

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4882 HRES ANWR LAND TRADES: DOI, ANCSA, STATE

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5. To the extent practicable, land trades should be compatible with proven administrative leasing procedures developed under the Mineral Leasing Act of 1920 and not require development of new, ad hoc procedures applicable only to ANWR.
6. Any land trades should reflect basic principles of federalism and not preempt traditional state police power jurisdiction.

B. Land trades must maximize the benefits received by all of those concerned.

1. The state's interest in preserving revenues which would automatically come to the state under existing law -- i.e., the Mineral Leasing Act 90-10 revenue split -- must be recognized.
2. All Native corporations should benefit from any trades involving Native subsurface acreage through incorporation of the revenue sharing procedures in section 7(i) of the Alaska Native Claims Settlement Act (ANCSA).
3. The national interest (including the interests of conservation groups and the Department of the Interior (1) should be maximized by including

inholdings in parks and other conservation system units as well as wildlife refuges, and (2) must be fully protected by including the subsurface estate in the lands exchanged.

4. The entire oil and gas industry should be provided equal opportunities to participate through competitive leasing of lands in ANWR so that some industry participants do not have a preferred position relative to others by virtue of their participation in a noncompetitive process.

5. The Department of the Interior's interest should be maximized by (1) ensuring accurate valuation of exchanged lands, (2) maximizing free market competition for ANWR oil and gas tracts, and (3) eliminating private inholdings in all types of conservation system units, not just wildlife refuges.

C. Land trades must not adversely impact the primary goal of opening ANWR.

1. The process leading to any land trades must be open and beyond reproach.

2. Land trades must have benefits for all of those concerned.
3. The process leading to any land trades, and the land trades themselves, must not divert attention from the primary goal of opening ANWR.
4. Because Congress will make the ultimate decision both on opening ANWR and on any land trades, we must at all times be sensitive to Congressional concerns.
5. In terms of timing, land trades must not be consummated prior to a Congressional decision to open ANWR.

III. Both the process and the product of the current Bill Horn approach to land trades are seriously deficient.

A. They do not satisfy the "good government" test.

1. Negotiations have been conducted in secret, not in an open public forum.
2. Not all interested parties have been represented.

3. Substantial questions exist with respect to the value determination procedures for both exchange lands and ANWR tracts.

a. While fair market value appraisals were done for all proposed exchange lands, Interior is not using those values but instead is using an arbitrary alternative valuation methodology.

b. When competitively leasing prospective oil and gas tracts, Interior determines potential tract values from a one mile square seismic grid and at least one off-structure stratigraphic test well; the ANWR seismic grid is three miles by six miles and Interior has no test well data.

4. Environmentally and economically imprudent development of ANWR oil and gas potential will result.

a. "Checkerboard" ownership patterns in ANWR will make environmental regulation of exploration and development activities more difficult than uniform federal ownership and administration of a competitive leasing system.

b. Exploratory drilling on privately-owned ANWR inholdings probably would occur significantly in advance of federal leasing of remaining tracts, with a substantial likelihood that those remaining tracts would be significantly devalued (economically condemned).

5. An entire new set of untested, ad hoc "exchange" procedures is being developed, procedures which are not compatible with those developed and administered for the past 67 years under the Mineral Leasing Act of 1920.

6. Significant federalism issues are presented regarding the state's sovereign police power jurisdiction with respect to fish and game management, environmental protection and oil and gas conservation.

B. Not all of those concerned will benefit.

1. The state would lose all mineral sharing revenues from ANWR tracts obtained by Native corporations.

2. Not all Native corporations will receive benefits because not all Native corporations are

participating in the proposed trades and section 7(i) of ANCSA does not apply.

3. The current proposal does not include park and other conservation system unit inholdings and does not include any subsurface acreage.

4. Only pre-determined members of the oil industry will benefit through partnership with participating Native corporations, and their benefits will be unjustifiably enhanced by obtaining the right to explore and develop ANWR tracts through a non-competitive process.

5. The Department of the Interior will obtain only wildlife refuge inholdings, will not obtain significant subsurface acreage, and may not obtain full value because of inaccurate valuation procedures.

C. Most significantly, the Bill Horn approach will adversely impact the primary goal of opening ANWR.

1. Severe criticism can be expected on the ground that principles of "good government" have not been followed.

2. Not all of those concerned will benefit.
3. At minimum, significant controversy over land trades will be created, diverting attention from the primary goal of opening ANWR.
4. In terms of sensitivity to Congressional concerns, the continued development of this proposal has been directly contrary to the express desires of several influential Congressmen (Senators Bumpers, Bradley, Leahy, Proxmire, Rockefeller, Moynihan, Levin, Metzenbaum, Simon and Gore, as well as former Senator Hart) and could be viewed as an attempt to usurp Congressional prerogatives.
5. The land trades will be consummated before Congress even begins serious consideration of opening ANWR.

IV. There is at least one alternative land trade proposal which would satisfy all the necessary criteria.

A. The proposal in a nutshell.

1. Following Congressional opening of ANWR, the Department of Interior would competitively lease tracts in ANWR.

2. Prior to such leasing, trade participant inholdings (both surface and subsurface) in conservation system units (including wildlife refuges and park system units) would be exchanged for bid credits which could be used in bidding at competitive lease sales in ANWR (and possibly elsewhere).

(i) The amount of bid credits would equal the value of the exchanged inholdings.

(ii) Bid credits could be used at competitive ANWR lease sales (and possibly at other federal lease sales) in lieu of cash up to a predetermined percentage of any bonus bid.

(iii) One Native corporation's bid credits could be pooled with other Native corporations' bid credits and cash to maximize economic competitiveness at any lease sale.

B. This proposal could be developed and implemented according to "good government" principles.

1. The proposal would be further developed in an open process, not a secret one.

2. All interested parties could participate in development of the proposal.
3. Valuation of inholdings would occur under a process similar to the one developed for the Bill Horn proposal, but in a public setting and not a secret one; valuation for ANWR oil and gas tracts would be true fair market value because it would result from competitive bidding.
4. This proposal would ensure environmentally and economically prudent development.
  - a. The federal government would continue to own all of ANWR, making it subject to uniform federal administration under well-established administrative leasing procedures developed under the Mineral Leasing Act and avoiding problems created by "checkerboard" ownership.
  - b. Because the federal government would competitively lease all of the ANWR acreage opened to leasing by Congress, there would be no early exploratory drilling on a few tracts affecting the value of remaining tracts.

5. No new ad hoc procedures would have to be developed because leasing would occur under the administrative procedures implementing the Mineral Leasing Act of 1920.
  6. Principles of federalism would be honored because the state would retain the same sovereign state police power jurisdiction over ANWR lands that it currently has.
- D. All of those concerns would benefit from this proposal.
1. While the state would not receive its 90 percent share of those portions of successful bonus bids comprised of bid credits, it would receive its 90 percent share of the cash portions of all successful bonus bids and would receive its 90 percent share of all rentals and production royalties.
  2. While Native corporations participating in the land trades would not be assured of getting tracts in ANWR, they would receive fair value for their inholdings and could maximize their economic competitiveness by pooling bid credits or, alternatively, they could sell their bid credits to oil companies; non-participating Native corporations

would receive benefits under section 7(i) of ANCSA.

3. The nation, including environmental groups and the Department of Interior, would benefit by eliminating both surface and subsurface inholdings in a number of conservation system units, including both park system units and wildlife refuges.
  4. The oil industry would benefit because all members of the industry would participate on an equal basis at competitive lease sales.
  5. The Department of the Interior would benefit because it would be getting full value for the ANWR oil and gas tracts leased.
- D. This proposal would not adversely impact the primary goal of opening ANWR.
1. The process would be beyond reproach.
  2. Benefits would be received by all of those concerned.
  3. Development of this proposal would not divert attention from the primary goal of opening ANWR.

4. This proposal would acknowledge the political sensitivity of Congress and, because it would be beyond reproach in terms of "good government" principles, would not have adverse political repercussions.
  
5. Trades would occur after Congress made its decision on opening ANWR.

# Issues Regarding ANWR Land Trades

## Basic Criteria

Any Land trades must facilitate the opening of ANWR and not be counterproductive; to accomplish that, certain criteria must be met:

- A. Any land trades must be developed through "good government" principles.
  1. The process must be open.
  2. All interested parties must be represented.
  3. Fair value must be received by all parties.
  4. The result of any land trades must ensure environmentally and economically prudent development of ANWR.
  5. Trades should be compatible with Mineral Leasing Act procedures and not require development of new, untested ad hoc procedures.
  6. Sovereign state jurisdiction must not be preempted.
- B. Land trades must maximize benefits received by all those concerned.
  1. The state's interest in revenues coming to the state under existing law must be recognized.
  2. All Native corporations should benefit through revenue sharing under section 7 of ANCSA.
  3. Conservation groups' interest (1) should be maximized by eliminating inholdings in parks and other conservation system units as well as game refuges, and (2) should include the subsurface estate in the lands exchanged.
  4. All oil companies should be given an equal opportunity to participate through competitive leasing of lands in ANWR.
  5. Interior's interest should be maximized by (1) ensuring accurate valuation of exchanged lands, (2) promoting free market competition for ANWR oil and gas tracts, and (3) eliminating inholdings in all types of conservation system units.
- C. Land trades must not adversely impact the primary goal of opening ANWR.
  1. The process leading to any land trades must be beyond reproach.
  2. Land trades must have benefits for all those concerned.
  3. The process leading to any land trades, and the land trades themselves, must not divert attention from the primary goal of opening ANWR.
  4. Because Congress will make the final decision both on opening ANWR and on any land trades, Congressional prerogatives must not be preempted.
  5. In terms of timing, any land trades must follow the Congressional decisions on opening ANWR.

## Bill Horn Proposal

Both the process and the product of the current Bill Horn approach to land trades -- closed negotiations without all interested parties leading to noncompetitive exchanges of surface acreage for oil and gas interests -- are seriously deficient.

- A. They do not satisfy the "good government" test.
  1. Negotiations have been conducted in secret.
  2. All interested parties have not been represented.
  3. Substantial questions remain regarding assignment of dollar values to both inholdings and ANWR oil and gas tracts..
  4. Imprudent development of ANWR oil and gas tracts will result.
    - (a) "Checkerboard" ownership patterns in ANWR will make environmental regulation of exploration and development more difficult.
    - (b) Exploratory drilling on privately-owned ANWR inholdings in advance of federal leasing of remaining tracts would probably devalue (economically condemn) those remaining tracts.
  5. Untested ad hoc valuation and conveyance procedures are being developed.
  6. Federalism issues are presented because sovereign state jurisdiction may be preempted.
- B. Not all of those concerned will benefit.
  1. The state would lose all revenues from ANWR tracts obtained by Native corporations.
  2. Not all Native corporations will receive benefits.
  3. Park and other conservation system unit inholdings and subsurface inholdings are not included.
  4. Only a few members of the oil industry will benefit, and their benefits will be unjustifiably enhanced through a noncompetitive process.
  5. Interior will obtain only refuge inholdings, no subsurface acreage, and may not obtain full value because of inaccurate tract valuations.
- C. Most significantly, the Bill Horn approach will adversely impact the primary goal of opening ANWR.
  1. Severe criticism can be expected on the ground that principles of "good government" have not been followed.
  2. Not all those concerned will benefit.
  3. Significant controversy over land trades will be created, diverting attention from the primary goal of opening ANWR.
  4. The continued development of this proposal has been directly contrary to the express desires of several influential Senators and could be viewed as an attempt to usurp Congressional prerogatives.
  5. Exchange agreements will be finalized prior to Congressional consideration of opening ANWR.

STATE POSITION  
ON TRADES  
4/87

## Issues Regarding ANWR Land Trades

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  - 1. The process must be open.
  - 2. All interested parties must be represented.
  - 3. Fair value must be received by all parties.
  - 4. The result of any land trades must ensure environmentally and economically prudent development of ANWR.
  - 5. Trades should be compatible with Mineral Leasing Act procedures and not require development of new, untested ad hoc procedures.
  - 6. Sovereign state jurisdiction must not be preempted.
- B. Land trades must maximize benefits received by all those concerned.
  - 1. The state's interest in revenues coming to the state under existing law must be recognized.
  - 2. All Native corporations should benefit through revenue sharing under section 7(i) of ANCSA.
  - 3. Conservation groups' interest (1) should be maximized by eliminating inholdings in parks and other conservation system units as well as game refuges, and (2) should include the subsurface estate in the lands exchanged.
  - 4. All oil companies should be given an equal opportunity to participate through competitive leasing of lands in ANWR.
  - 5. Interior's interest should be maximized by (1) ensuring accurate valuation of exchanged lands, (2) promoting free market competition for ANWR oil and gas tracts, and (3) eliminating inholdings in all types of conservation system units.
- C. Land trades must not adversely impact the primary goal of opening ANWR.
  - 1. The process leading to any land trades must be beyond reproach.
  - 2. Land trades must have benefits for all those concerned.
  - 3. The process leading to any land trades, and the land trades themselves, must not divert attention from the primary goal of opening ANWR.
  - 4. Because Congress will make the final decision both on opening ANWR and on any land trades, Congressional prerogatives must not be preempted.
  - 5. In terms of timing, any land trades must follow the Congressional decisions on opening ANWR.

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  - 1. Negotiations have been conducted in secret.
  - 2. All interested parties have not been represented.
  - 3. Substantial questions remain regarding assignment of dollar values to both inholdings and ANWR oil and gas tracts.
  - 4. Imprudent development of ANWR oil and gas tracts will result.
    - (a) "Checkerboard" ownership patterns in ANWR will make environmental regulation of exploration and development more difficult.
    - (b) Exploratory drilling on privately-owned ANWR inholdings in advance of federal leasing of remaining tracts would probably devalue (economically condemn) those remaining tracts.
  - 5. Untested ad hoc valuation and conveyance procedures are being developed.
  - 6. Federalism issues are presented because sovereign state jurisdiction may be preempted.
- B. Not all of those concerned will benefit.
  - 1. The state would lose all mineral sharing revenues from ANWR tracts obtained by Native corporations.
  - 2. Not all Native corporations will receive benefits.
  - 3. Park and other conservation system unit inholdings and subsurface inholdings are not included.
  - 4. Only a few members of the oil industry will benefit, and their benefits will be unjustifiably enhanced through a noncompetitive process.
  - 5. Interior will obtain only refuge inholdings, no subsurface acreage, and may not obtain full value because of inaccurate tract valuations.
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  - 4. The continued development of this proposal has been directly contrary to the express desires of several influential Senators and could be viewed as an attempt to usurp Congressional prerogatives.
  - 5. Exchange agreements will be finalized prior to Congressional action on opening ANWR.

### A Preferable Alternative

At least one alternative land trade proposal -- exchanging surface and subsurface inholdings for bid credits which would be used at competitive lease sales -- would satisfy all the necessary criteria.

- A. The proposal would satisfy "good government" principles.
  - 1. It would be developed in an open process.
  - 2. All interested parties would participate in development of the proposal.
  - 3. Valuation of inholdings would be similar to the Bill Horn process, but in a public setting; the value received for oil and gas tracts would be true fair market value resulting from competitive bidding.
  - 4. This proposal would ensure environmentally and economically prudent development.
    - (a) ANWR would be subject to uniform federal administration under well-established leasing procedures, avoiding "checkerboard" ownership.
    - (b) There would be no early exploratory drilling on a few tracts, affecting the value of remaining tracts.
  - 5. No new ad hoc procedures would have to be developed.
  - 6. No sovereign state jurisdiction would be preempted.
- B. All those concerned would benefit.
  - 1. While the state would not receive its 90% share of those portions of successful bonus bids comprised of bid credits, it would receive its 90% share of the cash portions of successful bonus bids and would receive its 90% share of all rental and production royalties.
  - 2. Native corporations participating in the land trades would receive fair value for their inholdings; non-participating Native corporations would receive benefits under section 7(i) of ANCSA.
  - 3. Conservation groups would benefit by eliminating both surface and subsurface inholdings in a number of conservation system units, including both park system units and refuges.
  - 4. The oil industry would benefit because all members of the industry would participate on an equal basis at competitive lease sales.
  - 5. Interior would benefit because it would be getting full value for the ANWR oil and gas tracts leased.
- C. This proposal would not adversely impact the primary goal of opening ANWR.
  - 1. The process would be beyond reproach.
  - 2. All those concerned would benefit.
  - 3. Development of this proposal would not divert attention from the primary goal of opening ANWR.
  - 4. This proposal would not have adverse political repercussions.
  - 5. Trades would occur after Congress made its decision on opening ANWR.

