred in overlooking the implications of 14(g). But, he insists, so did others.

Guy Martin agrees. As state resources commissioner, Martin was Smith's boss when the trade was negotiated and submitted to lawmakers.

"It wasn't just the (Hammond) administration," he said. "There was huge public exposure of this thing." The trade was "the most thoroughly aired transaction the state ever conducted. That thing was turned inside out. I used to tell people that everyone but God had approved it, including the U.S. Supreme Court. To the extent this was missed, a lot of people had a shot at it."

But in reality, state decisions about the land trade were based on the analysis and advice of a small group of resource and legal experts whose understanding of the agreement was flawed.

Land trades, which contain hundreds of legal descriptions defining thousands of pieces of property, are extremely complex pieces of legislation, said former state Sen. John Rader of Anchorage.

In almost all instances, (legislators) rely on representations, in summary form, of what the bill is and does. You rely on the advice of state commissioners, the (attorney general's) office and your staff people," he said.

In Alaska, almost all of the information about the land trade came from Smith. He wrote a 42-page analysis that ... publicly reviewed land exchange, certainly in Alaska and perhaps in American history," Smith said. "All of these people, and Dale (Tubbs) is a good example, had an opportunity to voice their concerns."

Tubbs disagrees.

"I give CIRI all the credit in the world for getting what they got," Tubbs said. "But they got it because of Michael C.T. Smith."

One who apparently foresaw the negative effect of the trade on state income was an aide to an assistant secretary of the Interior. Four months before the legislature approved the trade, Ted Bingham, a career employee of the Bureau of Land Management, predicted the state "would likely lose its share of mineral royalties" from the Swanson River oil field.

In his memo, Bingham estimated the loss at $4 million a year. He didn't mention Section 14(g) and today he's unsure how he calculated the loss.

Bingham's memo went to the joint Federal-State Land Use Planning Commission, which reviewed the trade. The warning went unheeded.

Bigger, more costly errors followed as state officials began the actual conveyance of land.

Gallett's lawsuit had delayed the process for three years. CIRI used that time to assess the available state and federal land. When the time came to select, CIRI was prepared to pick only the most valuable.

The delay hurt the state.

By 1979 the land trade was no longer the top priority at the Department of Natural ... state had agreed to make "well located potentially developable land" available to CIRI.

Smith wrote that the state should retain land of "public significance," but he didn't define the term. The memo doesn't mention producing oil and gas land, land with proven oil and gas reserves, or land with high oil and gas potential.

"From my standpoint, it was so obvious we weren't going to give up oil and gas fields, that why repeat it," Smith explained recently. "I could have said we shouldn't give them the Governor's Mansion. I could have gone into incredible detail.

"I couldn't believe anybody in their right mind — if the process was working right — would give them producing oil and gas leases.

"If at Roger's level there was a misunderstanding, that's a breakdown somewhere in the system. I can't believe that Bill Beaty, who was really the person responsible for implementing (the trade) had any question about that," Smith said.

Beaty, who no longer works for the state, is on an extended tour of the Far East and could not be interviewed for this story.

By any measure, Smith's faith in the review process was badly misplaced.

When CIRI selected land in the Kenai and Sterling gas fields — selections that would transfer royalty income from the state to CIRI — the state conveyed it.

CIRI didn't just make the selections in the hope that an incompetent bureaucracy would ... never reviewed by the legislature.

Current natural resources employees say it is incredible that the state could transfer so much land so quickly.

Not all of the leases given to CIRI were valuable, but one of them represented more than a third of the state's ownership interest in the huge Kenai gas field. The previous year the lease had provided the state $495,000. Today, it produces more than $2 million a year for CIRI.

"We screwed up, to be quite blunt about it," said Ron Swanson, a land manager with the Division of Land and Water Management.

While one group of state employees was giving away a chunk of the Kenai gas field, a second negotiating team was hard at work on a second costly giveaway. The negotiators wanted CIRI and the Seldovia Native Association to give up land in Kachemak Bay State Park.

Officials with the state Division of Parks feared that CIRI would strip-mine scenic China Poot Bay and begin barging washed rock to gravel-starved Homer. In exchange for its gravel, CIRI wanted another 580 acres in the Kenai gas field.

In effect, the state protected the park by swapping its income from a federal gas lease in the Kenai field for $10 million worth of gravel. The state's interest in the lease was valued at $10 million in 1979. Because of recent gas price increases, it may be worth $50 million today.

The deal was never reviewed by the legislature or addressed at a public hearing.

According to George Krista, CIRI's executive vice president, the corporation wanted quick conveyance of the Cannery Loop land because "we knew (it) would never be conveyed after (Union) started to flare the well."

On May 13, 1979, a 40-foot plume of fire from the well signaled a major strike.

For the state, the discovery came too late.

On May 1, Bob LeResche had given away the state's interest in the field by signing the Seldovia agreement.

On May 2, according to state records, the Division of Lands had asked state oil and gas managers to estimate the value of the state interest in the Cannery Loop field. Within days, they replied with a memo estimating its value at $50 million to $120 million.

According to state petroleum manager Bill Van Dyke, the appraisal was based on a 1979 gas price of 30 cents per thousand cubic feet. Since then, gas prices have increased by more than 600 percent. If the volume of gas is the same as estimated in 1979, Van Dyke said, the land turned over by the state is now worth $300 million to $720 million.

"I didn't know it was worth that much," Dennerlein told a reporter last month. "Amazing as it may seem, the first time in my life I had ever seen (Van Dyke's memo) was when you showed it to me."

It's not clear who is to blame for giving away state oil and gas properties, or why the conveyances continued even after Van Dyke's memo clearly showed that valuable ... Dyke's Cannery Loop appraisal, state officials gave CIRI another 80 acres in the Kenai gas field.

On a separate occasion, the Division of Lands urged the federal government to give CIRI a 160-acre tract that Minerals and Energy Management had told them was part of the Kenai field. The tract was given to CIRI.

Before the 160 acres were transferred to CIRI, the state received 30 percent of the royalty income from the land. State officials could have blocked the transfer and protected the income simply by objecting.

CIRI "shouldn't have gotten any producing or proven reserves," said former Minerals Director Tom Cook. "We recommended against conveyance of oil and gas lands.

"Often our recommendations were not given a whole lot of consideration," he said. "There were some conveyances that were going to be made irrespective of what people responsible for resource management thought."

Michael Smith, who says he was not involved in the day-to-day details of conveying land, said he didn't know about the objections raised by Minerals and Energy Management.

"Nobody said 'boo' to me. I had no way of knowing anybody was even concerned about this. When I found out about this — that the staff had given away (producing tracts) — I just scratched my head and said, 'I can't believe it,'" Smith said.

"How in the hell could they screw up so bad as to give away ... oil and gas ...

Anchorage Daily News forum 3/4/1986

Smith responds to Cook Inlet Land Exchange story, editorial

The Daily News has done a public service in bringing to light errors on the part of the state in implementing the Cook Inlet Land Exchange. However, the News, in both the original Dec. 22 article and in its editorial, failed to provide an accurate overall analysis of what the myriad dates, events and complicated legal interpretations meant.

First, the News did not clearly make the important distinction between the process of negotiating and legislating the original agreement, and the subsequent implementation of that agreement during which the majority of mistakes occurred. The exchange agreement itself provided for a fair and equitable exchange for all parties. Its passage was accompanied by intense agency, public, legislative and legal debate. If errors were overlooked during this process, they were missed by many individuals, agencies and institutions.

Second, the News editorial's implication that the alarms raised by some lower echelon officials were ignored is simply wrong. The News' own article stated that the Deputy Director of Lands opposed the exchange in both oral testimony and in writing during the Senate Resources Committee hearings. Several other state officials also actively opposed the exchange. However, in the end both administration and the legislature decided the exchange was in the state's best interest. The Daily News also expressed editorial support for the exchange at the time.

Third, the unexpected benefits derived by Cook Inlet Region, Inc. occurred primarily from unintentional, but certainly preventable, errors made by state agencies during implementation of the exchange, including acquiescence in the application of Section 14(g) of ANCSA in clear contradiction to the original intent of the exchange agreement. It is, therefore, patently unfair for the News to place any blame upon former Commisssioner of Natural Resources Guy Martin as he had left that position more than a year before implementation of the exchange even began.

Lastly, the News article pointed out shortcomings in both the state's review of the initial exchange agreement and in the process of implementing the exchange. Many people were involved in both aspects of the exchange, and contributed to its many successes, and its few failures. My role was certainly pivotal in both aspects, and to that extent I accept part of both any blame, as well as credit. But why the problems occurred is less a matter of personalities, and more the result of the framework within which the land exchange conveyances were made.

The News is wrong in suggesting that the Hammond administration's land management system had virtually collapsed. In fairness to the Department of Natural Resources and other state employees who labored in good faith to convey the large entitlement identified in the agreement, it must be pointed out that the background against which those transfers were made was unique in Alaska's history.

In 1978, two years after the land exchange was formalized and just as implementation was beginning, the legislature became obsessed by land disposals under pressure of the Beirne Homestead Initiative. It mandated a series of duties and deadlines, to be accomplished largely within just 12 months, to remove all impediments to large-scale land disposals for private ownership. These mandates included completing identification of approximately 772,000 acres to fulfill the entitlements of Alaska municipalities; identification and transfer to CIRI of its more then 415,000 acres; and identification of tens-of-thousands of acres of private land disposals — tasks unparalleled in the state's history.

Foisted on an understaffed department, there was no way all those mandates could be met within such unrealistic time frames without significantly increasing the probabilities for serious errors. Expressions of these concerns to the legislature were shouted down in committee hearings as bureaucratic blocking of legislative desires.

This is not meant to blame the legislature for all the land exchange errors. But, the politics of "Now, and damn the obstacles," as exhibited by the 1978 legislature, always has a cost. The full costs for the roads, schools and other services which ultimately will be needed to support the helter-skelter state land disposals of the past seven years may never be tallied. In this instance, however, the Daily News has performed a service in identifying the unintended real dollar costs of the errors caused by having to hastily implement the CIRI exchange. The legislature and the people of Alaska would do well to keep that in mind when making future resource decisions with similar magnitudes and time constraints.

— Michael C.T. Smith

☐ Michael C.T. Smith is the past Alaska director of state lands.

State got its share in CIRI land deal

People have a tendency to refer to the Alaska Native Claims Settlement Act as a give-away rather than a settlement of a legitimate claim. But let's look at the facts in the case of the Cook Inlet land trade.

Cook Inlet Region, Inc., is in the most populated part of Alaska and most of the good land around the villages was either homesteaded, built upon by the government or claimed by the state. Mountains and glaciers were left.

We went to court and an Anchorage judge ruled that mountain tops and glaciers were good subsistence hunting and fishing grounds for Natives. I asked, if that was true, why not trade for some Moose Range. I was then told by the Fish and Wildlife Service that a moose couldn't live up there, but a Native could.

CIRI appealed the decision and the Court of Appeals said they had never seen such an atrocious decision and reversed it. The Department of Interior was going to appeal to the Supreme Court so CIRI, of which I was then the president, decided to go to Congress for help.

The Alaska Federation of Natives laughed at us when we asked for support. To them we were not Natives, since we in CIRI were practically all quarter or half-Native.

Our land department prepared folders which consisted of pictures of villages with a little writing under each. There were also pictures of the mountain tops and glaciers we'd been offered by Interior. I spent almost a year going to the congressmen and women who had voted in favor of ANCSA, lobbying to get their support.

The state said they had us over a barrel — that CIRI had to take whatever was offered. But at the last Interior and Insular Affairs Committee meeting that I attended I was pleasantly surprised. I didn't have to testify. After calling the meeting to order, the chairman told everyone that "the Department of the Interior and the State of Alaska are going to make an agreement with CIRI that is satisfactory to CIRI or we are not going to appropriate any money for the department." In a couple of days, the agreement was signed.

Now let's talk about how the state got shafted. They received a "small amount of land" in the Anchorage area that was due to go to CIRI. Included was the Campbell Airstrip, which contained over 20,000 acres of land now worth over $100,000 per acre and 40,000 acres at Point Woronzof, Point Mackenzie, Goose Bay, Elmendorf and Fort Richardson that's worth $50,000 an acre today. Hence, the "small amount" of land the state received is worth at least $5 billion. Now the state is crying because CIRI got $37 million in additional royalties. In addition, the state and the federal government have received over $8.6 billion in fees and royalties between 1959 and 1984. If the state is getting shafted what are the Natives getting?

Without ANCSA, the title to the land each of us owns in Alaska would be no good. How would you, a property owner, feel if a Native came along, said his relatives had lived on your land and that he wanted it back?

I write this letter because I feel that the whole story of the Cook Inlet land trade was not published. The negotiators for the state and for CIRI should not be judged too harshly.

Ralph A. Johnson, president
Salamatof Native Association

Questions on CIRI land gain

Your feature article of Dec. 22, "State mistakes cost millions" is excellent. Reporter Ronnie Chappell has done an accurate job.

As noted, a key to Cook Inlet Region's acquisition of over half of the valuable Kenai gas field is the federal land grant to the village of Salamatof. It was and is unbelievable that Mike Smith, former director of the State's Division of Lands and a longtime staff member of the Federal-State Land Use Planning Commission, did not realize that the land grant to Salamatof would, under section 14(g) convey much of the Kenai gas field to the Cook Inlet Region.

