ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5024 HRES SB 362 - SB 401

596

Dude Creek Critical Habitat Area

-Preparation of the Dude Creek Critical Habitat Area Management Plan will take one year to complete and require the following expenses (in thousands) if conducted concurrently with preparation of any other critical habitat area management plan:

Personnel

| | | | | |
|---|---|---|---|---|
| Habitat Biologist | (18c) | 6 months | 4.5/month | 27.0 |
| Game Biologist | (16c) | 2 months | 4.0/month | 8.0 |
| Drafting Tech. | (14d) | 1 month | 3.5/month | 3.5 |
| Clerk/Typist | ( 8a) | 1 month | 2.3/month | 2.3 |
| | | | | $40.8 |

Travel

Staff travel to Gustavus and Juneau $2.0

Contractual

| | | |
|---|---|---|
| Telephone | 0.75/month x 12 months | 0.9 |
| Photocopy | 0.10/month x 12 months | 0.1 |
| Advertising /public notices | | 1.0 |
| Aerial photography | | 0.7 |
| printing/ photographic/ blueprinting | | 4.0 |
| | | $ 6.7 |

Supplies

| | |
|---|---|
| Office supplies | 1.0 |
| TOTAL | $ 50.5 |

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : SB 362 (RES)
PUBLISH DATE :

# FISCAL NOTE

**REQUEST:**

Revision Date:
Title : Dude Creek Critical Habitat Area

Sponsor : Senator Eliason
Requestor : Senate Finance

Agency Affected : Natural Resources
BRU : Land and Water Management

Components :

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | 0 | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 0 | | | | |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

**FUNDING:** (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | 0 | | | | |

**POSITIONS:**

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

**ANALYSIS :** (Attach a separate page if necessary)

Legislative designation will not preclude this parcel from being appraised as part of the Mental Health Settlement. There may be some administrative savings because the public notice will be unnecessary; however, these savings will be less than $100.

Prepared by : Janet Burleson
Division : Land and Water Management
Phone : 465-3400
Date : 3/16/88

Approved by Commissioner : Judith M. Brady
Agency : Department of Natural Resources
Date :

Distribution (by preparer) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

SAM
Ned

# ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

RULES COMMITTEE CHAIRMAN
LABOR & COMMERCE COMMITTEE VICE CHAIRMAN
LEGISLATIVE COUNCIL
RESOURCES COMMITTEE
FISHERIES SUBCOMMITTEE CHAIRMAN

P.O. BOX 143
SITKA, ALASKA 99835

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4316

M E M O R A N D U M

TO: Representative Adelheid Herrmann, co-chair
Representative Sam Cotten, co-chair
House Resources Committee

FROM: Senator Dick Eliason R Eliason

RE: CSSB 362 (Res) - An Act establishing the Dude Creek Critical Habitat Area

DATE: March 24, 1988

I would appreciate your consideration in scheduling CSSB 362 (Res) for a hearing before the House Resources Committee at the earliest possible time.

Committee Substitute for SB 362 (Res) establishes the Dude Creek Critical Habitat area near Gustavus. This legislation is a direct response to a request from the residents of Gustavus. In January, 1984, the community of Gustavus overwhelming passed a referendum requesting the establishment of a critical habitat area for the protection and enhancement of a key roosting area for migrating Lesser Sandhill Cranes.

In 1985 similar legislation passed the House unanimously, but as the majority of the land in question was mental health trust land, the Senate decided to delay action on the legislation until an equitable solution to the trust land issue was found. Passage of Chapter 48, SLA 1987, provided the answer. Under the enactment of this law, the 3,443 acres of mental health trust land located within the proposed critical habitat area will remain in the the mental health trust corpus and the Department of Natural Resources will not need to find replacement lands for this acreage. George Rogers, chairman, Interim Mental Health Trust Commission, supports the passage of CSSB 362 (Res).

The designation of a critical habitat area would allow all traditional uses of the land while providing wildlife habitat protection.

# DUDE CREEK CRITICAL HABITAT AREA

## Letter of Intent

In creating the Dude Creek Critical Habitat Area, it is the intent of Alaska State Senate that hunting, fishing, and trapping will continue to occur in accordance with harvest regulations as established by the Boards of Fisheries and Game. These and the additional public uses, listed in the enabling legislation, including mechanized access, will be curtailed or disallowed only if there is sufficient evidence that these uses are detrimental to the cranes or their habitat. The Department of Fish and Game will conduct specific fact finding, including public hearings in Gustavus, prior to making final determination of the appropriateness of above uses.

The Department of Fish and Game is to consult with the community of Gustavus in the preparation and implementation of a management plan for the Dude Creek Critical Habitat Area. In the event the community forms an Advisory Committee, the department will work closely with that committee in preparation of the plan.

**Gustavus Community Association**

Post Office Box 62
Gustavus, Alaska 99826

January 27, 1983

Senator Dick Eliason
Pouch V
Juneau, AK 99801

Dear Senator Eliason,

With the settling of the mental health land issue, the way again seems clear for CSHB 312, the bill for an act to establish the Dude Creek Critical Habitat Area.

I would like to take this opportunity to encourage your support for this bill. Work was begun toward the possibility of the critical habitat designation in 1978 and through a lengthy process of negotiation and compromise a proposal was reached that does meet the needs and wishes of most people.

The community demonstrated majority support for this bill in January, 1984, in a referendum ballot polling every registered voter. The response was 66 in favor and 25 opposed. In 1985, the Gustavus Community Association endorsed the bill.

The critical habitat designation would allow all traditional uses of the land to continue, i.e., hunting, fishing, clamming, berry picking, collection of beach logs, kelping, grazing, hiking and use of recreational vehicles, while providing enduring wildlife habitat protection.

Thank you for your consideration.

Best regards,

Dan Mills

Dan Mills
President

DM/an

# STATE OF ALASKA

**DEPARTMENT OF NATURAL RESOURCES**

*OFFICE OF THE COMMISSIONER*

*STEVE COWPER, GOVERNOR*

*POUCH M*
*JUNEAU, ALASKA 99811*
*PHONE: 907-465-2400*

February 1, 1988

Senator Richard I. Eliason
P.O. Box V
Juneau, Alaska 99811

Dear Senator Eliason:

I am pleased to inform you that the Interim Mental Health Trust Commission (IMHTC) is able to support the passage of SB 362-establishing the Dude Creek Critical Habitat Area. This support was made possible through the enactment of ch. 48 SLA 1987. Should SB 362 become law prior to the reconstitution of the mental health trust corpus, the work of the DNR and the IMHTC will be reduced by leaving 3,443 acres more of the original trust land in the reconstituted trust corpus than would be if it is not passed.

If I can be of further assistance please feel free to contact me.

Sincerely,

George Rogers

George Rogers, Chairman
Interim Mental Health Trust Commission

10-J9LH

Senator Dick Eliason
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Eliason,

In January, 1984, a referendum (enclosure 1) was sent to all registered Gustavus voters, asking whether they favored creation of a 4100-acre Critical Habitat Area to protect migrating sandhill cranes. This capped a two-year community effort to research the need for protection and the various protective options available. About 180 ballots were sent out; 91 people chose to vote; 66 favored the proposal and 25 opposed it.

A committee of Gustavus residents was then formed to act on this mandate. In consultation with Debra Clausen, ADF&G, Habitat Division, we developed a package of background information (enclosure 2), a proposed draft of enabling legislation (enclosure 3), and a boundary map (enclosure 4). This material has now been displayed at the post office for several weeks, and to date we have received no adverse comment on it. We hope that you and Representative Goll will now begin the process of enactment into law.

In the course of our work on the crane issue, three clearcut community opinions have emerged. First, there is strong sentiment in favor of crane protection. Second, people favor the idea of a Critical Habitat if the community is fully involved in preparing legislation and management plan. And third, many feel that human use should be regulated only to the extent necessary. In particular, the following public uses and activities should be allowed: wildlife viewing, firewood harvesting, mechanical and non-mechanical access, hiking, berry picking, and grazing, unless such activities are documented to be detrimental to the migrating sandhill cranes or their habitat.

There is general agreement that present use types and amounts are not threatening the cranes or their habitat in the area proposed for legislative action. The protective effort was begun because cranes have been substantially excluded from other parts of Gustavus and could be eliminated throughout if future use and development proceed in an unplanned fashion.

Lloyd Prouty, Debbie Woodruff, Morgan DeBoer and I will be glad to provide further information or assist in any way you wish.

Sincerely,

Greg Streveler, Chairman
"Crane Committee"

Box 94

Enclosure 1

Gustavus Community Association Referendum JANUARY, 1984

Established two years ago, the referendum was initiated to sample the opinions of the whole community, that is the registered voters of this election district. While not legally binding it is nonetheless recognized by the State of Alaska as a valid polling device.

Those responding are requested to return the completed referendum questions no later than Feb. 5th by mailing them to Box 62 Gustavus, AK 99826.

*************

1. Road Maintenance-

Fact: In 1983 the Alaska State Legislature appropriated $115,000 to upgrade Tong Road, Same Old Road, Salmon River Road and Rink River Road. An additional 27 thousand dollars was appropriated which was not used. The question arises on whether or not to spend this money for the maintenance of existing roads or upgrading other roads or returning the money to the state. Since receiving this request for this referendum, solicited legal opinion states that the GCA can be held liable for damages incurred as a result of this recent upgrade or any future maintenance or improvements to the roads or the Goode River Bridge.

Question:
1. The $27,000 should be used for maintaining the four recently upgraded roads. Yes No
2. The $27,000 should be used to upgrade other local access roads. Yes No
3. The $27,000 should be used to hire a professional engineer to inspect the recently upgraded roads and to pay for any neccessary corrections for safety, therefore minimizing liability to GCA. Yes No
4. The $27,000 should be returned to the State. Yes NO

Pro Statement:
The $27,000 could be used for several years to maintain local access roads, including snow removal. It has been estimated that it would cost somewhere between $3,000 and $6,000 a year to maintain these local access roads.

Winter snow removal would allow access year round and would allow the Fire Department and EMT's to respond to fire and medical emergencies. Pot holes could be filled in the spring and the roads could be graded throughout the spring.

Con Statement:
The acceptance of the $27,000 will put the community in the road maintenance business while the intent of the $115,000 was to bring the roads up to standard. Acceptance establishes a precedent for other new roads that will be built, with the communtiy expected to maintain them. This also represents another step in our inertia towards local government, and if and when Gustavus incorporated road maintenance and liability costs would be substantial.

II. Jetfoil Service-

Fact: In early December of 1983, representatives from Boeing Marine and the State Division of Marine Transportation met with the community, informing residents of their plan to bring jetfoil service to Gustavus. Plans called for a 240 passenger boat coming once a week with a 40 lb. baggage limit at a price of $30 on a test basis for the summer of '84, with alterations planned for the existing float. In response to protest expressed at the meeting the state agreed to postpone service until the question was put to the community in the form of a referendum. (P.S. On 12/13/83, a phonecall was received from DOT statin they could not wait for results of this referendum to do their schedule and therefore were removing Gustavus from the 1984 summer route. The GCA would still like your opinion on this matter so please answer the questio

Question:

1. Should the State of Alaska bring jetfoil service to the community of Gustavus? Yes No

Pro Statement:
Jetfoil service would provide a cheaper means of transportation and would thus enable more people to visit who would spend tourist dollars in our community. Other communities would be more accesible and may lead to full-time ferry service, which would allow increased freight and vehicular services. This would be an alternative for those who do not like to fly.

Con Statement:
The community has repeatedly petitioned against regular ferry service inthe past and jetfoil service represents the same. Alterations to theeexisting float could possibly imperil local usage and existing barge service, There are no existing facilities to handle a large influx of visitors and subsequent impact could be substantial and detrimental to the community.

III. Dude Creek Meadows Protection-

Fact: In May of 1983 a questionaire was sent to the registered voters of Gustavus asking if the sandhill cranes which, during migration, feed and rest along Dude Creek be given some sort of protection. Eighty-one percent of those questioned replied "yes." A committee was established to research the options available for protecting sandhill cranes and recommended the Community Association request the state legislature through Fish and Game, establish some 4,000 acres along Dude Creek as sandhill crane critical habitat.

Question:

See Map

1. Should approximately 4,000 acres (Option 1) paralleling Dude Creek be designated as 'critical habitat' for the sandhill crane? 66 Yes No 25

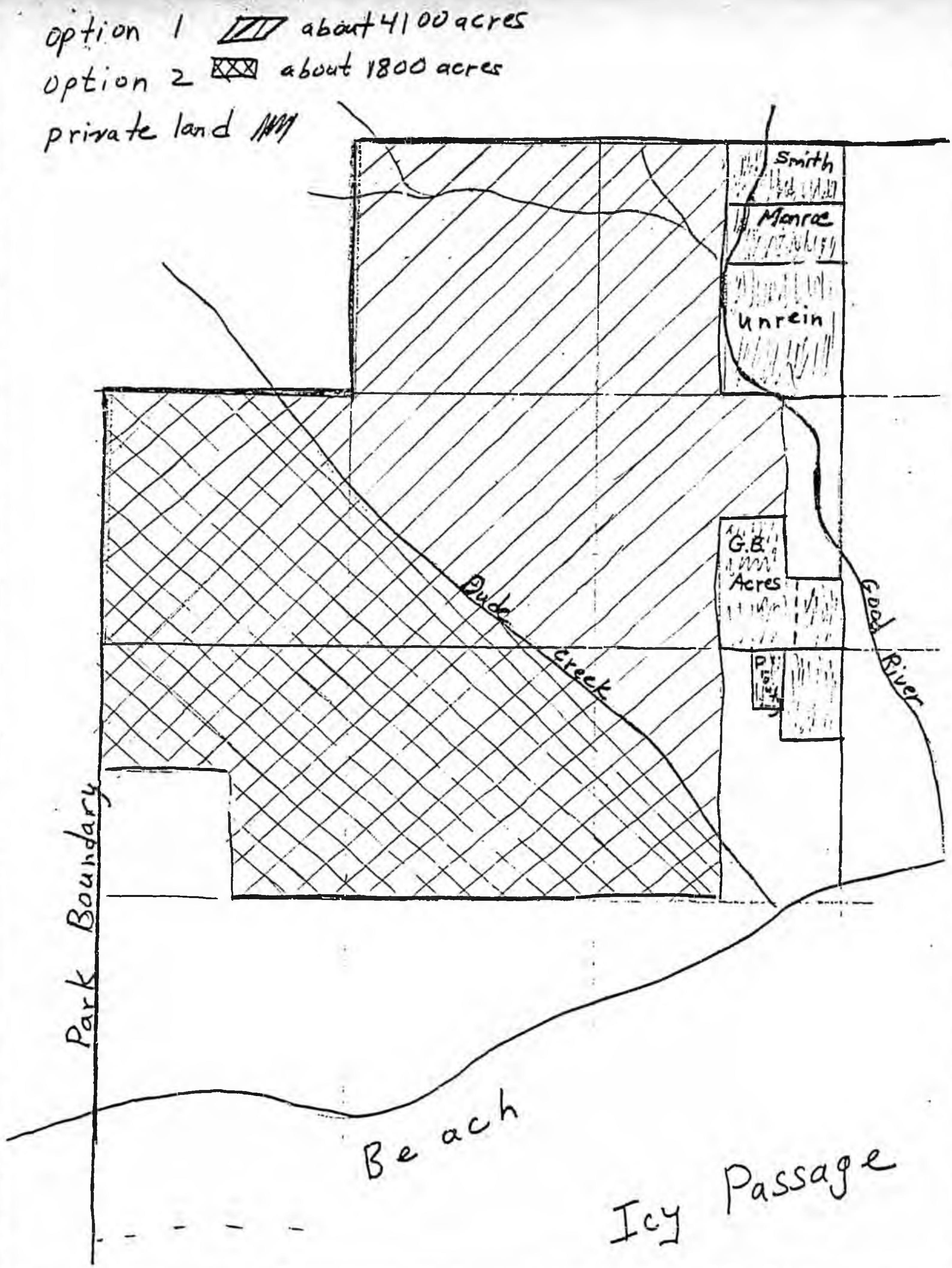
2. If "no", would you support inclusion of only the area west of Dude Creek (Option 2), or some other type of protection other than "critical habitat" ?
Yes ~~No~~ Specify ________________

