

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6967 HOUSE JUDICIARY

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(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

(Oct. 17, 1986, P. L. 99-499, Title III, § 311, 100 Stat. 1736.)

HISTORY; ANCHILARY LAWS AND DIRECTIVES

References in text:

"The Occupational Safety and Health Act of 1970", referred to in this section, is Act Dec. 29, 1970, P. L. 91-596, 84 Stat. 1590, which appears generally as 29 USCS §§ 651 et seq. For full classification of such Act, consult USCS Tables volumes.

Effective date of section:

Act Oct. 17, 1986, P. L. 99-499, § 4, 100 Stat. 1614, which appears as 42 USCS § 9601 note, provides that this section is effective on enactment on Oct. 17, 1986.

§ 11022. Emergency and hazardous chemical inventory forms

- (a) **Basic requirement.** (1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this title referred to as an "inventory form") to each of the following:
- (A) The appropriate local emergency planning committee.
 - (B) The State emergency response commission.
 - (C) The fire department with jurisdiction over the facility.
- (2) The inventory form containing tier I information (as described in subsection (d)(1)) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2)) to the recipients described in paragraph (1).
- (3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:
- (A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.
 - (B) Providing information on the inventory form on the mixture itself.
- (b) **Thresholds.** The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may,

in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) **Hazardous chemicals covered.** A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 311 [42 USCS § 11021].

(d) **Contents of form.** (1) Tier I information. (A) Aggregate information by category. An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(B) Required information. The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii) The general location of hazardous chemicals in each category.

(C) Modifications. For purposes of reporting information under this paragraph, the Administrator may—

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) Tier II information. An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e):

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 324 [42 USCS § 11044].

(e) **Availability of tier II information.** (1) Availability to state commissions, local committees, and fire departments. Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d), to the person making the request. Any such request shall be with respect to a specific facility.

(2) Availability to other state and local officials. A state or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) Availability to public. (A) In general. Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) Automatic provision of information to public. Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 324 [42 USCS § 11044]. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 324 [42 USCS § 11044] to the person making the request.

(C) Discretionary provision of information to public. In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee

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may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 324 [42 USCS § 11044] to the person.

(D) Response in 45 days. A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) Fire department access. Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) Format of forms. The Administrator shall publish a uniform format for inventory forms within three months after the date of the enactment of this title [enacted Oct. 17, 1986]. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter. (Oct. 17, 1986, P. L. 99-499, Title III, § 312, 100 Stat. 1738.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The Occupational Safety and Health Act of 1970", referred to in this section, is Act Dec. 29, 1970, P. L. 91-596, 84 Stat. 1590, which appears generally as 29 USCS §§ 651 et seq. For full classification of such Act, consult USCS Tables volumes.

"This title", referred to in this section, is Act Oct. 17, 1986, P. L. 99-499, Title III, 100 Stat. 1728, which generally appears as 42 USCS §§ 11001 et seq. For full classification of such Title, consult USCS Tables volumes.

Effective date of section:

Act Oct. 17, 1986, P. L. 99-499, § 4, 100 Stat. 1614, which appears as 42 USCS § 9601 note, provides that this section is effective on enactment on Oct. 17, 1986.

§ 11023. Toxic chemical release forms

(a) Basic requirement. The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) for each toxic chemical listed under subsection (c) that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) during the preceding calendar year at such facility. Such form shall be

(2) Written statement of need. The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) **Confidentiality agreement.** Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) **Regulations.** As soon as practicable after the date of the enactment of this title [enacted Oct. 17, 1986], the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection (a) and (c) and the confidentiality agreement under subsection (d).

(Oct. 17, 1986, P. L. 99-499, Title III, § 323, 100 Stat. 1750.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 17, 1986, P. L. 99-499, § 4, 100 Stat. 1614, which appears as 42 USCS § 9601 note, provides that this section is effective on enactment on Oct. 17, 1986.

§ 11044. Public availability of plans, data sheets, forms, and followup notices

(a) **Availability to public.** Each emergency response plan, material safety data sheet, list described in section 311(a)(2) [42 USCS § 11021(a)(2)], inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 322 [42 USCS § 11042], during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the

requirements of section 312 [42 USCS § 11022], the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 312(d)(2) [42 USCS § 11022(d)(2)] to be contained in an inventory form as tier II information.