The existence of Salamatof as a Native village was very questionable. Section 3(a) of the Alaska Native Claims Act requires that a Native village, to be eligible for a land grant, had to be named in the act under sections 11 or 16, or be composed of 25 or more Natives. In the Egan administration, a protest was filed on the grounds that Salamatof was not listed in sections 11 or 16 and was not composed of 25 or more Natives. Actually, most of the protests that had been filed were dismissed by the Department of Interior. However, the Egan administration, anticipating rejection of protests, had obtained from the Arctic Slope Regional Corporation a waiver of oil and gas rights on lands granted to the also questionable village of Nuiqsut, locted on the Colville River. Everyone in the Division of Lands, at least those employed prior to 1971, knew that a regional Native corporation would acquire mineral rights to lands granted to a Native village.

All that Mike Smith needed to do was to ask the older employees in the Division of Lands, especially Dale Tubbs. All that Guy Martin needed to do was to ask advice within his own commissioner's office from Bill Fackler, formerly Deputy Commissioner. Could Homer Burrell, former Director of the Division of Oil and Gas, be right when he refers to "Teapot Dome?"

Mike Smith told your reporter, "When you're in a situation like that with obviously support and instruction from up the ladder. . ." Who was on that ladder? Gov. Hammond? Sen. Stevens?

The environmentalists, as noted in the article, pushed for the land trade that gave valuable gas and coal leases to the Cook Inlet Region Inc. The environmentalists were greatly aided by the flood of environmentally oriented "planners" who flooded the Division of Lands early in the Hammond years. Without line responsibilities and, for the most part, historically unconscious, the planners accept preservation and oppose the state's legitimate interest in its subsurface wealth.

Still, there is one bright spot that shines through the dark complex of state errors. Roy Huhndorf, head of the Cook Inlet Region, does a far better job of balancing development and conservation than the state. Now that the damage to state royalty income has been done, I believe that the millions of dollars from gas and future coal royalties will be in the better hands.

— Charles F. Herbert

But on Monday, the fog loosened its grip a bit ... lengthy departure delays were still the

See C-3, TRAVELERS

their shoes off Monday to wait for a Seattle-bound flight.

Anchorage Daily News 12/24/85

Legal experts may advise state on recovering millions

By RONNIE CHAPPELL
Daily News reporter

The Alaska Department of Law may call in independent legal experts to evaluate the state's chances of recovering millions of dollars in oil and gas revenues lost by mistake during the negotiation and implementation of the Cook Inlet land trade, Attorney General Hal Brown said Monday.

"It might be nice to have the benefit of their thoughts, as well as our own," Brown said. "Then we could sit down, analyze them" and determine what to do.

"We already started looking at some" of the options available to the state, he said. "But we need to do more in-depth analysis before I can say what remedies, if any, are available to us."

In the meantime, Brown said, "my first goal is to make sure that nothing like this can happen now."

According to a months-long examination by the Daily News, losses of state royalty income have been substantial. Past mistakes, including the inadvertant conveyance of producing oil and gas leases to an Anchorage-based Native regional corporation, have cost at least $35 million and the total is increasing by at least $5 million a year.

State officials also gave Cook Inlet Region, Inc. an estimated $300 million to $700 million interest in the Cannery Loop gas field near Kenai. The field, discovered in 1979, is scheduled to go into production next year.

Procedures governing the disposal of state land have been tightened considerably since 1982, according to state officials. For that reason, Gov. Bill Sheffield is "satisfied that the errors (made by the Hammond administration) could not occur again," said Sheffield spokesman John Hilliard.

According to Hilliard, Sheffield is "going to wait for a closer reading on this thing from the attorney-general's office" before deciding whether it makes sense to pursue the lost millions.

House Speaker Ben Grussendorf, D-Sitka, said Monday that he had directed his staff to review the original agreement between CIRI and the Department of Natural Resources.

"I want to know more about it," Grussendorf said. "The story has broken. Now we've got to verify the facts. It's something we'll have to spend some time looking at."

Other House and Senate leaders were not available for comment Monday.

If the state attempts to recover the lost royalty income, state officials have said, the challenge will be based on claims that:

- State land deeded to CIRI was conveyed by state officials who lacked legal authority to execute the transfers.
- State and CIRI officials assured the legislature that state royalty income would not decline as a result of the Cook Inlet land trade.
- The state is still entitled to 90 percent of the royalty income generated by federal oil and gas leases, even when those leases are partly owned by Native corporations.

Vandals play Scrooge, tear down home's spectacular holi

By LARRY CAMPBELL
Daily News reporter

There are some hearts the holiday season ...ntly does not soften, as Gary and Doris Mueller learned Monday evening.

Only last week, the Muellers' East Anchorage home had been a spectacle of lights that caught the eyes of judges and a first-place award in this year's Daily News Christmas Lights Contest. The home was featured in Sunday's Daily News homes section.

Monday evening the lights were out, doused by vandals while the Muellers were out shopping.

"I wondered what was going on when we drove up. I couldn't figure out why the lights were off," Gary Mueller said. "It took me awhile before I took a good look and figured out it was all torn down."

The Mueller home was the brightest spot in their otherwise dark, out-of-the-way neighborhood off Muldoon Road. Even a nearby street light shed less light than the 4,000 to 5,000 lights strung about triangular spires, towers and arches on the Muellers' corner lot.

For eight years, Mueller said, he and his wife have adorned their home with lights for the holidays. This year the spectacle had taken them more than a month to complete, and the newspaper-sponsored contest rewarded them with a $200 dinner.

The Muellers turned down the prize and asked the money be donated to the Salvation Army.

Since the home appeared in Sunday's newspaper, Mueller said, there had been a steady stream of cars loaded with people coming to see his house. Monday evening, however, someone came to do harm.

Sometime between 5 p.m. and 6:30 p.m., vandals knocked down the lighted spires on the roof, smashed a string of lights atop the chain link fence and unplugged rows of other lights along the home's eaves. Lines of electrical wire hung loose and wooden triangle frames were torn from the roof.

Neighbors s... anything, but ... corner was dar...

Standing in ... at the destruct... shook his head... He said he wil... be able to fire ... strings for Chr...

"Here there ... and there's not ... about that," h... it? Just shows ...

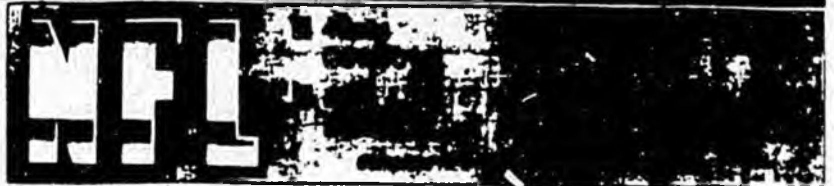
"I don't kno... happens. I gue... too."

NATION: O'Neill predicts veto of tax bill, Page A-3

NEIGHBOR TO NEIGHBOR

Daughter seeks reunion with father Outside

Metro, Page C-1



Anchorage Daily News

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Leader steers CIRI on a wealthy course

Huhndorf keeps his eye on assets — not limelight

By RONNIE CHAPPELL
Daily News reporter
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Rumpelstiltskin, the dwarf who spun straw into gold, could have taken lessons from Roy Huhndorf, the president of Cook Inlet Region Inc.

Huhndorf took an offer of glaciers and mountaintops and turned it into a river of cash for his company and every Native corporation shareholder in Alaska.

There was no hocus pocus, no sleight of hand.

Huhndorf, 45, used intelligence, toughness, tenacity and stealth to take the pants off the state in one of the most complicated land trades ever negotiated. As a result, his Anchorage-based Native regional corporation will collect hundreds of millions of dollars in oil and gas revenues the state never intended to give away.

Huhndorf is putting the money to good use. Today the corporation is among the leanest and most profitable in the state. CIRI employs just 55 people. Expenses account for less than a third of annual revenues.

The company has kept overhead low by searching out strong partners and investing with them in a number of successful ventures. CIRI owns a substantial interest in an offshore drilling rig, two on-shore drilling rigs, a North Slope construction company, and the ABC TV affiliate in Hartford-New Haven, Conn.

CIRI also is heavily involved in the development of industrial, commercial and residential property in Anchorage, Juneau, Southern California, Hawaii, Virginia and New Orleans.

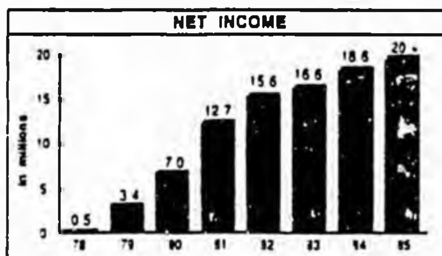
While some other Native corporations are struggling to keep Outside banks at bay, CIRI is collecting interest on more than $90 million in securities.

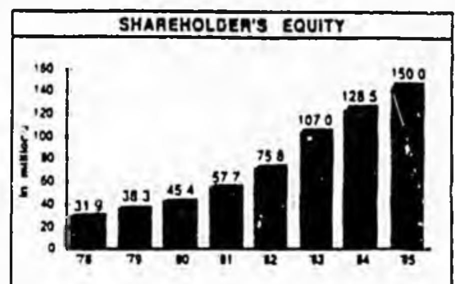
Since 1982, CIRI has funneled more than $48 million to other Native corporations under Section 7(i) of the Alaska Native Claims Settlement Act. Section 7(i) requires regional corporations to share 70 percent of their resource income with the other regional corporations. According to Huhndorf, CIRI's earnings have helped two corporations stay out of bankruptcy court.

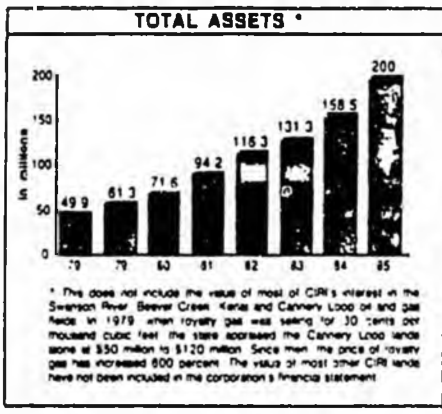
In contrast, CIRI has received less than $1.[illegible] million in 7(i) money from the 11 other regional corporations, some of which are perceived to be more successful than CIRI. Sealaska Corp. in Juneau, for example, has been listed among the country's 1,000 largest indus-

See Back Page HUHNDORF

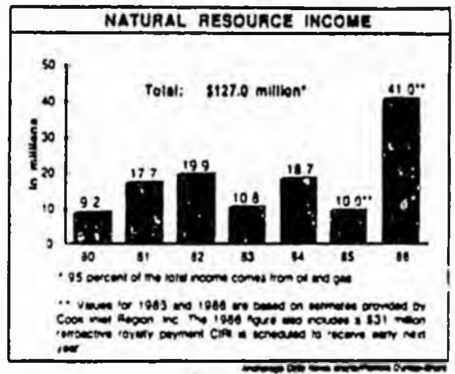
THE FINANCIAL PICTURE FOR COOK INLET REGION INC.







* This does not include the value of most of CIRI's interest in the Swanson River, Beaver Creek, Kenai and Cannery Loop oil and gas fields. In 1979, when royalty gas was selling for 30 cents per thousand cubic feet, the state appraised the Cannery Loop lands alone at $50 million to $120 million. Since then, the price of royalty gas has increased 600 percent. The value of most other CIRI lands have not been included in the corporation's financial statement.



* 95 percent of the total income comes from oil and gas.

** Values for 1985 and 1986 are based on estimates provided by Cook Inlet Region Inc. The 1986 figure also includes a $31 million retroactive royalty payment CIRI is scheduled to receive early next year.

Anchorage Daily News graphic/Patricia Dunsan-Brant

Officials take steps to learn from state's mistakes

By RONNIE CHAPPELL
Daily News reporter
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Resources Commissioner Esther Wunnicke has asked state attorneys to see if the state can recover millions of dollars in oil and gas revenues it mistakenly gave away in the Cook Inlet land trade.

No decision on whether to pursue the lost millions in court has been made, Wunnicke said. "We're seeking advice from the attorney general to guide us in future actions."

But Cook Inlet Region Inc., the Anchorage-based regional Native corporation that gained from the state mistakes, already is digging in to protect its interests in the Cannery Loop, Swanson River, Beaver Creek and Kenai oil and gas fields.

In a 16-page memo delivered to state officials this month, CIRI attorneys describe a state claim on Native royalty income as "a direct attack upon the integrity of the Alaska Native Claims Settlement Act and a clear threat to the survival of many Alaska Native corporations."

They also warn that any effort "to deprive Alaska Natives of revenues from their lands" could prompt the Congress to reduce the state's "unique and extremely generous 90 percent" share of federal oil and gas royalty income.

In an effort to prevent future mistakes, Wunnicke also will make permanent a land transfer review process established in 1982. Before that, the state lacked a formal procedure for reviewing land selections.

The state also will audit all its past land conveyances under the terms of the Cook Inlet land trade.

"In this time of declining revenue we can ill afford to give away a producing oil and gas lease," said Gary Gustafson, the state's chief land manager. "We have built-in mechanisms to keep that from happening. It will not happen again, unless of course, it is intentional."

See Back Page STATE

Huhndorf keeping a stealthy head, steady hands at the helm of CIRI's financial empire

Continued from Page A-1

trial companies.

CIRI has never sought that kind of attention. The corporate land — more than [illegible] million acres of surface and subsurface estate — has never been appraised.

Huhndorf would rather pay his stockholders big dividends — four times the size of other Native corporations — and keep a low profile. He avoids publicity and concentrates on profits. CIRI doesn't have a public relations department and, as a rule, doesn't issue press releases.

"We feel that the figures at the end of the year speak for themselves," Huhndorf said.

There are other reasons for doing business quietly. State and federal agencies still owe CIRI more than a million acres under terms of the Cook Inlet land exchange. Publicity generally means controversy, and nothing gums up the wheels of government and the process of obtaining land like controversy.

Huhndorf grew up in a log home in Nulato, an Athabascan village on the Yukon River. The family had a large vegetable garden and hunted moose in the fall. His mother, a Native, sewed fur garments and his father, a retired serviceman, was one of the few villagers with a cash income.