Pro Statement:

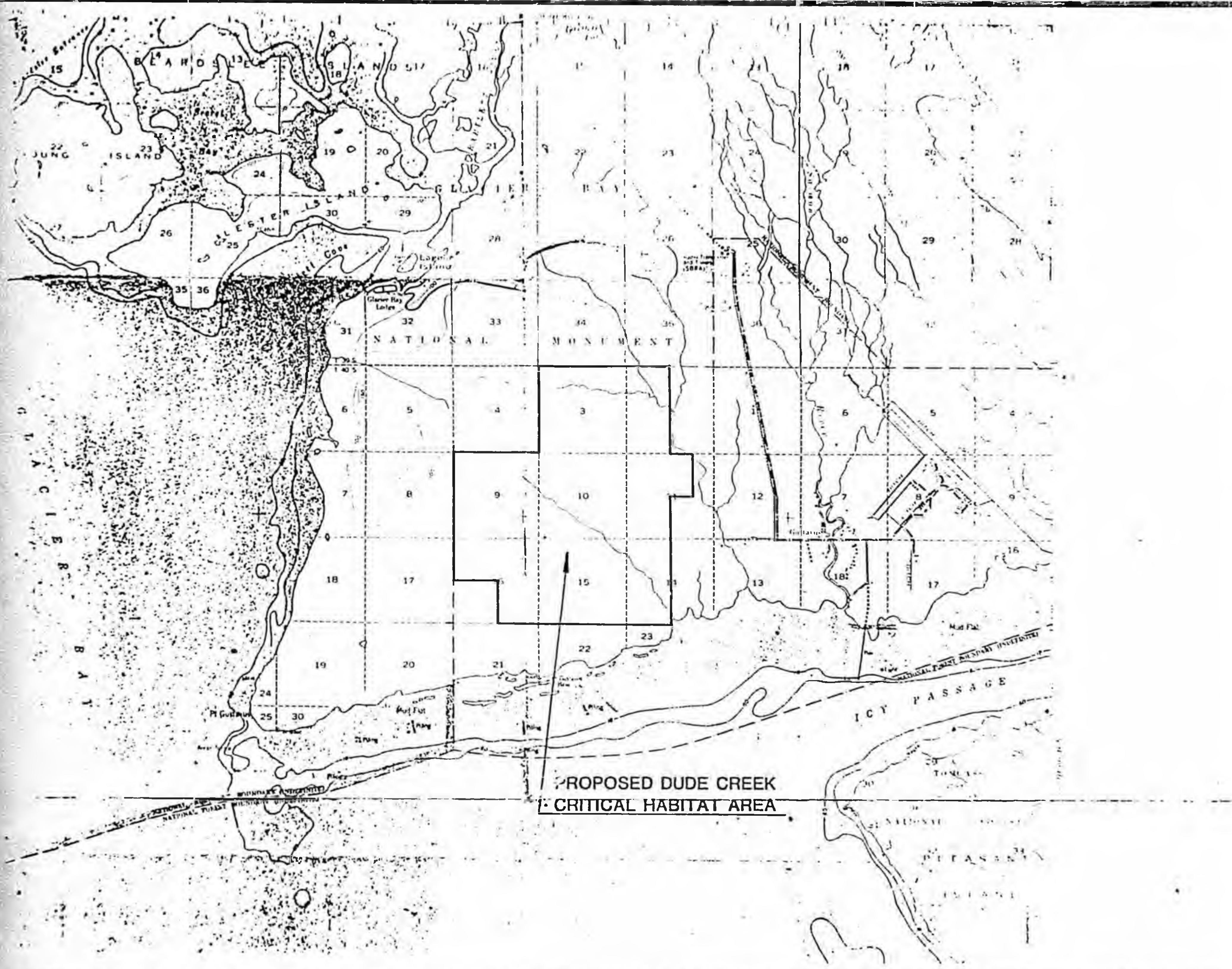
The setting aside of approximately 4,000 acres of Gustavus wetlands for a critical habitat designation for the approximately 7,000 sandhill cranes who rest and feed annualy in the Dude Creek meadows signifies the committment to the well-being of a particular species of waterfowl. Boundaries protect only the areas most heavily used by the cranes. All traditional uses such as hunting, trapping, firewood harvest and all-terrain vehicle use will continue as long as they do not interfere with the species. The area would serve for perpetuity as a recreational area. Community input on the area's management can be very strong if we help write the legislation and management plan.

Con Statement:

Because Gustavus is already surrounded by 2 million acres of Park, any lands restricted for use within our community would only hinder further growth and is merely an attempt to lock up more of our state. Agricultural and recreational uses may be restricted by Fish & Game and/or "environmental concerns" and others who may not be truly in touch with our needs - this could be dangerous. To lock up lands used only a couple months a year by the cranes, and likely to change by natural succession is unwise.

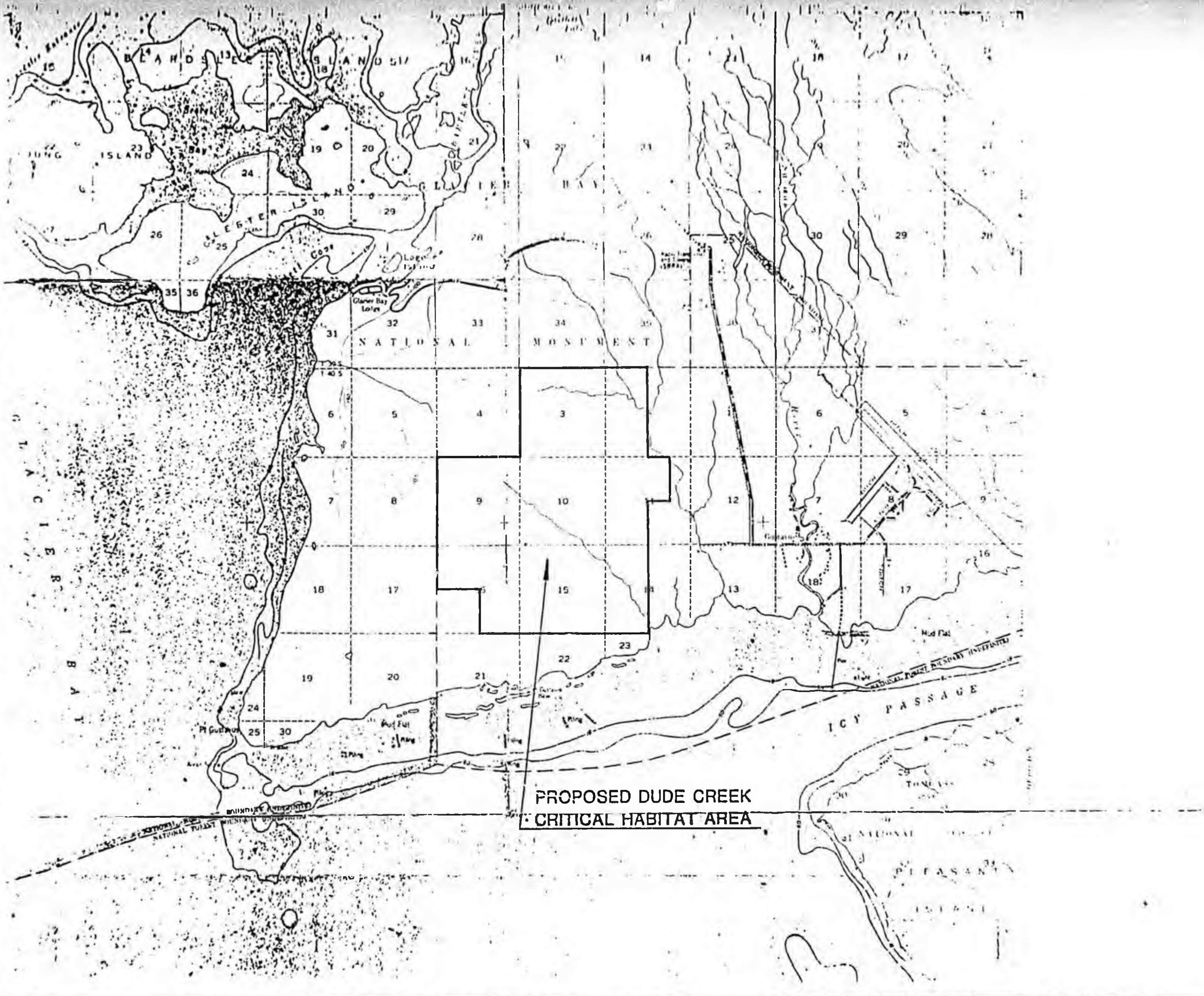


option 1 about 4100 acres
option 2 about 1800 acres
private land
Smith
Monroe
Unrein
G.B. Acres
Dude Creek
Good River
Park Boundary
Beach
Icy Passage


PROPOSED DUDE CREEK
CRITICAL HABITAT AREA
ICY PASSAGE
NATIONAL
MONUMENT
Mud Flat
Pt Gustavus

# CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY


PROPOSED DUDE CREEK
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ICY PASSAGE
NATIONAL MONUMENT
GLACIER BAY
Glacier Bay Lodge
Pt Gustavus
Mud Flat

SAir

ALASKA STATE LEGISLATURE - SENATE
SENATOR RICHARD I. ELIASON

RULES COMMITTEE CHAIRMAN
LABOR & COMMERCE COMMITTEE. VICE CHAIRMAN
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P.O. BOX 143
SITKA, ALASKA 99835
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4916

M E M O R A N D U M

TO: Representative Adelheid Herrmann, co-chair
Representative Sam Cotten, co-chair
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Dan Mills

Dan Mills
President

DM/an

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*OFFICE OF THE COMMISSIONER*

*STEVE COWPER, GOVERNOR*

*POUCH M*
*JUNEAU, ALASKA 99811*
*PHONE: 907-465-2400*

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10-J0LH

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*Enclosure 1*

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Question:

1. Should approximately 4,000 acres (Option 1) paralleling Dude Creek be designated as 'critical habitat' for the sandhill crane? 66 Yes No 25 See Map

2. If "no", would you support inclusion of only the area west of Dude Creek (Option 2), or some other type of protection other than "critical habitat" ?
Yes No Specify ____________

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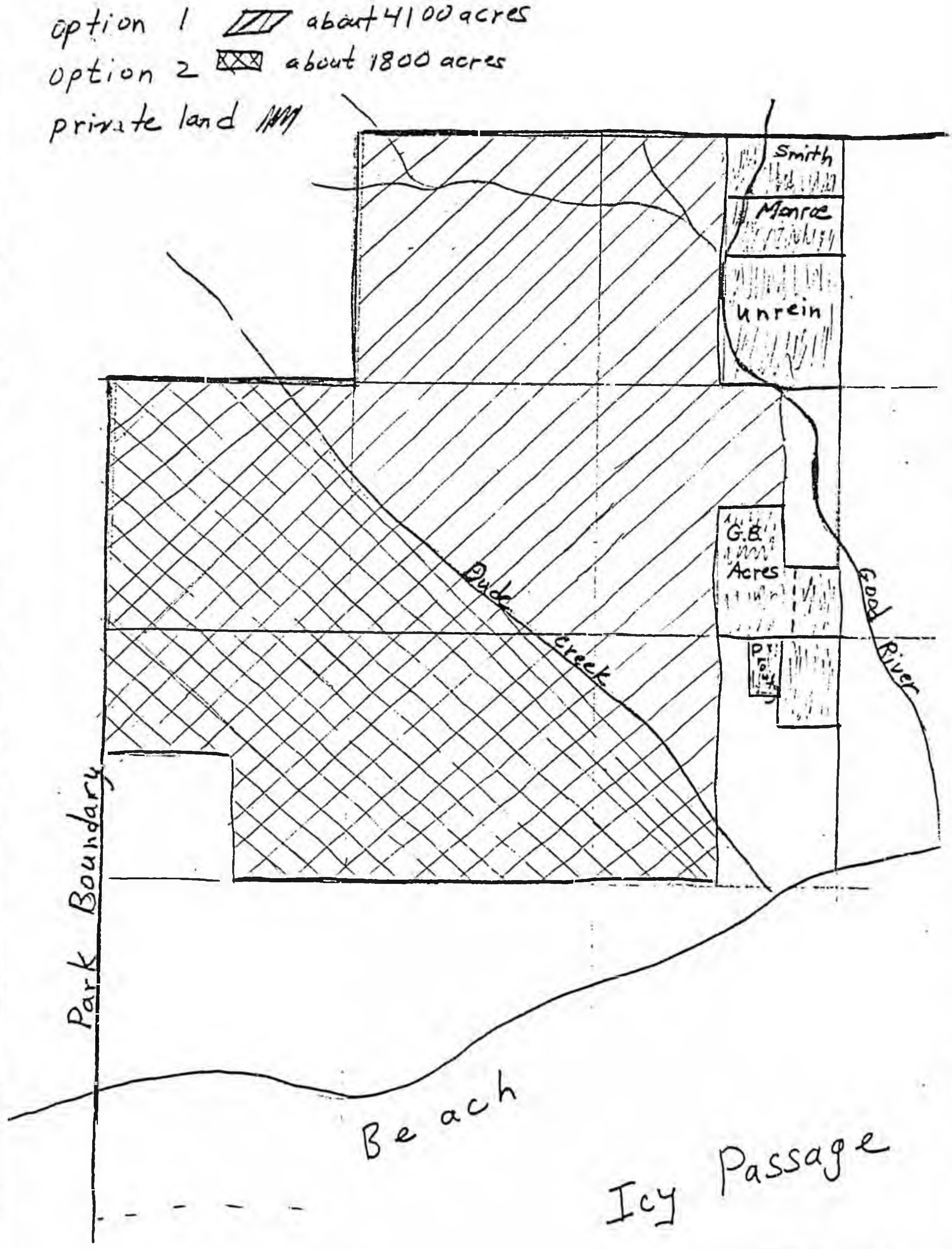
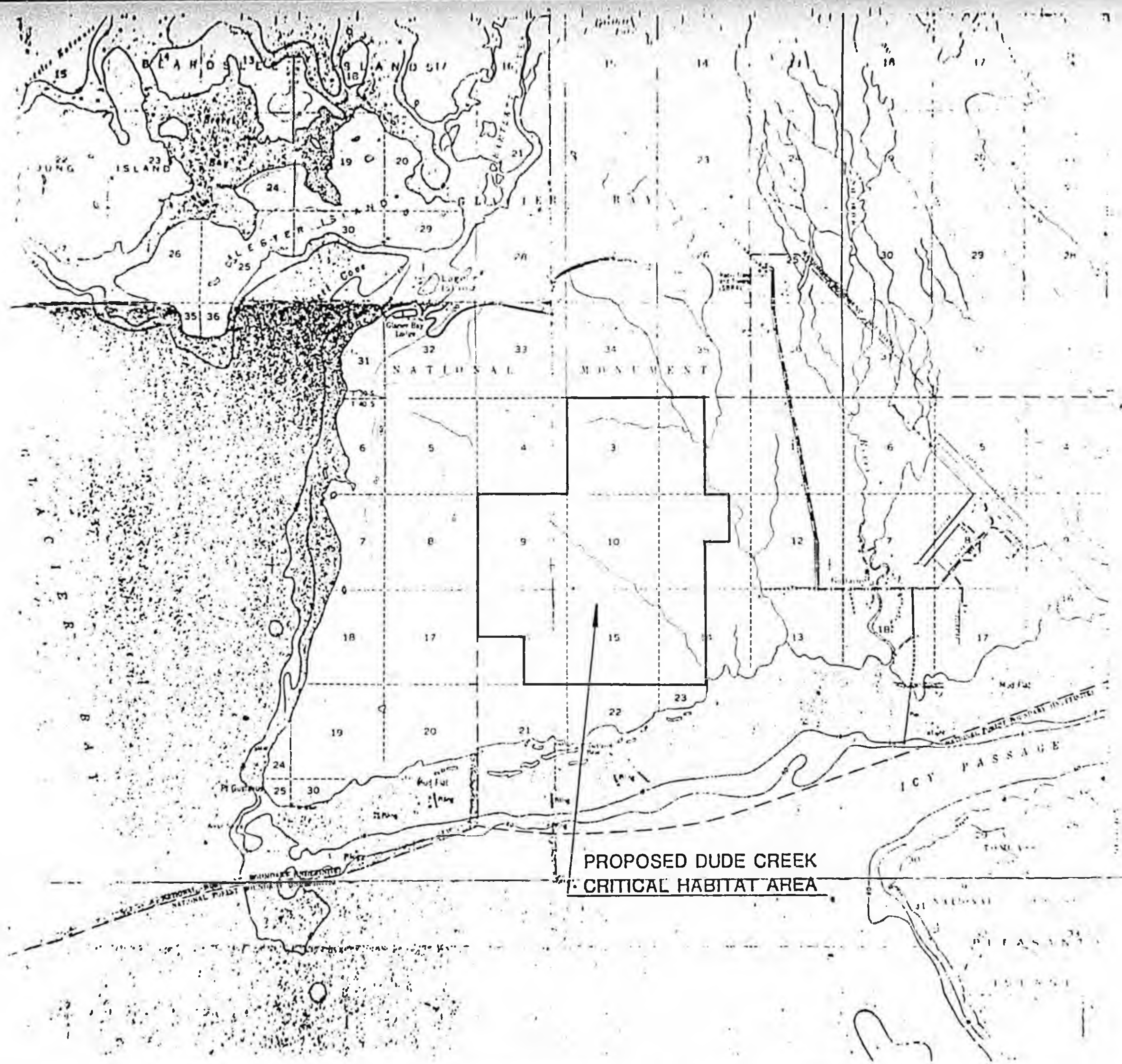