The governor has reviewed the trade proposal in the context of the state as both proprietor and sovereign. On both counts he has concluded that the trades, in their present format, do not properly address or protect state interests. More specifically, the trades present the following concerns and problems.

1. Congress is solely responsible for the ultimate decisions on whether any land trades will proceed. Based upon discussions with Congressional leaders and staff in Washington, D.C., the governor has concluded there is not widespread support for the trades in Congress. The Congressional forum will give the state adequate opportunity to protect its interests, should the proposed trades continue.
2. The proposed trades may have an adverse influence upon the state's paramount ANWR objective: to achieve Congressional approval for opening the 1002 area to oil and gas exploration and development. Rather, the state's efforts should be directed towards facilitating the ANWR opening process, through implementation of the governor's advocacy program. The trades add a layer of unnecessary complexity to the process.
3. The exchanges increase the risk that subsequent federal lease sale bonus bids will be devalued. Based upon industry information, Native corporations could select and obtain the most economically valuable tracts through the proposed trades. As a result, exploration would likely get underway earlier in these areas than on surrounding land retained by the federal government. Therefore, bonus bids on the remaining federal tracts would probably be deflated (with corresponding loss to state revenues) if there were dry holes. It is inappropriate to gamble with state resources based upon the available information.
4. The timing of the proposed trade is premature. If any trades are to occur, they should only be pursued after Congress acts to open the 1002 area. The present trade schedule calls for agreements in principle (on contract and land stipulations) and ANWR tract selection to occur before congressional action on ANWR and perhaps before the Secretary makes his final 1002 recommendation to Congress. At the time the state withdrew from the negotiation table, tract selection was expected within a matter of weeks.
5. The state participated until recently in the trade negotiations to ascertain whether the trades might be structured in a manner which meets state interests and objectives. While the state's participation was somewhat successful in enhancing our information base, the state returned from the negotiation table convinced that under the current terms and timeframe, it would be impossible to sufficiently alter the process to meet state objectives. Although the state achieved some progress with respect to the size and value of the state lands proposed for trade (the size of the state trade package tripled), the Department of the Interior was unwilling to accede on several fundamental issues, including an overriding state royalty.

6. Land exchanges in ANWR would preempt state revenues. Under existing law, the State of Alaska is entitled to 90 percent of all revenues derived from federal oil and gas leasing in national wildlife refuges (including ANWR). The exchange of ANWR oil and gas interests to Native corporations would remove these interests from federal ownership and bar the state from any revenue sharing since these areas would not be leased by the federal government. The state has consistently maintained that the 90 percent revenue share allocation must be protected.
7. The exchanges do not appear to be subject to the revenue sharing provision contained in Section 7(i) of ANCSA. Section 7(i) requires that 70 percent of all revenue obtained by regional corporation management of the subsurface land estate be redistributed equally among all 12 ANCSA regional corporations. Because the proposed trades do not involve any regional subsurface estate, it does not appear that Section 7(i) would apply. This means the trades would benefit only those corporations which participate.
8. There simply is not enough reliable subsurface data available in the 1002 area upon which to adequately base subsurface values for purposes of an exchange. The seismic grid surveys completed during the winters of 1983-84 and 1984-85 are too gross to be very meaningful. These data are simply inadequate to delineate the presence of potential oil fields the size of Milne Point or Duck Island. Furthermore, it is known that at least two of the five Native corporation trade participants have the KIC well information. Although the AOGCC also has this information, it must remain confidential and unavailable for either the state or federal government. Therefore, it is inappropriate to juxtapose known surface values for speculative ANWR subsurface values.
9. The Department of the Interior proposes to exchange ANWR oil and gas tracts to Native corporations where the State of Alaska has title claims to the beds of navigable waterbodies. In addition, the Native corporations propose to trade the Department of the Interior submerged lands to where there have been no navigability determinations. Therefore, it is quite likely that the Natives will be trading some land, and receiving corresponding value, which may ultimately belong to the state.

COWPER ON 9  
2/87

Statement of Governor Steve Cowper  
on ANWR Land Trades  
February 27, 1987

Yesterday I returned from five days in Washington, D.C. during which I met with a number of federal officials including Interior Secretary Donald Hodel and several members of Congress. One purpose of my trip was to get the Washington perspective on possible development of the Arctic National Wildlife Refuge.

I left Washington with several impressions. But the one I want to announce here today is that I'm convinced that the proposed land exchanges are premature, that they may well adversely impact the interests of the state and that they create divisions among Alaskans at a time when all of us should be focusing on establishing a responsible method of opening the arctic coastal plain to oil and gas development.

The state has participated in these land trade negotiations in good faith to determine whether it was possible to structure the trades in a manner favorable to state and national interests. I am now convinced that's not possible under current circumstances. Therefore, I have directed the state's representatives to withdraw from negotiations.

1

Here's why I've made this decision. First, land trades add a layer of complexity to the ANWR issue. By further complicating this already difficult matter, Congressional attention is diverted from the State's central concern which is the opening of the refuge. Response from a number of Congressional observers of the land trade process confirm this judgement.

2a

Second, the State and federal government's understanding of the actual location and value of the petroleum reserves is not good enough to assure that either the State will obtain desirable lands or that highly prospective tracts are not traded away without sufficient compensation. The fact that some of the corporations involved in the trades have access to additional data which the state does not have, makes these risks even greater. While, I might be willing to take such risks as the executive officer of a private company, I feel that such a gamble is not appropriate for a public official acting on behalf of the citizens of Alaska.

2b

Another major factor to consider is that land exchanges are not in the best interest of the broadest spectrum of Alaskans. Under the Statehood Act and the 1920 Mineral Leasing Act, Alaska would receive 90 percent of the governmental share of royalties, bonuses and rentals derived from any oil and gas produced from federal land in ANWR. Whatever revenue is derived from ANWR development should go into the state's general treasury to benefit all Alaskans. The state would not receive its share of royalties, bonuses and rentals from land conveyed to private ownership through land exchanges.

③ Third, for both of the above reasons, land exchanges are premature and should await Congress's action on the central issue and a better understanding of the coastal plain's subsurface value. In addition, consideration of the issue in the proper time sequence would resolve a number of other questions regarding the areas that will be open for development and the regulatory conditions which will apply.

I'm certainly sensitive to the interests of the Native corporations which have been participating in these land trade negotiations. But as governor, I must protect the interests of the entire state. That's why I'm taking this position today. At such time as the state is privy to the same information as the other parties, we would be open to further negotiations to establish an ownership mix that is in the best interests of all Alaskans.

Thank you and I'll be happy to answer questions about this issue or any other.

Chairman Cotten, members of the House Resources Committee. My name is Tom Hawkins and I am the director of the land and water management division in the Department of Natural Resources.

John Katz has delivered an accurate summary of the chronology of participation by the State of Alaska in the talks concerning the ANWR exchange. He has also usefully augmented Rod Swope's description of the state's policy position on these matters.

Our view is that if ANWR is to be opened by Congress both the executive branch and the Legislature must search for ways which enable Interior to pursue ALL of its goals. At this time they appear to be:

- ° Assuring environmentally sensitive oil and gas exploration and development on a portion of the Arctic coastal plain, and
- ° Enlarging the refuge system generally by reducing inholdings of non-federal land in that system.

Recognizing these goals we have advanced lands for possible inclusion in the refuge system in exchange for oil and gas rights, reviewed planning by Interior for the trades generally, met with the native participants, and avoided condemning the actions contemplated despite the loss of potential royalties to the state.

We have however raised what we consider to be substantial questions about the process for planning for these exchanges and criticized specific elements of these plans. I would like to discuss briefly 5 areas which deserve direct attention:

- ° Assuring sufficient state acreage is reviewed and approved by Interior for inclusion in the exchange to provide the state with a meaningful stake in the process;
- ° Improving the environmental stipulations and mitigation strategies so as to achieve a level of protection consonant with the values at risk;
- ° Analyzing the tract selection process and proposing alterations which improve objectivity and fairness and reduce discretion;
- ° Reforming the basic model contract to clarify the nature of oil and gas interests conveyed, improving its treatment of technical oil and gas issues, and assuring its consistency with current industry practices and standards;

- Encouraging Interior to maintain flexibility in its timelines so that our concerns can be judged on their merits and not summarily dismissed because of lack of time to allow their consideration.

A precise analysis of the principal instruments of the exchange plan was delivered to Interior in late December and early January. Copies of these submittals are in your packet. There has been one major negotiating session since that time and a number of individual meetings and information exchanges. We can report useful progress on some fronts and point to remaining problems in a number of areas.

After receiving Director Gilmore's invitation to participate in January, 1986 the Departments of Natural Resources and Fish and Game assembled a listing of nearly 12 million acres of land, primarily valuable for habitat purposes and presented it to the USF&WS. In March Gilmore responded specifically to that listing, prioritized its contents and expressed a desire to acquire about 100,000 acres. In the following months we explored ways to increase that approved acreage. As recently as yesterday the F&WS approved additions to the package which currently stands at 792,000 acres. In your packets is a generalized list of state owned and selected lands within and adjacent to refuges and those tracts approved for acquisition by the F&WS include numbers 1-11. The remaining parcels, including those lands owned by the state within the National Park System have not been accepted. It is our understanding that NPS, originally interested in the exchange plans, has withdrawn from active participation because of its unwillingness to endorse the oil and gas exploration and development these exchanges are meant to facilitate.

In short we've made substantial progress in our efforts to improve the size of the state's participation. While we have completed fair market appraisals of all of the land on the list we submitted and believe that addition of the other parcels would improve the marketability of the overall exchange project we are generally pleased with the approved list.

Another important accomplishment lies in the area of environmental stipulations and mitigation strategies. The State of Alaska has more than 20 years experience in the design of environmental stipulations for oil and gas exploration and development in arctic and subarctic areas and based on that experience ADEC, ADF&G and ADNRR had significant concerns about the environmental package prepared by Interior. Modeled after the Kaktovik exploration stipulations the original package did not assure

that environmentally sensitive oil and gas exploration and development would occur in the arctic coastal plain. The state invested considerable energy suggesting modifications to that package and are now heartened by Interior's decision that the standards and stipulations developed in the 1002 report and any additional requirements detailed in the opening legislation will prevail over that initial compilation.

Unfortunately our concerns about the tract selection process persist. As stated earlier the state finds that unnecessary discretion is afforded to Interior when resolving conflicts between competing bids for particular tracts. But the difficulties here are even more fundamental. There are two valuation processes essential to the mechanics of the exchange. First, the BLM is setting values for the more than 400 oil and gas lease tracts on the coastal plain. Our geologists maintain that the seismic grid is so broad as to not provide sufficient information to perform this task at any acceptable level of certainty.

The second valuation process concerns the establishment of values for the surface acreage sought by Interior. The first component of this value is what the property would yield on the market or fair market value. This value is then to be augmented with three additional considerations; Congressional acquisition of other comparable lands (like the Pribilof purchase at \$600 per acre); transactional benefits such as the worth of having willing buyers and sellers and the reduction of fire suppression costs; and finally the importance of any particular lands to the purposes of the refuge.

While these three aspects of the surface valuation process afford considerable discretion to Interior two recent events alleviate our concerns in this regard somewhat. First, the Assistant Secretary has stated that state acreage will be treated the same as other lands under consideration. Second, the F&WE is in the process of elaborating its acquisition criteria so the results can be predicted with more certainty.

Progress on this front has not reduced our fears that discretion plays too large a role in the conflict resolution mechanism. This system is necessary for the situation when more than one bidder chooses the same tract. The current process would then allow Interior to choose between three possible resolution mechanisms. The first, competitive bidding, is the approach favored by the state. The second, lottery, leaves the decision to chance. Finally, Interior could award the tract to the bid which offered the lands

most sought by the refuge system. This approach appears to allow double dipping. By that we mean the Secretary has already used this method to assign value and if it is utilized again at this stage a skewing of the outcome is guaranteed. We are not satisfied with the evolution of this particular mechanism.

State concerns about the model contract also persist. To understand them it is useful to split them into preemption issues and fundamental oil and gas considerations. The initial contract preempted state authority in a number of areas. Subsequent drafts have reduced these conflicts but not all of them. For instance the contract now acknowledges state authority to appropriate water. However the subsistence language appears to preempt state management authority and we have suggested changes. Initially the contract failed to accommodate the overlapping jurisdictions of EPA/DEC, F&WS/ADF&G, and Interior/AOGCC. Some progress is evident but an agreement which establishes a regime of coordination between these authorities is still being sought. The model contract does not sufficiently acknowledge submerged lands considerations. Title to lands underlying seven rivers has been claimed by the state but Interior resists segregation of these claims from the process. On the flip side Interior questions the ability or willingness of the state to convey the submerged lands it owns within lands approved for refuge acquisition due to the public trust doctrine. This second issue is appropriate for detailed legislative comment.

The second aspect of the state's contract problems address the nature of the interest conveyed, current oil and gas industry practices, and technical oil and gas matters. Our primary difficulty stems from the fact that the state has no industry partner and consequently must acquire an interest of sufficient clarity and quality to permit it to offer same for lease at a competitive bid. The Attorney General's Office has retained oil and gas contracting expertise to assist in achieving this definition. Interior has been unwilling to come to terms with our analysis that the interest they are offering has a diminished market worth. Our consultants have also expressed concern about the compensatory royalty for drainage provisions and other technical matters.

One other contract difficulty is the term which allows amendment of the document at any time with mutual consent of the parties. Although superficially this provision provides for flexibility it seems to us that it will be regarded skeptically also makes it difficult to determine at which point the contract for the exchange will be ready for legislative review.

I would now summarize by restating our concern about the timing of this entire adventure. As has been detailed in our remarks we have briefed and successfully resolved a number of our initial problems. This has been possible because of Interior's willingness to flex its schedule when appropriate and to devote considerable attention to problem resolution. Yet there remains a lot of work to be completed between today and the announced March 2 deadline. We are not confident that sufficient attention can be focused on our remaining problems before the train leaves the station. This fact alone is not sufficient to cause us to abandon hope and we expect to participate in the sessions scheduled for the week of February 23 in the expectation that our remaining concerns will be addressed on their merits.

I appreciate the opportunity to appear before you and remain available to answer any questions you may have.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

February 12, 1987

Honorable Don Young  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Young:

I appreciate the opportunity to respond more fully to your recent inquiry concerning the potential exchange of oil and gas interests in the Arctic National Wildlife Refuge for refuge inholdings in Alaska. You were particularly interested in the role of the State of Alaska in exploring potential exchanges and our receptiveness to their proposals.

Should the Secretary recommend and Congress decide to open the Arctic coastal plain to oil and gas activities, I view the exchanges now under consideration as an unparalleled opportunity to enhance natural resource management within the State for the benefit of all Alaskans. In view of the significance of this undertaking, all such exchanges will be subject to congressional approval, notwithstanding the Secretary's administrative exchange authority pursuant to Section 1302(h) of the Alaska National Interest Lands Conservation Act of 1980. Further, the participants to the exchange discussions have been consistently advised that no exchange proposals will be presented to the Secretary or forwarded to Congress until after the Secretary has reached an independent decision on the recommendation to be included in the Section 1002(h) report. Any potential exchange agreements must be consistent with the findings and recommendations included in that final report.

The following chronology is offered to provide a perspective on the State's participation in the exchange process to date:

1. During the first 6 months of 1985, several Native corporations approached the Department concerning the potential for exchanges.
2. While in Alaska in August 1985, I broached the subject with Governor Bill Sheffield.
3. Later in 1985, I again discussed the project with Alaska Department of Natural Resources (DNR) Commissioner Esther Wunnicke and the Governor's Washington representative, John Katz.

4. By letter of November 13, 1985, Regional Director Bob Gilmore outlined the exchange concept to Governor Sheffield.
5. By letter of December 7, 1985, Governor Sheffield proposed the possibility that state lands be considered for exchange.
6. By letter of January 6, 1986, to Governor Sheffield, Regional Director Bob Gilmore invited the State to participate in the exchange discussions.
7. By letter of February 5, 1986, the State proposed 12 million acres of lands for consideration in an exchange. On the same date, Messrs. Tom Hawkins and Gary Gustafson of the DNR were briefed on the status of the project by Regional Director Bob Gilmore.
8. By letter of March 12, 1986, Mr. Gilmore responded specifically to the State's proposal.
9. During the following months there were intermittent staff discussions concerning the State's interest in continuing to pursue an exchange. I also continued my discussions with John Katz and members of the State legislature during this period.
10. Early in November 1986, I again met with Ms. Wunnicke in Washington, D.C.
11. By letter of November 14, 1986, the State tendered a second exchange proposal.
12. State representatives, having reiterated the State's serious interest in possibly participating as a landowner in the exchange, attended exchange negotiations in Washington, D.C., the week of December 1, 1986.
13. Coordination with State representatives has been on a continuing basis during the intervening weeks.