At 15, Huhndorf left Nulato to attend Anchorage High School.

"There was some prejudice aimed at me personally," he recalled. "If you take it seriously, it can make you have a pretty low opinion of yourself."

While managing CIRI, Huhndorf found time to attend college classes at night. In 1984 he received his diploma from the University of Alaska Anchorage. At the time he was a student, he was also a university regent. He is now president of the Board of Regents.

As a young man, Huhndorf watched Outsiders lease land that had been hunted and fished by Native Alaskans for more than [illegible] years.

Even the state participated in the land grab. Entire villages were gobbled up, Huhndorf said, despite provisions in the Statehood Act that prohibited state selections in areas subject to aboriginal title.

This simmering conflict came to a head in the mid-1960s when Alaska Natives claimed to own Prudhoe Bay and the corridor needed for the trans-Alaska pipeline. The oil companies fought the claim in court, and lost.

In 1971 the Alaska Native Claims Settlement Act gave the state uncontested title to the Prudhoe Bay oil field, allowed construction of the pipeline and created more than a hundred village and regional Native corporations and settled them with $962 million and 44 million acres.

"A lot of people tend to ignore the legality of the settlement act," Huhndorf said. "Change always bothers some people. There are always those who resent it."

For CIRI, however, the settlement act was a hollow promise. Most of the developable land within its boundaries had been taken. Millions of acres were tied up in the Chugach National Forest and the Kenai National Wildlife Refuge. The state had selected millions more and homesteaders had gobbled up the rest.

When the Secretary of the Interior tried to satisfy CIRI's entitlement with "mountain tops and glaciers," Huhndorf said, "we knew there was not going to be a fair settlement.

Roy Huhndorf, Cook Inlet Region Inc. president

We weren't going to stand still for that."

After [illegible] in court, CIRI went to the U.S. Congress for help. Strong support from Sen. Henry Jackson, D-Wash., and others gave CIRI the lever it needed to pry a compromise out of the Department of Interior.

Federal officials offered the corporation more than 230,000 acres in the Kenai National Wildlife Refuge, the Swanson River oil field and several large tracts of federal land in the Anchorage Bowl.

CIRI turned down the deal. The corporation was asked to give up two-thirds of its entitlement and the assets it was receiving weren't valuable enough, Huhndorf said.

The state joined the talks during the spring of 1975 because "it had a variety of interests it wanted to protect," Huhndorf said. Six months later Congress approved a three-way trade that netted CIRI more than 2 million acres.

The state contributed 115,000 acres on the Kenai Peninsula and 110,000 acres in the Beluga area. The Beluga lands contained more than 900 million tons of known coal reserves.

The Alaska Legislature approved the deal after [illegible] and others testified that CIRI had abandoned its claims to Swanson River and other oil fields, so the present income of the state of Alaska could be maintained.

Despite Huhndorf's testimony, CIRI later:

• Used Section 7(i) of the settlement act to take more than a third of the royalty income generated by the Swanson River and Beaver Creek fields.

• Nominated state and federal lands in the huge Kenai gas field for conveyance to the corporation. It paid the cost of a lawsuit that allowed the Salamatof Native Association to get additional land in the Kenai field.

• Used an agreement designed to protect Kachemak Bay State Park to take over the state's interest in a new gas field near Kenai that could be worth $[illegible] million to $[illegible] million. The field will go into production next year.

Huhndorf insists he and other company officials did not mislead lawmakers. At the time the trade was under consideration by the Legislature, CIRI had not assessed the effect of 7(i) on state revenue from Swanson River, he said.

By nominating tracts in the Kenai gas field, CIRI was only trying to obtain the best land available. Under the agreement approved by the Legislature, the state had an absolute right to block those selections, Huhndorf said.

State officials rarely exercised that power. Instead, they gave away revenue-producing leases in existing fields. The line-move chess players at the Alaska Department of Natural Resources proved no match for the silver-haired grandmaster and his team at CIRI.

The CIRI strategy was so well conceived and smoothly executed that a decade later the presiding state officials still didn't realize the magnitude of their mistakes.

Almost everyone agrees that CIRI succeeded by knowing the game and the rules better than its opponents. When roadblocks were encountered, CIRI negotiators stuck with it until the troublesome faces or policies changed.

"We've got a healthy respect for CIRI that comes from experience," said Gary Gustafson, the chief of land management for the state.

Gustafson wasn't involved in the negotiation of the land trade and had nothing to do with the loss of state land in producing oil and gas fields.

"Of all the Native corporations we deal with, (CIRI) is the most astute," Gustafson said. "If there's a meeting," he said, "CIRI always prepares the agenda. If there's an agreement to be worked out, they always prepare the first draft."

The tactic is effective in complex negotiations, Gustafson said, because "he who controls the script usually gets what he wants."

Today, the state is still outmatched.

The Division of Land and Water Management has just [illegible] people negotiating and implementing land exchanges.

"We are stretched to the limit no matter how good these people are. It's difficult to keep up," Gustafson said. "Especially when CIRI knows exactly what they're doing and has four people assigned to the task. We're swamped all the time, and they've got a hit team."

CIRI has triumphed and profited over its business counterparts. Unocal Corp., the California oil company that operates the Kenai gas field, will soon pay CIRI more than $30 million in retroactive royalties on natural gas sold to the Unocal Chemical plant in Nikiski. The settlement also triples the price that CIRI, the state and the federal government will get for royalty gas.

"Unocal and the other companies with an interest in the Kenai field hate the fact we got those lands," said CIRI Executive Vice President George Kriste.

Agreement has been reached on the value of royalty gas delivered to Enstar Natural Gas Co., a utility that serves more than 40,000 customers in Anchorage, the Matanuska Valley and the Kenai Peninsula.

According to Enstar officials, settlement of that dispute will cost the average residential gas consumer about $50 spread over a period of 20 months.

Huhndorf is proud of CIRI's performance but he's hesitant to boast about it.

"It's a bit of paranoia," he said in an interview that reporters were not allowed to record. "Anytime a Native corporation does well, people resent that."

State officials examining legal avenues to see if Alaska can recoup lost oil, gas revenues

Continued from Page A-1

Recovering the oil and gas lands that already have been lost could be difficult, Gustafson said. Most of the state's options look like long shots. They're being considered because "we're looking at all possible avenues to recover lost royalty income or lease revenues," Gustafson said.

Losses of royalty income have been substantial. Past mistakes have cost the state at least $3[illegible] million and the total is increasing at a minimum of $5 million a year.

Although legislators were told the 2 million-acre deal would keep Cook Inlet Region Inc. from tapping state royalty income, the Anchorage-based Native corporation has made more than $70 million in Cook Inlet oil and gas production.

State officials also gave away a $300 million to $700 million interest in the Cannery Loop gas field near Kenai. The field, discovered in 1979, is scheduled to go into production next year.

Pursuing the lost millions will be politically difficult. Since 1982, CIRI has distributed $44 million to other Alaska Native corporations, representing more than 60,000 Native shareholders.

Strong Native support was crucial in 1982 in the election of Gov. Bill Sheffield. Sheffield will need their continued support in 1986 election.

"This is a no-win situation for Sheffield," said one former state official. "He's damned if he goes after the money, and he's damned if he doesn't."

If the state decides to challenge the Cook Inlet land transfers, Gustafson said, it will argue that:

• State land deeded to CIRI was conveyed by state officials who lacked legal authority to execute the transfers.

• State and CIRI officials assured the legislature that state royalty income would not decline as a result of the Cook Inlet land trade.

• The state may still be entitled to 90 percent of the royalty income generated by federal oil and gas leases, even though the leases are partly owned by Native corporations.

In a Nov. 4 letter to Martin Richard of the Alaska Department of Revenue, former Assistant Attorney General Tom Meacham argues that the state's 90 percent royalty share is a "valid existing right" under Section 14(g) of the settlement act.

Therefore, Meacham writes, transfer of oil and gas leases to CIRI "could not impair the state's right to receive continued royalties from (CIRI's) portion of the leases."

If Meacham is correct, the state could recover more than $60 million and prevent the loss of millions more.

CIRI contends that Meacham's analysis contradicts the legislative history and later application of the settlement act.

"The state's right to royalty income from federal leases is a derivative right contingent upon continued federal ownership of the leases," CIRI President Roy Huhndorf said. "As soon as federal ownership ends, the state's rights to continued royalty payments end."

There apparently have been no court cases that directly analyze whether the state's interest in federal royalty income "is a valid existing right" under Section 14(g) of the settlement act, CIRI attorneys said. "If such a claim were asserted, it seems clear that its practical resolution would be a task ultimately left for Congress."

Gustafson agrees with CIRI's interpretation of the law, but has asked for an opinion from the attorney general's office because "it's too important to have any question marks remaining."

Chances also appear slim that the state can reclaim lost revenue on grounds that state officials lacked authority to give away oil and gas leases, or that conveyance of the leases violated the intent of the legislature.

Both questions have been reviewed by state attorneys before.

"If any doubt now exists as to the legal authority of the person who executed the state's deeds of title, that doubt would almost certainly be resolved by a court in favor of the innocent third party, Cook Inlet Region Inc.," wrote Meacham in September 1980.

"It is my conclusion that these lease tracts have been irrevocably conveyed to CIRI."

In October 1980 Billy Berner, director of the Division of Legal Services, advised the House Research Agency that "the legislative history or intent of the legislation does not provide a legal basis for return of the leases."

According to Gustafson, the state's best hope for cutting its losses may lie in the erroneous conveyance of several federal oil and gas leases to the state during the early 1980s. The Bureau of Land Management discovered the mistake in March 1985 and asked the state to return leases that include 165 acres in the Kenai and Cannery Loop gas fields.

Returning the leases could work to the state's advantage. Under a 1977 agreement, the state is obligated to convey that land and any related subsurface resources to CIRI.

By returning the mineral rights to the federal government before giving the land to CIRI, the state could continue to collect 90 percent of the royalty income from the leases, Gustafson said.

"In this case, we can keep the situation from getting any worse and we might be able to undo part of what's already happened. From the state's perspective, that's important."

Improvements in land conveyance practices should prevent the loss of valuable oil and gas land in the future, Gustafson said.

In the old days, lands were conveyed quickly, without public hearings or legislative review.

"We couldn't do that today," he said.

Six years ago, the agency didn't always research every piece of state and federal land proposed for conveyance to CIRI. Today, there is a title search on each tract.

"This tells us if the land is even eligible" for conveyance to CIRI, Gustafson said. The review recently turned up several valuable tracts of federal land that didn't belong in the pool from which CIRI selects. Among them was a 150-acre parcel near Klatt Road and Minnesota Drive.

State resource agencies are now notified of proposed conveyances and given 45 days to respond. No action is taken until each has delivered its recommendations, in writing, to the Division of Land and Water Management.

In 1979 it took the Division of Lands just nine months to give away 45,000 acres of land, 48 oil and gas leases and a third of the state's holdings in the Kenai gas field. The transfer was never the subject of public hearings or reviewed by the legislature.

In contrast, it has taken the state six years to complete a much smaller trade aimed at getting the Seldovia Native Association out of Kachemak Bay State Park.

And that deal, because it involves state land valued at more than $3 million, eventually must be approved by the legislature.

"I'm comfortable that the process gives us the information we need to make an informed decision in the best interest of the state," Gustafson said.

State mistakes in land deals with Cook Inlet Region result in losses of up to $500 million

Continued from Page A-1

The string of errors and misunderstandings that proved so costly to the state came about in part because:

• Bitter disputes within the Alaska Department of Natural Resources kept it from giving the trade agreement the close scrutiny it required.

• Key state employees were shut out of negotiations.

• Legislators were misled by state and CIRI officials who assured them the trade would not reduce state revenues. The same officials now say they misunderstood the agreement and its effect on state oil and gas income.

• Workers responsible for conveying land to CIRI were never told not to give away producing oil and gas fields.

• The state traded away land before it knew what the land was worth.

• The recommendations of oil and gas managers were ignored by land officials carrying out the trade.

At one point, confusion within the Department of Natural Resources was so complete that officials agreed to sell gas they had mistakenly given away the year before.

Even today, many of the individuals involved in the Cook Inlet trade don't realize what happened.

"Dear God," muttered Bob LeResche, the former commissioner of natural resources, when told recently that he had signed away the state's interest in a major gas field as part of a 1977 agreement to prevent gravel mining in Kachemak Bay.

"It's just outrageous," LeResche said. "Somebody got snookered. I certainly feel as though I did."

LeResche said he trusted subordinates to handle the CIRI land conveyances. In retrospect, he said, that was a mistake. "I was being treated like a mushroom," he said.

The Cook Inlet land trade was the product of a long-simmering conflict between Alaska Natives — who had hunted, fished and occupied most of the state for thousands of years — and a white world that was fast claiming the best Alaska had to offer.

The conflict came to a head in the mid-1960s when Alaska Natives claimed Prudhoe Bay and the land needed to build the trans-Alaska oil pipeline. The oil industry challenged the claim in court, and lost.

Congress resolved the dispute in 1971 with the Alaska Native Claims Settlement Act, which cleared the way for the pipeline by creating more than 170 Native regional and village corporations and vesting them with $963 million and 44 million acres. The agreement also gave the state undisputed title to the Prudhoe Bay oil field.

Most Native corporations were able to get the land they were entitled to, but CIRI had problems. Almost all of the developable land within its traditional boundaries had

TEN YEARS LATER, AS THE STATE LOSSES MOUNT

"(It's) just outrageous. Somebody got snookered. I certainly feel as though I did."

— Bob LeResche, former commissioner of natural resources

"To the extent this was missed, a lot of people had a shot at it."