option 1 about 4100 acres
option 2 about 1800 acres
private land
Smith
Monroe
Unrein
G.B. Acres
Dude Creek
Good River
Park Boundary
Beach
Icy Passage



PROPOSED DUDE CREEK
CRITICAL HABITAT AREA
NATIONAL MONUMENT
ICY PASSAGE
Mud Flat
Pt Gustavus

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 362 (RES)
PUBLISH DATE:

# FISCAL NOTE

REQUEST:

Revision Date:
Title: Dude Creek Critical Habitat Area

Sponsor: Senator Eliason
Requestor: Senate Finance

Agency Affected: Natural Resources
BRU: Land and Water Management

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | 0 | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 0 | | | | |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | 0 | | | | |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Legislative designation will not preclude this parcel from being appraised as part of the Mental Health Settlement. There may be some administrative savings because the public notice will be unnecessary; however, these savings will be less than $100.

Prepared by: Janet Burleson
Division: Land and Water Management
Phone: 465-3400
Date: 3/16/88

Approved by Commissioner: Judith M. Brady
Agency: Department of Natural Resources
Date:

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : CSSB362 (Res.)
PUBLISH DATE :

# FISCAL NOTE

**REQUEST:**

Revision Date:
Title : Dude Creek Critical Habitat Area
Sponsor : Eliason
Requestor :

Agency Affected : Department of Fish and G.
BRU : Habitat
Components :

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | 0 | | | | |
| TRAVEL | | 0 | | | | |
| CONTRACTUAL | | 0 | | | | |
| SUPPLIES | | 0 | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 0* | | | | |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

**FUNDING:** (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | 0 | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | 0 | | | | |
| TOTAL | | | | | | |

**POSITIONS:**

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

**ANALYSIS :** (Attach a separate page if necessary)

Preparation of the Dude Creek Critical Habitat Area Management Plan

Prepared by : Bruce H. Baker
Division : Habitat Division
Phone : 465-4105
Date : 3/10/88

Approved by Commissioner :
Agency : Department of Fish and Game
Date : 3/11/88

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

*If existing schedule of one plan per year is adhere to, and no "date certain" is set for preparation of the Dude Creek Management Plan, the operating budget would be adequate. However, if two plans are to be prepared concurrently, the cost for the second plan would be 50.5.

page 1 of 2

Dude Creek Critical Habitat Area

-Preparation of the Dude Creek Critical Habitat Area Management Plan will take one year to complete and require the following expenses (in thousands) if conducted concurrently with preparation of any other critical habitat area management plan:

Personnel

| | | | | |
|---|---|---|---|---|
| Habitat Biologist | (18c) | 6 months | 4.5/month | 27.0 |
| Game Biologist | (16c) | 2 months | 4.0/month | 8.0 |
| Drafting Tech. | (14d) | 1 month | 3.5/month | 3.5 |
| Clerk/Typist | ( 8a) | 1 month | 2.3/month | 2.3 |
| | | | | $40.8 |

Travel

| | |
|---|---|
| Staff travel to Gustavus and Juneau | $2.0 |

Contractual

| | | |
|---|---|---|
| Telephone | 0.75/month x 12 months | 0.9 |
| Photocopy | 0.10/month x 12 months | 0.1 |
| Advertising /public notices | | 1.0 |
| Aerial photography | | 0.7 |
| printing/ photographic/ blueprinting | | 4.0 |
| | | $ 6.7 |

Supplies

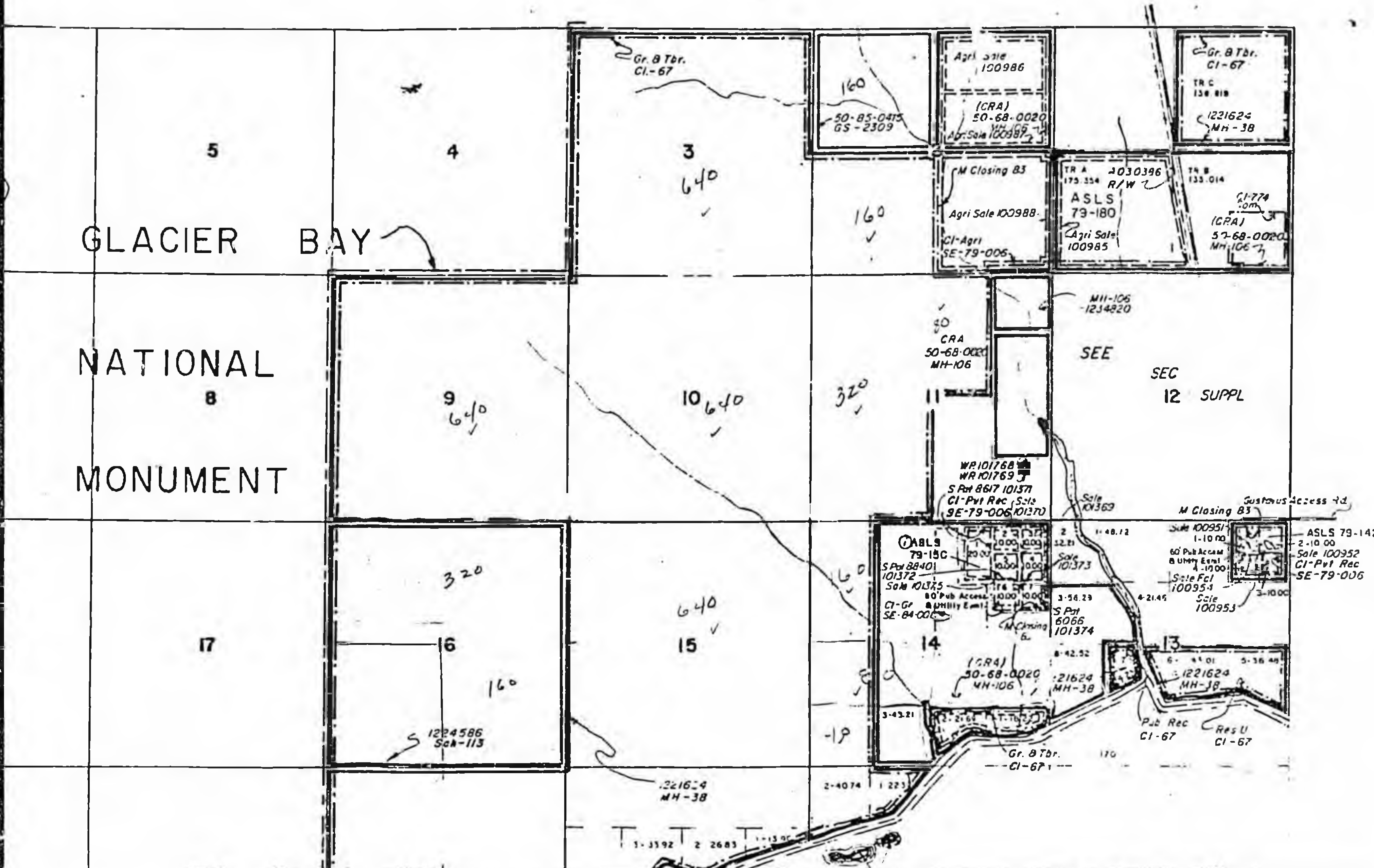
| | |
|---|---|
| Office supplies | 1.0 |
| TOTAL | $ 50.5 |

THE FOLLOWING DOCUMENT HAS NOT BEEN FILMED BUT IS AVAILABLE IN THE ORIGINAL FILE

TOWNSHIP 40S RANGE 58E OF THE COPPER RIVER MERIDIAN, ALASKA

STATUS OF STATE
LAND AND MINERAL TITLES

## STATUS PLAT




OTHER ACTIONS AFFECTING DISPOSAL OR USE OF STATE LANDS.

ENTIRE TOWNSHIP SURVEYED, PLAT APPVD 7/22/21.

AUCTION #201, 6/23/72, LEASE

USS 965

Lottery 2 12/15/79

ASLS 79-150 Lot 1-7 Appvd 12/26/79

(1) Public Access Easements Are Reserved to the State of Alaska Along All Public and Navigable Inland Water, Extending 50 Feet Upland of Ordinary High Water, per AS 38.05.127

ASLS 79-142 Lots 1-4 Appvd 1/22/80

ASLS 79-180 Tr A, B, C, Plat Appvd 8/7/80

BLM Nav Det Avail

SB

397

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 397
PUBLISH DATE: 3/7/87

# FISCAL NOTE

REQUEST:

Revision Date:
Title: "An act relating to the obstruction or hindrance of lawful hunting, fishing, ..."
Sponsor: Fanning, Faiks, et al
Requestor: House Transportation

Agency Affected: Public Safety
BRU: Fish & Wildlife Protection
Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|---|---|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|---|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

KSD
JNR
2/12/88

Prepared by: Captain Conrad G. Seibel
Phone: 269-5509
Division: Fish & Wildlife Protection
Date: 2/10/88

Approved by Commissioner: [signature] Dep. Comm.
Date: 2-12-88
Agency: Department of Public Safety

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ___ of ___

# Alaska State Legislature

SENATOR KEN FANNING
P.O. BOX 80929
COLLEGE, ALASKA 99708

P.O. BOX V—STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-38[illegible]

Senate

April 13, 1988

**MEMORANDUM**

To: House Resources
Committee Members

From: Senator Ken Fanning

Subject: SB 397 - Obstruction of hunting, fishing & trapping

---

This bill is designed to prevent intentional harassment or obstruction of persons engaged in lawful hunting, fishing or trapping in Alaska. It was passed by the Legislature in this form in 1984, and in an earlier version in 1983. Both times it was vetoed by then-Governor Bill Sheffield, who explained his actions by saying no real need existed because few incidents of hunter harassment had taken place, and that in his view current criminal statutes covered the issue.

The bill is patterned after legislation adopted by other states, and has similar penalty provisions. It also provides a liberal defense clause to protect those who mistakenly believed it was not unlawful to disturb hunting, fishing and trapping activities.

As the legislative body of the State of Alaska, we have a responsibility to protect Alaskan citizens, as well as those who visit from Outside, in their pursuit of outdoor recreation. This bill does this, and it reduces the potential for violence in the field by providing judicial relief for those aggrieved by intentional harassment.

I urge your support of SB 397.

# SYNOPSIS AND ANALYSIS

OF

SB 397 - "An Act relating to the obstruction or hindrance of lawful hunting, fishing or trapping."

This is a one section bill that would amend Title 16 by adding a new section 16.05.926 to preclude intentional obstruction or hindrance of lawful hunting, fishing and trapping activities.

Subsection (a) contains the prohibition.

Subsection (b) provides a definition of "lawfully" to mean in compliance with applicable state and federal statutes and regulations, and with the permission of a private landowner, if that is where it occurs.

Subsection (c) provides that a peace officer can order a person to desist from the harassment, and to cite the person if he or she persists.

Subsection (d) provides that it is an affirmative defense that a person believed it was alright to harass sportsmen.

Subsection (e) provides punishment of up to 30 days in jail or up to $500 fine.

The second portion of the bill provides for civil remedies. Subsection (a) allows an aggrieved party to obtain a court order to enjoin the obstructer from the activities.

Subsection (b) allows an aggrieved party to recover damages, including license and tag fees, travel costs, guide fees, etc.

Subsection (c) allows the court to award punitive damages in addition to general and special damages allowed under subsection (b).

SYNOPSIS

**STATE OF ALASKA**

**OFFICE OF THE GOVERNOR**

# BILL ANALYSIS

| DEPARTMENT | DIVISION | BILL NUMBER | SPONSOR |
|---|---|---|---|
| Fish and Game | Game | SB 397 | Senator ~~Coghill~~ Fahrenkamp |

DEPARTMENT POSITION

Support

| PREPARED BY | DATE | COMMISSIONER'S SIGNATURE | DATE |
|---|---|---|---|
| Don E. McKnight | 3/1/88 | [illegible] | 3/2/88 |

## SUMMARY

| OTHER AGENCIES AFFECTED BY BILL | CONSTITUENT GROUP(S) AFFECTED BY BILL |
|---|---|
| Public Safety | Hunters, trappers and fishers |

| ORGANIZATIONAL SUPPORT FOR BILL | ORGANIZATIONAL OPPOSITION TO BILL |
|---|---|
| Alaska Outdoor Council and other organized sportsmen groups | Anti hunting, fishing, trapping groups<br>Animal rights activists |

FISCAL IMPACT: ☑ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

In the past 10 to 15 years individuals who oppose hunting and trapping have become well organized and very aggressive in their efforts to impede those who hunt and trap. There have been a number of well-publicized instances in which hunters were harassed or game they were stalking harassed. The intent of this bill is to serve notice that such obstruction of hunting, fishing or trapping is not acceptable to Alaskans. Similar laws have recently been enacted in a number of states.

ANALYSIS OF BILL/PROGRAM EFFECTS

Passage of this bill into law would make obstruction or harassment of an individual legally hunting, fishing or trapping a misdemeanor punishable by a fine or imprisonment. This law would provide legal protection from this form of hooliganism to the thousands of Alaskans who legally hunt, fish and trap in Alaska each year. It would also provide these individuals an alternative to violence in protecting themselves from harassment by these well-meaning, but overzealous, opponents of hunting, trapping and fishing. Certainly for most Alaskans, hunting, fishing and trapping constitute recreational experiences which the state should help ensure not being disrupted by unpleasant or unsafe intrusions by individuals opposed to these particular activities.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.