The level of interaction and associated timing with the State over the past 2 years has been consistent with those same efforts directed toward the Native corporations. Indeed, Native Lands Group did not submit an exchange proposal until December 19, 1986, and Old Harbor made a proposal as late as mid-January 1987.

The State's role in the potential exchange is considerably greater than that of the Native corporations since the State contributes to the process both as a proprietor and as a sovereign. This dual role serves the interests of all

participants by assuring that the interests of the State as a whole are adequately represented at the negotiating table. Likewise, all Alaskans will share in the benefits generated by the State's participation should the exchanges become a reality. Substantial direct revenues from the State's leasing of tracts acquired by the State through exchange, and increased tax base, expanded employment opportunities, and maintenance of a healthy support services infrastructure are some of the sizeable advantages that could be realized by the State through the exchanges.

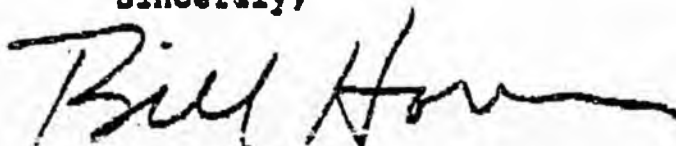
More recently, the State was fully represented at last week's negotiating session and considerable progress was made on the model exchange agreement. All of the exchange participants, including the State, will be meeting again the week of February 23, 1987, with a view toward reaching agreement in principle on the exchange agreements with the various participants. Obviously, a lot of work remains to be done if this goal is to be reached. Identification of specific land interests within the Arctic Refuge to be exchanged will not occur until later.

Finally, I would like to dispel the notion that the exchange will consume a major portion of estimated subsurface values on the Arctic coastal plain. While the acres potentially offered in exchange are large, the exchange is premised on exchange for comparable value. If the Secretary recommends opening the Arctic coastal plain and Congress takes appropriate action, it appears that the bulk of the subsurface resources would be available for allocation through a traditional leasing program.

I consider the State an integral and essential component of the exchange initiative and hope it continues to participate as many of the lands it has offered provide significant environmental resources that would enhance the National Wildlife Refuge System.

I appreciate your interest and, if the Department approves any exchange proposals, I look forward to working with you during the congressional review process. Please let me know if we may be of further assistance to you or your staff on this important issue.

Sincerely,



Assistant Secretary for Fish  
and Wildlife and Parks

cc: John Katz  
Senator Stevens  
Senator Murkowski

# MEMORANDUM

State of Alaska

TO: Judith M. Brady  
Commissioner  
Department of Natural Resources

DATE: February 15, 1987

FILE NO:

TELEPHONE NO: 276-3550

FROM: GRACE BERG SCHAIBLE  
Attorney General

SUBJECT: Policy issues  
concerning ANWR  
trades

By: Mark P. Worcester *MPW*  
Francis Neville  
Assistant Attorneys General

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This memorandum includes a listing of the policy issues implicated in the drafting of an ANWR exchange contract. We request policy guidance on these issues so that we will have a basis for assisting in the negotiation of the terms of a draft exchange contract. Brief descriptions of some considerations bearing on the policy choices are included.

## ULTIMATE TRADE ISSUES

- (1) State participation. Should the state be involved in trades?
- (2) Native corporation participation. Should the state take a position on Native Corporation trades?

## ISSUES RELATING TO THE TRADE PROCESS

- (3) Timetable. Should the state oppose the present timetable for trade processes? There are a number of problems created by rushing to complete trade agreements before opening legislation:
  - a) Wasted effort. All efforts may be wasted if Congress fails to open ANWR.
  - b) Perception of objectivity. The fact that Interior is completing trades at a time when it is supposedly objectively reviewing comments on the advisability of opening ANWR to oil and gas activities may reduce the chances of favorable Congressional action.
  - c) Potential inconsistencies with opening legislation. Congress may not open some of the tracts which may be traded. The agreement does not address this possibility, and it would be difficult to address this problem in a way which would be fair to all trade participants. Congress may also impose different

conditions than those envisioned by the trades. This fact creates drafting and practical problems.

- (d) Negotiation handicap. Interior rejects good faith suggestions by the state on the ground that the timetable will not allow departure from existing drafts. (In particular, the state's counterdraft of the trade agreement was not even presented to Interior because Interior made clear that a new draft would be perceived as too late, and intended to scuttle, rather than promote the trade process. Also, John Katz has indicated that the state's ability to use the existing state exchange law (AS 38.50) will be dictated by Interior's timetable.)
- (e) Public policy vs. private agendas. The present timetable is the result of internal corporate needs of Koniag and its trade "partner" (reportedly Chevron). Should federal and state policy be dictated by private corporate needs, especially when this may result in an unnecessarily complex and ambiguous agreement, and may also result in unfavorable Congressional action?
- (4) Secrecy. Should the state support secret negotiations? On a policy level, does the state believe that this is an appropriate way to deal with this vital state and national issue? On a practical level, does the state believe that Congress will be favorably or unfavorably influenced by this secret negotiation process in advance of opening legislation?
- (5) State exchange approval process. Should the state commit itself to an exchange process not presently authorized under state law? Present exchange law (enacted in the wake of the CIRI land trades) would require a preliminary trade agreement, followed by a public process and then a final trade agreement. AS 38.50. It appears that Interior will insist upon proceeding directly to a final agreement, subject to ratification by Congress and the state legislature. The ratification by the state legislature would sanction the deviation from AS 38.50. The question is how the Alaska legislature will react to this deviation from existing exchange law.
- (6) Using stipulations as regulations. Should the state

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support the idea of extensive stipulations (80 pages in the first draft) being included in the title documents? These stipulations really are in the nature of regulations, but are drafted as land title documents, which would be recorded, and the terms of which would run with the land. Supposedly, the stipulations are designed to be superseded when and to the extent "inconsistent" regulations are later adopted. This could create a bewilderingly complex, inflexible and ambiguous regulatory system. With an array of state and federal laws and regulations already creating a complicated regulatory process, arguments over the proper application of these detailed title stipulations is virtually inevitable. The apparent reason for casting what are properly regulations as title stipulations is to enable the Native corporations a headstart on development. (Interior says it will take two years after opening legislation to conduct a lease sale and promulgate regulations.) However, the state should decide whether it should support secret negotiation of title stipulations when the purpose is to avoid the public regulation promulgation process.

- (7) Format and style. Should the state accept the wording and structure of Interior's draft? Interior seems adamant upon a form and style of agreement which is archaic, convoluted, verbose, and filled with unnecessary legalisms. As a result, Interior's draft contract is very difficult to read and comprehend. Ambiguity is created even where the parties agree upon contractual intent. Despite a virtually universal adverse reaction to the form and style of Interior's draft, the state's plain English reorganized counterdraft was not presented to Interior on the sole ground that Interior would reject it because it is "too late".

#### SUBSTANTIVE ISSUES

- (8) Who should pay for additions to federal refuges? Should the state oppose the Native corporation trades as presently structured because of their impact on state revenues? As it is, the Native Corporations are not only likely to get much more than "comparable value" for the interests traded to Interior, but Interior will finance 90 percent of the purchase price with dollars which would otherwise go to the state. It is reasonable to insist that the effectuation of

federal refuge purposes should be financed by federal revenues, not state revenues.

- (9) Subsistence easement. Should the state actively oppose the "subsistence easement" Interior intends to grant to Kodiak Natives in the Kodiak National Wildlife Refuge? This easement, rather than merely preserving existing statutory rights under ANILCA, may create novel subsistence rights as a matter of property law which would be immune from future statutory and regulatory control. This would be a radical departure from existing law, and would preempt state authority to make findings and regulate under ANILCA and state law. Liza McCracken is preparing a counterdraft of the easement which may be acceptable to the state, with a more detailed exposition on the issues. The testimony at the Alaska House Resource Committee hearings on February 13, 1987 made it clear, however, that the provisions of the Koniag draft which attempt to enhance both the legal nature and substantive extent of Native subsistence rights is an important aspect of the Koniag trade for both Koniag and Interior.
- (10) Public use easement. Should the state seek a "public use easement" for state residents on land it trades to Interior? What should the nature be of any retained "public use easement"?
- (11) Treatment of state-claimed submerged land in ANWR. Should the state actively oppose Interior's attempt to trade to Native corporations the submerged lands in ANWR which are claimed by the state under the "Equal Footing Doctrine"? In the past, lands subject to a title dispute have typically not been leased, or the proceeds placed in escrow pending resolution of the title dispute. Interior wants to trade the disputed lands "subject to valid existing rights". This would require the state to litigate not only with the federal government, but also with the Native corporations and their industry partners. Tom Koester has already written a draft letter to Interior which addresses this subject in more detail.
- (12) Treatment of submerged portions of land to be traded to Interior. Should the state reserve submerged lands from its trades to Interior? Tom Koester's draft letter concludes that this is a policy issue.

(13) Valuation issues. Should the state insist upon a fairer valuation method?

- (a) Valuation of ANWR tracts. Interior is valuing each ANWR tract. State geologists, geophysicists and economists assert there is insufficient information available to value the individual tracts with any reliability. (Significantly, some of the Native Corporation partners have well data and have reprocessed seismic data which provide them a significant advantage over the state and Interior in assessing which tracts are most valuable.) Should the state oppose trades because of the risk of the potentially much more than "comparable" value to some of the Native corporation participants?
- (b) Credit for loss of Mineral Leasing Act Revenues in ANWR lands received by state. In valuing tracts which the state might get in ANWR, Interior refuses to give credit to the state for the amounts which the state would have received under the Mineral Leasing Act and the Alaska Statehood Act if there were no trade. No account is given to the fact that the state would lose its 90 percent of the revenues in any tract the state received in ANWR. Without a consideration of this fact, the state would receive only a net value of \$1 in ANWR oil and gas rights for every \$10 worth of land traded to Interior. (Of course, opening legislation might attempt to reduce the state's Mineral Leasing Act share, but this would change only the degree to which the state would not receive full value, not the fact that the state would not receive full value.) The impact is that these are not really "comparable value" trades for the state, especially in comparison with the Native corporations. Native corporations receive ten times greater "bang for their bucks" on account of this factor.
- (c) Headstart premium value. Interior is probably not properly accounting for the premium value being granted the trade participants. The trades are designed to allow the participants to select tracts with only the very limited competition inherent in Interior's "tract selection" aspect of the exchange process (i.e., without having to face open competitive bidding). Equally importantly, the trade participants, and

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primarily the Native corporation participants who already have industry "partners" signed to leases, will get a minimum two year head start on drilling over those who must rely upon buying oil and gas rights at a federal lease sale. These priority rights are surely worth a great premium, and divert revenues from the federal bonus and royalty stream from which the state participates. It is conceivable that drilling on tracts acquired by Native corporations could condemn the state tracts before the state could obtain state legislative approval and complete all steps required under state law to lease the tracts acquired by the state. The Native corporations, which have substantially more trade stock than the state, will be the primary beneficiaries of the apparent failure of Interior to put an early opportunity premium on the ANWR trade tracts.

- (d) Valuation of lands to be traded to Interior. Interior's valuation of lands to be traded allows variance between state and Native Corporation land based upon Interior's subjective acquisition priorities. Also, in some instances, it is debatable whether Interior is really gaining very much of value in exchange for oil and gas rights in ANWR. For instance, in the Kodiak National Wildlife Refuge the Native corporation title is subject to refuge restrictions under existing law. While Koniag and the related village corporations might be yielding legal title to the surface, the subsurface estate would be retained. More significantly, as noted above, Koniag and the village corporations intend to retain a subsistence easement. This raises the question whether the USFWS is truly obtaining any additional authority to protect and regulate the Kodiak National Wildlife Refuge in exchange for the millions of dollars in ANWR oil and gas rights being granted Koniag and the village corporations. Whatever the defects in the valuation process, however, it should be noted that Interior asserts that the same standards applicable to the Native corporations will also be applied to the state.

- (14) Grant clause. Should the state insist upon a better grant clause? The state would prefer a fee interest in ANWR. However, there is every reason to believe Interior will insist upon eventual reversion of all interests to Interior.

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Interior's draft would convey less tenure than a normal oil and gas lease. (In particular, the agreement is not intended to guarantee that the oil and gas interest may be held indefinitely while waiting for a gas field or marginal oil field to become economic.) The grant clause drafted by Interior also leaves the extent of the grant subject to a large degree of USFWS discretion, and even fails to make expressly the drilling and production rights exclusive.

- (15) Rescission. Should the state elect rescission rights? It complicates the terms of the trade, and has a cost (1.5 percent federally-retained royalty, and a right to regain only 65 percent of the traded state land, after deducting any net revenues).
- (16) Preservation of state regulatory authorities. Should the state insist upon better definition of the interplay between federal, state, and local regulatory authorities? It would be reasonable to apply many state authorities in ANWR. (AOGCC, DEC, ADF&G, DNR, CZMA). To what degree should the state accept preemption of state authorities?
- (17) Drainage. Should the state insist that the federal government should not receive any drainage compensation for drainage from areas the federal government chooses not to lease on environmental grounds? Interior's proposal to insist upon drainage compensation has two drawbacks. First, Interior's insistence that it retain the authority to determine the extent of drainage is unreasonable. Second, without delineation wells, there will necessarily be inadequate data upon which even a neutral party could determine drainage. If drainage compensation is granted to the federal government, the state should seek specific language assuring that the federal drainage compensation revenues would be shared with the state under the Mineral Leasing Act and the Statehood Act. This assurance would make drainage compensation to the federal government more beneficial than detrimental to the state to the extent the state received more as its share of drainage compensation paid by state and Native corporations than it paid as drainage compensation.
- (18) Unitization. Interior's draft would appear to preempt AOGCC authority, and give Interior improper authority over when unitization is appropriate, but also over the rate of exploration, development and production, and over the

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allocation of production. Interior's unitization clause would also allow the federal government to commit unleased federal land to a unit, and make the federal share of the costs of development and production payable only as an offset against the federal share of production. This provision has two significant drawbacks. First, it imposes a potentially large capital burden upon potential state lessees. State lessees would have to front all the costs of production. This may cause prospective state lessees to pay less for state ANWR leases. Second, to the extent the federal government self-develops land (rather than leasing it), Interior may claim the proceeds are exempt from the revenue sharing provisions of the Mineral Leasing Act and the Statehood Act.

- (19) 7(i). Should the state take a position on the interplay between the trades and 7(i) revenue sharing? Interior and the Native corporations claim that the revenues received by the Native corporations as a result of the trades are exempt from 7(i) because the Native corporations are, at Interior's supposed insistence, only trading surface estate interests for ANWR rights.
- (20) Possible alternatives to trades as presently conceived. The state could urge Interior to change the nature of the bargain in a way which would benefit the Native corporations without harming state interests. Two possible alternatives are discussed below.
- (a) Reserved royalty. The state could urge that any traded ANWR oil and gas rights be subject to a retained federal landowner's royalty, and that the retained royalty be subject to revenue sharing under the Mineral Leasing Act. Alternatively, an overriding royalty directly in favor of the state could be reserved. Such reserved royalty interests would obviously lower the value of ANWR tracts (which would mean a greater portion of ANWR would be traded). Also, a typical reserved royalty clause (whether indirectly in favor of the state through the Mineral Leasing Act or directly in favor of the state) would not prevent the loss of the state's existing right to share in bonuses and rents. However, state sharing of royalties from ANWR land traded to Native corporations would tend to decrease the extent to which the state would be financing Interior's additions to its refuges.

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- (b) Bid credits. A more attractive alternative would be to urge Interior to issue assignable bidding credits to the Native corporations in return for Native corporation land. This would avoid many of the procedural and substantive problems identified in this memorandum, but would raise some additional problems which would need to be addressed. For instance, it would be necessary to be clarify that the state would still receive its Mineral Leasing Act share even if the bonus were received by Interior in the form of a bid credit.

CHRONOLOGY OF STATE INVOLEMENT IN  
PROPOSED ANWR LAND EXCHANGES

1984 - 1985

Koniag broaches subject of ANWR land trades with former USFWS Regional Directors Keith Schreiner and Bob Putz. Informal discussions then ensue with Alaska's congressional delegation and DOI's Bill Horn.