— Guy Martin, former commissioner of natural resources

"It wasn't something we contemplated and deviously tried to take advantage of."

— Roy Huhndorf, CIRI president

"It's disastrous management by the state ... I really don't see any excuse for it."

— Hugh Malone, former state representative

been homesteaded, deeded to the state, or reserved for military bases, national forests or wildlife refuges.

CIRI sued the federal government, arguing that under the settlement act it was entitled to more than just "glaciers and mountain tops."

The federal Department of Interior tried to settle the case in the spring of 1975. It offered CIRI 230,000 acres in the Kenai National Wildlife Refuge, mineral rights to another 345,000 acres, the Swanson River oil field and several large tracts of federal land in the Anchorage Bowl.

CIRI turned down the offer.

Fearful that state interests might suffer if Congress came up with a more generous settlement, state officials joined in the trade.

One of the main advocates of state participation in the swap was Michael C.T. Smith, the brilliant and sometimes abrasive director of the Alaska Division of Lands. Smith quickly became the key state player in the trade, negotiating the deal, leading efforts to win legislative approval of it, and running the state agency that carried it out.

In October 1975, after months of talks, Smith announced agreement on a three-way trade involving more than 2 million acres.

Under the agreement, the state received thousands of acres near Willow, then the proposed site of a new state capital, land in the Bristol Bay watershed, the Campbell park strip, and a tract needed for a north-south runway at Anchorage International Airport.

In return, the state gave up surface and subsurface (oil, gas and mineral) rights to thousands of acres on the Kenai Peninsula, and 310,000 acres containing 500 million tons of coal in the Beluga area on the west side of Cook Inlet.

Although the trade encountered little difficulty in the Congress — where CIRI, the state and all three members of its congressional delegation lobbied for passage — it stirred considerable controversy at home.

Critics questioned the wisdom of "giving away" 500 million tons of coal. Some charged that the deal violated the Alaska Constitution, in particular the prohibition against transferring state resources to private parties. Others complained that the agreement was too vague about which state lands CIRI would get.

"One of the problems we have with this deal is its uncertainty," Anchorage engineer Hamid Galliett told a joint meeting of the House and Senate resource committees in February 1976.

"It's a blank check to which you're going to sign your signatures and then Mr. Smith behind me is going to sit down with the Native corporations and decide what he wants to give them of our state lands. You are not going to know the deal. The way it is written does not permit that."

Approve the trade, warned Anchorage lawyer Homer Burrell, and you'll "commit an error which is going to approach Teapot Dome someday."

Galliett sued to keep the state out of the trade. The Alaska Supreme Court ruled against him in a split decision, and the U.S. Supreme Court refused to hear his appeal.

Environmental groups, CIRI, the administration of then-Gov. Jay Hammond and members of the state's congressional delegation pushed hard for the Alaska Legislature to approve the trade.

At CIRI's request, U.S. Sen. Ted Stevens wrote House Majority Leader Mike Miller, D-Juneau, to warn that failure to endorse the trade could have "unsettling results for the state."

Stevens told Miller that all "oil-producing federal lands that yield revenue to the state" had been precluded from transfer to CIRI. "Only in that way," Stevens wrote, "could a certain and current income stream for the state be maintained."

Smith and other state officials made similar statements.

A summary by the Department of Natural Resources said "no oil and gas fields" would "be transferred to Native ownership. All revenues currently received by the state will continue."

CIRI President Roy Huhndorf testified before legislative committees and the Federal-State Land Use Planning Commission that CIRI had given up its claims to Swanson River and other oil fields "so the present income of the state of Alaska could be maintained."

CIRI publicly assured opponents of the land trade that "all revenues currently received by the state, such as from the Swanson River oil field, will continue."

Legislators, even those critical of the trade, accepted the statements of CIRI and state and federal officials.

"Oil and gas was never a major part of the debate," recalled state Sen. Pat Rodey, D-Anchorage. The potential for significant loss of royalty income was considered so small "it was not discussed."

If lawmakers had known the deal would cost the state tens of millions of dollars, "there would have been a different approach to the oil and gas question," Rodey said.

At the time, the state needed money. The $900 million paid for the original Prudhoe Bay leases had been spent and the pipeline was still years from completion.

"I can't imagine the '76 legislature allowing a change by anybody that would lower the amount of money that was flowing into the treasury," Rodey said.

State officials believed they had protected state royalty income by prohibiting CIRI from selecting land in the Swanson River, Beaver Creek, West Fork, Birch Hill, Beluga River and Nicolai Creek oil and gas fields.

The state could also veto CIRI selections of state and federal land in the huge Kenai gas field. Its veto power did not extend to land claimed by the Salamatof Native Association, a village corporation in the Cook Inlet region. Under the settlement act, when a village corporation receives title to land, its regional corporation gets the oil, gas and mineral rights.

More than half of CIRI's interest in the Kenai gas field was acquired indirectly through the Salamatof village selections. That interest now earns CIRI millions that once went to the state.

Smith said it never occurred to him to negotiate the question of CIRI's right to oil and gas through village selections in the Kenai gas field.

CIRI also found a legal backdoor into the Swanson River and Beaver Creek fields.

The key was Section 14(g) of the Native claims settlement act. First, CIRI used the Cook Inlet land trade to get land just outside the oil and gas fields. This allowed them to acquire partial ownership of producing leases that overlapped the boundaries of the fields. Then, CIRI used Section 14(g) of the claims act, which entitles Native corporations to a share of the revenue from leases in which they have an interest, to take a third of the royalties from Swanson River and Beaver Creek — about $22 million so far. Before the trade, 90 percent of that money would have gone to the state.

Legislators were never warned that "14(g)" could be used to tap state royalty income. Smith said he and other state officials simply overlooked it. They first learned about CIRI's claims under 14(g), they said, when questioned by the Daily News last month.

CIRI knew about Section 14(g) before the trade, Huhndorf said, but didn't know how it would apply to the land trade. "We were so caught up in receiving our land entitlement that we never focused on it."

But when Huhndorf learned that 14(g) allowed CIRI to take a major share of Swanson River and Beaver Creek revenues, he didn't let his testimony about the sanctity of state royalty income keep him from going after it.

"I would have breached my fiduciary responsibility to our shareholders by not pursuing" the royalties. Besides, he said, his board of directors would have forced him to go after the money.

CIRI's reputation for shrewd business dealing makes some people doubt that the 14(g) windfall was as unexpected as Huhndorf says.

"I don't think anything happens by accident," said Rep. Don Young, R-Alaska. He smiled when told that Huhndorf had testified that state royalties would not be reduced.

CIRI shouldn't be criticized for "taking advantage of the state," Young said. "The

See Page A-15, MISTAKES

Official who negotiated land trade is now CIRI consultant

By RONNIE CHAPPELL
Daily News reporter
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The state official who negotiated the land trade that enabled Cook Inlet Region Inc. to claim tens of millions of dollars in state oil and gas revenues today is a paid consultant to the corporation.

Michael C.T. Smith, former director of the Division of Lands, went to work for CIRI in 1981, two years after leaving state service.

Smith advises CIRI on land issues and has helped the corporation obtain federal land under terms of the Cook Inlet land trade. He also was involved in negotiations aimed at getting village corporations to give up land selections around Lake Clark.

CIRI is one of his biggest clients, Smith said recently. The company has paid him $105,000 in fees, about 25 percent of his total billings, over the past five years, he said.

Some of the former state officials who worked with Smith on the land trade are critical of his involvement with CIRI. It's improper, they say, for him to have negotiated the land trade and then gone to work for the company that benefitted from it.

But others aren't troubled.

"If commercial incest were a crime in Alaska, almost everyone would be in jail," as Guy Martin, former state commissioner of resources, put it.

Dozens of former state officials, many with access to confidential resource information, have gone to work for Native corporations and oil companies.

"Mike Smith is about the best public servant I ever knew," Martin said. "As a person, he's just thoroughly admirable."

Smith admits that the decision to work for CIRI was a tough one.

"CIRI approached me and they wanted to hire me and I said no," Smith recalled. "I said, 'I don't think that would look all that good and that's something that concerns me.'

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"I talked to (my wife) Linda and I hemmed and I hawed. I finally decided after kicking it around and talking to some people to call the person who I felt would give me the most objective look."

Smith called Martin and asked whether he thought it would be improper for Smith to work for CIRI.

Smith said Martin told him, " 'If this thing had been negotiated out of the backdoor and you handed somebody a deed to what Cook Inlet got, I'd say yes . . . But, this is the most upfront public resource decision that's ever been made.' He said, 'You're out of your tree.' "

According to Smith, his relationship with CIRI has actually worked to the state's advantage.

". . . If I wasn't there," Smith said, "(CIRI) might be able to go to some of these new, inexperienced people" working for the state and get land they aren't entitled to.

"I would turn CIRI around inside. I never came out and said it, but they knew I wasn't going to be part" of an attempt to take unfair advantage of the state.

"A lot of times when CIRI would start to take off, I'd say, you know, that isn't going to fly with the state because that isn't what we negotiated."

Smith's life outside government has been relatively quiet, in marked contrast to the five years he spent as director of lands.

He wielded immense power during a time that the state was preoccupied with land issues, overseeing huge deals that will affect the state for decades to come. He force fed change to a state agency set in its ways.

His refusal to give in to public demands for free state land moved legislators to try to eliminate his job from the state budget. In May 1979, Resources Commissioner Bob LeResche finally demanded his resignation.

But few of Smith's initiatives stirred more controversy than the Cook Inlet land trade, which he and other Hammond administration policymakers defended as a way to protect important state interests.

Opponents, including some within Smith's agency, called the deal a billion-dollar boondoggle to benefit Cook Inlet Region.

Mistakes in the negotiation and execution of the trade have cost the state millions of dollars and will cost millions more. Smith accepts partial responsibility for the errors, but argues that others — even those who opposed the trade — are also at fault.

Friends and critics alike describe Smith as a thorough, brilliant, self-assured man. He grew up in New York, was selected as a Fullbright scholar, and studied in New Zealand before returning to the U.S. to earn a doctorate in resource management.

"He's such a smart guy that he doesn't suffer fools easily," Martin said. "That got him in trouble a lot of the time." Smith's style was "abrasive to a fault."

Theodore Smith worked for Smith in 1979. He describes his former boss as an intelligent, sometimes arrogant man who is "totally convinced of his own rightness. He's difficult to argue with. He's really smart, but because he is so smart, he's blind to his own mistakes."

"Mike did things his own way or else," said Tom Cook, who served under Smith as director of the Division of Minerals and Energy Management. "There was no willingness to compromise or take into consideration the concerns we had."

Cook and others at Minerals and Energy Management seemed out of step in an administration that bought back oil and gas leases to protect Kachemak Bay and traded coal reserves for park land and moose habitat.

"Smith had his own agenda at that time. What he said went. I personally had a lot of disagreements with Mike over resource management," Cook said.

Smith dismisses Cook's criticism as the grumbling of man whose positions on resource issues weren't articulated as well as his own.

"I'm a person who's got ideas and is not afraid to voice them, although I think I'm a person who listens to reason and can be certainly turned around by a good argument.

"I had as much determination to protect oil and gas fields as anybody else and everything I can see that I did was in that way," Smith said. "Certainly, nobody is able to stand up and say that at any point in time there was any attempt or direction on my part to go easy on oil and gas leases."

1/5/86

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

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Howard Weaver, Managing Editor
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Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

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A state error that will haunt for years

Anyone who still believes the sentimental notion that Alaskans won't make the same mistakes that were made Outside should study the Kenai land trade between the state and Cook Inlet Region Inc. This was a world-class blunder by the Hammond administration. It rivals Congress' giveaway of public land to the railroads a hundred years ago as a land policy error.

As a result of the bungled trade, CIRI inadverently received millions of dollars worth of oil and gas leases. Indeed, the loss eventually may be measured in hundred of millions of dollars.

There is no suggestion of corruption here. The trade was a good idea in concept. A trade should have been made but not one that provided CIRI with such a rich, unexpected windfall at the state's expense.

The evidence suggests the Hammond administration's land management system had virtually collapsed. Responsibility for negotiating the trade and affecting the conveyanace was in the hands of too few people; and they were subject to too little supervision and scrutiny.

There is plenty of blame to go around but clearly Gov. Jay Hammond, his natural resources commissioners, Guy Martin and Bob LeResche, and former director of the Division of Lands Michael C.T. Smith deserve public recognition for their stunning mismanagement of state resources. It's simply not good enough to say, as Mr. Smith did, "things fall through the cracks like this."

Not everyone in the administration missed the boat. Some lower echelon officials in the Department of Natural Resources who recognized the implications of the trade raised the alarm. But they were ignored, demonstrating once again why it is so important for public officials to seek a wide range of opinion when faced with major decisions. To protect the state and themselves, governors and commissioners must be exposed to things they don't want to hear.

The Sheffield administration has taken steps to establish a review process that protects the state's natural resources from now on. Good. Natural resources are as valuable as money. They should be subject to similar security and scrutiny.

Can the state recoup its losses through legal action? It's impossible to say without a thorough, hard-nosed evaluation of the state's case and the legal probabilities.

But on Monday, the fog loosened its grip a bit. Le[illegible]y departure delays were still the

See Page [illegible] TRAVELERS

Gary and Eva Squires and sons, David, 4, and Mathew, [illegible] took their shoes off Monday to wait for a Seattle-bound flight

Anchorage Daily News 12/24/85

Legal experts may advise state on recovering millions

By RONNIE CHAPPELL
Daily News reporter

The Alaska Department of Law may call in independent legal experts to evaluate the state's chances of recovering millions of dollars in oil and gas revenues lost by mistake during the negotiation and implementation of the Cook Inlet land trade, Attorney General Hal Brown said Monday.