(b) **Notice of public availability.** Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a). (Oct. 17, 1986, P. L. 99-499, Title III, § 324, 100 Stat. 1752.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 17, 1986, P. L. 99-499, § 4, 100 Stat. 1614, which appears as 42 USCS § 9601 note, provides that this section is effective on enactment on Oct. 17, 1986.

§ 11045. Enforcement

(a) **Civil penalties for emergency planning.** The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 302(b)(2) [42 USCS § 11002(b)(2)]) to comply with section 302(c) [42 USCS § 11002(c)] and section 303(d) [42 USCS § 11003(d)]. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

(b) **Civil, administrative, and criminal penalties for emergency notification.**

(1) **Class I administrative penalty.** (A) A civil penalty of not more than \$25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 304 [42 USCS § 11004].

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) **Class II administrative penalty.** A civil penalty of not more than \$25,000 per day for each day during which the violation continues may

paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Oct. 17, 1986, P. L. 99-499, Title III, § 325, 100 Stat. 1753.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 17, 1986, P. L. 99-499, § 4, 100 Stat. 1614, which appears as 42 USCS § 9601 note, provides that this section is effective on enactment on Oct. 17, 1986.

SERC Liability under Federal law

11046. Civil actions

(A) Authority to bring civil actions. (1) Citizen suits. Except as provided in subsection (e), any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

- (i) Submit a followup emergency notice under section 304(c) [42 USCS § 11004(c)].
- (ii) Submit a material safety data sheet or a list under section 311(a) [42 USCS § 11021(a)].
- (iii) Complete and submit an inventory form under section 312(a) [42 USCS § 11022(a)] containing tier I information as described in section 312(d)(1) [42 USCS § 11022(d)(1)] unless such requirement does not apply by reason of the second sentence of section 312(a)(2) [42 USCS § 11022(a)(2)].
- (iv) Complete and submit a toxic chemical release form under section 313(a) [42 USCS § 11023(a)].

(B) The Administrator for failure to do any of the following:

- (i) Publish inventory forms under section 312(g) [42 USCS § 11022(g)].
- (ii) Respond to a petition to add or delete a chemical under section 313(e)(1) [42 USCS § 11023(e)(1)] within 180 days after receipt of the petition.
- (iii) Publish a toxic chemical release form under 313(g) [42 USCS § 11023(g)].
- (iv) Establish a computer database in accordance with section 313(j) [42 USCS § 11023(j)].
- (v) Promulgate trade secret regulations under section 322(c) [42 USCS § 11042(c)].

42 USCS § 11046

PUBLIC HEALTH AND WELFARE

(vi) Render a decision in response to a petition under section 322(d) [42 USCS § 11042(d)] within 9 months after receipt of the petition.

* (C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324(a) [42 USCS § 11044(a)].

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) [42 USCS § 11022(e)(3)] within 120 days after the date of receipt of the request.

(2) State or local suits. (A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 302(c) [42 USCS § 11002(c)].

(ii) Submit a material safety data sheet or a list under section 311(a) [42 USCS § 11021(a)].

(iii) Make available information requested under section 311(c) [42 USCS § 11021(c)].

(iv) Complete and submit an inventory form under section 312(a) [42 USCS § 11022(a)] containing tier I information unless such requirement does not apply by reason of the second sentence of section 312(a)(2) [42 USCS § 11022(a)(2)].

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 303(d) [42 USCS § 11003(d)] or for failure to submit tier II information under section 312(e)(1) [42 USCS § 11022].

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g) [42 USCS § 11042(g)].

(h) Venue. (1) Any action under subsection (a) against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) Relief. The district court shall have jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice. (1) No action may be commenced under subsection (a)(1)(A) prior to 60 days after the plaintiff has given notice of the alleged

violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) **Limitation.** No action may be commenced under subsection (a) against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act [42 USCS §§ 11001 et seq.] with respect to the violation of the requirement.