FISCAL NOTE

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 397
PUBLISH DATE:

# FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to Obstruction or Hindrance of Hunting, Fishing or Trapping
Sponsor: Senator Coghill
Requestor:

Agency Affected: Fish and Game
BRU: Game
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Don E. McKnight
Phone: 465-4190
Division: Game
Date: 3/2/88

Approved by Commissioner: [signature]
Date: 3/2/88
Agency:

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page 1 of 1

BILL SHEFFIELD
GOVERNOR

JAN 16 1985

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 19, 1984

The Honorable Joe L. Hayes
Speaker of the House
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: CSHB 546(Res) am S (An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping.)

Dear Representative Hayes:

Under the authority granted in art. II, sec. 15, of the Alaska Constitution, I have vetoed CSHB 546(Res) am S -- a bill that would have made it a misdemeanor for a person "to perform an act with the intent to obstruct or hinder hunting, fishing, or trapping engaged in lawfully by another person." As you may recall, I vetoed a similar bill (2d SCS CSHB 163(Jud)) last year.

I have decided to veto this legislation for the following reasons:

First, an amendment to the bill made on the House floor (the insertion of the language "possessing a valid State of Alaska license or permit" which appears on page 1, lines 13 -- 14, of the final bill) creates both a potential constitutional problem and a public policy problem.

The amendment was made to ensure that a person who obstructs the capture of orca whales in Alaskan waters by Sea World could not be prosecuted under this law. The overall result of this amendment is that if a person obstructs a hunter holding a valid state license or permit, that person can be prosecuted under this law, whereas, if a person obstructs a hunter who is lawfully hunting with only a federal permit, (this includes orca capture, as well as any other kind of hunting, fishing, or trapping requiring a federal permit only) that person is

SHEFFIELD VETO MSG

exempt from prosecution. Such disparate treatment of similar offenders, with no apparent rational basis for the distinction, raises an equal protection question under the constitution.

On a policy basis, I question the wisdom of granting -- just because we want to specifically exempt from prosecution those who might attempt to obstruct the capture of orca whales -- blanket immunity to persons who obstruct hunters, fishermen, and trappers who are hunting, fishing, or trapping lawfully without a state license or permit. This provision should be given more thoughtful consideration.

Secondly, it may be difficult to effectively prosecute an offender under the bill. The new law would not apply to obstruction or hindrance that is "incidental" to a person's lawful use of public or private land or water. This exception was included so that hunting activities would not be given a clear priority over other lawful outdoor activities such as camping, hiking, birdwatching, etc. Although adding this provision serves a laudable purpose, especially since last year's bill included no recognition of the validity of such competing uses, this language is likely to make it more difficult to prosecute some cases. That is, it may be difficult to prove that obstructive acts were deliberate as opposed to being the incidental result of another person's lawful use of the land.

Thirdly, there have apparently been no verified reports in Alaska of the types of "sabotage" tactics that the proponents of this bill seek to prohibit. I am not convinced of the need to establish a new crime prohibiting conduct that has yet to occur in this state.

Fourthly, as I stated in last year's veto letter, existing criminal statutes provide adequate coverage for physical interference with lawful hunting and fishing. In particular, the crimes of assault, criminal mischief, and harassment provide criminal penalties similar to those imposed under this bill.

Finally, creating such a crime in the Alaska statutes gives the impression that Alaska seeks to give hunting, fishing and trapping of wildlife, (whether it be for sport, commercial purposes, or subsistence use) priority over efforts to protect and preserve wildlife. Despite the fact that I myself have participated in sport hunting and fishing, I do not believe that it is appropriate to make such a strong statement in our laws.

For these reasons, I have vetoed this bill.

Sincerely,

Bill Sheffield
Governor

The following are the official comments of The Alaska Wildlife Alliance. We are against SB411 We do not think hunting activities are compatible with other public uses in state parks. . The phrase that possession and use of a firearm may be necessary to personal safety is just an excuse to allow hunting in areas where it does not belong and is a threat to personal safety. People are encouraged to recreate in state parks. Hikers, cross country skiers, photographers, canoers- the majority of outdoor recreationists are put at risk when state parks are opened to hunting. Because such a policy would be too capricious we do not think that the commissioner of DNR should regulate the use of a firearm or other weapon within one-quarter mile of posted areas such as a trail head, visitor center, or highway wayside. . Current law forbids use of a firearm within one-half mile of posted areas and it includes roads. Roads are not included in SB411. We are emphatically against liberalizing the law to 1/4 mile, especially in the populated parks of southeast and south central. Currently, parks are closed except where specifically open and The Division of Parks may close parks for reasons of public safety. Chugach Park may be closed by the Division of Parks for wildlife observation. The Division of Parks needs to maintain this power for the safety of non-consumptive users and the benefit of wildlife whom they have a duty to protect.

We oppose SB398 ("An Act relating to certain reports and records concerning game animals") for all the reasons we have opposed similar bills in the past. The bill is unconstitutional and denies a citizen's right to freedom of information. Public access is the standard in Alaska and this was confirmed by an AG's opinion two year's ago. It cannot be argued that sealing certificates give financial information or interfere with anyone's livelihood since sealing certificates don't deal with pelt prices or give the specific trapping area.

WILDLIFE ALLIANCE

(There is no priority information on sealing certificates) We, the public, have a right to know who and how public resources are used. As a practical matter, if sealing certificates and hunting permits are not public record, how would graduate students, economic researchers, statisticians, or any others be able to get the facts and figures needed in their studies? These records have been made available to organizations like ours who perform a watchdog roll. There have been no ill effects of this information having been provided.

We oppose SB397 ("An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping.") Rather than protecting the activities of consumptive users, this bill endangers the rights of non-consumptive users. In fact, this bill could create a real safety problem if a hunter perceived harassment and wanted an excuse to attack a non-consumptive user. The bill will promote the very kind of conflict it seeks to prevent. The majority of non-consumptive users are already virtually "second class citizens" in the field of wildlife management, and this bill will further deprive them of anything approaching equal rights. Even the proponents of this bill admit no such harassment has occurred in Alaska to date. If it were to occur, it can be addressed by existing statutes without further affecting the right of all non-consumptive users. This bill, in slightly different forms has been vetoed before by Governor Sheffield for these same reasons.

ny DeVRIES
ska Wildlife Alliance
Box 190953
chorage, AK 99519

Tenny DeVries
Alaska Wildlife Alliance
P.O Box 190953
Anchorage, Ak 99519

# NRA

## Position Paper

## SB 397 and SB 411

SB 397

NRA's field representative, Rupe Andrews, is out of town and would like to have NRA's position into the record. We support SB 397. This legislation has passed the legislature twice already. This area of concern is not a large problem but the problem is growing.

SB 411

The NRA supports this bill. ANILCA took away significant hunting opportunities away from Alaskans. The National Park Service continues to work towards curtailing even existing hunting opportunites. The hunters of this state need not be restricted even further by our own state parks system. Thank-you!

NRA POSITION PAPER

REENPEACE U.S.A.

). Box 104432
:horage, Alaska 99510

Tel. (907) 277-8234

GREENPEACE TESTIMONY BEFORE THE SENATE RRESOURCES COMMITTEE TELECONFERENCE HEARING - MARCH 2, 1988 - Anchorage, Alaska

SENATE BILL NOS. 411 - RELATING TO THE USE OF FIREARMS IN STATE PARKS, STATE MARINE PARKS, STATE WILDLIFE PRESERVES, AND STATE RECREATION AREAS; 398 - RELATING TO CERTAIN REPORTS AND RECORDS CONCERNING GAME ANIMALS, AND 397 - RELATING TO THE OBSTRUCTION OR HINDRANCE OF LAWFUL HUNTING, FISHING, OR TRAPPING.

My name is Cindy Lowry and I am the Alaska Field Representative for Greenpeace, an international environmental organization with over 600,000 supporters nationwide, including 1800 Alaskans.

As an organization dedicated to protecting the integrity of Alaska's diverse ecosystems and ensuring the future viability of all species in their natural habitats, we are opposed to the above mentioned Senate bills.

One of our biggest concerns with wildlife management in the State of Alaska is the lack of enforcement of game regulations. Senate Bill No. 411 stresses the compatibility of the use of firearms during lawful hunting activities, when conducted safely with other public uses in state parks, marine parks, wildlife preserves, and recreation areas.

The key words here are "during lawful hunting activities when conducted safely." As I mentioned before, the State's enforcement program is seriously deficient in both personnel and funding and I would like to know if the sponsors of this bill are seeking additional appropriations for enforcement.

There are serious ramifications associated with this bill in that it also includes marine parks and preserves. Would the discharging of a firearm be allowed in the Walrus Islands State Game Sanctuary, possibly causing the stampede and deaths of walrus. This bill would also conflict with federal laws which prohibit the shooting and harassing of marine mammals and would make it even more difficult to prosecute violators.

We also seriously question that the discharge of a firearm outside of the discretionary 1/4 mile buffer zone is compatible with the non-consumptive public use of any facility listed in the bill.

GREENPEACE

Bill No. 398 relates to certain reports and records concerning game animals and again resurrects the case of the public's right to know how public resources are being used vs. individual trappers and hunters rights to privacy. As you may know, I submittod a Freedom of Information request to the Alaska Dept. of Fish & Game in 1986 asking for wolf sealing certificates including the names and addresses of individual trappers.

Subsequently, the Attorney General provided an opinion which stated that the information I requested was "subject to the open records provisions of AS 09.25.110."

He further stated "the department has in the past been concerned that public disclosure of fur sealing information would reduce the detail and accuracy of information submitted by trappers regarding where fur animals are taken, and that failure to receive accurate data would in turn diminish the department's ability to formulate appropriate conserrvation and management strategies. Although this could theoretically occur, we believe that a reviewing court would find that the risk of trappers failing to submit information required by law is minimal compared to the strong public interest in knowing how public resources are being used."

We wholeheartedly agree with this opinion and to my knowledge, it has not changed. In adddition, the Alaska Trappers Association brought a lawsuit against the State regarding this issue in the Alaska Superior Court which failed.

Bill No. 397 relates to the obstruction or hindrance of lawful hunting, fishing, or trapping. We have commented on this concept many times in the past in various forms of bills. In essence, this bill promotes the very conflict it purportedly seeks to prevent. It is also my understanding that a theoretical harassment situation implied in the bill has never occurred in the State of Alaska. We remain opposed to this type of adversarial legislation.

Again, we oppose all three aforementioned Senate bills and do not believe they are in the best interest of the public or wildlife species in Alaska. Thank you for this opportunity to provide comments.

Respectfully submitted,

Cindy Lowry

Cindy Lowry
Alaska Field Representative
Greenpeace

Sen. Janning

# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802 907-586-2345

## SB 397 Hunter Harassment

SB 397 Hunter Harassment and a companion bill, SB 398 Confidentiality of Records, represents another attempt to give preferential treatment to consumptive users of wildlife. The bills are intented to "protect" those individuals engaged in the lawful pursuit of hunting, fishing and trapping from so-called "intentional harassment" from animal protection groups.

SB 397 would establish statutes making it illegal to interfere, either directly or indirectly, with individuals involved in lawful hunting, fishing or trapping. While the Alaska Environmental Lobby does not condone the use of illegal harassment tactics, we feel that this bill is unnecessary for several reasons.

- THERE IS NO PRECEDENT FOR THIS BILL. TO DATE THERE HAVE BEEN NO DOCUMENTED INCIDENTS OF HUNTER HARASSMENT IN ALASKA.

- THERE ARE EXISTING LAWS WHICH PROTECT HUNTERS FROM THIS TYPE OF HARASSMENT, SPECIFICALLY ASSAULT, CRIMINAL MISCHIEF AND GENERAL HARASSMENT STATUTES.

- THE LANGUAGE OF THE BILL IS VAGUE, OFFERING NO CLEAR DEFINITION OF WHAT CONSTITUTES EITHER OBSTRUCTION OR INTENT TO HARASS.

- THE BILL FAILS TO ADDRESS THE QUESTION OF EQUAL RIGHTS FOR ALL USERS OF PUBLIC RESOURCES.

SB 397 would actually encourage the type of confrontation it seeks to prevent. Citizens involved in recreational activities such as bird watching, hiking, and camping would be vulnerable to citizen arrest and/or fines if their activities overlapped with those engaged in hunting or fishing. SB 397 fails to acknowledge these legitimate non-consumptive uses of our natural resources.

Variations of SB 397 were introduced in previous legislatures (1983 and 1986) and were vetoed by then-Governor Sheffield due to constitutional problems. AEL believes that these problems still exist with SB 397. AEL strongly opposes this legislation.



ENVIRONMENTAL LOBBY

PUBLIC OPINION MESSAGE

EAR: SENATO' 'ANNING

IAME: JIM TALLERICO
TLE:
ESS: 2925 SEAWIND
ITY: ANCHORAGE ZIP: 99516
ONE: 345-5709
. NO:
IECT: GAME AND RECREATION
AGE: STRONGLY SUPPORT SB 397, SB 398, AND HB 93. URGE PASSAGE OF THIS
TANT LEGISLATION.

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: ANDY GIFFORD
TITLE:
ADDRESS: 18827 TWENTY GRAND ROAD
CITY: EAGLE RIVER ZIP: 99577
PHONE: 694-2469
BILL NO: SB 397
SUBJECT: OBSTRUCTING OR HINDERING HUNTING/FISHING
MESSAGE: AND SB 398; I WHOLE-HEARTEDLY APPROVE OF THESE BILLS AND RECOMMEND THEIR PASSAGE.

POMs IN SUPPORT

3

PUBLIC OPINION MESSAGE

SENATOR FANNING

GINNY DEVRIES
ALASKA WILDLIFE ALLIANCE
P.O. BOX 190953
ANCHORAGE, ALASKA ZIP: 99519
277-0897
SB 397
OBSTRUCTING OR HINDERING HUNTING/FISHING
: WHAT WAS THE INDIVIDUAL RECOMMENDATION ON SB 397 THAT PASSED OUT OF THE RESOURCES COMMITTEE.

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: BOB GREEN
TITLE:
ADDRESS: 951 BUNKERHILL
CITY: WASILLA, ALASKA ZIP: 99687
PHONE: 271-2514
BILL NO: SB 397
SUBJECT: OBSTRUCTING OR HINDERING HUNTING/FISHING
MESSAGE: SB 398 - CONFIDENTIALITY OF TRAPPING/HUNTING INFO - I SUPPORT SB 397 AND SB 398.

OMID: 03135941
DATE: 03/04/88
TIME: 13:59:41
NAME: ANCHORAGE LIO

PIES: SENATORS

COGHILL
DUNCAN
ELIASON
FISCHER
STURGULEWSKI
ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: GARVAN BUCARIA
TITLE:
ADDRESS: P.O. BOX 870298
CITY: WASILLA, ALASKA ZIP: 99687
PHONE: 373-4974
BILL NO: SB 397
SUBJECT: OBSTRUCTING OR HINDERING HUNTING/FISHING
MESSAGE: SB 398 - CONFIDENTIALITYOF TRAPPING/HUNTING INFO - I FULLY SUPPORT THESE TWO PORPOSED SENATE BILLS AND URGE THEIR PASSAGE WITH SUFFICIENT PENALTIES TO MAKE THEM SUFFICIENT APPROPRIATE LAWS. IF ENACTED PLEASE SEND ME COPIES OF THE BILLS.