Fall, 1985

Four USFWS appraisers appear in DNR's Anchorage office and ask for state comparable information on recent large land sales. They are extremely evasive concerning their purposes. At no time do they mention a possible ANWR land trade.

December 3, 1985

John Katz sends memo to the Alaska congressional delegation regarding ANWR land exchanges. He advises that the Interior Department has commenced trade discussions with various Native corporations. Katz relates that the discussions are at an early stage and that the state has neither been consulted by DOI officials, nor yet taken a position regarding the wisdom of the trades.

January 21, 1986

Dick Mylius of DLWM provides DLWM Director Tom Hawkins with a memorandum which identifies approximately 12 million acres of state land identified by ADF&G which might be used for trade. These lands have habitat attributes which should be of interest to USFWS.

January, 1986

Tom Hawkins meets with Bob Gilmore of USFWS to discuss ANWR trade prospects. Gilmore provides only superficial information regarding Native trades but agrees to consider a formal state trade proposal.

February 5, 1986

Tom Hawkins meets again with Bob Gilmore and delivers a letter which asks for more information regarding the details of Native trade discussions and offers the 12 million acre pool of candidate state exchange land for USFWS consideration. *Tetlin only*

February 17, 1986

Governor Sheffield writes the commissioners of DNR, DEC, DF&G, Commerce, Revenue as well as Bob Grogan (OMB/DGC), Hal Brown (AGO) and John Katz to assign numerous issue analysis tasks related to ANWR. The tasks assigned DNR included: a) monitor closely USFWS plans for possible land exchanges in ANWR and ascertain opportunities for exchanges involving state land; and b) work with ADF&G to identify state lands available for inclusion in a trade.

February 17, 1986

Governor Sheffield writes DOI Secretary Hodel to request information related to ongoing trade discussions between DOI and Native corporations and to express the state's interest in the ongoing land

*August 85  
Horn meets Sheffield*

*Nov 85  
Gilmore writes Gov  
invig putting in*

exchange discussions. He specifies that, as a sovereign state, Alaska should be consulted and meaningfully involved in any trade deliberations.

March 12, 1986

USFWS Regional Director Gilmore responds to the Hawkins letter of February 5, 1986. He stated that USFWS has reviewed the pool of candidate state exchange lands and lists the areas in order of acquisition priority. Only the state land within the Tetlin NWR is identified as a high USFWS acquisition priority. Gilmore states that the majority of the state lands are simply not a priority for acquisition. Furthermore, he suggests that adequate protection for some areas might be achieved through cooperative management agreements. Gilmore makes no reference to the proposed Native trades.

April 2, 1986

DOI Assistant Secretary Bill Horn responds to the governor's February 17 letter to Secretary Hodel. Horn says that the trade negotiations with Native corporations are still very preliminary and that DOI has reached no tentative agreements, including a decision on whether an exchange proposal will be forwarded to Congress. He assures the state that "should this effort progress beyond the speculative stage, the State of Alaska will be kept informed of further developments and be welcome to participate in any exchange negotiations . . ."

May 16, 1986

DNR Commissioner Wunnicke sends memo to Bob Grogan (OMB/DGC) which responds to the governor's information request of February 17th. Attached to the memo is a summary of the state action taken thus far on land exchanges.

May 20, 1986

Tom Hawkins sends detailed ANWR land exchange memo to Bob Arnold, DNR Deputy Commissioner. The memo described the state's land exchange progress of the DOI/Native trade efforts. The memo concludes by stating that the USFWS response to the state's trade proposal calls for further state action.

July 8, 1986

Bob Grogan issues memorandum to resource commissioners, John Katz, Molly McCammon (Governor's Office) and Vince Wright (Revenue) which outlines state policy regarding management of ANWR. Also attached is an executive summary of the material used to support the policy. The policy includes the statement that "the DOI has assured us that the state will be kept apprised of any proposed land exchange under consideration and will be consulted before any final decision is made." The executive summary says the state will continue

discussions with USFWS concerning the state's land exchange proposal.

September 11, 1986 Tom Hawkins and Gary Gustafson brief the House Special Committee on Oil and Gas on the ANWR land trade. They report the state's efforts and the tepid response from USFWS. The meeting is covered by the Anchorage Daily-News and an article appears the next day in the newspaper.

September 26, 1986 Representative Don Clocksin writes Commissioner Wunnicke to request a briefing on the specifics of any trades involving ANWR.

October, 1986 Commissioner Wunnicke goes to Washington, D.C. and among other items, discusses proposed Native/DOI land trades with Bill Horn. Horn seems interested in the prospect of a state/DOI land exchange in ANWR and encourages state participation. He also assures John Katz and the commissioner that DOI will keep the state advised of the Native trade efforts.

*"Real discussions" going on in D.C. - Katz. were stuck in Ak. back channel - Katz*

October 30, 1986 Commissioner Wunnicke, Tom Hawkins and Gary Gustafson brief Representative Clocksin, Representative Cotton, Senator Halford and an aide to Representative Pourchot on state involvement in ANWR land trades. It is explained that state efforts have stalled due to USFWS reluctance to accept most of the state's trade offerings. However, the state intends to continue its trade efforts.

November 4, 1986 Gary Gustafson meets with Margie Sagerser, Mike Smith and Mark Rindner of the Native Land Group, a CIRI sponsored ANWR exchange participant. He learns the exchange proposal is much further advanced than previously thought. Draft exchange documents have been distributed and an ANWR tract selection process is imagined within several months. For the first time the state learns the identity of all the Native corporation participants and that a DOI ANWR exchange team has been assembled.

November 12, 1986 Gary Gustafson sends memo to Commissioner Wunnicke which outlines status of Native land exchanges and provides recommendations for state participation, including the creation of a state ANWR Exchange Team with an appropriate level of funding. This memo also outlines the general methodology DOI intends to use to award subsurface tracts in ANWR to exchange participants. It includes the names of the DOI and Native representatives who are negotiating the trade. Gustafson also outlines a timeframe for completing state exchange tasks.

- November 14, 1986 Gary Gustafson and Sharman Piper (Representative Cotton's Office) meet with John Doebel (USFWS) to discuss the status of Native trades. Doebel provides some details but stresses that the exchanges are still considered speculative.
- November 14, 1986 Tom Hawkins again writes Bob Gilmore to renew trade discussions. He proposes the inclusion of all state land of interest to USFWS as part of trade, and to consider any additional areas nominated by USFWS. Hawkins mentions that the state is also willing to consider trading state lands of interest to other federal agencies, such as the National Park Service (NPS). He says he is prepared to draft a preliminary exchange agreement as a first step towards negotiations. Hawkins also asks for an update on the status of DOI trade negotiations with Native corporations. (Note: no response has been received to this letter.)
- November 17, 1986 Commissioner Wunnicke sends an ANWR Trades Issues Paper to Governor Sheffield. She notes that the USFWS has shown little interest in trading ANWR lands for state lands. She also relates that the state has just learned of Native corporation efforts to accelerate ANWR trades and that DOI has apparently made considerable progress of late in its planning for trades. The paper also includes a recommendation to create a state ANWR Exchange Team as an element of a larger ANWR strategy.
- November 17, 1986 Tom Hawkins meets with Bob Gilmore and John Doebel while delivering his letter to Gilmore. They reconfirm that Native land trades are still in a very preliminary stage and that they will reexamine the state's trade proposal.
- November 19, 1986 Commissioner Wunnicke again provides Governor Sheffield with an ANWR trade update. She mentions that her staff continues to advance a land trade package with USFWS, but that USFWS finds it difficult to justify acquisition of certain lands because they feel the state already provides a sufficient level of protection. She also relates that the USFWS has no interest in giving up ANWR land to benefit the NPS. The memo is also furnished to Governor-elect Cowper.
- November 24, 1986 Commissioner Wunnicke sends memo to Jim Eason (Director, Division of Oil and Gas) and Laurel Murphy (Acting Director, Division of Mining and Geology) which asks them to ascertain the resource and resultant economic values in the ANWR coastal plain in order to prepare for possible state participation in tract

December 1-5, 1986 Tom Hawkins, Gary Gustafson and Norm Cohen (ADF&G) go to Washington, D.C. to participate in the DOI sponsored ANWR land exchange negotiations. John Katz' staff also participate. The negotiations center on the land exchange contract, land use stipulations and ANWR subsurface tract selection process. The state's representatives also advance the state's trade package with DOI. The meeting was of considerable benefit as the state learns the details and timing of the proposed trade for the first time.

December, 1986 Briefings on the ANWR trade proposal are held by Tom Hawkins and Gary Gustafson for Governor Cowper, Lt. Governor McAlpine, DNR Commissioner Brady and others. The state continues to advance its trade package by conducting appraisals of 1.45 million acres. The USFWS conceptually approves about 250,000 state acres for trade. The state strives to expand this acreage.

Jan 87 }  
Feb 87 } state particip in as a full partner

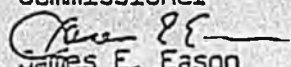
despite "diff'y of state raising itself until Oct 86," }  
the state still has all options available } Katz 2  
2/13/87

# MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL AND GAS

TO: Judith M. Brady  
Commissioner

THRU:   
James E. Eason  
Director

FROM: ~~Edward Phillips~~  
Edward Phillips  
Petroleum Economist

DATE: January 12, 1987

FILE NO:

TELEPHONE NO: 561-2020

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

DNR geologists and geophysists are in unanimous agreement that lands within the coastal plain of ANWR represent the best remaining potential for major oil and gas discoveries in Alaska. This estimated potential substantially exceeds that of remaining unleased state lands. Under current law, federal leasing of ANWR lands for oil and gas development would yield 50 percent of any bonuses, rentals and royalty income to the state. In addition, the state would receive severance, corporate, property and conservation taxes from development of ANWR leases. However, the royalty share alone could constitute upwards of 70 percent of total state revenue from potential ANWR development.

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

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

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

Judith M. Brady, Commissioner  
January 12, 1987  
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The assumptions underlying the estimates of potential land trade-related revenue gains and losses to the state have geological, geophysical and economic components. ~~X~~The 1002 Report indicates that if oil is discovered, the average recoverable reserves are estimated at 3.2 billion barrels. This quantity was used for the NNEB estimate derived by ELM for the draft 1002 report, and provides the "assumed" reserve base or recoverable reserves for this discussion. ~~X~~In our analysis, production would commence (from two fields) in 2000 at a 1984 dollar price of \$35.00 per barrel, and escalate at one percent per year in real terms (production from one of the fields could be delayed for a year or two without substantially affecting the results). ~~X~~All estimates are in 1984 dollars, hence they are net of inflation, but they are not discounted to reflect the time value (time preference) of funds to the state.

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

As Table I illustrates, potential ANWR revenues to the state (even given current ASRC/KIC inholdings) could be substantial, exceeding those of Prudhoe Bay by the year 2005. By the year 2010, ANWR's revenue potential is almost double that of Prudhoe Bay using the federal price assumptions. This would be true of almost any set of prices exceeding the development threshold for ANWR. Based upon the assumptions we have analyzed, any further transfers of prospective ANWR lands from federal jurisdiction reduces the state's per-barrel revenue potential by about 70 percent as a result of loss to the state of potential royalties, bonuses and rentals. As can be seen from Table 1, the potential royalty revenue at stake exceeds six billion dollars.

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

Attachment

0274P

TABLE I

ESTIMATED POTENTIAL INCOME 2000 TO 2010\*  
(10<sup>6</sup> 1984\$)

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

Ass →  
/60

3145

2986

6465

\* using federal price assumptions

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

Steve Cooper

SOVEREIGN



State of Alaska

OFFICE OF THE GOVERNOR

WASHTON, D.C.

January 9, 1987

Ms. Sharon Allender  
Division of Conservation  
and Wildlife  
Department of the Interior  
Room 6535  
C St. between 18th & 19th Sts., N.W.  
Washington, D.C. 20248

Dear Ms. Allender:

Preliminary comments on draft ANWR exchange agreement

The State of Alaska has reviewed the draft land exchange agreement between Ionig, Inc. and the United States, dated November 3, 1986. This letter conveys some of our comments on the form and content of that draft agreement.

As stated in my December 29, 1986, letter accompanying the comments on the draft stipulations, the state has two principal areas of responsibility from which to review the proposed land exchange agreement: (1) as landowner and potential participant in phase one of the exchange process; and (2) as a sovereign. The sovereign responsibilities include both a responsibility to act as steward of natural resources with police power in the area, and the responsibility of a fiduciary. As a fiduciary, the state must review the concept of land exchanges with third parties as well as consider the effect of such exchanges on the overall interests of Alaska.

The comments in both this letter and the accompanying marginal notes to the draft exchange agreement are preliminary and reflect only a brief review, primarily from the perspectives of state as landowner and as sovereign with police power. The concepts reflected in the draft exchange agreement are fairly complex and will require further review and study before we can provide more detailed comments.

From the perspective of state as landowner and potential participant in the exchange process, we have a concern that the contract will not accomplish one of its basic purposes; that is, to enable a land exchange participant to acquire a sufficient interest in land to lease it out for a profit. Initially, there is a question, currently being looked at by our attorneys, as to whether the limited interest in land proposed to be conveyed is

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sufficient to permit a participant to lease it under current state statutes. Beyond that, the state is concerned with the limitations on the grant, especially when limited by post-agreement events and Secretarial discretion. Also, the uncertainties resulting from the provisions pertaining to termination of the contract and the extensive reservation of discretion for the Secretary of the Interior (Secretary) and the regional director to make determinations without substantive standards create questions as to whether there is sufficient security to a lessee to enable it reasonably to conduct exploration and development activities.

The uncertainties created by the proposed exchange agreement also affect the value of the land interest that the Department of the Interior (DOI) proposes to exchange. We recommend that you review the federal oil and gas lease form as an example of the types of provisions that may satisfy potential bidders. In addition to these concerns, there may also have to be changes in the wording of the draft agreement to reflect provisions of state law and procedure applicable to state participation in a land exchange. We are currently reviewing the agreement to determine the necessity and the content of such changes. We expect any State/DOI exchange agreement will need to deviate from, or supplement, many of the provisions contained in the Ionia agreement.

From the perspective of state as sovereign steward with police powers, the draft exchange agreement raises a number of issues. In this regard, the focus of our concern is language in the draft agreement that appears to override or usurp existing state jurisdiction. While it may be possible, through Congressional authorization of the land exchange agreement, to preempt certain existing state rights, most of the rights affected by the draft exchange agreement involve areas of historical jurisdiction, state expertise, or prior Congressional determination that the state should exercise its jurisdiction. Congress should not be asked to abdicate those rights through the vehicle of a land exchange agreement, particularly when the recent Reagan Administration report on The Status of Federalism in America was extremely critical of federal government preemption of legitimate state rights.

The following are three examples of this concern. Other instances are noted in the marginal notes to the draft exchange agreement. First, there is the need for a coordinated state/federal process for design review, permitting, field surveillance, and enforcement. This concern is described in some detail in the letter giving comments on the draft stipulations. Coordination of the various governmental processes is necessary to avoid duplication of efforts and associated problems.

With respect to the draft exchange agreement, there are certain provisions which appear to afford the regional director the discretion to approve activities that are already under the

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jurisdiction of other state or federal agencies. In most cases there are no substantive standards or guidelines applicable to that approval process. For example, paragraph 4 (a) gives the regional director authority to approve utilization agreements, reinjection of "gas, water, air or other substances," and storage of injected or reinjected substances. However, these activities are already under the jurisdiction of the Alaska Oil and Gas Conservation Commission and the U.S. Environmental Protection Agency under the terms of applicable state and federal statutes and regulations. As noted in the comments to the stipulations, a land exchange agreement between two parties simply is not an adequate substitute for the network of federal, state, and local requirements that have been developed over time to address complex issues. We believe that these existing processes are proven and should be used, rather than preempted.

Next, the state clearly has jurisdiction over appropriative water rights and groundwater allocations for development purposes. There are several provisions in the draft exchange agreement which appear to conflict with that authority. Paragraph 10 affords the Secretary the authority to operate or lease a "well for the purposes of producing water, using such water on refuge lands, and disposing of it for beneficial use on other lands." This appears to be in conflict with state jurisdiction. Under the rationale of United States v. New Mexico, 438 U.S. 696 (1978), the U.S. Fish and Wildlife Service (USFWS) may have a reserved federal water right, but (if at all) only the minimum amount necessary for refuge purposes. Confirmation of any reserved right would have to be obtained through the state water rights adjudication process and any additional right would require application under the state appropriation process. Also, paragraph 4 (d) requires the regional director to approve the use of surface and ground water in ANWR, even if there has already been a state water rights adjudication. This is a usurpation of established state authority.