"It might be nice to have the benefit of their thoughts, as well as our own," Brown said. "Then we could sit down, analyze them" and determine what to do.

"We already started looking at some" of the options available to the state, he said. "But we need to do more in-depth analysis before I can say what remedies, if any, are available to us."

In the meantime, Brown said, "my first goal is to make sure that nothing like this can happen now."

According to a months-long examination by the Daily News, losses of state royalty income have been substantial. Past mistakes, including the inadvertant conveyance of producing oil and gas leases to an Anchorage-based Native regional corporation, have cost at least $35 million and the total is increasing by at least $5 million a year.

State officials also gave Cook Inlet Region, Inc. an estimated $300 million to $700 million interest in the Cannery Loop gas field near Kenai. The field, discovered in 1979, is scheduled to go into production next year.

Procedures governing the disposal of state land have been tightened considerably since 1982, according to state officials. For that reason, Gov. Bill Sheffield is "satisfied that the errors (made by the Hammond administration) could not occur again," said Sheffield spokesman John Hilliard.

According to Hilliard, Sheffield is "going to wait for a closer reading on this thing from the attorney-general's office" before deciding whether it makes sense to pursue the lost millions.

House Speaker Ben Grussendorf, D-Sitka, said Monday that he had directed his staff to review the original agreement between CIRI and the Department of Natural Resources.

"I want to know more about it," Grussendorf said. "The story has broken. Now we've got to verify the facts. It's something we'll have to spend some time looking at."

Other House and Senate leaders were not available for comment Monday.

If the state attempts to recover the lost royalty income, state officials have said, the challenge will be based on claims that:

- State land deeded to CIRI was conveyed by state officials who lacked legal authority to execute the transfers.
- State and CIRI officials assured the legislature that state royalty income would not decline as a result of the Cook Inlet land trade.
- The state is still entitled to 90 percent of the royalty income generated by federal oil and gas leases, even when those leases are partly owned by Native corporations.

Vandals play Scrooge, tear down home's spectacular holi

By LARRY CAMPBELL
Daily News reporter

There are some hearts the holiday season [illegible]ntly does not soften, as Gary and [illegible] Mueller learned Monday evening.

Only last week, the Muellers' East Anchorage home had been a spectacle of lights that caught the eyes of judges and a first-place award in this year's Daily News Christmas Lights Contest. The home was featured in Sunday's Daily News homes section.

Monday evening the lights were out, doused by vandals while the Muellers were out shopping.

"I wondered what was going on when we drove up. I couldn't figure out why the lights were off," Gary Mueller said. "It took me awhile before I took a good look and figured out it was all torn down."

The Mueller home was the brightest spot in their otherwise dark, out-of-the-way neighborhood off Muldoon Road. Even a nearby street light shed less light than the 4,000 to 5,000 lights strung about triangular spires, towers and arches on the Muellers' corner lot.

For eight years, Mueller said, he and his wife have adorned their home with lights for the holidays. This year the spectacle had taken them more than a month to complete, and the newspaper-sponsored contest rewarded them with a $200 dinner.

The Muellers turned down the prize and asked the money be donated to the Salvation Army.

Since the home appeared in Sunday's newspaper, Mueller said, there had been a steady stream of cars loaded with people coming to see his house. Monday evening, however, someone came to do harm.

Sometime between 5 p.m. and 6:30 p.m., vandals knocked down the lighted spires on the roof, smashed a string of lights atop the chain link fence and unplugged rows of other lights along the home's eaves. Lines of electrical wire hung loose and wooden triangle frames were torn from the roof.

Neighbors s[illegible] anything, but corner was dar[illegible]

Standing in at the destruc[illegible] shook his hea[illegible] He said he wil[illegible] be able to fire strings for Chr[illegible]

"Here there and there's not about that," h[illegible] it? Just shows [illegible]

"I don't kn[illegible] happens. I gue[illegible] too."

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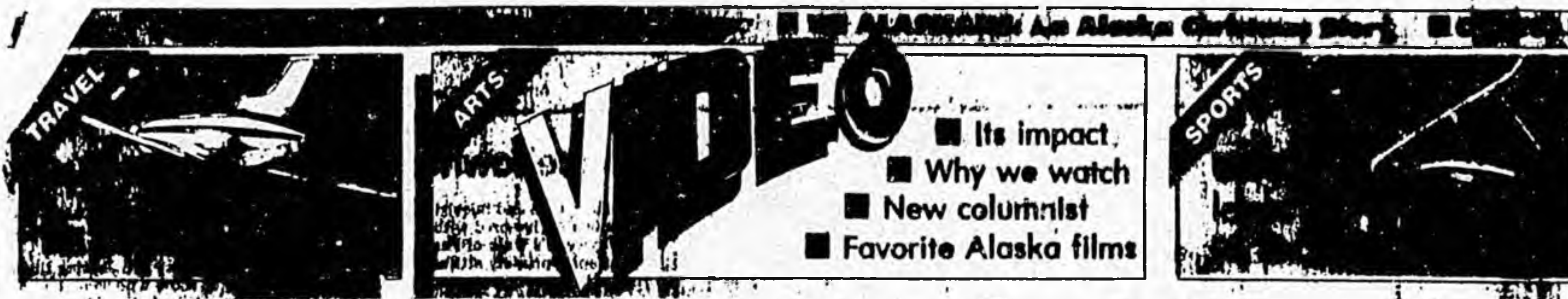

Anchorage Daily News

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State mistakes cost millions

Native corporation got oil, gas worth as much as $500 million

By RONNIE CHAPPELL
Daily News reporter
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Mistakes by state officials executing a land swap 10 years ago have cost the state at least $35 million in oil and gas revenues, an examination by the Daily News reveals.

The cost of these oversights by state resource managers is growing by $5 million or more a year, and one day may exceed $500 million.

In response to inquiries by the Daily News, state officials have begun looking for ways to recover the lost oil and gas land and revenue. They also are drafting new land disposal rules designed to prevent the kind of errors that resulted in:

- The transfer of 11 valuable state-owned leases on the Kenai Peninsula to Cook Inlet Region Inc., the Anchorage-area Native regional corporation.
- The loss to CIRI of nearly half the state's ownership interest in one of the largest gas fields in the United States.
- The conveyance of more than 2,000 acres in the Cannery Loop gas field without knowing that it was worth $50 million to $120 million. Today, because of increases in the price of natural gas, the land could be worth $300 million to $720 million.
- The overlooking of a section of the Alaska Native Claims Settlement Act that allowed CIRI to take a third of state revenue from two known oil and gas fields.

The land CIRI has obtained is among the most valuable in Alaska. Over the past five years, the company has grown into a financial powerhouse that earns millions of dollars a year, and pumps millions more into 11 other Native regional corporations.

The engine of CIRI's success is the oil and gas income unwittingly turned over by the state.

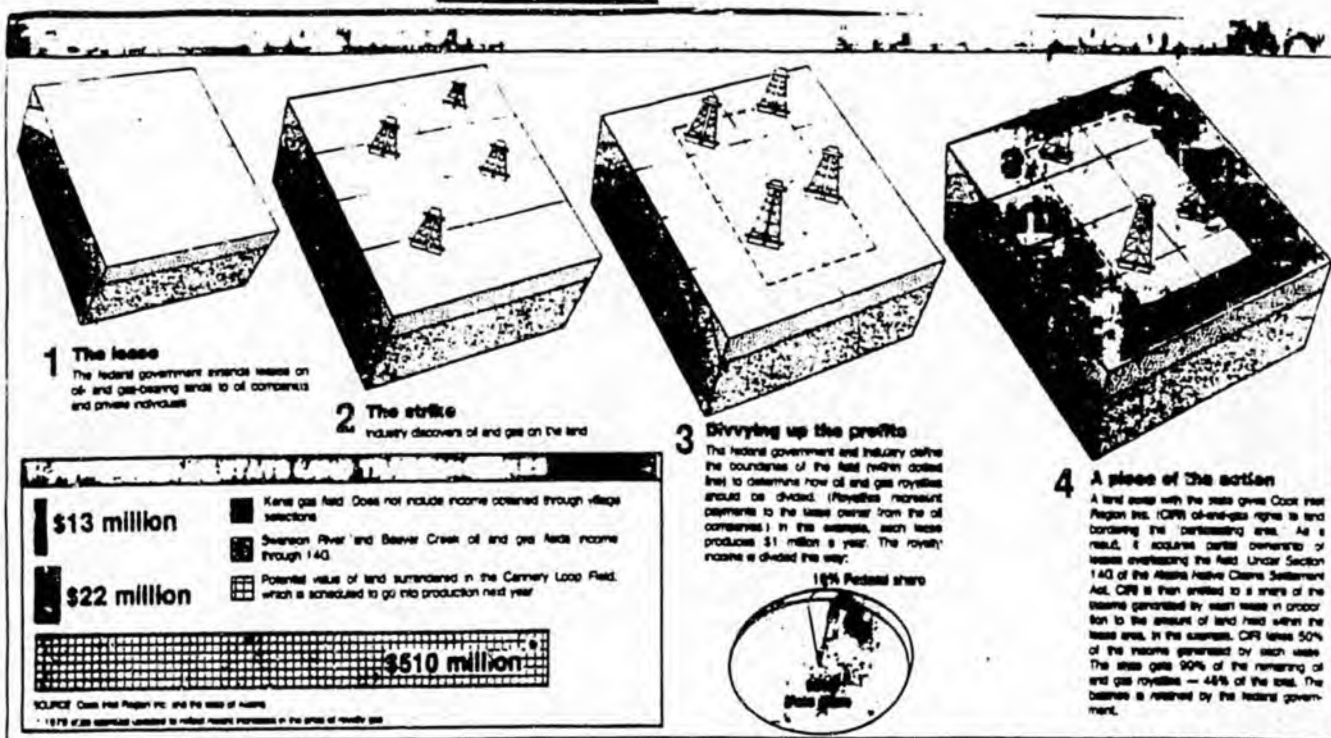
Under federal law, the state receives 90 percent of all oil and gas royalties from federal land in Alaska. Under that system, the state once earned up to $7 million a year from the Swanson River oil field.

CIRI used the land trade to take a 35.1 percent cut of the income from Swanson River. The state's share fell from 90 to 58.4 percent; the federal government gets 6.5 per cent.

The loss to the state was even greater in the Kenai gas field, one of the largest in the country. The field heats most of Anchorage, supplies raw material for a world-class fertilizer plant and fuels the only liquified natural gas export facility in the U.S.

Before 1976, the state collected more than 90 percent of the royalty income from the Kenai field. Through the land trade, CIRI acquired 65 percent, worth more than $10 million a year beginning in 1986, and the state share fell to 31.5 percent, with the balance going to the federal government.

See Page A-14, STATE



Mistakes in land deals with Native corporation cost state millions in oil and gas revenue

Continued from Page A-14

state ı a big boy too."

Smith admits he erred in overlooking the implications of 1981. But, he insists, so did others.

Guy Martin agrees. As state resources commissioner, Martin was Smith's boss when the trade was negotiated and submitted to lawmakers.

"It wasn't just the (Hammond) administration," he said. "There was huge public exposure of this thing." The trade was "the most thoroughly aired transaction the state ever conducted. That thing was turned inside out. I used to tell people that everyone but God had approved it, including the U.S. Supreme Court. To the extent this was missed, a lot of people had a shot at it."

publicly reviewed land exchange, certainly in Alaska and perhaps in American history," Smith said. "All of these people, and Dale (Tubbs) is a good example, had an opportunity to voice their concerns."

Tubbs disagrees.

"I give CIRI all the credit in the world for getting what they got," Tubbs said. "But they got it because of Michael C.T. Smith."

One who apparently foresaw the negative effect of the trade on state income was an aide to an assistant secretary of the Interior. Four months before the legislature approved the trade, Ted Bingham, a career employee of the Bureau of Land Management, predicted the state "would likely lose its share of mineral royalties" from the Swanson River oil field.

state had agreed to make "well located, potentially developable land" available to CIRI.

Smith wrote that the state should retain land of "public significance," but he didn't define the term. The memo doesn't mention producing oil and gas land, land with proven oil and gas reserves, or land with high oil and gas potential.

"From my standpoint, it was so obvious we weren't going to give up oil and gas fields, that why repeat it," Smith explained recently. "I could have said we shouldn't give them the Governor's Mansion. I could have gone into incredible detail.

"I couldn't believe anybody in their right mind — if the process was working right — would give them produc...

never reviewed by the legislature.

Current natural resources employees say it is incredible that the state could transfer so much land so quickly.

Not all of the leases given to CIRI were valuable, but one of them represented more than a third of the state's ownership interest in the huge Kenai gas field. The previous year the lease had provided the state $495,000. Today, it produces more than $2 million a year for CIRI.

"We screwed up, to be quite blunt about it," said Ron Swanson, a land manager with the Division of Land and Water Management.

While one group of state employees was giving away a chunk of the Kenai gas field, a second negotiating team was hard at work on a second...

According to George Kriste, CIRI's executive vice president, the corporation wanted quick conveyance of the Cannery Loop land because "we knew (it) would never be conveyed after (Union) started to flare the well."

On May 13, 1979, a 40-foot plume of fire from the well signaled a major strike.

For the state, the discovery came too late.

On May 1, Bob LeResche had given away the state's interest in the field by signing the Seldovia agreement.

On May 3, according to state records, the Division of Lands had asked state oil and gas managers to estimate the value of the state interest in the Cannery Loop field. Within days, they replied with a memo estimating its value at $50 million to $120 million.

Dyke's Cannery Loop appraisal, state officials gave Cifi; another 80 acres in the Kenai gas field.

On a separate occasion, the Division of Lands urged the federal government to give CIRI a 160-acre tract that Minerals and Energy Management had told them was part of the Kenai field. The tract was given to CIRI.