POMID: 03104934
DATE: 03/04/88
TIME: 10:49:34
LIONAME: ANCHORAGE LIO

SB

401

1.

file: ELF

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

**OFFICE OF THE GOVERNOR**

OFFICE OF MANAGEMENT AND BUDGET

DIVISION OF POLICY

P.O. BOX AD
JUNEAU, ALASKA 99811
PHONE: (907) 465-3568

August 12, 1987

The Honorable Sam Cotten
Representative
Alaska State Legislature
P.O. Box 296
Eagel River, AK 99577

Dear Representative Cotten:

SUBJECT: ELF

The enclosed information identifies another possible problem with the current version of the Economic Limit Factor -- drilling wells for the sake of reducing taxes.

As more information is developed on this point, we will provide it to you.

Sincerely,

Mary

Mary Halloran
Director

MH/dmc/88D-311

Enclosures

cc: Hugh Malone, Commissioner
Department of Revenue

01 A34LH

# MEMORANDUM

**State of Alaska**
***Office of the Governor***
*Division of Policy*

TO: Mary Halloran
Director

DATE: August 5, 1987
(minor emendations 8/12/87)

FROM: Gregg Erickson GKE
Senior Economist

PHONE: 465-3568

SUBJECT: Potential Severance Tax Loophole


Summary

Studies currently in progress by DOR economists in Anchorage, and other evidence, suggest that oil producers at Prudhoe Bay may be able reduce state severance taxes through a tax avoidance mechanism involving the newly applicable economic limit factor (ELF). The loophole was largely unanticipated, and has not yet been accounted for in the state's petroleum revenue forecasting models. The likely revenue loss is still uncertain. Efforts are underway to appropriately model company behavior and the potential tax avoidance mechanism in time for the December forecast.


Background

The ELF was first added to Alaska's severance tax in 1978 as part of an effort not just to increase revenue, but to do so in a way that would reduce the incentives in earlier severance taxes toward underdevelopment of the oil resource.[1] It was understood that the ELF could conceivably produce an opposite incentive -- toward overdevelopment.

---

[1]Underdevelopment (sometimes called premature shutdown) occurs whenever a flat percentage tax is imposed on gross revenue. As the resource nears exhaustion the percentage tax takes an ever larger share of the potential profits; eventually it takes everything. At this point -- unless the tax is reduced -- production, profits, and tax revenues all end. This is a *premature* shutdown since all three would continue if taxes were reduced. Alaska adopted a sliding scale severance tax based on average per-well production in 1970. The ELF adopted in 1978 eliminated the "lumps" in that sliding scale and thus was expected to further reduce the under-development incentive.

This would be just as bad, since overdevelopment would also reduce state revenues.[2] Most analysts thought the overdevelopment risk was mainly a theoretical matter, however, with little potential for practical impacts on drilling, production rates, or major field investments. Even if there were some incentive for overdrilling, it was thought that the regulatory oversight of the Alaska Oil and Gas Conservation Commission would serve to keep it in check.

In past weeks evidence has accumulated suggesting that renewed application of the ELF to Prudhoe Bay, which occurred in June, may trigger a drilling program designed to artificially reduce severance tax rates. Under such a program, additional wells could cost more than the gains from increased oil production as long as the difference is more than offset by the transfer to the companies of severance tax revenue -- revenue that would have gone to the state had the well not been drilled.

From the state's standpoint, overdrilling would cause a fall in state severance tax revenue from a source not thus far anticipated in the state's forecast models. A collateral effect would be a shift in the production curve, moving future production toward the present but steepening the rate of decline later. Output over the life of the field would likely increase. Nevertheless, total economic rents -- the difference between production costs and the value of the oil -- would be reduced.

[2]Many people have a hard time understanding how overdevelopment can be a bad thing. They forget that it is profits and net tax revenues that make oil production so desired, not more barrels, *per se*. As an extreme example, assume some edict required all profits and tax revenues from a field reinvested to drill additional wells in the field. Both the state and company would find this a bad deal, despite the resulting increase in production. Neither would receive any net benefits from the resource, all of it having been dissipated on the excess investment. Oil drillers and drilling companies would naturally like the idea, but society as a whole would be worse off.

The New Evidence

The first piece of evidence in this regard surfaced in late March in testimony of ARCO Kuparuk Unit Manager James Weeks before the House Finance Committee. Mr. Weeks provided an example showing that under the present ELF it is possible for total production to increase at the same time total severance tax collections decrease. This is exactly the condition that is necessary for overdevelopment. Weeks argued that this was a desirable characteristic of the tax structure.[3]

The second piece of evidence was the result of ongoing Department of Revenue (DOR) modeling work. Over the past year DOR economists in Anchorage had been preparing fiscal notes on various concepts for revising the ELF. In the course of that work and even before, as a part of their regular forecasting, the DOR economists had modeled the impact of different tax structures and oil prices on the decision to produce Alaska North Slope oil fields. An early version of that model, now called the "production module," was integrated into the large PETREV forecasting model in September 1985.

The production module assumes that prices and tax structures will have no effect on the optimum number of wells or other field investment, only on the decision to produce or not. Initially this assumption seemed like a reasonable simplification; but as the DOR economists got more involved in preparing ELF fiscal notes they became concerned that there might be important field investment effects that the module was not designed to detect.

The ARCO testimony in March added additional urgency to these concerns, since it showed that at least one oil company

[3]ARCO's example and OMB's April 29 critique of the ARCO argument is found in Attachment A.

was talking publicly about drilling wells that were only economic for it because of a potential tax rebate inherent in the ELF structure. Last Friday Dr. Roger Marks at DOR provided us with preliminary results from a new production model, one which shows the effect of changing prices or taxes on drilling.[4] The results suggest that the ELF does indeed create an incentive at Prudhoe for operators to reduce their taxes through overdrilling.

The third piece of evidence is found in July *Anchorage Times* reports of plans by ARCO and Standard Oil Company to increase drilling at Prudhoe Bay. The stories (see Attachment C) speak for themselves. Neither ARCO nor Standard announced any such plans; according to an ARCO official, the plans were revealed to the *Times* only after their reporter directed inquires to field personnel regarding trade press notices showing that ARCO was seeking bids for additional drilling services.

Further Action

No immediate action is recommended. I have encouraged Dr. Marks to continue his analysis, and he indicated his intention to do so. He hopes that a new model taking account of drilling incentives can be integrated with the production module and large forecasting model in time for the December forecast, but it is conceivable that it could take longer. I have also asked DOR to model the incentive structure in the ELF formula that passed the House in 1987 (CSHB 164 (fin.) am.). I would hope that the proposed formula would eliminate much of the problem. We will see. In any event, Dr. Marks and his colleagues should be congratulated for calling this potential problem to our attention.

[4] A draft of Marks' paper is found in Attachment B.

Attachments: A. "Technical Note on ARCO's Kuparuk Example," OMB, 29 April 1987.

B. "A Model To Evaluate the Economics of Drilling Additional Wells," Roger Marks, DOR, August 1987.

C. *Anchorage Times*,"Arco to increase oil production," 15 July 1987, and "Standard adds drill rig to Prudhoe field," 16 July 1987.

cc: R. Marks, DOR
J. Rhode, DOR
R. Fineberg, OMB/Policy

# TECHNICAL NOTE ON ARCO'S KUPARUK EXAMPLE

Attachment A

### Tax Effects of Drilling an Additional Well Under Current Law

Mr. James Weeks, Kuparuk Unit Manger for ARCO, provided testimony to the House Finance Committee on March 27, 1987. Examples of severance tax effects (see following page) accompanied his testimony. The examples compare the severance tax effects of adding one additional well in the Kuparuk field under the current ELF and under the proposed ELF (CSHB 154 fin.). The examples show that the addition of one well producing just under 300 barrels per day would increase output from 90,168,000 barrels of oil per year (BOPY) to 90,277,000 BOPY. At the $9.00 per barrel price assumed in ARCO's example, annual gross revenue to the owners increases by $981,000.

(90,277,000 BOPY - 90,168,000 BOPY)*($9/barrel) =
( 109,000 BOPY )*($9/barrel) = $981,000

The first of ARCO's two examples shows how under current law the owners would collect an annual severance tax *rebate* of $37,846 on this additional revenue. The effective severance tax rate on the new production is thus -3.9 percent. The effect is analagous to a personal income tax where the effective tax rates become lower as increasing income moves the taxpayer into a higher bracket.

The second ARCO example illustrates how this will be changed under the proposed law. Instead of giving the owners a $37,846 windfall, the proposed law will collect $58,611 (6.0 percent) of the incremental $981,000 for the state in severance tax. The table below summarizes the effects under the current and proposed severance tax laws, as shown in the ARCO examples.

**TAX EFFECTS OF DRILLING ONE ADDITIONAL WELL**
**(ARCO Kuparuk Example)**

| | Change In Annual Gross Revenue | Change In Annual Severance Tax | Tax Rate On Incremental Production | Average Tax Rate Before Drilling | Average Tax Rate After Drilling | Percent Change In Average Tax Rate Due To Drilling |
|---|---|---|---|---|---|---|
| Current Law | $981,000 | ($37,846) | -3.9% | 7.820% | 7.806% | -0.180% |
| Proposed Law | $981,000 | $58,611 | 6.0% | 10.944% | 10.938% | -0.055% |

## DRILLING/WORKOVER DISINCENTIVE
## COMMITTEE SUBSTITUTE HB 164

## SEVERANCE TAX CALCULATION

**CURRENT LAW**

*Field Rate × Wellhead Price × Severance Tax × ELF*

90,168,000 *BOPY* × \$9/*BO* × 0.15 × 0.52134

= \$63,461,050/*year*

Addition of 1 well :

90, 277,000 *BOPY* × \$9/*BO* × 0.15 × 0.5204

= \$63,423,203/*year*

A decrease of \$37,846 year

**PROPOSED LAW**

*Field Rate × Wellhead Price × Severance Tax × ELF*

90,168,000 *BOPY* × \$9/*BO* × 0.15 × 0.7296

= \$88,811,873/*year*

Addition of 1 well :

90, 277,000 *BOPY* × \$9/*BO* × 0.15 × 0.7292

= \$88,870,484/*year*

An increase of \$58,611 year

*[ARCO Handout, March 27, 1987]*

# Attachment B

## A Model to Evaluate the Economics of Drilling Additional Wells

Roger Marks
State of Alaska Department of Revenue
Petroleum Research Section
August 1987

The oil production severance tax structure in Alaska causes the tax to be sensitive to the number of wells in a field. Levied on non-royalty barrels, the tax is the product of the wellhead price (market price less shipping and pipeline costs), the severance tax rate, and the economic limit factor (ELF). The ELF is a number between zero and one which reduces the severance tax as well productivity declines and a field approaches its economic breakeven point:

$$ELF = \left(1 - \frac{PEL}{TP}\right)^{\left[\frac{460 * WD}{PEL}\right]}$$

where PEL = the monthly production rate at the economic limit
TP = total production during the month for which the tax is to be paid
WD = the total number of well days in the month for which the tax is to be paid

Thus, for example, with all other thing equal, as wells increase, PEL will increase, PEL/TP will increase, the base of the exponent will decrease, and the ELF, along with severance tax, will decrease.

Recently there have been legislative proposals to modify the severance tax structure, notably the form of the ELF. Meaningful judgements on the merits of the proposals will depend, among other things, on how they affect development, productivity, profitability, and State revenues.

The State of Alaska Department of Revenue's current forecasting model has a component that computes the economic rent of specific fields to assess whether or not they are feasible to produce given price and volume scenarios. When economic rent is negative production is delayed until a start-up year generating positive economic rent is found. This reduces the likelihood that the model will project revenue from uneconomic fields. When economic rent is positive the model finds the profit maximizing amount of enhanced recovery.

Projected price, volume, and well numbers are exogenous input, with the latter two based on producer public information and State engineering assessments. They reflect the current and announced extent of development, a rather limited time horizon.

Consequently, the Department has developed a model to examine the economics of drilling additional wells in developed fields. Such a model indicates the degree of extra in-fill drilling and production that may occur to maximize economic rent for primary recovery, and is also useful for analyzing potential severance tax structures.

The crux of the model is the relationship it establishes between additional wells and the production profile. On that matter the model is generic while reservoirs are unique, but reflects general engineering principles. The model does allow reasonable systematic comparative policy analysis in an area where the answer is unknowable.

The production decline characteristics of many oil wells and fields follow exponential declines. The slope of the decline curve is called the exponential decline rate, a, where:

$$a = \frac{\ln\left(\frac{q_i}{q_f}\right)}{t}$$

$q_i$ = production rate at the beginning of any time period during the decline

$q_f$ = production rate at the end of the time period

$t$ = number of years between $q_i$ and $q_f$

Production in any year is $1/e^a$ times production in the previous year, where e, the number whose natural logarithm is one, is approximately 2.71828. We henceforth refer to $1/e^a$ as the production multiplier, P. Similarly, the well count will decline as producers are converted to injectors as production, saturation, and pressure drops. The well decline multiplier is estimated at $.5*(1+P)$.

In general, the major impetus for in-fill drilling is to produce a finite amount of oil sooner. Given an initial decline rate, $a_B$, additional wells will slow down the decline rate on a field basis to $a_N$, and the initial production multiplier $P_B$ ($1/e^{a_B}$) increases to $P_N$ as $a_B$ decreases. $a_B$ will decrease at a decreasing rate as wells are added. At Prudhoe Bay $a_B$ is estimated to be 0.090, and $P_B$ is 0.91394.

As wells increase the production multiplier will increase such that

$$P_N = P_B + f(w),$$

where w is the number of additional wells, and production for a given year, $V_t$, will be

$$V_{t-1} * P_N$$

where $V_{t-1}$ is production in the previous year.

f(w) is approximated by the form

$$C * \left[ \ln\left(\frac{\left(w + T^{\frac{x-1}{x}}\right)^x}{T^{x-1}}\right)\right]$$

where T = total wells prior to decline. For Prudhoe Bay T is estimated at 541.

x = 3 is determined such that

$$\left[ \ln\left(\frac{\left(.25T + T^{\frac{x-1}{x}}\right)^x}{T^{x-1}}\right) \Big/ \ln\left(\frac{\left(T + T^{\frac{x-1}{x}}\right)^x}{T^{x-1}}\right)\right]$$

This calibrates f(w) such that 50 percent of the change in f(w) that would result from doubling w is realized after w is increased 25 percent.

$$c = \left(\frac{1}{e^{a_B - .002}} - \frac{1}{e^{a_B}}\right) \Big/ \ln\left(\frac{\left(w + T^{\frac{x-1}{x}}\right)^x}{T^{x-1}}\right)$$

This coefficient calibrates f(w) such that as w = T (i.e. the number of wells is doubled), $a_B$ is reduced by two one-thousandths. For Prudhoe Bay c is estimated to be 0.0002755271.

The intercept term ($T^{\frac{x-1}{x}}$) calibrates f(w) so f(w) = 0 when w = 0.

There is a limited amount of reserves remaining before exponential decline decays into arithmetic. For Prudhoe Bay this is estimated to be 4 billion additional barrels after 1987. The model stops exponential decline when accumulated post-1987 production reaches this estimated limit, and begins arithmetic decline, decreasing production each year by a constant amount equal to the difference in production between the prior two years. Note that arithmetic decline will begin sooner where more wells have been drilled. Also, this gives a more rapid decline where more wells had been drilled, accelerating the arrival of economic shutdown, and consequently total recovery over the economic life of the field may be less with greater numbers of wells even though economic rent is greater.

The model is incorporated into a conventional discounted cash flow profitability model specific to the North Slope. A number of additional wells (w) is exogenously inputed (along with their costs), and a third of them are added in each of the three years 1989 through 1991. A ceiling of T is put on w. Volume is adjusted as specified above. The model cuts off production when after tax net value is negative. The number of additional wells that maximizes economic rent is found iteratively.