Third, the subsistence easement created in paragraph 3(b) and the appendix describing the easement suggest potential conflicts with the jurisdiction of the state over subsistence issues. The appendix seems to assume that the Secretary of the Interior is managing subsistence uses on refuge lands under section 305 of ANILCA. In fact, the state has enacted laws of general applicability that have been approved by the Secretary under section 305, and, therefore, the state, not the United States, is managing subsistence uses on refuge lands and other federal public lands. Because the state has enacted laws of general applicability that have been approved, it is the state boards of fisheries and game, not the Secretary, that are responsible for developing regulations governing subsistence uses. The provisions of title VIII of ANILCA reflect existing Congressional intent that, once the state has met the statutory requirements, it has jurisdiction over subsistence uses on federal lands.

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Because subsistence opportunities for rural residents on federal lands are protected under both state and federal law, Appendix 2 is not necessary, and could be deleted. However, if it is deemed necessary for some other purpose, the following changes need to be made to make it consistent with state and federal statutes.

1. Use "domicile" rather than "residence" in order to be consistent with state law (Ch. 52, SLA 1985).
2. Specify that the "eligibility" of residents of Karluk and Laxson Bay (not the "right", since the use of wild resources for subsistence is not an absolute right) will be determined by the state boards of fisheries and game so long as the state has laws approved by the Secretary under section 305 of ANILCA.
3. Delete provisions that mandate a finding that residents of the specified communities are local residents under ANILCA. This decision is made by the state boards, subject to the judicial review procedures set out in section 307 of ANILCA. In fact, these communities have already been found to be rural.
4. Recognize that the state also has closure authority under state management.
5. On page 3, there is no need to specify that references to ANILCA will be construed in accordance with that law -- this is redundant. Moreover, it would not be appropriate to limit construction of ANILCA terms to the provisions as they existed in 1980. For example, there has already been an amendment to section 307 of ANILCA that repeals the expedited judicial review provisions (i.e., it no longer requires these cases to have priority over other matters).

We also believe that the terms, conditions, and stipulations in the exchange agreement do not provide adequate protection for fish and wildlife resources or human use of those resources. Two provisions of the exchange agreement are of particular concern. Paragraph 21 appears to require the issuance of permits from any agency of the DOI, if the activities are consistent with provisions of the agreement and comply with federal laws and regulations. Similarly, paragraph 25 restrains the USFWS from opposing or commenting unfavorably upon any permit or approval application made to any government agency if the proposed actions are consistent with the agreement. These two provisions appear to limit USFWS's ability to respond to and mitigate possible adverse impacts through the permit review and comment processes. Exploration, development, and production activities may extend for 20 or more years after exchange agreements are signed. It is difficult, if not impossible, to initially envision all terms and conditions necessary to protect fish and wildlife resources over such an extended time period. Development of mitigative measures is a dynamic process that must change with assimilation of new

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information or development of new technology. The state recommends that paragraphs 21 and 25 be amended to: (1) provide for the modification of stipulations based on new information or technology, and (2) eliminate provisions that restrict the USFWS's ability to comment on proposed development activities.

Numerous deficiencies were also noted in Appendix 4, the draft land use stipulations. For example several fish and wildlife species of local, state, and national importance were not addressed in the stipulations including: polar bear, moose, and peregrine falcons. Specific comments on the stipulations contained in Appendix 4 are contained in our December 29 letter.

The state requests the opportunity to review and comment on the draft ANILCA 310 analysis for the land exchange, which is presented in paragraph 14, prior to consummation of the agreement. This analysis is important to the exchange process because it is unclear that the stipulations contained in Appendix 4, or the tract selection process will not significantly restrict subsistence uses on exchanged lands. The state also requests the opportunity to review the draft ascertainment report being prepared for the Koniag exchange and described in term 15, as well as Appendix 1 to ensure that the state has a clear picture of all associated impacts.

Enclosed is a copy of the draft exchange agreement with our marginal comments. Besides our substantive concerns, we feel that by condensing and reorganizing the agreement considerable improvement could be achieved. For instance, many of the definitions are not needed, are more appropriately incorporated into the substantive provisions, or would gain greater clarity if more simply stated. The substantive provisions would also be both more readable and clear if set forth more simply and concisely. Moving the definitions to the end of the agreement would also enhance readability. The agreement would also benefit from headings and a table of contents. In reviewing our marginal comments, you should keep in mind that they are only shorthand indications of our preliminary thoughts. Please feel free to contact us for a fuller explanation of our comments.

In addition to the marginal comments, there are a number of items not presently included in the agreement which we feel are important to include in the final agreement. They include:

1. A provision dealing with access to, use of, and procedures for maintaining confidentiality of confidential data. This provision is necessary for utilization purposes and may be desirable for other federal and state land management purposes.
2. A provision providing that state leasing activity is not considered a "commercial" enterprise. This is desirable to avoid any possible claim that state involvement as a lessor in ANILCA constitutes prohibited

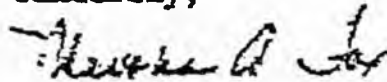
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"commercial use" of confidential data under the provisions of ANILCA.

3. A force majeure clause.
4. Provisions for choice of law and choice of forum.
5. A provision setting out how the agreement is to be interpreted.
6. A provision on duty of good faith and fair dealing.
7. A provision regarding notice.
8. A provision in which each party warrants that it will not create any new third party interests in the land it proposes to exchange.
9. A provision stating that headings (once they are included in the agreement) are not part of the agreement.
10. A provision that clarifies any restriction on subsurface interests retained by the state or native corporations when the surface estate is conveyed to USFWS as part of the exchange. This provision is necessary to ensure both adequate protection for fish and wildlife resources and public use values from incompatible subsurface uses, and to protect the retained subsurface interests.

Thank you for the opportunity to comment on the draft land exchange agreement. While no final decision has been made by the state on the advisability of the land exchange concept, we have attempted here to make constructive comments for your consideration. As with the draft stipulations, we anticipate further opportunities to review and comment on the proposed exchange agreement. If you have any questions concerning this letter please contact me at the Governor's Office in Washington, D.C.

Sincerely,



Martha A. Fox  
Special Assistant Attorney  
General

Enclosure

cc: Lieutenant Governor Stephen McAlpine, Juneau  
Commissioner Judy Brady, DNR, Juneau  
Commissioner Dennis Kelso, DEC, Juneau  
Commissioner Ben Collinsworth, DFG, Juneau

Ms. Sharon Allard

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January 9, 1987

John Katz, Office of the Governor, Washington, DC  
Red Swope, Office of the Governor, Juneau  
Bob Grogan, Division of Governmental Coordination, Juneau

STEVE EDWPER  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

December 29, 1986

Ms. Sharon Allender  
Division of Conservation  
and Wildlife  
Office of the Solicitor  
Department of the Interior  
Eighteenth and C Streets, NW  
Washington, DC 20240

Dear Ms. Allender:

You have invited the State of Alaska to comment on the draft land exchange agreement between Arctic Slope Regional Corporation, Inc., and the United States that could result in certain oil and gas rights in the Arctic National Wildlife Refuge being transferred to Arctic Slope Regional Corporation, Inc., the draft stipulations that were enclosed as Appendix 4 to the draft exchange agreement, and the proposed tract selection process for such exchanges which was discussed at a work session during the week of December 1.

With regard to the Department of the Interior's proposed land exchanges, the state has two principal areas of responsibility: (1) as a landowner and potential participant in phase one of the exchange process, and (2) as a sovereign steward of natural resources. This second role has two distinct aspects: (a) the state's role as a protector of the environment through the police power, and (b) the state's role, in the nature of a fiduciary, reviewing the concept of land exchanges with third parties and the affect of such exchanges on the overall interests of Alaska generally. The comments we are making at this time reflect only our very brief review of the draft exchange agreement, draft stipulations and proposed tract selection process from the perspective of land owner and sovereign with police power; our review from the broader overall state interest perspective is still underway.

With respect to this broader review, the most critical unanswered question may be whether the concept of exchanges will advance or hinder the opening of the Arctic National Wildlife Refuge (ANWR) to oil and gas development, a question which applies both to the

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substance of such exchanges and the process under which they will be negotiated and consummated. That question has profound implications for both the state and the nation, but is not the only issue the state must consider. Other issues which the state will examine include the affect of such exchanges on the potential employment of resident Alaskans in any development which might occur, the state's existing right to a 90 percent share of mineral leasing revenues from public lands under the Mineral Leasing Act, and other state revenue implications from severance taxes, production taxes, corporate income taxes, etc.

In short, there are numerous questions which the state will answer before determining that such land exchanges are in the best interest of both the state and the nation. Accordingly, these comments should not be viewed as agreement that such exchanges are possible from either a state or national perspective. The state's final position on leasing in ANWR, including land exchanges and required mitigation measures, will be conveyed to the Secretary of the Interior when we formally respond to the draft ANWR 1002(b) report.

While a final decision regarding the advisability of such exchanges cannot be made at this time, Governor Cowper has directed appropriate state agencies to review the draft exchange agreement, the draft exchange stipulations and the proposed tract selection process on the assumption that such exchanges ultimately will be found to be in the public interest. Accordingly, while the state has not made a final decision on exchanges, our comments are intended to ensure the viability of the exchange process in the event it is concluded that such exchanges are advisable. In other words, our goal in these comments is the same as yours: to ensure that the exchange process, if implemented, actually works.

In this letter, we comment only on the draft exchange stipulations and proposed tract selection process. We will transmit our comments on the draft exchange agreement early next week.

#### DRAFT EXCHANGE STIPULATIONS

As you are aware, the draft stipulations included in Appendix J address many of the major issues associated with the draft ANWR 1002(b) report that is currently being circulated for public review and comment. In light of this, the state recommends that the stipulations to the transfer agreement not be adopted until after public views have been considered on the draft ANWR 1002(b) report and the draft ANWR 1002(b) stipulations have been finalized. At that time the State of Alaska will be better able to provide detailed advice regarding the draft transfer stipulations, and the U.S. Fish and Wildlife Service will have had an

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opportunity to consider the views of other individuals and entities.

However, as you requested, we have prepared preliminary comments on the draft stipulations. Given the extremely short period of time in which we have been asked to review and comment on the draft land exchange agreement, our comments are preliminary and subject to change pursuant to further opportunities to review both the draft land exchange agreement and the draft AWR 1602(b) report. The state has had sufficient time only to accomplish a cursory review of the draft exchange agreement. The state will need to play a strong role in ensuring that any activity in AWR occur properly. In the course of our review, the state agencies identified many significant issues which will require further analysis before we can comment. These issues include, but are not limited to, caribou calving and insect relief areas, stream siltation, mitigation, decision-making criteria, and rehabilitation requirements.

The state review did uncover the following general issues which are very significant and need to be appropriately addressed in the Department of the Interior's land exchange process.

Coordinated State/Federal Process for Design Review, Permitting, Field Surveillance, and Compliance and Enforcement

The state believes that it would benefit all parties to provide a process for coordinating review, permitting, field surveillance and compliance and enforcement efforts between federal, state, and local authorities.

Language currently in the proposed land exchange agreement is of concern to the state. Specifically, Appendix 4 states that the plan of operations:

Shall be submitted for approval to the regional director and shall include information necessary to satisfy all associated federal, state, and local permitting actions. The operator is responsible for securing all other applicable permits prior to initiation of any activities pursuant to the . . . Special Use Permit. (Section 4, page 15).

This process for submitting information for a plan of operations and securing an approval and Special Use Permit should identify or acknowledge existing regulatory requirements and identify or acknowledge the wide range of existing permits and authorizations governing these activities. The agreement should address different agencies' review times or public notice requirements or requirements for compliance with the Alaska Coastal Management Program, and its associated coordinated state review process.

Agencies with jurisdiction in these activities include state agencies such as the Alaska Oil and Gas Conservation Commission, Alaska Department of Environmental Conservation, Alaska Department of Fish and Game, Alaska Department of Natural Resources, and Governor's Division of Governmental Coordination; federal agencies such as the U.S. Environmental Protection Agency and Corps of Engineers; and the North Slope Borough.

The requirements listed in Appendix 4 of the draft exchange agreement for submission of information in the plan of operations largely parallel requirements of existing state and federal permits and authorizations. Issues that must be addressed include how individual agency enforcement actions taken pursuant to their own statutory remedies will be coordinated with compliance actions taken by the regional director. In addition, direction must be given for coordinated field surveillance and provisions for field approvals. Without a coordinated permitting and enforcement process, each agency will deal with the operator on an independent basis, calling for individual information requirements, timeframes for securing permits and authorizations, permit conditions and stipulations, field surveillance and enforcement actions.

The current language in Appendix 4 suggests that the regional director is empowered to perform all of the review, permitting, surveillance and enforcement functions of the combined agencies. For example, item 3.5(f)(7) states that the operator:

Shall comply with applicable federal laws and regulations and with applicable state and local laws and regulations, the requirements of which are not inconsistent with the Agreement . . . .

The state is concerned with this approach. A land exchange agreement between two parties should augment but not seek to replace applicable federal, state, and local legal requirements.

The state believes that a process for coordinating the various governmental authorities applicable to the subject oil and gas activities would help avoid duplication, confusion, higher costs, inconsistencies, and delays. The state urges the Department of the Interior to provide for an acceptable means of management oversight for oil and gas development activities in the ANWR.

#### Reclamation and Rehabilitation

Reclamation and rehabilitation of disturbed areas in the refuge is a very important issue to the state. Reclamation and rehabilitation provisions contained in Appendix 4 should be better defined and technically supported. Considerable discussion and further consideration of this important issue is necessary.

Ms. Allender

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Please refer to the additional comments we have provided on this issue in Enclosure 1 of this letter.

Development and Production Activities

Appendix 4 of the draft land exchange document primarily addresses the exploration phase of oil and gas activities. All subsequent phases including development and production and transportation need to be more fully addressed in the final agreement.

Enclosure 1 of this letter contains a brief discussion of major issues which we have identified that are either not addressed, inadequately addressed, or inaccurately addressed in the land use stipulations contained in Appendix 4 of the draft land exchange agreement. In particular, for environmental protection issues, many of the proposed stipulations inaccurately characterized existing regulatory requirements. Enclosure 2 of this letter contains page specific comments that have been made in red ink in the margins of a copy of Appendix 4 of the draft exchange agreement. Page specific comments that were too lengthy to make in the margins have been typed on a sheet of paper and inserted in the appropriate location of Appendix 4. The page specific comments may not identify all of the deficiencies in Appendix 4, but reflect those inadequacies that could be noted during the review time available. We were not able to complete a review of all the stipulations.

PROPOSED TRACT SELECTION PROCESS

The comments which follow reflect the state's review of the Department's proposed ANWR tract selection process for proposed land exchanges which was distributed at the work session the week of December 1. This review should not be considered at this time as agreement that such exchanges are positive from either a state or national perspective.

Reliability of ANWR Tract Valuation

The state's best professional judgement is that geophysical data available for ANWR are not sufficient to enable a reliable tract specific valuation for tracts of the dimension selected by the Department of the Interior for exchange purposes. The seismic grid in ANWR is large (three miles by six miles), and no subsurface well data are available for assessing the stratigraphic parameters which would be essential components of any valuation model to calculate subsurface resource values. The geophysical survey grid in ANWR is so large that an interpreter could easily miss several giant oil fields in the order of Zandcott, Seal Island, and Point-Thomson. With these facts in mind, we find the proposed tract valuation procedures technically unsupportable and inadequate.

Further, unless a competitive tract selection process were established, additional geological and geophysical surveys would be required to determine values for purposes of any exchanges.

#### Valuation of Participants' Trade Lands

The state has reservations over the Department's proposed process to enhance the fair market appraisal value of candidate exchange lands through the application of public interest value adjustment criteria. As we understand this process the Department negotiates individually with each exchange participant to arrive at a final approved value for all candidate exchange lands.

Although it may be appropriate to adjust appraisal values to factor in the Department's acquisition priorities, such adjustment should be based upon established criteria and uniformly applied.

#### Schedule for Tract Selection by Participants

The state is concerned that participants in any exchange are expected to select tracts before it is known which tracts are available for leasing, what stipulations or restrictions are attached to each tract, what provisions exist for roads and pipeline rights-of-way, and before a satisfactory process of conflict resolution is established. For these reasons, selection of tracts should not take place until Congress has acted upon the recommendations of the Department regarding leasing and development of the coastal plain.