Before the 160 acres were transferred to CIRI, the state received 90 percent of the royalty income from the land. State officials could have blocked the transfer and protected the income simply by objecting.

CIPI "shouldn't have gotten any producing or proven reserves," said former Minerals Director Tom C;ok. "We recommended against convey...

Official who negotiated land trade is now CIRI consultant

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"He's such a smart guy that he doesn't suffer fools easily," Martin said. "That got him in trouble a lot of the time." Smith's style was "abrasive to a fault."

Theodore Smith worked for Smith in 1979. He describes his former boss as an intelligent, sometimes arrogant man who is "totally convinced of his own rightness. He's difficult to argue with. He's really smart, but because he is so smart, he's blind to his own mistakes."

"Mike did things his own way or else," said Tom Cook, who served under Smith as director of the Division of Minerals and Energy Management. "There was no willingness to compromise or take into consideration the concerns we had."

Cook and others at Minerals and Energy Management seemed out of step in an administration that bought back oil and gas leases to protect Kachemak Bay and traded coal reserves for park land and moose habitat.

"Smith had his own agenda at that time. What he said went. I personally had a lot of disagreements with Mike over resource management," Cook said.

Smith dismisses Cook's criticism as the grumbling of man whose positions on resource issues weren't articulated as well as his own.

"I'm a person who's got ideas and is not afraid to voice them, although I think I'm a person who listens to reason and can be certainly turned around by a good argument.

"I had as much determination to protect oil and gas fields as anybody else and everything I can see that I did was in that way," Smith said. "Certainly, nobody is able to stand up and say that at any point in time there was any attempt or direction on my part to go easy on oil and gas leases."

Anchorage Daily News forum 5/4/1986

Smith responds to Cook Inlet Land Exchange story, editorial

The Daily News has done a public service in bringing to light errors on the part of the state in implementing the Cook Inlet Land Exchange. However, the News, in both the original Dec. 22 article and in its editorial, failed to provide an accurate overall analysis of what the myriad dates, events and complicated legal interpretations meant.

First, the News did not clearly make the important distinction between the process of negotiating and legislating the original agreement, and the subsequent implementation of that agreement during which the majority of mistakes occurred. The exchange agreement itself provided for a fair and equitable exchange for all parties. Its passage was accompanied by intense agency, public, legislative and legal debate. If errors were overlooked during this process, they were missed by many individuals, agencies and institutions.

Second, the News editorial's implication that the alarms raised by some lower echelon officials were ignored is simply wrong. The News' own article stated that the Deputy Director of Lands opposed the exchange in both oral testimony and in writing during the Senate Resources Committee hearings. Several other state officials also actively opposed the exchange. However, in the end both administration and the legislature decided the exchange was in the state's best interest. The Daily News also expressed editorial support for the exchange at the time.

Third, the unexpected benefits derived by Cook Inlet Region, Inc. occurred primarily from unintentional, but certainly preventable, errors made by state agencies during implementation of the exchange, including acquiescence in the application of Section 14(g) of ANCSA in clear contradiction to the original intent of the exchange agreement. It is, therefore, patently unfair for the News to place any blame upon former Commisssioner of Natural Resources Guy Martin as he had left that position more than a year before implementation of the exchange even began.

Lastly, the News article pointed out shortcomings in both the state's review of the initial exchange agreement and in the process of implementing the exchange. Many people were involved in both aspects of the exchange, and contributed to its many successes, and its few failures. My role was certainly pivotal in both aspects, and to that extent I accept part of both any blame, as well as credit. But why the problems occurred is less a matter of personalities, and more the result of the framework within which the land exchange conveyances were made.

The News is wrong in suggesting that the Hammond administration's land management system had virtually collapsed. In fairness to the Department of Natural Resources and other state employees who labored in good faith to convey the large entitlement identified in the agreement, it must be pointed out that the background against which those transfers were made was unique in Alaska's history.

In 1978, two years after the land exchange was formalized and just as implementation was beginning, the legislature became obsessed by land disposals under pressure of the Beirne Homestead Initiative. It mandated a series of duties and deadlines, to be accomplished largely within just 12 months, to remove all impediments to large-scale land disposals for private ownership. These mandates included completing identification of approximately 772,000 acres to fulfill the entitlements of Alaska municipalities; identification and transfer to CIRI of its more then 415,000 acres; and identification of tens-of-thousands of acres of private land disposals — tasks unparalleled in the state's history.

Foisted on an understaffed department, there was no way all those mandates could be met within such unrealistic time frames without significantly increasing the probabilities for serious errors. Expressions of these concerns to the legislature were shouted down in committee hearings as bureaucratic blocking of legislative desires.

This is not meant to blame the legislature for all the land exchange errors. But, the politics of "Now, and damn the obstacles," as exhibited by the 1978 legislature, always has a cost. The full costs for the roads, schools and other services which ultimately will be needed to support the helter-skelter state land disposals of the past seven years may never be tallied. In this instance, however, the Daily News has performed a service in identifying the unintended real dollar costs of the errors caused by having to hastily implement the CIRI exchange. The legislature and the people of Alaska would do well to keep that in mind when making future resource decisions with similar magnitudes and time constraints.

— Michael C.T. Smith

☐ Michael C.T. Smith is the past Alaska director of state lands.

NATION: O'Neill predicts veto of tax-bill, Page A-3

NEIGHBOR TO NEIGHBOR
Daughter seeks reunion with father Outside
Metro, Page C-1

Anchorage Daily News

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Leader steers CIRI on a wealthy course

Huhndorf keeps his eye on assets — not limelight

By RONNIE CHAPPELL
Daily News reporter
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Rumpelstiltskin, the dwarf who spun straw into gold, could have taken lessons from Roy Huhndorf, the president of Cook Inlet Region Inc.

Huhndorf took an offer of glaciers and mountaintops and turned it into a river of cash for his company and every Native corporation shareholder in Alaska.

There was no hocus pocus, no sleight of hand.

Huhndorf, 45, used intelligence, toughness, tenacity and stealth to take the pants off the state in one of the most complicated land trades ever negotiated. As a result, his Anchorage-based Native regional corporation will collect hundreds of millions of dollars in oil and gas revenues the state never intended to give away.

Huhndorf is putting the money to good use. Today the corporation is among the leanest and most profitable in the state. CIRI employs just 45 people. Expenses account for less than a third of annual revenues.

The company has kept overhead low by searching out strong partners and investing with them in a number of successful ventures. CIRI owns a substantial interest in an offshore drilling rig, two on shore drilling rigs, a North Slope construction company and the ABC TV affiliate in Hartford-New Haven, Conn.

CIRI also is heavily involved in the development of industrial, commercial and residential property in Anchorage, Juneau, Southern California, Hawaii, Virginia and New Orleans.

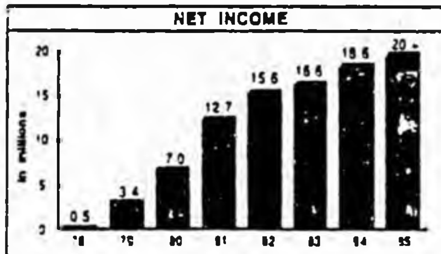
While some other Native corporations are struggling to keep Outside banks at bay, CIRI is collecting interest on more than $50 million in securities.

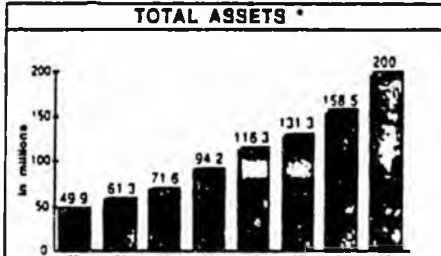
Since 1982, CIRI has funneled more than $48 million to other Native corporations under Section 7(i) of the Alaska Native Claims Settlement Act. Section 7(i) requires regional corporations to share 70 percent of their resource income with the other regional corporations. According to Huhndorf, CIRI's earnings have helped two corporations stay out of bankruptcy court.

In contrast, CIRI has received less than $1.5 million in 7(i) money from the 11 other regional corporations, some of which are perceived to be more successful than CIRI. Sealaska Corp. in Juneau, for example, has been listed among the country's 1,000 largest indus-

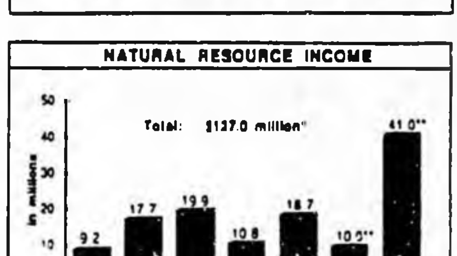
See Back Page HUHNDORF

THE FINANCIAL PICTURE FOR COOK INLET REGION INC.





* This does not include the value of most of CIRI's interest in the Swanson River, Beaver Creek, Kenai and Cannery Loop oil and gas fields. In 1979, when royalty gas was selling for 30 cents per thousand cubic feet, the state appraised the Cannery Loop lands alone at $50 million to $120 million. Since then, the price of royalty gas has increased 800 percent. The value of most other CIRI lands have not been included in the corporation's financial statement.



* 95 percent of the total income comes from oil and gas

** Values for 1985 and 1986 are based on estimates provided by Cook Inlet Region Inc. The 1986 figure also includes a $31 million retroactive royalty payment CIRI is scheduled to receive early next year.

Anchorage Daily News chart/Pamela Dunlap-Shohl

Officials take steps to learn from state's mistakes

By RONNIE CHAPPELL
Daily News reporter
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Resources Commissioner Esther Wunnicke has asked state attorneys to see if the state can recover millions of dollars in oil and gas revenues it mistakenly gave away in the Cook Inlet land trade.

No decision on whether to pursue the lost millions in court has been made. Wunnicke said: "We're seeking advice from the attorney general to guide us in future actions."

But Cook Inlet Region Inc., the Anchorage-based regional Native corporation that gained from the state mistakes, already is digging in to protect its interests in the Cannery Loop, Swanson River, Beaver Creek and Kenai oil and gas fields.

In a 16-page memo delivered to state officials this month, CIRI attorneys describe a state claim on Native royalty income as "a direct attack upon the integrity of the Alaska Native Claims Settlement Act and a clear threat to the survival of many Alaska Native corporations."

They also warn that any effort "to deprive Alaska Natives of revenues from their lands" could prompt the Congress to reduce the state's "unique and extremely generous 90 percent" share of federal oil and gas royalty income.

In an effort to prevent future mistakes, Wunnicke also will make permanent a land transfer review process established in 1982. Before that, the state lacked a formal procedure for reviewing land selections.

The state also will audit all its past land conveyances under the terms of the Cook Inlet land trade.

"In this time of declining revenue we can ill afford to give away a producing oil and gas lease," said Gary Gustafson, the state's chief land manager. "We have built in mechanisms to keep that from happening. It will not happen again, unless of course, it is intentional."

See Back Page STATE

Huhndorf keeping a stealthy head, steady hands at the helm of CIRI's financial empire

Continued from Page A-1

that companies.

CIRI has never sought that kind of attention. The corporate land — more than [illegible] million acres of surface and subsurface estate — has never been appraised.

Huhndorf would rather pay his stockholders big dividends — four times the size of other Native corporations — and keep a low profile. He avoids publicity and concentrates on profits. CIRI doesn't have a public relations department, and as a rule doesn't issue press releases.

"We feel that the figures at the end of the year speak for themselves," Huhndorf said.

There are other reasons for doing business quietly. State and federal agencies still owe CIRI more than a million acres under terms of the Cook Inlet land exchange. Publicity generally means controversy and nothing gums up the wheels of government and the process of obtaining land like controversy.

Huhndorf grew up in a log home in Nulato, an Athabascan village on the Yukon River. The family had a large vegetable garden and hunted moose in the fall. His mother, a Native, sewed fur garments and his father, a retired serviceman, was one of the few villagers with a cash income.

At 15, Huhndorf left Nulato to attend Anchorage High School.

"There was some prejudice aimed at me personally," he recalled. "If you take it seriously, it can make you have a pretty low opinion of yourself."

While managing CIRI, Huhndorf found time to attend college classes at night. In 1984 he received his diploma from the University of Alaska Anchorage. At the time he was a student, he was also a university regent. He is now president of the Board of Regents.

As a young man, Huhndorf watched Outsiders stake land that had been hunted and fished by Native Alaskans for more than [illegible] years.

Even the state participated in the land grab. Entire villages were gobbled up, Huhndorf said, despite provisions in the Statehood Act that prohibited state selections in areas subject to "aboriginal title."

This simmering conflict came to a head in the mid-1960s when Alaska Natives claimed to own Prudhoe Bay and the corridor needed for the trans-Alaska pipeline. The oil companies fought the claim in court, and lost.

In 1971 the Alaska Native Claims Settlement Act gave the state uncontested title to the Prudhoe Bay oil field, allowed construction of the pipeline and created more than a hundred village and regional Native corporations and vested them with $962 million and 44 million acres.

"A lot of people tend to ignore the legality of the settlement act," Huhndorf said. "Change always bothers some people. There are always those who resent it."

For CIRI, however, the settlement act was a hollow promise. Most of the developable land within its boundaries had been taken. Millions of acres were tied up in the Chugach National Forest and the Kenai National Wildlife Refuge. The state had selected millions more and homesteaders had gobbled up the rest.

When the Secretary of the Interior tried to satisfy CIRI's entitlement with mountaintops and glaciers, Huhndorf said, "we knew there was not going to be a fair settlement.

Roy Huhndorf, Cook Inlet Region Inc. president

We weren't going to stand still for that."

After [illegible] round in court, CIRI went to the U.S. Congress for help. Strong support from Sen. Henry Jackson, D-Wash., and others gave CIRI the lever it needed to pry a compromise out of the Department of Interior.