Our estimates of the optimum number of additional wells for Prudhoe Bay under current law, as a function of constant real Pump Station One (PS1) price, are as follows. (These prices are approximately $5 under market prices.)

| Price | Additional Wells |
|---|---|
| $15 | 3 |
| $20 | 100 |
| $25 | 316 |

Table 1 compares the well count, production volume, and economic rent, with and without an optimized in-fill drilling program, at a $20 PS1 price.

Table 2 compares the well count, production volume, and economic rent between optimized in-fill drilling programs at $20 and $25 at PS1.

Table 1
Comparison of Wells, Volume, and Economic Rent
With and Without an Optimized In-fill Drilling Program
$20 PSI Price

| | No Optimization | | Optimization (100 wells) | | Increased | Increased |
|---|---|---|---|---|---|---|
| | Wells | Volume (mmbbl) | Wells | Volume (mmbbl) | Wells | Volume (mmbbl) |
| 1988 | 541 | 561 | 541 | 561 | 0 | 0 |
| 1989 | 518 | 513 | 551 | 513 | 33 | 0 |
| 1990 | 495 | 469 | 560 | 469 | 65 | 0 |
| 1991 | 474 | 428 | 569 | 429 | 95 | 1 |
| 1992 | 454 | 391 | 544 | 392 | 90 | 1 |
| 1993 | 434 | 358 | 521 | 359 | 87 | 1 |
| 1994 | 416 | 327 | 499 | 328 | 83 | 1 |
| 1995 | 398 | 299 | 477 | 300 | 79 | 1 |
| 1996 | 381 | 273 | 457 | 275 | 76 | 2 |
| 1997 | 364 | 250 | 437 | 251 | 73 | 1 |
| 1998 | 348 | 228 | 418 | 230 | 70 | 2 |
| 1999 | 333 | 207 | 400 | 208 | 67 | 1 |
| 2000 | 319 | 185 | 383 | 187 | 64 | 2 |
| 2001 | 305 | 164 | 366 | 165 | 61 | 1 |
| 2002 | 292 | 142 | 351 | 144 | 59 | 2 |
| 2003 | 280 | 121 | 336 | 122 | 56 | 1 |
| 2004 | 268 | 99 | 321 | 101 | 53 | 2 |
| 2005 | 256 | 78 | 307 | 79 | 51 | 1 |
| 2006 | 245 | 56 | 294 | 58 | 49 | 2 |
| 2007 | 235 | 35 | 281 | 36 | 46 | 1 |
| 2008 | 224 | 13 | 269 | 15 | 45 | 2 |
| Total | | 5196 | | 5223 | | 27 |
| Economic Rent ($mm) | | 29467 | | 29501 | | 34 |

Table 2
Comparison of Optimized In-fill Drilling Programs
$20 and $25 PSI Prices

| | $20 (100 wells) | | $25 (316 wells) | | | |
|---|---|---|---|---|---|---|
| | Wells | Volume (mmbbl) | Wells | Volume (mmbbl) | Increased Wells | Increased Volume (mmbbl) |
| 1988 | 541 | 561 | 541 | 561 | 0 | 0 |
| 1989 | 551 | 513 | 622 | 513 | 71 | 0 |
| 1990 | 560 | 469 | 700 | 470 | 140 | 1 |
| 1991 | 569 | 429 | 774 | 430 | 205 | 1 |
| 1992 | 544 | 392 | 740 | 393 | 196 | 1 |
| 1993 | 521 | 359 | 709 | 360 | 188 | 1 |
| 1994 | 499 | 328 | 678 | 330 | 179 | 2 |
| 1995 | 477 | 300 | 649 | 302 | 172 | 2 |
| 1996 | 457 | 275 | 621 | 276 | 164 | 1 |
| 1997 | 437 | 251 | 594 | 253 | 157 | 2 |
| 1998 | 418 | 230 | 569 | 231 | 151 | 1 |
| 1999 | 400 | 210 | 544 | 212 | 144 | 2 |
| 2000 | 383 | 192 | 521 | 194 | 138 | 2 |
| 2001 | 366 | 176 | 498 | 177 | 132 | 1 |
| 2002 | 351 | 161 | 477 | 162 | 126 | 1 |
| 2003 | 336 | 147 | 456 | 148 | 120 | 1 |
| 2004 | 321 | 134 | 437 | 136 | 116 | 2 |
| 2005 | 307 | 123 | 418 | 124 | 111 | 1 |
| 2006 | 294 | 112 | 400 | 114 | 106 | 2 |
| 2007 | 281 | 103 | 383 | 104 | 102 | 1 |
| 2008 | 269 | 94 | 366 | 95 | 97 | 1 |
| Total | | 5223 | | 5251 | | 28 |
| Economic Rent ($mm) | | 29501 | | 38275 | | 8774 |

Attachment C

QUALITY SERVICES

Date JUL 15 1987

Anchorage Times

Client No. 30

# Arco to increase oil production

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By Ray Tyson
Times Business Writer

Arco Alaska, Inc. plans to sink five more production wells at Prudhoe Bay beginning in September in the first major increase in drilling activity at Prudhoe in 14 months.

Arco's decision to add an additional oil drilling rig is directly related to recent increases in the price of crude oil, said Arco drilling manager Randy Ruedrich.

It means an additional 100 field jobs at Prudhoe and several hundred more jobs in related businesses in Anchorage and Fairbanks, Ruedrich said.

If the oil price climate continues to improve, he said, further drilling can be expected in the near future.

"This is very good news," Ruedrich said. "It's the first sign that higher crude prices are affecting Alaska's economy."

Hugh Depland, spokesman for Standard Alaska Production Co., which along with Arco operates the Prudhoe Bay field, said Arco's decision to increase drilling required the consent of the eight owners, especially Standard, which owns 50 percent of the field.

Depland said any plans to increase production at Prudhoe required approval of at least 90 percent of the owners.

Arco and Exxon Company USA, the other major owners, each own about 21 percent of the field.

Since oil prices collapsed last year, Arco has reduced the number of rigs on the Slope from 10 to 2, eliminating about 800 field jobs and countless thousands of related jobs in the Railbelt.

"When world crude prices came unglued we began to stack (eliminate) rigs," Ruedrick said. "Now we're in a position to begin replacing" those whose contracts have expired. "This means we don't have to stack another rig."

The contractor to provide and operate the new rig to drill $13 million worth of production wells at Prudhoe will be announced in early August. Drilling will begin about Sept. 1.

Arco also plans to replace a production oil rig at the nearby Lisburne field, which it had planned to eliminate, and continue current production activity at the Kuparuk River field west of Prudhoe.

QUALITY SERVICES

Date JUL 16 1987

Anchorage Times

Client No. 350

# Standard adds drill rig to Prudhoe field

## Anticipates another dozen before end of year

3VSA 350 0360 0590

Standard Alaska Production Co. has added a drilling rig to its Prudhoe Bay operation, signaling yet another industry response to increasing oil prices following months of relative inactivity.

Arco Alaska, Inc., which along with Standard operates the field on behalf of eight owners, announced on Tuesday plans to add an additional rig to drill five production wells beginning in September.

Standard spokesman Hugh Depland said today the new Standard rig began operating in mid-June.

Standard, which plans to sink about 12 more production wells by the end of the year, now has two rigs operating on the western portion of the field.

The new Arco and Standard rigs mean an extra 200 field jobs and several hundred more jobs in related industries in Anchorage and Fairbanks.

It costs about $2.3 million to drill a production well.

Wells must be added to maintain the 1.5-million-barrel a day production level at Prudhoe Bay.

"The signing on of an additional rig was made possible by the improvement in oil prices," Depland said. "We had planned to do this all along. But the increase in prices made it possible."

Oil prices have steadily increased since they hit rock bottom at $8 a barrel last year.

Oil futures today reportedly climbed to $22 a barrel, the highest in 18 months.

Oil prices at West Texas Intermediate, the U.S. benchmark, jumped to $22.15 a barrel.

# Opinion



*Editorial Opinion and Comment of*

FAIRBANKS

**Daily News-Miner**

"Independent in All Things    Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

## *Treating the symptom?*

Judging from the recent audit, critics of the city's steam heat utility were right all along.

The audit showed that a shocking two-thirds of steam-heated properties had meter bypasses.

Six of the bypasses were found to be active during the well-publicized March audit, meaning the customers got steam without it showing up on their meters or their utility bills. There's no way of telling how many were active when the city *wasn't* looking.

All of which may do much to explain why the system "loses" about a third of its steam, has lost more than $3 million since 1980, and expects to lose another $550,000 this year.

The critics, consisting mainly of steam-heat users who *have* been paying their bills, had complained that recent rate increases wouldn't have been necessary if the system was run efficiently, and it's clear now they were on target.

An ordinance before the city council should bring the bypass problem under control and stop losses to unmetered users, and the downtown utilidor work should cut losses from leaks in the steam lines.

Let's hope these improvements end the need for more rate increases, as well as the system's financial hemorrhage.

But let's not forget that MUS management allowed the problem to fester for years, and did the audit chiefly in response to pressure from customers and elected and appointed officials, rather than from any internal drive for efficiency or fairness.

Consequently, it's not safe to assume an ordinance will permanently fix the system's problems. As long as the same managers are in charge of it, the cure may be only temporary.

## *The merry month*

In May, many things are honored of which we

# Should Alaska change the ELF formula?

## Yes

**Guest Opinion**

By SAM COTTEN

The importance of oil and gas development in Alaska's economy can't be overstated. As Alaskans we derive the largest part of our economic development and public revenue from our oil fields and oil taxes. But judging from the fact that Prudhoe Bay producers are due to receive an $80 million tax break from the state this June, there is something wrong with our existing tax structure.

Prudhoe Bay is by far the most productive and profitable field in United States history. Prudhoe oil producers have made huge profits from developing this resource, owned by the people of Alaska, and from shipping and refining the oil produced there.

It is unrealistic to say, as some industry advocates have, that maintaining the current tax regime for this field (by passing the House bill), will destroy or diminish Alaska's oil industry. Prudhoe Bay and Kuparuk—the two fields that receive smaller tax breaks under the Economic Limit Factor (or ELF) bill that recently passed the House—are healthy, profitable fields.

This bill makes our oil tax system more equitable and sensible. It does two important things:

1. It prevents large tax breaks for giant oil fields like Prudhoe Bay and Kuparuk, where tax incentives aren't needed. These large tax breaks are scheduled to take effect at the end of June, and they will mean the loss of about $90 million to $120 million in revenue per year over the next five years.

2. It provides tax incentives for production from every other known field in Alaska. These are smaller, more marginal fields like Endicott, Lisburne, and Milne Point—which was recently shut down because its production was uneconomic.

This makes sense. Where marginal fields can be developed in Alaska, they provide jobs and in many cases substantial royalty income to the state. They broaden the industry and brighten the future for production from other marginal fields.

Some industry representatives are saying now that the state shouldn't change its tax system, that "tax stability" is the most important issue here. The proposed changes to the ELF will not cause Prudhoe and Kuparuk producers to stop or limit production, which has been growing rapidly. And it will enhance the economic viability of smaller fields.

So the real issue for these industry representatives, of course, is money. It's clear from history that the industry actually favors an "unstable" tax regime when it will benefit.

For instance, when the price of oil was climbing in 1981, the oil industry came to the Legislature and asked for tax breaks. The Legislature responded, implementing a new "unitary" tax system for Alaska. Since that time, the people of the state of Alaska have foregone more than a billion dollars worth of revenue that would have been collected under the former system.

I am not reopening the question of the unitary tax vs. separate accounting of taxes. But I am pointing out that the industry has been the willing beneficiary of select "unstable" tax policies in the past.

In this case, if the Legislature does not change the current tax system, the state of Alaska will forfeit needed revenue that could have been used in our shrinking school budgets, for maintaining roads, and for continuing resource management programs that the Senate now advocates cutting by 15-25 percent. And smaller, marginal fields in Alaska will continue to be inequitably treated under existing law.

The facts about the ELF and the proposed ELF changes show that we need a different tax system. The vague representations by oil industry representatives—that the industry will be deeply damaged, that Alaska will lose points for being an unstable state—have not been very convincing.

I am strongly supportive of Gov. Cowper's effort to modify the existing ELF law. The House and Gov. Cowper are working together for a tax system that truly serves the interests of Alaskans.

*Rep. Sam Cotten, D-Eagle River, co-chairs the Alaska House Resources Committee*

## No

**Guest Opinion**

By HAROLD HEINZE

It is vital that Alaskans think about how they fit into their local and state economy so they can encourage activities that contribute to jobs and income.

In Fairbanks, the economy is directly impacted by the level of North Slope drilling activity. When oil prices fell, drilling diminished. Now, new oil severance tax legislation passed by the state House would discourage an increase in drilling activity. That's bad news for Fairbanks.

Statewide, the fuel supbly for the state's economic engine is the dollars derived from extracting and exporting natural resources, including oil and gas, fish, timber, minerals and coal.

The gross value of oil and gas produced in Alaska in 1986 was $4 billion. That's the money derived from selling those resources on the world market. In 1985, when oil prices were considerably higher, the comparable number was $12 billion. If you have wondered why the Alaskan economy is sputtering, it is entirely contained within that one single change. No other natural resource value changed significantly.

Two other sources of fuel for the Alaska economy are tourism and defense spending by the federal government. State government is not on the list because it does not create wealth; it runs off the same fuel supply as the private economy. (The only exception is the state's Permanent Fund dividend program.)

What does it take to succeed in the natural resource businesses? Since they all are sold in the world market at world prices, the key to success is to be a low cost producer. The resource industries all are sensitive to government regulation and they all require access to the land.

There's been a lot of conversation about diversification of the state's economy. But the best answer I know to what ails the economy is to figure out ways to help the natural resource industries grow. They are already big contributors to the state's economy and increases in any of them help the economy grow.

When we look at the $450 million ARCO Alaska has spent in Fairbanks over the last four years, we find, as expected, that the construction companies based in Fairbanks are a big part of that.

However, the construction dollars represent only about a quarter of the money ARCO is putting into the Fairbanks economy. Drilling activities and trucking are major pieces of that dollar infusion.

More than half the traffic on the Dalton Highway, for example, represents Fairbanks carriers hauling things for ARCO Alaska. In the early years of Prudhoe development, most supplies traveled to the North Slope by barge. But Fairbanks people worked together and made freight movement up the highway a very competitive thing.

The changes to the state's Economic Limit factor, which are in a bill recently adopted by the state House of Representatives, would have a major adverse impact on ARCO's North Slope drilling activity. That means the entire Fairbanks economy will be negatively impacted.

What started as a proposal by the governor to modify one portion of the severance tax law ended as a major restructuring of the severance tax on the oil industry in Alaska. Producers would be penalized for drilling additional wells and adding new production.

The new bill (House Bill 164) would increase the severance tax on the Kuparuk River field by 84 percent, and on the Prudhoe Bay field by 44 percent. We calculate that it would add $1.8 billion to industry's tax bill over the next 10 years, based on state Department of Revenue oil price estimates.

In restructuring the tax, the House introduced new factors. Instead of basing the tax on production from each well, it relates the tax rate to the production level from an entire field. That means the more oil produced from a field, the higher the tax rate. It removes any incentive to increase production.

In our business, you drill wells and try to increase production to lower operating costs. That's how we compete and how we generate more jobs and more wealth for everyone. The House bill is counterproductive.

Passing that bill tells me that the House majority is not looking at the impact on the private sector.

I know that many people in Fairbanks are working to get the economy going. But when the vote was taken in the House on the severance tax, the five House representatives from Fairbanks all voted for the tax increase.