#### Conflict Resolution

The conflict resolution process should be as simple as possible and equitable in both appearance and application. To achieve these ends, the state recommends that the mechanism for resolving conflicts be straightforward, consistent and self executing, rather than reliant on the discretion of Department officials. The unguided discretion contemplated in the proposal makes the process appear arbitrary. It is preferred that there be but one process spelled out to provide specific direction to the Department to resolve specific tract selection conflicts.

Second, the state opposes the use of the Department's proposed priority ranking of the participants' land as a means of resolving conflict. The Department's acquisition priorities will be reflected in the valuation of the participants' land packages. This valuation already provides adequate assurance that the Department will acquire the land it desires. Using a priority system to resolve conflicts would in effect be double counting the value of the land to the Department of the Interior. The

Ms. Allender

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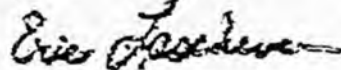
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state, therefore, recommends that this method of resolving conflicts be dropped.

Finally, in the event the proposed tract selection process is adopted, it is our view that the Department should not relegate prospective additions to the national park system to a lower priority than refuge additions as candidate lands for exchange. The Department should conduct a single round of tract selections in which the value of state lands of interest to the federal government, as park or refuge additions, would be the basis of tract selection by the state.

Thank you for the opportunity to comment. We anticipate further opportunities to review and comment on the proposed land exchange process. We will continue to refine our comments on land exchanges and necessary mitigation measures as we develop our formal response on the draft AWR 1002(h) report.

Sincerely,



Eric Laschever  
Associate Director  
for Fisheries and the Environment

Enclosures

cc w/enc: Lieutenant Governor Stephen McAlpine, Juneau  
Commissioner Don Collinsworth, DFG, Juneau  
Acting Commissioner Robert Arnold, DNR, Juneau  
Acting Commissioner Keith Keltou, DEC, Juneau  
John Katz, Office of the Governor, Washington, DC  
Lennie Gorsuch, Office of the Governor, Juneau  
Rod Swope, Office of the Governor, Juneau  
Tom Koester, Department of Law, Juneau  
Kurt Fredrikson, DGC, Juneau  
Jim Eason, DNR, Anchorage  
Tom Hawkins, DNR, Anchorage  
Robert Batts, DNR, Juneau  
Norman Cohen, DFG, Juneau  
Al Ott, DFG, Fairbanks  
Dick Sidelax, DFG, Fairbanks  
Lance Trasky, DFG, Anchorage  
Claudia Slatar, DFG, Anchorage  
Doug Anderson, DEC, Juneau  
Larry Dietrick, DEC, Fairbanks  
Dan Wilkerson, DEC, Anchorage  
Mike Wheeler, DEC, Anchorage  
Sally Gilbert, DGC, Anchorage

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# MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF MINING AND GEOLOGY

Bob Arnold  
Acting Commissioner

DATE December 8, 1986

FILE NO

TELEPHONE NO 762-2171

FROM Laurel A. Murphy *lm*  
Acting Director, DMGGS  
for Jim Eason *JE*  
Director, DOG *DOG*

SUBJECT Request for Tract  
Evaluation of ANWR

A memo of November 24, 1986 from former Commissioner Wunnicke requested a detailed hydrocarbon resource assessment of recoverable reserves on the ANWR Coastal Plain, and an economic evaluation on a tract specific basis of the estimated reserves for the purpose of evaluating potential land exchanges with the federal government.

At this time, the state does not possess sufficient data (either seismic or well data) to accomplish either task with a degree of reliability that would inspire confidence in the resulting estimates.

The Department of the Interior has used the PRESTO II computer simulation model to arrive at recoverable oil values for individual prospects and tracts in ANWR. The model uses prospect-specific geologic and geophysical input parameters, geologic risk factors, an assortment of economic assumptions, and "Monte Carlo" simulation techniques to establish dollar values on given tracts. The grid employed by Interior in its ANWR analysis is nine tracts per township (four one-mile square sections per tract). The modelling procedures are well documented and are routinely used by the Minerals Management Service to derive petroleum resource estimates for OCS planning areas. The resource estimates are then used to evaluate (accept or reject) competitive bids.

This modelling is similar to the State's economic evaluation process used to establish competitive bid terms for State oil and gas lease sales.

However, perusal of the draft DOI ANWR document reveals that they have applied sophisticated modelling procedures to data that we regard as inadequate/unreliable for the purposes of such a detailed analysis. Therefore, their estimates must be considered suspect. The attempt to estimate dollar values for tracts from the currently available ANWR database stretches the methodology beyond meaningful results.

The professional staff at DMGGS and DOGG, in their best professional judgment, believe that the ANWR data available to the state is not sufficient to enable a reliable tract evaluation. The seismic grid in ANWR is quite large (three miles by six miles) and no subsurface well data are available for assessing stratigraphic parameters. The geology of the area is extremely complex, and wide "no data" zones exist on the available seismic lines. Making matters worse, the economic assumptions necessary for establishing dollar values have an extremely wide variance.

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Consider the fact that the seismic grid in ANWR is large enough to miss giant oil fields such as the Endicott, Seal Island, and Point Thomson accumulations. More subtle traps such as the Kuparuk accumulation could most definitely be missed, as well. A reliable seismic grid used to evaluate state and federal OCS areas is rarely less than one mile by one mile, and oftentimes approaches one quarter mile square spacing.

Map scale is also a function of the level of detailed data available. For example, in ANWR the most detailed seismic map producible, reliably, from the data is only 1:250,000, a full 2.5 to 5 times less detailed than the 1:96,000 or 1:48,000 scales usually attainable for tract evaluation purposes. In ANWR many of the "prospects" are inferred from evidence on only one or two seismic lines, and closure cannot be demonstrated.

In the federal OCS, prospects are much better delineated than in ANWR. The seismic coverage is considerably tighter and normally one or two stratigraphic wells provide subsurface stratigraphic information.

In fact, many within DOI agree with the professional judgment outlined above, but presumably for political considerations have, chosen to stretch the limits of the data to derive an unreliable dollar value for very small tracts on the Coastal Plain.

Finally, people can reasonably disagree over the economic assumptions used to attach dollar values to the reserve estimates. Different opinions concerning future oil prices, development costs, timing of development, transportation costs, and discount rates can individually or in concert substantially affect dollar values. Thus, economic uncertainty is combined with the lack of detailed geologic data to shield inaccurate dollar estimates of resource values. Neither mathematical manipulation, no matter how sophisticated nor probability theory can change doubtful data into positive scientific fact.

With these facts in mind, the staff recommends a "ranking" type evaluation procedure in order to best utilize the data available and maximize the reliability of results. This procedure will use all available seismic and geologic data to weigh relative resource potential of individual townships or, in the case where confidence is sufficiently high, partial townships. Using a variety of geologic and geophysical criteria, such as inferred trapping mechanism, reservoir potential and size of inferred prospects, ~~these~~ relative rankings can be attached to individual townships with a comfortable degree of confidence. This process is currently being pursued and can be completed by January 15, 1987.

The staff further recommends that the State immediately enter into discussions with DOI for the purpose of developing a Memorandum of Understanding that assures State participation in developing tract specific value criteria for the Coastal Plain.

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The complexity and diminished relative value of probability distributions, resource assessments and tract specific economic evaluations under these circumstances should be made clear to other staff who may be involved in the ANWR work. We would welcome the opportunity to present greater detail and answer any questions you may have.

LAM/JE/lkb/2946M

cc: James K. Barnett .  
Tom Hawkins  
Gary Gustafson

MEMORANDUM

State of Alaska

To: Esther C. Wunnicke  
Commissioner

From: Gary Gustafson, Chief  
Land Management  
Land and Water Management

Date: November 12, 1986

File no: 9105

Telephone no: 762-4346

Subject: ANWR Trade

THE ISSUE

You have asked for an update on the status of proposed land exchanges involving the Arctic National Wildlife Refuge (ANWR) as well as recommendations to outline those actions and finances necessary for the state to participate in exchanges. Accordingly, I have included a background and summary report of these exchange negotiations and recommend the immediate appointment of an ANWR Exchange Team to advance state interests.

The 1.5 million acre Coastal Plain of ANWR is considered highly prospective for oil and gas by knowledgeable observers. As a result, Section 1002(h) of the Alaska National Interest Lands Conservation Act (ANILCA) directed the Secretary of the Department of Interior (DOI) to prepare a report together with his recommendations "... with respect to whether further exploration for, and the development and production of, oil and gas within the Coastal Plain should be permitted ...."

In anticipation of the release of this report and a subsequent decision by Congress to open the Coastal Plain to oil and gas exploration and development, DOI has been engaged in land exchange negotiations with several Native corporations formed pursuant to the Alaska Native Claims Settlement Act (ANCSA). More particularly, the U.S. Fish and Wildlife Service (USFWS) proposes to trade oil and gas rights within ANWR's Coastal Plain for ANCSA village and regional corporation lands (surface and subsurface estate) within or adjacent to components of the national wildlife refuge system in Alaska.

Land exchange negotiations between the DOI and several ANCSA corporations have progressed to the point that values for the proposed trade lands have been established and the ANCSA corporations will soon be allowed to make oil and gas right tract selections in the Coastal Plain. Although there will likely be opportunity future trades, the ANCSA corporations (armed with

industry expertise) can be expected to acquire the most valuable prospective tracts in the first round of any exchanges. Given the advanced status of these negotiations, the state must act quickly if it is to interject itself as a viable player in the initial ANWR land exchange efforts.

## BACKGROUND REPORT

### DOI Exchange Team

The ANILCA Section 1002(h) report referenced above was originally scheduled to be submitted by the Secretary of the DOI to Congress by September 2, 1986. However, environmentalist-sponsored litigation, dealing with whether the report requires public input and a revised Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA), has delayed release of the report. The Secretary is expected to release the report on November 24, 1986. Once released, Congress will review the report and decide the future management regime to govern activities on ANWR's Coastal Plain.

At the same time the ANILCA Section 1002(h) report was being prepared, DOI began land trade negotiations with ANCSA corporations. Informal discussions occurred over two years ago and soon progressed to the point that many ANCSA lands were identified and appraised. Most of these discussions occurred in Washington, D.C. and involved Bill Horn, DOI Assistant Secretary for Parks and Refuges. In an effort to standardize negotiations among the interested corporations as well as to better define federal land management objectives, DOI has appointed an ANWR Land Exchange Team made up of the following five individuals:

Sharon Allender, USFWS Solicitor, Washington, D.C.  
Jim Gillette, USFWS Realty Chief, Washington, D.C.  
Ted Stephenson, BLM, Alaska Program Staff, Washington, D.C.  
Paul Kirion, Solicitors Office, Washington, D.C.  
John Doebel, USFWS, Asst. Secretary's Liaison, Anchorage

In addition, the USFWS Alaska State Office in Anchorage had been actively involved, particularly Bob Gilmore, State Director and John Rogers, Director Gilmore's Assistant. Mr. Doebel is responsible for keeping Assistant DOI Secretary Bill Horn abreast of all negotiations.

### ANWR Oil and Gas Valuation

In 1980, prior to the acquisition of seismic and other geophysical data and other information on the Coastal Plain, the U.S. Geological Survey (USGS) estimated that there was a five percent probability that the Coastal Plain could contribute up to 17 billion barrels of crude oil and 34 trillion cubic feet of

natural gas. USGS also estimated there was a mean probability that the Coastal Plain could contain up to 4.85 billion barrels of crude oil and 12 trillion cubic feet of natural gas.

Under terms of ANILCA, geophysical surveys of the Coastal Plain had to be completed before December 2, 1985. Approximately 600 line miles of geophysical data were acquired during the winter of 1983-84, with another 580 lines miles run during the winter of 1984-85. These data and their subsequent analysis will form the basis of the ANILCA Section 1002(h) report to Congress.

According to oil industry, state and federal estimates, ANWR is considered to have potential oil and gas resources in excess of one-third of the current U.S. oil reserves and probably more than the initial reserves at Prudhoe Bay. Specific federal estimates should be included in the ANILCA 1002(h) report.

However, prior to the completion and release of the 1002(h) report, the DOI has assigned preliminary values (based upon oil and gas potential) to lands within the Coastal Plain. For purposes of the proposed land trades, DOI has divided the Coastal Plain into tracts of 2,560 acres each. These tract sizes were derived by dividing each township (23,040 acres) in nine equal component parts. Each tract, therefore, consists of four sections (640 acres x 4 = 2,560 acres). This parcelization is similar to that used for federal oil and gas lease sales. Using the above described tract grid, DOI has numbered and assigned a prospective value to each 2,560 acre tract. These values will be kept confidential until the proposed exchanges actually occur.

It appears to be DOI's intent to allow the corporation's to use the appraised value of their lands to select and acquire Coastal Plain oil and gas tracts. The method of acquisition would be similar to a Monte Carlo game, in that oil and gas tracts would be selected and acquired without prior knowledge of their estimated value. Thus, armed with oil company exploration knowledge, the corporation's are likely to select the most promising tracts.

The department's Division of Mining and Geology has also completed a report concerning the subsurface resources and prospective value of the ANWR Coastal Plain. This state report was completed some time ago and has remained confidential, pending release of the ANILCA Section 1002(h) report. The 1002(h) report was partially based upon information obtained from the state.

### ANWR Land Status

Originally established in 1960 as the 8.9 million acre Arctic National Wildlife Range, ANWR now includes about 19 million acres. The Coastal Plain consists of 1.5 million acres (approximately eight percent of ANWR's total acreage). Managed by the USFWS, the Coastal Plain has only one in-holding, the large surface and subsurface estate owned by the Village of Kaktovik and the Arctic Slope Regional Corporation (ASRC) respectively.

Pursuant to Section 12(a) of ANCSA, the Kaktovik Inupiat Corporation on Barter Island in ANWR, selected 92,160 acres along the Beaufort Sea. However, a provision of ANCSA required ASRC, which normally would have acquired the subsurface estate under Kaktovik's surface estate, to select in-lieu subsurface acreage outside ANWR and NPRA. In August, 1983, ASRC exchanged about 100,000 acres of this in-lieu subsurface entitlement near Chandler Lake in the Gates of the Arctic National Park for 92,000 acres of subsurface rights in ANWR under the Kaktovik Inupiat Corporation land. The land trade preempted another process established by Section 1431(o) of ANILCA, whereby ASRC could have obtained these same lands at a later date, provided Congress opened the Coastal Plain to commercial oil and gas development within 40 years and ASRC selected land within 75 miles of Kaktovik's land. The attached map depicts the Kaktovik and ASRC ownership on the Coastal Plain.

### Native Exchange Efforts

At the present time, there are four groups of Native interests involved in ANWR land exchange efforts. Koniag, the Kodiak-based village/regional corporation merger, has been involved in trade discussions with the USFWS for almost two years. Koniag owns several areas of land (e.g. Karluk River) of great interest to USFWS due to their location within the Kodiak National Wildlife Refuge. The Koniag ANWR Team is headed by Bill Timme, Art Kennedy and Bob Putz (former USFWS Alaska Director). A draft exchange agreement has been drafted and Koniag's lands were appraised last winter by a team of DOI appraisers. The initial exchange agreement has now been redrafted following recent meetings in Washington, D.C.

Another ANWR trade package has been assembled by DOYON, Ltd., based in Fairbanks. I have been unable to obtain much information concerning this proposal. Presumably, however, most or all of DOYON's land was also appraised last winter by the USFWS. The Akhiokaguyak Corporation, located on the south end of Kodiak Island (not part of Koniag), has also advanced a proposal to trade up to 100,000 acres to the USFWS.

The newest and largest ANWR trade package has been assembled by a Native corporation consortium headed by Cook Inlet Region, Inc. (CIRI) the Anchorage based regional corporation. Consisting of village corporation lands from the Bristol Bay, Calista and DOYON regional areas, as well as CIRI land holdings within the Kenai National Wildlife Refuge, this consortium has moved rapidly to present a very attractive trade package to the USFWS.

The CIRI ANWR Team is headed by three experienced land traders, Margie Sagerser, Mark Rindner and Michael C. T. Smith. Ms. Sagerser is a CIRI Board member and former CIRI vice-president for land management. Mark Rindner is a private attorney who has handled land use matters for CIRI. Michael C. T. Smith is a former DNR Deputy Commissioner and current land use consultant, often retained by CIRI. Ms. Sagerser and Mr. Smith were previously the principals in the 1976 Cook Inlet Land Trade.