Federal officials offered the corporation more than 230,000 acres in the Kenai National Wildlife Refuge, the Swanson River oil field and several large tracts of federal land in the Anchorage Bowl.

CIRI turned down the deal. The corporation was asked to give up two-thirds of its entitlement and the assets it was receiving "weren't valuable enough," Huhndorf said.

The state joined the talks during the spring of 1975 because "it had a variety of interests it wanted to protect," Huhndorf said. Six months later, Congress approved a three-way trade that netted CIRI more than 2 million acres.

The state contributed 115,000 acres on the Kenai Peninsula and 110,000 acres in the Beluga area. The Beluga lands contained more than 900 million tons of known coal reserves.

The Alaska Legislature approved the deal after Huhndorf and others testified that CIRI had relinquished its claims to Swanson River and other oil fields so the present income of the state of Alaska could be maintained.

Despite Huhndorf's testimony, CIRI later:

• Used Section 14(g) of the settlement act to take more than a third of the royalty income generated by the Swanson River and Beaver Creek fields.

• Nominated state and federal lands in the huge Kenai gas field for conveyance to the corporation. It paid the cost of a lawsuit that allowed the Salamatof Native Association to get additional land in the Kenai field.

• Used an agreement designed to protect Kachemak Bay State Park to take over the state's interest in a new gas field near Kenai that could be worth $100 million to $200 million. The field will go into production next year.

Huhndorf insists he and other company officials did not mislead lawmakers. At the time the trade was under consideration by the Legislature, CIRI had not assessed the effect of 14(g) on state revenue from Swanson River, he said.

By nominating tracts in the Kenai gas field, CIRI was only trying to obtain the best land available. Under the agreement approved by the Legislature, the state had an ultimate right to block those selections, Huhndorf said.

State officials rarely exercised that power. Instead, they gave away revenue-producing leases in existing fields. The line-move chess players at the Alaska Department of Natural Resources proved no match for the silver-haired grandmaster and his team at CIRI.

The CIRI strategy was so well conceived and smoothly executed that a decade later the presiding state officials still didn't realize the magnitude of their mistakes.

Almost everyone agrees that CIRI succeeded by knowing the game and the rules better than its opponents. When roadblocks were encountered, CIRI negotiators stuck with it until the troublesome faces or policies changed.

"We've got a healthy respect for CIRI that comes from experience," said Gary Gustafson, the chief of land management for the state.

Gustafson wasn't involved in the negotiation of the land trade and had nothing to do with the loss of state land in producing oil and gas fields.

"Of all the Native corporations we deal with, (CIRI) is the most astute," Gustafson said. "If there's a meeting," he said, "CIRI always prepares the agenda. If there's an agreement to be worked out, they always prepare the first draft."

The tactic is effective in complex negotiations, Gustafson said, because "he who controls the script, usually gets what he wants."

Today, the state is still outmatched.

The Division of Land and Water Management has just two people negotiating and implementing all exchanges.

"We are stretched so thin that no matter how good those people are, it's difficult to keep up," Gustafson said. "Especially when CIRI knows exactly what they're doing and has four people assigned to the task. We're swamped all the time, and they've got a hit team."

CIRI has triumphed and profited over its business counterparts. Unocal Corp., the California oil company that operates the Kenai gas field, will soon pay CIRI more than $20 million in retroactive royalties on natural gas sold to the Unocal Chemical plant in Nikiski. The settlement also triples the price that CIRI, the state and the federal government will get for royalty gas.

"Unocal and the other companies with an interest in the Kenai field hate the way we got those lands," said CIRI Executive Vice President George Kriste.

Agreement has been reached on the value of royalty gas delivered to Enstar Natural Gas Co., a utility that serves more than 90,000 customers in Anchorage, the Matanuska Valley and the Kenai Peninsula.

According to Enstar officials, settlement of that dispute will cost the average residential gas consumer about $50, spread over a period of 20 months.

Huhndorf is proud of CIRI's performance, but he's hesitant to boast about it.

"It's a bit of paranoia," he said in an interview that reporters were not allowed to record. "Anytime a Native corporation does well, people resent that."

State officials examining legal avenues to see if Alaska can recoup lost oil, gas revenues

Continued from Page A-1

Recovering the oil and gas lands that already have been lost could be difficult, Gustafson said. Most of the state's options look like long shots. They're being considered because "we're looking at all possible avenues to recover lost royalty income or lease revenues," Gustafson said.

Losses of royalty income have been substantial. Past mistakes have cost the state at least $35 million and the total is increasing at a minimum of $5 million a year.

Although legislators were told the 2 million-acre deal would keep Cook Inlet Region Inc. from tapping state royalty income, the Anchorage-based Native corporation has made more than $70 million in Cook Inlet oil and gas production.

State officials also gave away a $100 million to $200 million interest in the Cannery Loop gas field near Kenai. The field, discovered in 1979, is scheduled to go into production next year.

Pursuing the lost millions will be politically difficult. Since 1982, CIRI has distributed $48 million to other Alaska Native corporations, representing more than 60,000 Native shareholders.

Strong Native support was crucial in 1982 in the election of Gov. Bill Sheffield. Sheffield will need their continued support in 1986 election.

"This is a no-win situation for Sheffield," said one former state official. "He's damned if he goes after the money, and he's damned if he doesn't."

If the state decides to challenge the Cook Inlet land transfers, Gustafson said, it will argue that:

• State land deeded to CIRI was conveyed by state officials who lacked legal authority to execute the transfers.

• State and CIRI officials assured the legislature that state royalty income would not decline as a result of the Cook Inlet land trade.

• The state may still be entitled to 90 percent of the royalty income generated by federal oil and gas leases even though the leases are partly owned by Native corporations.

In a Nov. 4 letter to Martin Richard of the Alaska Department of Revenue, former Assistant Attorney General Tom Meacham argues that the state's 90 percent royalty share is a "valid existing right" under Section 14(g) of the settlement act.

Therefore, Meacham writes, transfer of oil and gas leases to CIRI "could not impair the state's right to receive continued royalties from (CIRI's) portion of the leases."

If Meacham is correct, the state could recover more than $60 million and prevent the loss of millions more.

CIRI contends that Meacham's analysis contradicts the legislative history and later application of the settlement act.

"The state's right to royalty income from federal leases is a derivative right, contingent upon continued federal ownership of the leases," CIRI President Roy Huhndorf said. "As soon as federal ownership ends, the state's rights to continued royalty payments end."

"There apparently have been no court cases that directly analyze whether the state's interest in federal royalty income is a 'valid existing right' under Section 14(g) of the settlement act," CIRI attorneys said. "If such a claim were asserted, it seems clear that its practical resolution would be a task ultimately left for Congress."

Gustafson agrees with CIRI's interpretation of the law, but has asked for an opinion from the attorney general's office because "it's too important to have any question marks remaining."

Chances also appear slim that the state can reclaim lost revenue on grounds that state officials lacked authority to give away oil and gas leases, or that conveyance of the leases violated the intent of the legislature.

Both questions have been reviewed by state attorneys before.

"If any doubt now exists as to the legal authority of the person who executed the state's deeds of title, that doubt would almost certainly be resolved by a court in favor of the innocent third party, Cook Inlet Region Inc.," wrote Meacham in September 1980.

"It is my conclusion that these lease tracts ... have been irrevocably conveyed to CIRI."

In October 1980, Billy Berger, director of the Division of Legal Services, advised the House Research Agency that "the legislative history or intent of the legislation does not provide a legal basis for return of the leases."

According to Gustafson, the state's best hope for cutting its losses may lie in the erroneous conveyance of several federal oil and gas leases to the state during the early 1960s. The Bureau of Land Management discovered the mistake in March 1985 and asked the state to return leases that include 165 acres in the Kenai and Cannery Loop gas fields.

Returning the leases could work to the state's advantage. Under a 1979 agreement, the state is obligated to convey that land and any related subsurface resources to CIRI.

By returning the mineral rights to the federal government before giving the land to CIRI, the state could continue to collect 90 percent of the royalty income from the leases, Gustafson said.

"In this case, we can keep the situation from getting any worse and we might be able to undo part of what's already happened. From the state's perspective, that's important."

Improvements in land conveyance practices should prevent the loss of valuable oil and gas land in the future, Gustafson said.

In the old days, lands were conveyed quickly, without public hearings or legislative review.

"We couldn't do that today," he said.

Six years ago, the agency didn't always research every piece of state and federal land proposed for conveyance to CIRI. Today, there is a title search on each tract.

"This tells us if the land is even eligible" for conveyance to CIRI, Gustafson said. The review recently turned up several valuable tracts of federal land that didn't belong in the pool from which CIRI selects. Among them was a 160-acre parcel near Klatt Road and Minnesota Drive.

State resource agencies are now notified of proposed conveyances and given 45 days to respond. No action is taken until each has delivered its recommendations, in writing, to the Division of Land and Water Management.

In 1979 it took the Division of Lands just nine months to give away 45,000 acres of land, 48 oil and gas leases and a third of the state's holdings in the Kenai gas field. The transfer was never the subject of public hearings or reviewed by the legislature.

In contrast, it has taken the state six years to complete a much smaller trade aimed at getting the Seldovia Native Association out of Kachemak Bay State Park.

And that deal, because it involves state land valued at more than $5 million, eventually must be approved by the legislature.

"I'm comfortable that the process gives us the information we need to make an informed decision in the best interest of the state," Gustafson said.

State mistakes in land deals with Cook Inlet Region result in losses of up to $500 million

Continued from Page A-1

The string of errors and misunderstandings that proved so costly to the state came about in part because:

• Bitter disputes within the Alaska Department of Natural Resources kept it from giving the trade agreement the close scrutiny it required.

• Key state employees were shut out of negotiations.

• Legislators were misled by state and CIRI officials who assured them the trade would not reduce state revenues. The same officials now say they misunderstood the agreement and its effect on state oil and gas income.

• Workers responsible for conveying land to CIRI were never told not to give away producing oil and gas fields.

• The state traded away land before it knew what the land was worth.

• The recommendations of oil and gas managers were ignored by land officials carrying out the trade.

At one point, confusion within the Department of Natural Resources was so complete that officials agreed to sell gas they had mistakenly given away the year before.

Even today, many of the individuals involved in the Cook Inlet trade don't realize what happened.

"Dear God," muttered Bob LeResche, the former commissioner of natural resources, when told recently that he had signed away the state's interest in a major gas field as part of a 1979 agreement to prevent gravel mining in Kachemak Bay.

"(It's) just outrageous," LeResche said. "Somebody got snookered. I certainly feel as though I did."

LaResche said he trusted subordinates to handle the CIRI land conveyances. In retrospect, he said, that was a mistake. "I was being treated like a mushroom," he said.

The Cook Inlet land trade was the product of a long-simmering conflict between Alaska Natives — who had hunted, fished and occupied most of the state for thousands of years — and a white world that was fast claiming the best Alaska had to offer.

The conflict came to a head in the mid-1960s when Alaska Natives claimed Prudhoe Bay and the land needed to build the trans Alaska oil pipeline. The oil industry challenged the claim in court, and lost.

Congress resolved the dispute in 1971 with the Alaska Native Claims Settlement Act, which cleared the way for the pipeline by creating more than 170 Native regional and village corporations and vesting them with $963 million and 44 million acres. The agreement also gave the state undisputed title to the Prudhoe Bay oil field.

Most Native corporations were able to get the land they were entitled to, but CIRI had problems. Almost all of the developable land within its traditional boundaries had been homesteaded, deeded to the state, or reserved for military bases, national forests or wildlife refuges.

CIRI sued the federal government, arguing that under the settlement act it was entitled to more than just "glaciers and mountain tops."

The federal Department of Interior tried to settle the case in the spring of 1975. It offered CIRI 230,000 acres in the Kenai National Wildlife Refuge, mineral rights to another 345,000 acres, the Swanson River oil field and several large tracts of federal land in the Anchorage Bowl.

CIRI turned down the offer.

Fearful that state interests might suffer if Congress came up with a more generous settlement, state officials joined in the trade.

One of the main advocates of state participation in the swap was Michael C.T. Smith, the brilliant and sometimes abrasive director of the Alaska Division of Lands. Smith quickly became the key state player in the trade, negotiating the deal, leading efforts to win legislative approval of it, and running the state agency that carried it out.

In October 1975, after months of talks, Smith announced agreement on a three-way trade involving more than 2 million acres.

Under the agreement, the state received thousands of acres near Willow, then the proposed site of a new state capital, land in the Bristol Bay watershed, the Campbell park strip, and a tract needed for a north-south runway at Anchorage International Airport.

In return, the state gave up surface and subsurface (oil, gas and minerals) rights to thousands of acres on the Kenai Peninsula, and 310,000 acres containing 500 million tons of coal in the Beluga area on the west side of Cook Inlet.

Although the trade encountered little difficulty in the Congress — where CIRI, the state and all three members of its congressional delegation lobbied for passage — it stirred considerable controversy at home.

Critics questioned the wisdom of "giving away" 500 million tons of coal. Some charged that the deal violated the Alaska Constitution, in particular the prohibition against transferring state resources to private parties. Others complained that the agreement was too vague about which state lands CIRI would get.

"One of the problems we have with this deal is its uncertainty," Anchorage engineer Hamid Galliett told a joint meeting of the House and Senate resource committees in February 1976.

"It's a blank check to which you're going to sign your signatures and then Mr. Smith behind me is going to sit down with the Native corporations and decide what he wants to give them of our state lands. You are not going to know the deal. The way it is written does not permit that."

Approve the trade, warned Anchorage lawyer Homer Burrell, and you'll "commit an error which is going to approach Teapot Dome someday."