The state Senate is going to have to address this issue. Your input to Senate members from Fairbanks will be vital in deciding the issue.

Other oil-producing states are looking for ways to encourage oil producers to drill more wells. Those states are aware of the benefits of oil development activity. Meanwhile, the Alaska House has passed new legislation that discourages drilling in the Prudhoe Bay and Kuparuk oil fields. It is new state policy that will further dampen drilling activity on the North Slope and further shrink the state's private economy.

*Harold Heinze is president of ARCO Alaska, Inc.*

Bach Taxer Sam Cotten

DEPARTMENT OF REVENUE COMMENTS

February 22, 1988

SENATE BILL 401

S.B. 401 appears to be based on the assumption that -- at least in the limited circumstances covered by the bill -- an administrative agency cannot "fairly" resolve a dispute within its area of responsibility. This assumption is directly contrary to Alaska's basic system of government, which relies heavily on administrative agencies to resolve disputes. It is also contrary to the specific provisions governing hearing procedures within the department of revenue, and court oversight of those procedures.

Our current tax system begins with an audit followed, if necessary, by an assessment. If a taxpayer disagrees with the assessment, it may request an informal conference, and then a formal hearing. After formal hearing, a taxpayer (but not the department) may appeal to superior court for review. The superior court will apply certain standards in reviewing the agency decision. This court review is the way our system guarantees fairness and due process. The court will examine whether or not the agency has provided a fair hearing. If it has not, the court can grant de novo review. It will make sure that the agency has correctly applied the law, and will reverse the agency if it did not. It will make sure that the agency's determination is supported by its findings, and that the findings are supported by the evidence. In Alaska, the court may exercise its independent judgment on the evidence. It may set aside factual findings if they are not supported by the weight of the evidence as a whole. If appropriate, the reviewing court will augment the record.

The department of revenue applies, administratively, the tax laws that the legislature has passed. This administrative procedure is just like that of a great many other administrative agencies within Alaska, in other states, and in the federal system. States chose the administrative procedure for tax matters, instead of the courts, in order to reduce the burden on the court system, to provide the taxpayer with a forum less formal and costly than the courts, and to provide the taxpayer with a forum that has first hand experience and expertise in the tax laws.

The bill would restructure this basic dispute-resolution mechanism, but only for certain types of taxpayers for certain types of taxes. It would change the administrative procedure from one in which a dispute is <u>resolved</u> by the agency, with an appeal to the court available, to one in which the administrative procedure only finalizes the agency's position. The dispute then would be <u>resolved by the court instead of the agency</u>.

These changes are accomplished in the bill by (1) providing that internal agency review (the present "informal" and "formal" hearings) is for the purpose of establishing an assessment rather than, as now, for the purpose of reviewing the correctness of an assessment and (2) providing for a trial de novo for any part of the department's final assessment with which the taxpayer does not agree. These changes make the bill inconsistent with the basic duties of the department, as outlined in AS 43.05.010. Paragraph (9) of that section provides that the commissioner of revenue shall "hear and determine appeals involving ... taxes ... and enter orders on the appeals which are final unless reversed or modified by the courts."

In addition to this basic restructuring of the mechanism for resolving disputes, the bill provides serious restrictions that work against the state in both the agency review and in the court proceeding. The highlights of these deficiencies are outlined below:

1. The bill fails to link the time requirements that it imposes or permits. The bill does not change the current requirement that an assessment be made within a three year statute of limitations. However, it adds approximately 300 days of procedures (from the issuance of the preliminary audit conclusions through the policy review decision) that must be accomplished before this statute runs. The shorter timelines set up by the bill may be extended by mutual agreement, but there is no requirement that the statute of limitations would be tolled if such an agreement were made.

Similarly, under the bill the taxpayer may appeal the "reasonableness" of a departmental request for information, but there is no requirement that the statute of limitations is tolled while the appeal is pending. Since the statute runs against the state and not the taxpayer, these provisions will reduce the state's ability to make accurate assessments within the three year period.

2. The procedural time limits are not workable. The bill cuts the time available to audit the production tax by one third to one half. The severance tax is a monthly tax. The department doesn't audit a single month, but rather joins twelve tax periods (one year) together. This means that when the audit begins, almost a year of the three year period has already run for at least one tax period. The bill adds about a year (300 days) of procedures that are supposed to fit in after the audit but before the three year statute runs. This leaves only slightly more than a year for the audit. In the experience of the department, under the best of circumstances, a severance tax audit takes between two and three years.

3. The taxpayer does not have to, and has no incentive to, provide relevant information to the department. A combination of provisions in the bill would result in the department being unable to base its tax assessments on the best information. First, the bill allows the taxpayer to appeal the reasonableness of a departmental request for information. Since the statute of limitations continues to run, the department must complete its assessment without the requested information. Second, the subpoena and inquiry provisions of AS 43.05.240(c)) applicable to other types of taxpayers would not apply to hearings on oil and gas taxes. Third, if information arises during, for example, the closing conference, the department won't have the time (under the bill's schedule) to pursue it. Finally, the type of de novo court review in the bill would permit the taxpayer to introduce factual material

in court that has not been presented to the agency. The combined effect of these provisions is that the department would be forced to assess on insufficient information.

4. The court procedure is unfairly biased against the state. The bill provides for a trial _de novo_ only of "those portions" of the department's tax bill that the taxpayer disputes. This gives the taxpayer the exclusive power to define the scope of the court proceeding. No counterclaim can be raised by the state. But tax matters can often be intertwined. Suppose, for example, that the department had found that a certain expense could not be deducted as a cost, but rather had to be capitalized and depreciated. The taxpayer could appeal the department's determination that the expense could not be deducted. But the department would be bound by its determination that the expense should be capitalized. The taxpayer might end up both deducting and depreciating the same expense.

An important part of our current statutory framework is that the taxpayer must present _all_ his tax information to the department. The taxpayer cannot wait until the case gets to court and then present information. The court will admit new information only if it was unreasonably excluded by the agency or if it could not have been produced earlier. AS 44.62.570(d). This provision ensures that the department can make the best determination regarding a taxpayer's tax liability.

As explained above, the bill allows the taxpayer to withhold information from the department, resulting in unsubstantiated assessments. By allowing the taxpayer to carefully define the scope of the "de novo" review, the bill ensures that, whenever a gap in information works to the taxpayer's advantage, the gap will not be filled at the court level. However, when the gap can be filled to the taxpayer's advantage, the bill would permit him to fill it.

5. The transition provisions cannot be applied. The bill drastically restructures internal agency provisions. The transition section applies these new procedures to pending matters without any explanation as to how this could be done. The bill requires nearly a year of procedures that have to be finished before the three year statute of limitations runs. But it does not explain how to apply those provisions if, for example, the statute will run next month. The bill does not explain what happens if the assessment has already been issued. Under the bill, an assessment is not final for purposes of the statute of limitations until a policy review narrative and schedules or worksheets are provided to the taxpayer. Since these new steps have not happened in old assessments, it could be argued that the currently outstanding assessments are not valid. The statute of limitations has run on those assessments.

PERSPECTIVE ON SB 401

SB 401 drastically changes the administration of our tax law. Based on review by department staff, it is my opinion that SB 401 will severely reduce the state's ability to pay for needed government services.

SB 401 would disrupt the scheduling on major tax issues now in the administrative appeal process. SB 401 unrealistically shortens the amount of time available to the state to review and audit a tax filing.

SB 401 would restrict the department's access to information necessary to produce an accurate review of return and determine whether taxes (or a refund) were due.

SB 401 would virtually eliminate the incentive for an affected taxpayer to produce information for an administrative determination on the amount of tax due.

SB 401 would give the specially treated taxpayers the right to a de novo review in the court on issues of their choosing even on issues/facts that were not raised previously by the taxpayer.

In summary, SB 401 will reduce the states ability to collect taxes and royalties. It would weaken the present audit programs resulting in even greater likelihood of non-compliance.

A far better approach would simply be to modify the law to require payment of taxes after the administrative hearing, subject to refunds if the taxpayer prevails in court on any remaining disputed issue.

A. <u>DISPUTED ASSESSMENTS</u>

1. Disputed taxes and royalties

   - Disputed taxes and royalties
   - complexity of issues
   - responses

B. <u>SELF INFLICTED POVERTY</u>

1. Major erosions of the state revenue base since 1977

2. Erosion since 1981

   - income tax
   - property tax — total in excess of $1 billion

3. New losses - millions of dollars

| FY 88 - FY 89 (2 years) | |
|---|---|
| ELF | 305.0 |
| Property Tax | 35.5 |
| Fish Tax Credit | 30.0 |
| | 370.5 |

C. <u>PROGRAM FOR IMPROVEMENT</u>

1. Collection a priority - use tools at our disposal

2. Pass HB 164 (ELF)

3. Pass HB 58

4. Initiate program to review our tax structure

D. <u>DEALING WITH THE CURRENT ECONOMIC CONTRACTION</u>

1. Adequately funded government programs

2. Creating jobs

3. Building for the future

When I first saw the subject "disputed assessments" on the Joint Economic Recovery Committee agenda I was not sure what was required.

Right now, the department has over $2.5 billion dollars in assessed but uncollected taxes, penalties, and interest. These taxes are practically all deficiencies that have been assessed for oil and gas income or production taxes.

Besides the disputed taxes, the amount of money due the state for our royalty oil is in court. A final assessment for the royalty due has not yet been completed, but the amount will be in the hundreds of millions, if not billions of dollars.

Since final determinations have not yet been made on the actual amount of taxes or royalties due, a total dollar amount is not known. But the amount is large.

## COMPLEXITY OF ISSUES

The disputed tax amounts are part of a a general problem that started in 1977 when the large reservoir at Prudhoe Bay went into production. Our law defines the value of oil for tax and royalty as the value of oil at the point of production or field. As you know, we arrive at this "netback" value by taking the value of the oil in the market and subtracting back the costs of transport to the point of production. This sounds simple. It is not. The early years of Prudhoe Bay products were years when

1. North Slope producers were struggling for a market share, and different producers were applying different marketing strategies.

2. World oil prices zoomed from $12 up to about $40, making value difficult to determine and changing investments that led to changes in relative crude value.

3. Federal price controls were in effect making it more difficult for producers to capture the real value of the oil.

4. Windfall profits taxes affected marketing and pricing strategies.

This led to a tumultuous and confusing trail to follow.

Common issues that arise are

You would expect all the oil coming out of the ground at the same place at the same time to have the same value. And I would say it does. But not for our tax laws.

It is possible for the same producer to have their oil going to six or seven different markets.

This does happen. So we have six or seven different tax values for the same oil for the same producer for the same day.

Some producers value the oil when it is produced, some when it is sold. This led to situations where oil <u>produced on the same day</u>, and delivered to the <u>same market</u>, have substantially different values, because prices changed in the month or so it took to get the oil to market.

Some producers sold the oil out right. Some sold it to themselves. Some traded it for foreign crudes that were not subject to price controls. These all produce different values for the same oil.

Transportation costs are, except for the tariff, equally complicated and diverse.

Defining these issues, getting the company data to analyze them, and determining the correct amount of tax or royalty due is an enormous task.

This situation, plus the natural tendency for taxpayers to reduce their tax payments as much as they think they can, gave rise to the present situation.

SELF INFLICTED POVERTY

We all are aware of how vulnerable we are to oil prices. But there is almost no discussion of what damage we are doing to ourselves.

In 1981, the Legislature repealed the state separate accounting income tax law for oil and gas income tax and replaced by the apportionment income tax we have today. This law was repealed because of a legal challenge by the oil companies in ARCO v. STATE (This law was later upheld by the court). Even though the Legislature increased the rate of the severance tax, in the three years following this change the estimated revenue loss to the state overall was over $650 million dollars. Lower oil prices would reduce this loss right now, we still continue to suffer from that tax law change.

The income from our 20 mill oil and gas property tax is eroding.

In 1978 the assessed value of the tax base was $11 billion. The state received 173 million dollars, or 78% of the 20 mills.

In 1987 the assessed value was 18 billion. The state received 102 million, or 28% of the total revenues.

In 1987 we saw the beginning of the effects of the E.L.F. This law, as presently written, provides large tax breaks for high-production oil fields, while at the same time providing insufficient tax reduction for marginal fields.

We also saw the effects of the newly-passed fisheries tax credit which is estimated to cut state fish tax receipts from $30 million per year down to about $15.

The decline in state income due to the E.L.F. The reduction in the state share of the oil and gas property tax, and the fish tax credit will cost the state approximately $370,500,000 in lost revenue for FY 88 and FY 89 combined.

(Comparisons w/FY 87 in millions of dollars)

| | FY 88 | FY 89 | 2 Year TOTAL |
|---|---|---|---|
| ELF $ Loss | (147) | (158) | (305) |
| Oil and Gas Production Tax $ Loss | (27.5) | (35.5) | (63) |
| Fish Tax $ Loss | (14.2) | (13.2) | (27.4) |
| | (188.7) | (206.7) | (395.4) |

I know of no other way to describe this situation than self-inflicted poverty.

We are giving away the State's Revenues:

- ELF Memo
- Oil and Gas Property Tax Tables
- 9/87 General Fund Unrestricted Revenues Source Book Table.

State of Alaska
Department of Revenue
Oil and Gas Audit Division

RECEIVED
ALASKA DEPARTMENT OF REVENUE
FEB 19 1988
OFFICE OF THE COMMISSIONER

M E M O R A N D U M

To: Hugh Malone, Commissioner

Thru: William Floerchinger, Director

From: Charles Logsdon, Petroleum Economist CL

Date: February 19, 1988

Subject: Current Estimate of the Revenue Impact of ELF on Prudhoe Severance Taxes

As you know, since July 1987, the severance tax rate on production from Prudhoe Bay has been subject to the Economic Limit Factor (ELF). The ELF reduces the severance tax rate on an oil field. The magnitude of the tax reduction depends on how much oil is produced from each well in the field. The Prudhoe Bay oil field is not only the State's largest oil field but is produced with the highest average production per well. An aggressive drilling program such as that announced by the Prudhoe producers will keep production at the 1,540,000 million barrel per day level but will do it with more wells than are currently required. For this reason, the severance tax rate will fall even though Prudhoe production will not.

The revenue impact of the ELF depends not only on the magnitude of the tax rate reduction, but also on the tax base which is determined by the value of the production. Based on our current assumptions about price, production, and wells for Prudhoe Bay, we project the cost to the State of the ELF to be $147 million in FY 1988 and $158 million in FY 1989. These estimates are considerably higher than those made last Spring when the legislature was considering ELF legislation. The reason is a combination of higher assumed prices, production in FY 1989, and a greater number of wells.

The following tables illustrate the current estimate of the cost to the State of the Prudhoe ELF as compared to the estimates made last Spring and what accounts for the change in the estimate.