Certainly in the case of the Koniag and CIRI, and probably that of DOYON, oil company money is a driving force and interest. Those companies rumored to be helping finance corporation trade efforts include ARCO, Texaco and Exxon.

It is evident that the corporations are well organized, financed and on the verge of consummating preliminary land exchange agreements with the USFWS. Thus far the corporations view the state as a possible competitor for key ANWR lands and have been reluctant to provide the state with much information. In addition, they undoubtedly fear the state might choose to oppose ANCSA trades in ANWR due to the loss of our 90 percent royalty share from federal leasing.

With the exception of some of the CIRI Team lands, the USFWS has appraised all ANCSA lands proposed for exchange. However, these federal appraisals must still be adjusted to account for public interest values. These adjustments are part of the on-going negotiations.

#### State Exchange Efforts

After learning of possible land trades between ANCSA corporations and the USFWS involving ANWR, you asked the department to initiate the trade discussions with the USFWS in late 1985. In February, 1986, Tom Hawkins, director of the department's Division of Land and Water Management, wrote Bob Gilmore, USFWS State Director to formally propose a state/federal land trade involving ANWR.

At that time, the department offered 12 million acres of state land holdings within or adjacent to national parks or refuges in Alaska as candidates for trade. Included were very important

habitat areas such as the Shearwater Peninsula and Marmot Island at Kodiak, the Black Hills caribou calving grounds on the Alaska Peninsula, trumpeter swan nesting area in the Copper River basin and state inholdings near McCarthy in the Wrangell-St. Elias National Park.

Mr. Gilmore responded in March, 1986, claiming that only the state lands within the Tetlin National Wildlife Refuge merited high priority for USFWS acquisition by trade. The remaining state lands were referenced as having only low to moderate USFWS acquisition interest.

In October of 1986 during a trip to Washington, D.C., you discussed the ANWR trade matter with Bill Horn, DOI's Assistant Secretary for Parks and Refuges. Mr. Horn apparently relayed that DOI was interested in a state/federal ANWR trade, and that state lands in national park units were acceptable trade candidate areas. This prompted the state to reassemble its ANWR trade package, expanding the list of candidate state lands to include numerous areas of interest to the NPS. Mr. Horn also continued to assure you and John Katz that DOI would keep the state informed of the progress of DOI/ANCSA Corporation trade efforts. Unfortunately, it is now evident that much has occurred without state consultation.

On the basis of the Washington, D.C. discussions, Director Hawkins once again wrote Mr. Gilmore of the USFWS to try and solidify a state land trade proposal. Included in this revised state trade proposal were in-holdings within national parks for which the NPS has a long-standing interest (e.g. McCarthy, Wolf townships, Kamishak, etc.). We have not yet received a response to this latest state trade proposal.

#### RECOMMENDATION

The advanced status of the DOI/ANCSA Corporation land exchange negotiations requires an immediate and accelerated response from the State of Alaska. Assuming the Coastal Plain of ANWR is opened to oil and gas development by Congress in the near future, the State may assume two postures in order to protect or enhance its interests.

First, the State must seek proforma to preserve its 90 percent royalty interest from federal oil and gas lease sales, pursuant to the Mineral Leasing Act. Although some may suggest our 90 percent royalty is an excessive state benefit in this time of federal budget austerity, the State should do everything within its means to avert the loss of revenue which might accrue to the state.

Second, and coincident to attempts to maintain the State's current federal lease royalty percentage, the State should immediately advance its own land trade proposal and join the ANCSA corporations at the starting gate of the ANWR selection race. This means the State has to quickly identify a trade package of state lands and proceed to have them appraised in time for submission of a trade proposal to the legislature. Because state land appraisals will likely be completed later than the normal legislative exchange submission deadline established by AS 38.50, the governor will have to submit the exchange at a later date, following a finding of exigent circumstances.

The following timeframe should be closely followed if the State is to be in position to join the ANCSA corporations in the initial ANWR tract selection process (estimated by March-April, 1987).

1. Brief Governor Bill Sheffield, Governor-elect Cowper and key legislators on the conceptual state exchange proposal and designate a state ANWR Exchange Team (November, 1986).
2. Finalize state land pool to be included in exchange (December 1, 1986).
3. Conduct fair market value appraisals of state lands proposed for exchange (February 15, 1987).
4. Submit proposed trade to Legislature for approval (February 20, 1987).
5. Enter into Preliminary or Conceptual Exchange Agreement with DOI (April, 1987).

The unique nature of this exchange will necessitate variances in the normal AS 38.50 process. These variances must be approved by the legislature as part of their final review of the proposal.

Obviously, there is a tremendous amount of work to be done between now and mid-March. The only way the State can hope to successfully assemble, market and deliver this exchange is to immediately identify and appoint a qualified multi-disciplinary ANWR Exchange Team and provide them with sufficient support (both administrative and financial) to complete the assignment. I have proposed below a rough outline of the personnel and funding necessary to accomplish the task. It is essential that Team members be the most experienced and capable staff members within their realm of expertise. Team members should be available for the project on a full-time basis for a three month period from November, 1986, to February, 1987, and at least part-time thereafter.

### Personnel and Responsibilities

1. Governor's Office, Washington, D.C. -  
Congressional liaison, coordination with  
DOI representatives in Washington, D.C., represent  
Governor's interests.
2. Staff member, Division of Mining and Geology -  
responsible for ANWR subsurface evaluation,  
coordination with government, industry interests  
related to resource information, legislative briefings.
3. Assistant Attorney General, Department of Law -  
preparation of legislation and exchange agreements,  
legal support, coordination with Solicitors Office.
4. Staff member, Division of Land and Water Management -  
responsible for assemblage of state exchange land,  
coordination of state agency involvement, appraisal  
process, legislative briefings, negotiations.

In addition, it is essential to involve other affected state agencies (e.g. ADF&G, DEC) regarding those issues within their responsibility or expertise.

### Financial

Primary costs are for appraisals and travel. Appraisals will likely be needed for substantial acreage of state land, and costs will be reduced if DNR uses in-house staff appraisers. Travel costs include several trips to Washington, D.C. for negotiations with DOI officials as well as several Juneau trips for legislative briefings.

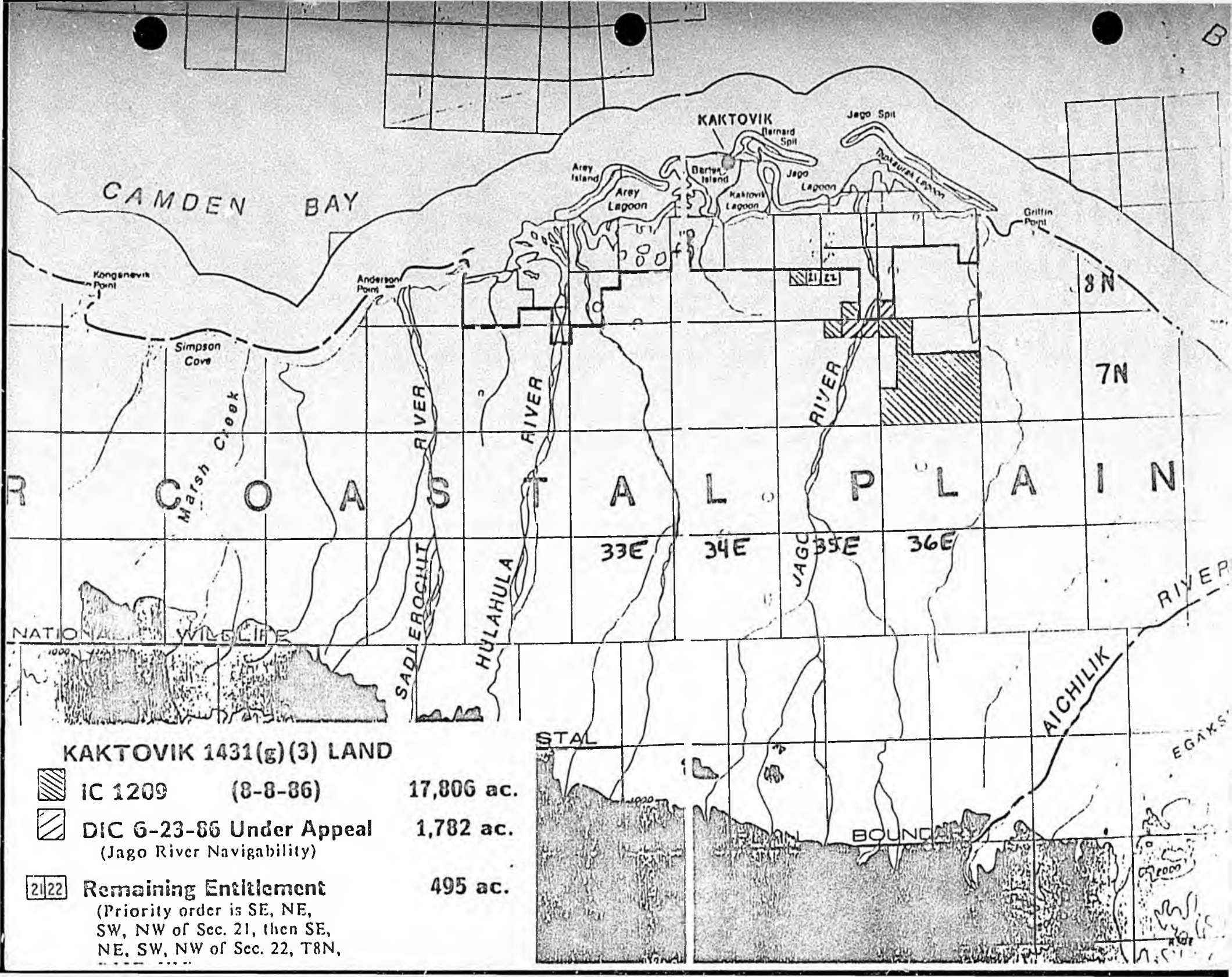
Travel (2 team trips to Washington, D.C., 5 team trips to Juneau)	\$15,000
Appraisal (charter flights, etc.)	\$25,000
Other contractual (maps, aerial photos, printing, postage copy)	\$9,300
Equipment (filing cabinet)	\$200
 Total Estimated Project Budget	 \$50,000

Finally, because the Secretary is expected to release the 1002(h) report on November 24, 1986, it would be advantageous to publicly announce the formation of a state ANWR Exchange Team no later than November 21, 1986.

GG/jlh

ATTACHMENT

- cc: Jim Eason, DO&G
- Laurel Murphy, DM&G
- Rich Kornbrath, DM&G
- John Katz, Gov. Office, Washington, D.C.
- Bob Arnold, CO
- Jim Barnett, CO
- Ned Farquhar, CO
- Tom Koester, AGO
- Norm Cohen, ADF&G
- Tom Hawkins, DLWM



CAMDEN BAY

KAKTOVIK

Jago Spit

Arey Island

Bernard Spit

Arey Lagoon

Bertel Island

Kaktovik Lagoon

Jago Lagoon

Natural Lagoon

Griffin Point

Konganevik Point

Anderson Point

Simpson Cove

Marsh Creek

SADLEROCHIT RIVER

HULAHULA RIVER

JAGO RIVER

RIVER

8N

7N

ARCTIC COASTAL PLAIN

33E

34E

35E

36E




NATIONAL WILDLIFE REFUGE

STAL

AICHILIK RIVER

EGAKS

**KAKTOVIK 1431(g)(3) LAND**

-  **IC 1209 (8-8-86) 17,806 ac.**
-  **DIC 6-23-86 Under Appeal 1,782 ac.**  
(Jago River Navigability)
-  **Remaining Entitlement 495 ac.**  
(Priority order is SE, NE, SW, NW of Sec. 21, then SE, NE, SW, NW of Sec. 22, T8N,

ELAN BOUNDARY

TO: The Honorable Stephen McA Alpine  
Lieutenant Governor

DATE: December 17, 1986

THRU: *B. N. Arnold*  
Robert D. Arnold  
Acting Commissioner  
Department of Natural Resources

FILE NO.:

TELEPHONE NO.: 762-4241 (Eason)  
762-4355 (Hawkins)

FROM: *James E. Eason*  
James E. Eason, Director, DO&G  
Tom Hawkins, Director, DLWM

SUBJECT: Arctic National  
Wildlife Refuge

*Tom Hawkins*

It is apparent to us that the ANWR land exchange and leasing decisions are becoming quite complex, and that the development of a successful state strategy will involve the participation of a fairly large number of state employees in Juneau, Anchorage and Washington, DC. We also believe that there will be great pressure for the state to remain "reactive" to the policy initiatives of the Department of the Interior (DOI), rather than asserting its own goals for the development of ANWR and lobbying effectively to see that those goals are met.

The state is entitled to 90 percent of the revenues that will be generated from the leasing and development of ANWR provided Congress agrees to allow leasing of the Coastal Plain, and provided Congress takes no affirmative action to reduce the state's entitlement. However, it is clear that the state's prospective share of revenues from ANWR may be reduced dramatically or effectively eliminated if the land exchanges contemplated by the DOI are effected without some express provision for retaining the state's revenue interests.

The next land exchange meeting with the DOI is scheduled for January 12, 1987. By that time, the state should decide which alternatives it wishes to pursue. If the decision is to pursue exchanges, we will need to develop a position on the methodology to be used in evaluating exchange options and the timing of tract selections.

In developing the state's position, it is important to consider the impacts our participation in exchanges may have in potentially foreclosing other options available to the state. To fully protect the state's interests, including its current entitlement to 90 percent of the ANWR leasing revenues, we recommend adoption of the following position statements for guidance to state agency employees who will participate in the development of the state's position on ANWR.

We believe that a concise straightforward policy statement from your office would assist in guiding the department's participation in the ongoing land-exchange negotiations, in providing impetus to explore fully the state's alternatives to exchanges and in providing direction for the state agencies involved in the development of state comments on the draft 1002(h) ANWR study (comments due to DOI by January 22, 1987).

As a first step in developing the state's position on these issues, we believe that it would be in the state's interest to request that the DOI extend the January 22 due date for comments on its ANWR study and recommendations. Additional time will be needed to develop a unified position on several critical ANWR issues. As the affected state agencies work to develop a consensus position, we recommend that the following considerations guide their efforts.

1. It is the state's first priority to assure that the Coastal Plain of the Arctic National Wildlife Refuge should be opened for oil and gas leasing, exploration and development. The Coastal Plain has extraordinarily high potential for large oil and gas discoveries.
2. The state should assure reservation, to the extent possible, of its current 90 percent entitlement of potential ANWR oil and gas revenues. Long-term state revenue needs must be considered in determining the state's course of action.
3. Opening the Coastal Plain to leasing and development could provide the following economic benefits to the state:
  - (a) Additional bonus, rent and royalty revenues to the state (90 percent federal revenue sharing);
  - (b) Additional production and corporate income tax base (all production except governmental royalty interest would be subject to state production tax);
  - (c) Enhanced value of the federal OCS areas offshore of ANWR, and consequently incremental 8(g) revenues to the state;
  - (d) Enhanced the value of the KIC/ASRC lands within ANWR, resulting in incremental production tax revenues to the state;
  - (e) Enhanced value of the state's tide and submerged lands proposed for oil and gas leasing offshore of ANWR;
  - (f) Enhanced value of state uplands and submerged lands adjacent to ANWR; and
  - (g) Provision of new jobs for Alaskans.
4. The state should participate in ANWR land exchanges and endorse ANWR land exchanges only after a determination that it is in the state's overall best interest, and that the state's participation does not unduly reduce its alternative entitlements. A decision to continue participation in exchange negotiations should be guided by the following considerations:

December 17, 1986

- (a) Tract selection (or any other form of a land exchange) should not take place until the final 1002(h) study has been submitted to Congress. It may even be necessary to delay final tract selection until after Congress approves the opening of the Coastal Plain to leasing and development.

One of our primary goals, Congressional approval of the development of the Coastal Plain of ANWR, may be threatened by trade negotiations before Congress has had an opportunity to review final DOI recommendations. Congress might take offense at trades made at a time when DOI was under a mandate to study and recommend alternatives to Congress, rather than acting to limit Congressional discretion. The possibility of a negative reaction by Congress is exacerbated by the fact that confidential trade talks are proceeding before DOI has even settled on a formal recommendation.

- (b) Tract selection cannot take place until each party knows: 1) which ANWR tracts are available for leasing; 2) what specific restrictions and stipulations are attached to each tract; 3) what provisions are allowed for road and pipeline rights-of-way out of ANWR; 4) the appraised value of the lands to be exchanged; and 5) what method of conflict resolution will be employed during the tract selection process.