Galliett sued to keep the state out of the trade. The Alaska Supreme Court ruled against him in a [illegible] decision, and the U.S. Supreme Court refused to hear his appeal.

Environmental groups, CIRI, the administration of then-Gov. Jay Hammond and members of the state's congressional delegation pushed hard for the Alaska legislature to approve the trade.

At CIRI's request, U.S. Sen. Ted Stevens wrote House Majority Leader Mike Miller, D-Juneau, to warn that failure to endorse the trade could have "unsettling results for the state."

Stevens told Miller that all "oil-producing federal lands that yield revenue to the state" had been precluded from transfer to CIRI. "Only in that way," Stevens wrote, "could a certain and current income stream for the state be maintained."

Smith and other state officials made similar statements.

A summary by the Department of Natural Resources said "no oil and gas fields" would "be transferred to Native ownership. All revenues currently received by the state will continue."

CIRI President Roy Huhndorf testified before legislative committees and the Federal State Land Use Planning Commission that CIRI had given up its claims to Swanson River and other oil fields "so the present income of the state of Alaska could be maintained."

CIRI publicly assured opponents of the land trade that "all revenues currently received by the state, such as from the Swanson River oil field, will continue."

Legislators, even those critical of the trade, accepted the statements of CIRI and state and federal officials.

"Oil and gas was never a major part of the debate," recalled state Sen. Pat Rodey, D-Anchorage. The potential for significant loss of royalty income was considered so small "it was not discussed."

If lawmakers had known the deal would cost the state tens of millions of dollars, "there would have been a different approach to the oil and gas question," Rodey said.

At the time, the state needed money. The $900 million paid for the original Prudhoe Bay leases had been spent and the pipeline was still years from completion.

"I can't imagine the '74 legislature allowing a change by anybody that would lower the amount of money that was flowing into the treasury," Rodey said.

State officials believed they had protected state royalty income by prohibiting CIRI from selecting land in the Swanson River, Beaver Creek, West Fork, Birch Hill, Beluga River and Nicolai Creek oil and gas fields.

The state could also veto CIRI selections of state and federal land in the huge Kenai gas field. Its veto power did not extend to land claimed by the Salamatof Native Association, a village corporation in the Cook Inlet region. Under the settlement act, when a village corporation receives title to land, its regional corporation gets the oil, gas and mineral rights.

More than half of CIRI's interest in the Kenai gas field was acquired indirectly through the Salamatof village selections. That interest now earns CIRI millions that once went to the state.

Smith said it never occurred to him to negotiate the question of CIRI's right to oil and gas through village selections in the Kenai gas field.

CIRI also found a legal backdoor into the Swanson River and Beaver Creek fields.

The key was Section 14(g) of the Native claims settlement act. First, CIRI used the Cook Inlet land trade to get land just outside the oil and gas fields. This allowed them to acquire partial ownership of producing leases that overlapped the boundaries of the fields. Then, CIRI used Section 14(g) of the claims act, which entitles Native corporations to a share of the revenue from leases in which they have an interest, to take a third of the royalties from Swanson River and Beaver Creek — about $22 million so far. Before the trade, 90 percent of that money would have gone to the state.

Legislators were never warned that "14(g)" could be used to tap state royalty income. Smith said he and other state officials simply overlooked it. They first learned about CIRI's claims under 14(g), they said, when questioned by the Daily News last month.

CIRI knew about Section 14(g) before the trade, Huhndorf said, but didn't know how it would apply to the land trade. "We were so caught up in receiving our land entitlement that we never focused on it."

But when Huhndorf learned that 14(g) allowed CIRI to take a major share of Swanson River and Beaver Creek revenues, he didn't let his testimony about the sanctity of state royalty income keep him from going after it.

"I would have breached my fiduciary responsibility to our shareholders by not pursuing" the royalties. Besides, he said, his board of directors would have forced him to go after the money.

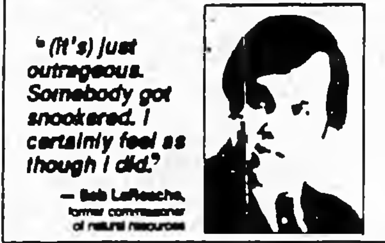
CIRI's reputation for shrewd business dealing makes some people doubt that the 14(g) windfall was as unexpected as Huhndorf says.

"I don't think anything happens by accident," said Rep. Don Young, R-Alaska. He smiled when told that Huhndorf had testified that state royalties would not be reduced.

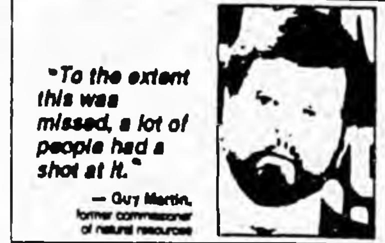
CIRI shouldn't be criticized for "taking advantage of the state," Young said. "The

See Page A-15, MISTAKES

TEN YEARS LATER, AS THE STATE LOSSES MOUNT



"(It's) just outrageous. Somebody got snookered. I certainly feel as though I did."
— Bob LeResche, former commissioner of natural resources



"To the extent this was missed, a lot of people had a shot at it."
— Guy Martin, former commissioner of natural resources

"It wasn't something we contemplated and deviously tried to take advantage of."
— Roy Huhndorf, CIRI president

"It's disastrous management by the state . . . I really don't see any excuse for it."
— Hugh Malone, former state representative

State got its share in CIRI land deal

People have a tendency to refer to the Alaska Native Claims Settlement Act as a give-away rather than a settlement of a legitimate claim. But let's look at the facts in the case of the Cook Inlet land trade.

Cook Inlet Region, Inc., is in the most populated part of Alaska and most of the good land around the villages was either homesteaded, built upon by the government or claimed by the state. Mountains and glaciers were left.

We went to court and an Anchorage judge ruled that mountain tops and glaciers were good subsistence hunting and fishing grounds for Natives. I asked, if that was true, why not trade for some Moose Range. I was then told by the Fish and Wildlife Service that a moose couldn't live up there, but a Native could.

CIRI appealed the decision and the Court of Appeals said they had never seen such an atrocious decision and reversed it. The Department of Interior was going to appeal to the Supreme Court so CIRI, of which I was then the president, decided to go to Congress for help.

The Alaska Federation of Natives laughed at us when we asked for support. To them we were not Natives, since we in CIRI were practically all quarter or half-Native.

Our land department prepared folders which consisted of pictures of villages with a little writing under each. There were also pictures of the mountain tops and glaciers we'd been offered by Interior. I spent almost a year going to the congressmen and women who had voted in favor of ANCSA, lobbying to get their support.

The state said they had us over a barrel — that CIRI had to take whatever was offered. But at the last Interior and Insular Affairs Committee meeting that I attended I was pleasantly surprised. I didn't have to testify. After calling the meeting to order, the chairman told everyone that "the Department of the Interior and the State of Alaska are going to make an agreement with CIRI that is satisfactory to CIRI or we are not going to appropriate any money for the department." In a couple of days, the agreement was signed.

Now let's talk about how the state got shafted. They received a "small amount of land" in the Anchorage area that was due to go to CIRI. Included was the Campbell Airstrip, which contained over 20,000 acres of land now worth over $100,000 per acre and 40,000 acres at Point Woronzof, Point Mackenzie, Goose Bay, Elmendorf and Fort Richardson that's worth $50,000 an acre today. Hence, the "small amount" of land the state received is worth at least $5 billion. Now the state is crying because CIRI got $37 million in additional royalties. In addition, the state and the federal government have received over $8.6 billion in fees and royalties between 1959 and 1984. If the state is getting shafted what are the Natives getting?

Without ANCSA, the title to the land each of us owns in Alaska would be no good. How would you, a property owner, feel if a Native came along, said his relatives had lived on your land and that he wanted it back?

I write this letter because I feel that the whole story of the Cook Inlet land trade was not published. The negotiators for the state and for CIRI should not be judged too harshly.

Ralph A. Johns[...]
Salamatof Native[...]

Questions on CIRI land g[...]

Your feature article of Dec[...] mistakes cost millions" is excell[...] er Ronnie Chappell has done an [...]

As noted, a key to Cook In[...] acquisition of over half of t[...] Kenai gas field is the federal l[...] the village of Salamatof. It [...] unbelievable that Mike Smith, [...] tor of the State's Division of [...] longtime staff member of the [...] Land Use Planning Commissi[...] realize that the land grant t[...] would, under section 14(g) con[...] the Kenai gas field to the Cook I[...]

The existence of Salamatof [...] village was very questionable. S[...] the Alaska Native Claims Act re[...] Native village, to be eligible[...] grant, had to be named in th[...] sections 11 or 16, or be compo[...] more Natives. In the Egan adm[...] protest was filed on the groun[...] matof was not listed in sections[...] was not composed of 25 or m[...] Actually, most of the protests [...] filed were dismissed by the D[...] Interior. However, the Egan ad[...] anticipating rejection of prot[...] tained from the Arctic Slope Re[...] ration a waiver of oil and gas r[...] granted to the also questiona[...] Nuiqsut, locted on the Colville [...] one in the Division of Lands, [...]

forum

employed prior to 1971, knew that a regional Native corporation would acquire mineral rights to lands granted to a Native village.

All that Mike Smith needed to do was to ask the older employees in the Division of Lands, especially Dale Tubbs. All that Guy Martin needed to do was to ask advice within his own commissioner's office from Bill Fackler, formerly Deputy Commissioner. Could Homar Burrell, former Director of the Division of Oil and Gas, be right when he refers to "Teapot Dome?"

Mike Smith told your reporter, "When you're in a situation like that with obviously support and instruction from up the ladder. . ." Who was on that ladder? Gov. Hammond? Sen. Stevens?

The environmentalists, as noted in the article, pushed for the land trade that gave valuable gas and coal leases to the Cook Inlet Region Inc. The environmentalists were greatly aided by the flood of environmentally oriented "planners" who flooded the Division of Lands early in the Hammond years. Without line responsibilities and, for the most part, historically unconscious, the planners accept preservation and oppose the state's legitimate interest in its subsurface wealth.

Still, there is one bright spot that shines through the dark complex of state errors. Roy Huhndorf, head of the Cook Inlet Region, does a far better job of balancing development and conservation than the state. Now that the damage to state royalty income has been done, I believe that the millions of dollars from gas and future coal royalties will be in the better hands.

— *Charles F. Herbert*

ANWR-
State
Agency
Comments

Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: ANWR tour participants (list below)
FROM: Ned Farquhar Ned
SUBJECT: More details
DATE: May 16, 1987

Planning

If you haven't yet, please let me know within the next couple of days whether you intend to join the tour. There are several alternates lined up who wish to go but can't join until we get the primaries figured out.

Purchasing transportation

Please purchase your round-trip airfare from your home to Anchorage or Fairbanks at least two weeks ahead of time to take advantage of excursion fares; there are no excursion fares from Anchorage/Fairbanks to Deadhorse. You should plan to arrive in Deadhorse the evening of Sunday, June 7 or on the earliest plane the morning of Monday, June 8. If you expect to join the North Slope Borough oilfield tour (described briefly below), you will be leaving Deadhorse either late Tuesday night or early Wednesday morning. (These dates could change if the weather is bad, but we need to plan on them.)

You can get a TR from me for your travel. But I'll be leaving Juneau on Thursday, May 21, so get it while it's hot.

Please keep me informed about the travel expenses you bill to the Committee. I need to keep a current budget.

Lodging

The North Slope Borough will provide lodging for the entire group at Deadhorse and Kuparuk. Please pick a roommate and let me know so that I can tell the Borough. The accommodations are regular motel-type.

North Slope Borough activities

North Slope Borough activities

So far the Borough has indicated an interest in showing the group some of its facilities in Service Area 10. On Tuesday morning, if the tour of the calving grounds is complete, the Borough plans to take the group over to Kuparuk for a visit that could last overnight. I should have more details on this soon and will keep you informed.

Contacts

I need to know your contact phone numbers between the end of session and June 7. My schedule is like this: May 21 travelling; May 22 - June 2 at 804-491-1999; June 2 -June 6 at 202-234-6030; June 7 travelling. Please call me anytime. I will appreciate being posted of any changes in your plans.

I am attaching a copy of Rep. Cotten's original memo on the trip and of USFWS's invitation for your review and files in case you have not received this information.

Distribution list

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DISTRICT 15

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P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

TO: Resources Committee members
Rep. Ben Grussendorf
Rep. Al Adams
FROM: Rep. Sam Cotten, co-Chair
SUBJECT: Caribou calving in ANWR
DATE: May 7, 1987

The Department of Interior will be inviting the House and Senate Resources Committees and the presiding members of each body to tour the caribou calving grounds in the Arctic National Wildlife Refuge. Please keep in touch with my staff in response to this memorandum.

Scheduling

The current itinerary is to leave Deadhorse (Prudhoe Bay) in the morning on Monday, June 8, for half- or full-day overflights of the area. This schedule is subject to change. My staff will need to know a contact phone number for you after session in case the schedule does change. The Interior Department projects that the calving will occur no earlier than June 8, but that the schedule could slip back a day or two, to the 9th or 10th of June. Likewise, if the weather prevents a tour on Monday, the Department will reschedule it for Tuesday.

This means that it will be best to schedule for arrival at Deadhorse on the evening of Sunday, June 7.

My staff is also trying to schedule some other oil-field and North Slope Borough tours for Tuesday and Wednesday after the calving grounds tour. If there is something that you are particularly interested in, please contact Ned Farquhar. I will let you know a more definite schedule for ancillary activities as soon as it shapes up.

Departure will depend on logistics and conditions on Monday and Tuesday; it should be safe to plan to leave Deadhorse on Tuesday evening or Wednesday morning as long as there are no disruptions. If you decide not to participate in the oil-field or Borough tours, you could depart Monday evening or