Revenue Impact of ELF on Prudhoe--Comparison
Spring 1987 and February 1988 Estimates

| | June 1987 Est. | Feb. 1988 Est. | Difference |
|---|---|---|---|
| 1988 | $101 million | $147 million | $46 million |
| 1989 | 96 million | 158 million | 62 million |

Components of Increased Cost of ELF Estimate
February 1988 vs June 1987 Projections

| | Total Difference | Higher Price Production | Increased Wells |
|---|---|---|---|
| 1988 | $46 million | $27 million | $19 |
| 1989 | 62 million | 22 million | 40 |

CLL/pjt
Enclosures

## AS 43.56. OIL AND GAS RELATED PROPERTY TAX HISTORY

| Year | State Assessed Value | Percent Increase | Gross Revenue | Local Credit | Net to State | Percent Increase to State | Percent of Gross to State |
|---|---|---|---|---|---|---|---|
| 1975 | 1,288,259,900 | N/A | 25,765,198 | 9,635,032 | 16,130,617 | N/A | 62.6 |
| 1976 | 4,622,605,630 | 258.83 | 92,452,113 | 24,526,617 | 67,926,767 | 321.10 | 73.5 |
| 1977 | 8,492,245,560 | 83.71 | 169,844,911 | 37,527,256 | 132,317,674 | 94.79 | 77.9 |
| 1978 | 11,076,984,670 | 30.44 | 221,539,693 | 48,019,417 | 173,520,276 | 31.14 | 78.3 |
| 1979 | 11,946,447,380 | 7.85 | 238,928,947 | 66,609,309 | 172,319,637 | (0.69) | 72.1 |
| 1980 | 12,165,633,950 | 1.83 | 243,312,679 | 72,900,166 | 170,412,512 | (1.11) | 70.0 |
| 1981 | 13,170,633,280 | 8.26 | 263,412,665 | 121,116,160 | 142,296,505 | (16.50) | 54.0 |
| 1982 | 14,410,448,680 | 9.41 | 288,208,973 | 144,171,544 | 144,037,429 | 1.22 | 50.0 |
| 1983 | 16,059,836,120 | 11.45 | 321,196,722 | 170,818,425 | 150,378,297 | 4.40 | 46.8 |
| 1984 | 18,593,314,880 | 15.78 | 371,866,298 | 242,038,930 | 129,827,368 | (13.67) | 34.9 |
| 1985 | 19,020,513,970 | 2.30 | 380,410,279 | 254,063,318 | 126,346,961 | (2.68) | 33.2 |
| 1986 | 19,542,046,830 | 2.74 | 390,840,937 | 277,578,082 | 113,262,855 | (10.36) | 29.0 |
| 1987 | 18,254,278,680 | (6.59) | 365,085,574 | 262,663,565 | 102,422,009 | (9.57) | 28.0 |

1987 AS 43.56 Oil and Gas Related Property Tax
Tax Distribution

| Municipality | Assessed Value | Tax at 20 Mils | Local Rate | Local Credit | Net to State |
|---|---|---|---|---|---|
| North Slope | $12,297,280,780 | $245,953,615.60 | 18.37 | $225,908,395.93 | $ 20,045,219.67 |
| North Star | 572,999,370 | 11,459,987.40 | 10.65 | 6,102,991.63 | 5,356,995.77 |
| Anchorage | 58,938,280 | 1,178,765.60 | 13.25 | 780,148,.47 | 398,617.13 |
| Kenai | 508,435,600 | 10,168,712.00 | 8.33 | 4,233,807.72 | 5,934,904.28 |
| Mat-Su | 4,199,140 | 83,982.80 | 5.80 | 24,355.01 | 59,627.79 |
| Valdez | 1,395,294,400 | 27,905,888.00 | 18.3523 | 25,606,861.42 | 2,299,026.58 |
| Whittier | 279,960 | 5,599.20 | 5.0 | 1,399.80 | 4,199.40 |
| Unalaska | 438,580 | 8.711.60 | 12.78 | 5,605.05 | 3,166.55 |
| Unorganized | 3,416,012,570 | 68,320,251.40 | N/A | N/A | 68,320,251.40 |
| Totals | $18,254,278,680 | $365,085,573.60 | | $262,663,565.03 | $102,422,008.57 |

# General Fund Unrestricted Revenues

**In Thousands of Current Dollars**

| Taxes | FY 1987 Prelim. Actuals | FY 1988 Estimate September | FY 1989 Estimate September | FY 1990 Estimate September |
|---|---|---|---|---|
| Income | | | | |
| Corporate-General | 20,500 | 16,000 | 16,000 | 16,000 |
| Corporate-Petroleum | 120,400 | 120,000 | 120,000 | 120,000 |
| Gross Receipts | | | | |
| Alaska Business License | 1,500 | 1,500 | 1,500 | 1,500 |
| Fish-Canned/Shorebased (1) | 17,500 | 6,000 | 7,000 | 9,000 |
| Fish-Floating | 9,000 | 9,800 | 9,800 | 9,800 |
| Seafood Marketing | 1,400 | 1,600 | 1,600 | 1,600 |
| Salmon Enhancement | 4,400 | 4,900 | 4,900 | 4,900 |
| Insurance Companies | 23,700 | 23,600 | 23,000 | 23,000 |
| Electric & Telephone Co-ops | 2,000 | 1,900 | 1,900 | 1,900 |
| Mining License Tax | 300 | 400 | 400 | 400 |
| Severance | | | | |
| Oil & Gas Production (2) | 639,500 | 728,600 | 658,700 | 753,000 |
| Oil & Gas Conservation (3) | 1,200 | 2,500 | 2,500 | 2,600 |
| Property | | | | |
| Oil & Gas | 102,500 | 75,000 | 67,000 | 60,000 |
| Sale/Use | | | | |
| Alcoholic Beverages | 12,600 | 12,300 | 12,000 | 11,900 |
| Fuel Taxes-Aviation (4) | 8,500 | 8,300 | 8,200 | 8,200 |
| Fuel Taxes-Highway (4) | 18,300 | 19,000 | 18,700 | 18,700 |
| Fuel Taxes-Marine (4) | 5,400 | 5,000 | 5,000 | 5,000 |
| Tobacco Products | 6,600 | 6,300 | 6,100 | 6,000 |
| Other | | | | |
| Estate | 1,100 | 700 | 700 | 700 |
| Total Taxes | 996,400 | 1,043,400 | 965,000 | 1,054,200 |
| Licenses & Permits | | | | |
| Business (5) | 8,600 | 8,500 | 8,500 | 8,800 |
| Non-Business | 19,200 | 19,000 | 19,000 | 19,500 |
| Total Licenses & Permits | 27,800 | 27,500 | 27,500 | 28,300 |
| Intergovernmental Receipts | | | | |
| Federal Shared Revenues (6) (7) | 11,700 | 9,500 | 9,800 | 10,000 |
| State Resource Revenue | | | | |
| Sale/Use | | | | |
| Bonus Sales (6) (8) (9) | 500 | 3,300 | -0- | -0- |
| Investment Earnings (10) | 161,900 | 115,000 | 90,000 | 60,000 |
| Rents (6) (8) (9) | 5,800 | 6,000 | 6,500 | 6,500 |
| Royalties (2) (6) | 445,100 | 654,700 | 608,800 | 688,200 |
| Sale of State Property | 7,000 | 7,500 | 7,500 | 7,500 |
| Gravel, Timber, etc. (11) | 7,200 | 2,500 | 2,500 | 2,500 |
| Facilities Related Charges | | | | |
| Airports | 1,500 | 1,600 | 1,600 | 1,600 |
| Ferry System-Southeast | 27,500 | 29,000 | 31,000 | 32,000 |
| Ferry System-Southwest | 3,800 | 3,900 | 4,000 | 4,100 |
| Other | 4,000 | 5,000 | 5,000 | 5,000 |

| | | | | |
|---|---|---|---|---|
| Service Related Charges | | | | |
| Court System | 5,300 | 5,400 | 5,600 | 5,700 |
| Other | 4,700 | 4,700 | 4,800 | 4,800 |
| Total State Resources Revenues | 674,300 | 838,600 | 767,300 | 817,900 |
| Miscellaneous Revenues | 18,000 | 15,000 | 15,000 | 15,000 |
| Unrestricted Revenues | 1,728,200 | 1,934,000 | 1,784,600 | 1,925,400 |
| Plus: Special Settlements (12) | 70,600 | -0- | -0- | -0- |
| Total Unrestricted Revenues (13) | 1,798,800 | 1,934,000 | 1,784,600 | 1,925,400 |

(1) The FY 88, FY 89, and FY 90 figures reflect the recent enactment of a shorebased fisheries business tax credit which is limited to 50 percent of the business' total tax liability with any unused portion of the credit carried forward two years (Ch. 79, SLA 1986, effective July 1, 1986). For example, the total FY 88 fisheries business tax liability is estimated at $30.0 million against which $14.2 million of estimated credits are applied thus yielding a total net fisheries business tax of $15.8 million. This state share will then be further reduced by municipal revenue sharing. The canned fisheries business tax has been combined into a single category with the shorebased since the tax credits are applied against the aggregate return and cannot be allocated by specific processing type.

(2) The forecasted numbers for FY 88, FY 89, and FY 90 assume the 30 percent case; however, if the mean case had been utilized for FY 88, FY 89, and FY 90, the production taxes would change to $798.9 million, $764.9 million, and $857.1 million, respectively. The royalty figures would change to $715.7 million, $708.6 million, and $786.4 million, respecitvely. All of the forecasted numbers include the estimated TAPS settlement.

(3) Ch. 56, SLA 1987 increased the levy from 1.25 mills to 4.00 mills per barrel of oil and per 50,000 cubic feet of natural gas, effective June 13, 1987.

(4) In FY 86 and FY 87 the Department of Revenue began to levy marine fuel taxes on watercraft motor fuel users who purchased fuel out-of-state but consumed fuel in transit through the state. On March 30, 1987, the State adopted hearing decision #87-07 which established that marine fuel users who merely consumed fuel in transit could not be retroactively taxed. In line with this decision, the Department of Revenue has refunded with interest any taxes collected under the earlier interpretation. This forecast estimates that refunds plus interest will total $1.8 million and assumes that the majority of these refunds paid in FY 87. All motor fuel tax refunds are paid from the Highway Fuel Tax Account.

(5) Figures reflect the recent shift in occupational licensing fees and insurance permit fees from General Fund Unrestricted Revenues to Restricted Program Receipts.

(6) Net Permanent Fund contribution by Ch. 18 SLA 1980.

(7) The FY 87 figure reflects the OCS "8(g)" revenue-sharing settlement of $4.0 million. The General Fund share represents 49.5 percent of the aforementioned total, whereas the Permanent Fund will receive 50.0 percent. The remaining 0.5 percent will be distributed to the Public School Fund.

(8) Reflects state lease sales of $0.9 million held June 24, 1986 (Sale 49 - Cook Inlet), $0.3 million held January 27, 1987 (Sale 51 - Prudhoe Bay Uplands), and $6.6 million held June 30, 1987 (Sale 50 - Camden Bay). Due to the timing of collections, receipts from the June 1986 lease sale are shown as FY 87 revenue, and receipts from the June 1987 lease sale are shown as FY 88 revenue. The bonus figures represent the General Fund's 49.5 percent share.

(9) The Department of Natural Resources projects the following FY 88, FY 89, and FY 90 state lease sales: FY 88 (Sale 54 - Kuparuk Upland, Sale 55 - Demarcation Point, Sale 66A - North Slope Exempt); FY 89 (Sale 52 - Beaufort Sea, Sale 56 - Alaska Peninsula, Sale 67A - Cook Inlet Exempt); and FY 90 (Sale 59 - Cook Inlet, Sale 57 - North Slope Foothills). However, bonus bids are impossible to anticipate prior to sales; therefore, no estimates are provided.

(10) The investment earnings projections reflect the current composition of General Fund assets and current interest rates. The projections reflect a liquidation of General Fund assets over the period because projected General Fund cash expenditure outflows exceed projected General Fund cash revenue inflows. Cash inflows are consistent with the current revenue forecast. Cash outflows are consistent with the current FY 88 budget. General Fund operating expenditures were assumed to remain at approximately FY 88 levels through FY 90.

(11) The FY 87 figure reflects increased construction of roads and drilling pads as projected by the Department of Natural Resources.

(12) The FY 87 figure reflects the General Fund portion from refunds and expenses for prior years relative to the TAPS case ($69.1 million) and court costs relative to the ARCO settlement ($1.5 million). Consequently, $70.6 million was received during FY 87, but this figure is subject to future audits.

(13) The State, per AS 38.05.180, will be granting incentive credits against royalties, severance taxes, and rentals to the oil companies for drilling exploratory wells. The deduction is approximately $2.9 million which has not been subtracted from the aforementioned FY 87 figure of $1,798.8 million. Additional credits are anticipated in subsequent years.

## PROPOSED PROCEDURE

| | | |
|---|---|---|
| 3* yr. from filing (whole period, Audit through Policy Review Decision & Final Assessment) | AUDIT | |
| | PRELIMINARY AUDIT CONCLUSIONS | Includes preliminary assessment, draft narrative and supporting worksheets; ends audit process and begins review of audit results |
| 60-90* days | CLOSING CONFERENCE | Informal, non-adversarial review of preliminary audit conclusions |
| 60* days | CONFERENCE DECISION & PROPOSED ASSESSMENT | Includes narrative and supporting worksheets, revised as necessary |
| 30* days | TAXPAYER REQUESTS POLICY REVIEW | |
| | NO REQUEST FOR POLICY REVIEW ---> PROPOSED ASSESSMENT BECOMES FINAL AND UNAPPEALABLE | |
| 30* days | POLICY REVIEW HEARING | Review to see that the right policies have been used and that they have been applied correctly to the taxpayer |
| 90* days | POLICY REVIEW DECISION & FINAL ASSESSMENT | Statement of statutes & regs being applied and of the specific policies for doing so; assessment includes supporting narrative and worksheets |
| 30 days | APPEAL TO COURT | Trial *de novo* |

* Time may be extended by mutual agreement.

## ALASKA'S PRESENT TAX APPEALS PROCESS

| | | |
|---|---|---|
| | AUDIT | |
| 3* yr. from filing | | No informal review of preliminary audit conclusions with taxpayer |
| | ASSESSMENT | |
| 30 days | | |
| | TAXPAYER APPEAL | |
| indefinite | INFORMAL CONFERENCE | Adversarial; each side is preparing a record in support of its case |
| indefinite | | |
| | FORMAL HEARING | Adversarial; a trial of the facts as well as policy decisions by the Department |
| indefinite | | |
| | FORMAL DECISION | Makes policy decisions, findings of fact, and conclusions of law |
| 30 days | | |
| | TAXPAYER APPEAL TO SUPERIOR COURT | |
| indefinite | | |
| | DECISION | Factual findings by the Department are upheld if not against the clear weight of the evidence; deference is given to agency policies in proportion to the agency expertise perceived to be involved |

* Time may be extended by mutual agreement.

SECTIONAL ANALYSIS

OIL AND GAS TAX PROCEDURES LEGISLATION

Section 1: Enacts a new section, AS 43.05.055, providing for appeals of requests by the Department of Revenue (DOR) for information or materials requested with respect to an audit, investigation or inspection relating to the four major state taxes imposed on the oil and gas industry. Those taxes are the corporate income tax (AS 43.20), the production tax (AS 43.55), the conservation tax (AS 43.57) and the former separate accounting income tax (AS 43.21).

Because the DOR also conducts audits of oil and gas royalties and net profits for the Department of Natural Resources (DNR), DOR can seek and use information obtained in the course of a royalty or net profits audit to determine a person's liability under one or more of these four principal taxes. This section grants the right to appeal an audit request made in the course of a royalty or net profits audit under AS 38.05 in order to avoid any circumvention of a person's right to appeal an unreasonable audit request by characterizing the audit as a royalty or net profits audit instead of a tax audit.

Section 2: The current procedures for administrative appeals within DOR are set out in AS 43.05.240. This second section of the bill amends AS 43.05.240(a). The new language being added at the beginning of the statute reflects the fact that the new procedures are being enacted for the four principal taxes on the oil and gas industry (corporate income tax, production tax, conservation tax and the former separate accounting income tax). The ad valorem property tax, AS 43.56, is not included because the special procedures for it, which allow the the involvement of affected municipalities and boroughs, have not led to the problems which have resulted from the administration of the four principal taxes.

For all other taxes, the present procedures are not being materially changed. Section 2 also creates a new ground for appeal by a person aggrieved by an action of the DOR in