The nature of oil and gas rights to be granted in ANWR, and the environmental stipulations on those rights, are being defined in the confidential trade process. The secrecy surrounding the negotiations prevents the requisite input from Congress, oil companies, environmental groups and other interested parties. This process may result in the development of lease terms and stipulations which would engender opposition to opening legislation from some parties who otherwise would favor opening legislation.

- (c) The tract valuation and land appraisal procedures must be realistic. Tracts cannot be valued with certainty prior to the finalization of exchange contract terms, access rights and operating/environmental stipulations.
- (d) The state is willing to adhere to a realistic time line. However, since this is a once-in-a-lifetime opportunity, the state cannot support DOI's current accelerated decision-making process. Delay of the exchange negotiations would allow the state to weigh the benefits and detriments of state and native corporation trades on a sound basis. The value of state ownership of oil and gas rights, and the costs to the state of

DOI trades to native corporations, cannot be estimated realistically until it is known whether Congress has acted to reduce the state's 90 percent share of federal revenues from the development of ANWR.

Delay would also allow all parties to develop proposals for the trade of tracts known to be available for development. Trading will be uncertain and unfair if Congress later opens to development some, but not all, tracts which had been included in trades.

5. The state recognizes that environmental protection and mitigation of potential negative impacts to biological resources will be a necessary part of any oil and gas exploration and development activities allowed in ANWR. The state believes that potential impacts to caribou, musk ox, waterfowl, subsistence resources, and habitat can be successfully mitigated. Sufficient data, technology, and Arctic operating experience currently exist to develop measures consistent with both the ANWR management goals and the need to open the Coastal Plain to oil and gas leasing and development.

Finally, in conjunction with any land exchange with native corporations or as an alternative to direct state participation in a land exchange, the state may want to propose alternatives, such as retention of overriding royalty interests or undivided interests in production, to maintaining its existing 90 percent revenue entitlement on ANWR lands. However, in order to even have the opportunity to discuss alternatives, we feel that it is important that the state's firm intent to protect its existing revenue entitlement in ANWR be established as soon as possible. With proper notice of the state's intent and with a delay in the implementation of any exchanges which would materially reduce the state's rights, we will have ample opportunity to review all options carefully and to develop a coordinated strategy for protecting the state's interests.

JEE/TH/wfs0665C

RECEIVED

DEC 18 1986

December 10, 1986

DIVISION OF OIL & GAS  
ANCHORAGE, ALASKA

The Honorable Stephen McAlpine  
Lieutenant Governor  
State of Alaska

Robert D. Arnold  
Acting Commissioner  
Department of Natural Resources

Specific Tract Values  
in ANWR

Although the Department of Interior has established a grid system of 560 tracts of 2,560 acres each in ANWR for purposes of land exchanges and has reportedly assigned values to each, Interior will not disclose those values until after tract selection has taken place. Since the State may be among those selecting tracts, we asked our professional staff to review the resource data and provide us with estimates of values of specific tracts, and we have received a response.

In brief, the directors of the Division of Oil and Gas and the Division of Mining/Geological and Geophysical Surveys report as follows:

- ° For a number of reasons (such as the size of the seismic grid, complexity of the geology, uncertainties of oil prices) the ANWR data is not sufficient to reliably establish tract values;
- ° It is possible, however, to estimate relative values by ranking tracts, and this process will be pursued and completed by January 15, 1987;
- ° The State should enter into discussions with Interior, seeking a Memorandum of Understanding that would assure State participation in developing tract specific value criteria.

(On the last point, I am skeptical that Interior would welcome State participation, but I have not yet explored the idea with the staff).

If you desire further information or a briefing on this subject, please let me know.

Enclosure

cc: John Katz/with enclosure  
Bob Grogan  
Tom Koester

November 14, 1986

Robert E. Gilmore, Regional Director  
U.S. Fish and Wildlife Service  
1011 E Tudor Road  
Anchorage, Alaska 99503

Dear Mr. Gilmore:

Some time has passed since we last discussed state participation in land exchanges involving the Arctic National Wildlife Refuge (ANWR). I feel it is appropriate to renew our discussion.

As you recall, last February I wrote to ask that you consider a large pool of state land for possible exchange. Included in the pool are almost 12 million acres with considerable habitat attributes, located within or adjacent to national park and wildlife refuges in Alaska. In March, you responded to my request by listing these state lands in priority of USFWS acquisition interest. You expressed particular interest in the state lands located within the Tetlin NWR and also indicated an interest in certain remaining state lands within the Tetlin NWR which we had inadvertently failed to include in the pool. Finally, you concluded that most of the state lands are not a priority for acquisition by the USFWS due to various management constraints or because adequate resource protection might be provided through cooperative management agreements.

The possibility of oil and gas development within ANWR and the discussion of associated land trades continues to cast a highly visible profile. Accordingly, the state has clearly articulated its concern that state royalty benefits not be jeopardized if oil and gas development is authorized by Congress. One direct means to preserve these existing benefits is for the state to obtain oil and gas interests in ANWR through land exchanges with the Department of Interior.

Therefore, I am prepared to propose the inclusion of all state land within the Tetlin NWR as well as those state lands noted as "medium priority" in your March correspondence. This includes Marmot Island, Tugidak Island, state land within the Alaska Peninsula NWR, Black Hills, Kisaralik River, Copper River trumpeter swan nesting areas and Redoubt Bay. I am confident that this pool is sufficiently extensive that we can negotiate some combination of the above candidate areas for inclusion in an exchange proposal. In addition, the state continues to be willing to consider the

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Page 1  
November 14, 1960

exchange of state lands in Alaska which may be of interest to other federal agencies, such as the National Park Service (NPS).

The NPS has indicated interest in several tracts of state land and the magnitude of the ANWR decision suggests the exchange discussion should address the broadest possible consolidation of federal interests in the state. We mentioned some of these areas in our earlier correspondence and offer a more complete list of potential candidates in the attached appendix. Although the exact mechanics of this aspect of a possible exchange will require additional staff work, we are eager to proceed with those steps necessary to value these lands for exchange purposes.

Subject to your agreement, I am prepared to draft a preliminary exchange agreement for your consideration. I expect this draft would represent a first step towards negotiating an exchange between our agencies. If you concur in this approach, please let me know. I suspect that we will need to get together again soon to discuss this matter in greater detail.

At your convenience, I would also appreciate an update on the status of your exchange negotiations involving ANCSA corporations. Recent discussion with your staff and others indicate you have made considerable progress. I believe it is extremely important for the state to continue to closely monitor your progress in this regard. In addition, I would also like to coordinate state exchange negotiations with those involving the ANCSA corporations so that the state can afford itself the same ANWR selection opportunity you propose to the corporations.

I appreciate your continued attention to this important matter and await your response.

Sincerely,

*Tom Hawkins*

Tom Hawkins  
Director

cc: Esther C. Wunnicke, CO  
John Katz, Washington D.C.

TH/GG/jlh

State Lands Within or Adjacent to N.L. Lands

1. Wrangell-St. Elias
  - ° Selections east of Copper River
  - ° McClatchy
2. Katmai
  - ° Kamisna
3. Aniakchak Bay area
  - ° 1/4 township north side
4. Lake Clark
  - ° eastern entrance
  - ° western boundary
  - ° Upper Chitkootna
  - ° west of Stoney River
  - ° calving areas in Bonanza Hills
5. Denali
  - ° western boundary Swift Fork
  - ° Wolf townships
6. Bering Land Bridge
  - ° Serpentine Hot Springs
7. Gates of the Arctic
  - ° southern boundary
  - ° hydrographic divide
8. Glacier Bay
  - ° Icy Bay
9. Kenai Fjords
  - ° Nuka Island



# REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 274-4031

WHILE IN JUNEAU:  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3704

## MEMORANDUM

TO: Representative Sam Cotten  
FROM: Representative Don Clocksin  
DATE: October 23, 1986

RE: Briefing on ANWR issues by Commissioner Wurnicke

I have made an appointment with Commissioner Wurnicke for a full briefing on issues regarding the Arctic National Wildlife Refuge - including the specifics on possible land trades and subsurface rights, and impacts on Alaska's future revenues (see letters to and from the Commissioner, enclosed).

Our meeting is now scheduled for Tuesday, October 28, 3:00 pm in Commissioner Wurnicke's Anchorage office on the 12th floor of the Frontier Building.

I suggest you join us at this briefing, if your schedule permits.

Please let me know.



# REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 274-4031

WHILE IN JUNEAU:  
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JUNEAU, ALASKA 99811  
(907) 465-3704

Ms. Esther Wornicke  
Commissioner  
Department of Natural Resources  
Pouch M  
Juneau, Alaska 99811

September 26, 1986

Dear Commissioner Wornicke:

It has come to my attention that there are several complex issues involving the status of lands and petroleum reserves in the Arctic National Wildlife Refuge (ANWR). More particularly, I have been told that there are proposed trades of lands and subsurface rights involving the federal government, several Native corporations and the State of Alaska. I understand that much rides on the outcomes of these proposed trades, including the ability of the State of Alaska to have access to future revenue sources from the development of petroleum reserves in the ANWR.

I would very much appreciate a full briefing from appropriate people in your Department on these issues, including explanation of the particulars of the overall issues, the posture of the State with respect to them and the specifics of any and all trades of lands and subsurface rights being proposed by the federal government, the State of Alaska and every involved Native corporation. In addition, I am especially interested in knowing what impacts the outcomes of all proposed combinations of actions will have on the ability of the State of Alaska to have access to future revenues from petroleum development in the ANWR.

I appreciate your attention to this matter and look forward to hearing from you soon. Thanks very much.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Clocksin".

Representative Don Clocksin  
House Majority Leader

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801  
PHONE: (907) 465-2400

October 7, 1986

The Honorable Don Clocksin  
House Majority Leader  
Alaska House of Representatives  
1024 West Sixth Avenue  
Anchorage, AK 99501

Dear Representative Clocksin:

Thank you for writing to me about your interest in the land status and petroleum reserves of the Arctic National Wildlife Refuge (ANWR). I would be happy to meet with you to discuss ANWR issues as well as to bring you up-to-date on the status of proposed ANWR land trades.

I suggest that we meet on October 27 at 2:00 p.m. in my Anchorage office (12th Floor, Frontier Building). Land and Water Management Director Tom Hawkins will join us at this meeting and other staff will be available as necessary to provide appropriate information.

Please let me know if the October 27 meeting date is convenient. I have enclosed a copy of the state's position regarding oil and gas development in ANWR, as background information for our meeting.

Sincerely,

*BN Am rd*  
Esther C. Wunnicke  
Commissioner

Enclosure

cc: Tom Hawkins  
Jim Eason

# MEMORANDUM

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

## State of Alaska

TO: Bob Arnold  
Deputy Commissioner

DATE: May 20, 1986

FILE NO:

*Tom Hawkins*  
FROM: Tom Hawkins  
Director

TELEPHONE NO: 762-4355

SUBJECT: ANWR

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# United States Department of the Interior

original to Tom -  
copy to Gus  
KA

FISH AND WILDLIFE SERVICE  
1011 E. TUDOR RD.  
ANCHORAGE, ALASKA 99503

IN REPLY REFER TO:

RE/4377e

Tom Hawkins, Director  
Division of Land and Water Management  
Alaska Department of Natural Resources  
555 Cordova Street  
Pouch 7-005  
Anchorage, Alaska 99510-7005

MAR 12 1986

Dear Mr. Hawkins:

Thank you very much for your 5 February 1986 letter regarding State participation in land exchanges involving Arctic National Wildlife Refuge (NWR).

We reviewed the pool of 17 parcels of State land made available for preliminary exchange consideration and listed the areas in order of acquisition priority. Area 15, "Tetlin NWR Consolidation," was identified as a high priority for acquisition by the Fish and Wildlife Service (FWS). This area contains high density waterfowl nesting habitat and is entirely within the boundary of Tetlin NWR. We believe acquisition of the area would enhance management of the refuge as a whole and would be in the best interest of the State and Federal governments. We would also like to note that other State-owned lands within Tetlin NWR and elsewhere are a higher priority for acquisition than those presently offered. We would be interested in negotiating an exchange which would include these lands as well.

While it is true that all of the areas listed have resource values which make them suitable for refuge status, most of the areas have not been identified as a priority for acquisition by the FWS. Nearly all of the parcels listed are outside the boundaries of Alaska NWR's, some being within the boundary of National Parks. Acquisition of these areas would present additional land administration and management problems. In addition, many of the areas are most important for resident game, a State responsibility, or those marine mammals which are a National Marine Fisheries Service responsibility. Although the FWS is not insensitive to the need for enhancing management of habitats important to these species, it is simply not an FWS priority to actively pursue acquisition of such habitats. In areas recommended for additional protection, such as those on the Bristol Bay coastal plain of the Alaska Peninsula, we believe that in most cases adequate protection could be provided through cooperative management agreements.

If you would like to meet and further discuss this matter please feel free to call me.

Sincerely,

*Robert L. Simone*  
Regional Director

MA?

DLWM Directors Office

Attachments

3-17

Ranked List of State Lands Available for Exchange Consideration With  
the U. S. Fish and Wildlife Service\*


<u>HIGH PRIORITY</u>	<u>PRINCIPAL RESOURCE VALUE</u>
Area 15 Tetlin NWR Consolidation (Tetlin NWR)	Waterfowl nesting.
<u>MEDIUM PRIORITY</u>	
Area 4 Marmot Island (Alaska Maritime NWR)	Marine mammals, seabirds.
Area 7 Tugidak Island (Alaska Maritime NWR)	Harbor seal rookery.
Area 10 Alaska Peninsula (portion within Alaska Peninsula)	Waterfowl nesting/staging.
Area 11 Black Hills	Resident game, waterfowl.
Area 8 Kisaralik River	Salmon, resident game.
Area 1. Trumpeter Swan Nesting Area	Waterfowl.
Area 2 Redoubt Bay	White-fronted goose nesting.
<u>LOW PRIORITY</u>	
Area 6 Shearwater Peninsula	Resident game, seabirds, marine mammals.
Area 9 Nushagak/Iliamna Area	Salmon spawning, resident game.
Area 5 Raspberry Island	Resident game.
Area 12 Kamishak	Resident game.
Area 13 Kokrine Hills/Melozitna River	Resident game.
Area 14 Lower John/Alatna Rivers	Resident game, salmon spawning.
Area 16 Wolf Townships	Resident game. (NPS inholding)
Area 17 Reed River	Resident game. (NPS inholding)
Area 3 McCarthy	Resident game. (NPS inholding)

\* List of parcels was developed by Alaska Dept. of Natural Resources and submitted to Fish and Wildlife Service on February 5, 1986.

Rationale for Ranking of State Lands Available for Exchange Consideration by the U. S. Fish and Wildlife Service (letter from Alaska Dept. of Natural Resources, 5 February 1986).

HIGH PRIORITY

Area 15 - Tetlin NWR Consolidation:

 This area is a priority because it would eliminate a large State selection on Tetlin NWR that has high waterfowl nesting densities. Major species are northern pintail, scaup and green-winged teal. Note: other State owned lands within Tetlin are a higher priority for acquisition but were not offered for exchange. Some of the land described on the maps supplied by the State appears to be Native owned. ?

MEDIUM PRIORITY

Area 4 - Marmot Island:

Identified by refuge staff as a high priority for acquisition. The eastern shore of the island contains a haulout site for about 8,000 Steller's sea lions. There are also several small seabird colonies present. Feral pigs were recently introduced and have begun to impact island vegetation. Management of Steller's sea lions is a National Marine Fisheries Service responsibility.

Area 7 - Tugidak Island:

Identified by refuge staff as a high priority for acquisition. The harbor seal rookery located here is one of the largest in the world. As many as 20,000 animals have been present at one time. Management of harbor seals is a National Marine Fisheries Service responsibility.

Area 10 - Alaska Peninsula:

None of the area described on the maps submitted by the Department of Natural Resources includes land within the boundary of Alaska Peninsula or Becharof NWR's. The area is very large, about 2.9 million acres, and contains a great deal of high quality nesting habitat for tundra swans and sandhill cranes and low density nesting habitat for several duck species. The area includes waterfowl staging habitat near State Critical Habitat Areas (SCHA) that Realty Division recommended for inclusion in expanded SCHA's and not as "new" refuge. Comprehensive Conservation Plans for the area recommend additional protection for large pieces of this area but do not necessarily recommend federal acquisition.