(f) **Costs.** The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) **Other rights.** Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) **Intervention.** (1) By the United States. In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons. In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

(Oct. 17, 1986, P. L. 99-499, Title III, § 326, 100 Stat. 1755.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Brackets are inserted around the first period in subsec. (a)(2)(A)(iv) to indicate the probable intent of Congress to omit such punctuation.

Effective date of section:

Act Oct. 17, 1986, P. L. 99-499, § 4, 100 Stat. 1614, which appears as 42 USCS § 9601 note, provides that this section is effective on enactment on Oct. 17, 1986.

HB

4/6

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 21, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-4-92

The JUDICIARY Committee considered:

HB 416

HOUSE BILL NO. 416

RATIFY SETTLEMENT W/ ARCTIC SLOPE REG COR

"An Act ratifying an agreement settling litigation between the State of Alaska and the Arctic Slope Regional Corporation; establishing procedures for implementing the agreement; and providing for an effective date."

RECOMMENDATIONS:

be replaced with _____ the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal notes, Law, Natural Resources, Law

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Kevin P. Parnell</i>	<input checked="" type="checkbox"/>	<i>John Ellis</i>		<input checked="" type="checkbox"/>	
<i>Terry Martin</i>	<input checked="" type="checkbox"/>	<i>Mark Stanley</i>		<input checked="" type="checkbox"/>	
<i>W. A. Chamberlain</i>	<input checked="" type="checkbox"/>	<i>Dave & Juley</i>		<input checked="" type="checkbox"/>	

Dave & Juley
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 416

Revision Date: _____
Title: "...settling litigation between the State...Arctic Slope Regional Corporation..."
Sponsor: House Rules/Request of the Governor
Requestor: House Judiciary Committee

Department Affected: Department of Law
BRU: Legal Services
Component: Operations

COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: February 21, 1992
Date: February 21, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 416

This bill approves and ratifies the 1991 settlement between the State of Alaska and the Arctic Slope Regional Corporation to settle claims raised in litigation involving lands in the Nuiqsut and Point Lay areas. Approval of this bill will have the effect of preventing other parties from making claims in this matter. Failure to ratify the settlement could result in the department having to defend against claims potentially costing tens of millions of dollars.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 278-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

February 28, 1992

The Honorable Pat Parnell
Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99801-1182

Dear Representative Parnell:

This letter responds to your inquiries regarding the language in HB 416 (17th Legislature, second session) which ratifies a settlement agreement between the Arctic Slope Regional Corporation and the State of Alaska. Specifically, you questioned whether the language in section 2 (ratification) could be misconstrued by a court in two ways: first, could the provision in lines 5 and 6 that the settlement agreement is ratified "as to the rights, duties, agreements, and obligations of the state" be read to mean that something less than the whole agreement is ratified (i.e., only the enumerated items would be ratified); and second, does the language at line 6 which refers to the rights, duties, agreements, and obligations of the state "provided for or contemplated in" the settlement agreement suggest that some rights, duties, agreements, or obligations "contemplated" by someone at a future date become ratified?

Both the state's and ASRC's attorneys have discussed your question, and we believe that as a matter of law section 2 is clear in specifying that by enacting the bill the legislature is ratifying the agreement in toto and nothing more. The term "contemplated" refers only to those provisions expressly referred to in the settlement agreement, not to any future or undefined provisions. The terms "rights, duties, agreements, or obligations" is intended only to make clear that the settlement agreement does include those responsibilities, and the enumerated terms are broad enough to encompass all the provisions of the settlement agreement. We do not believe that it is necessary to edit the bill at this point to avoid a possible ambiguity or misconstruction. We believe that a court would interpret section 2 to mean that the settlement agreement is ratified in whole and that only what is in the settlement agreement is ratified; we believe a court would reach this conclusion regardless of whether the language after the word "ratified" in line 5 were deleted or left as is. The inclusion of this letter in the legislative history file, if nothing else, should insure that result.

The Hon. Pat Parnell
Alaska House of Representatives

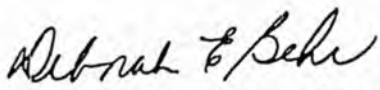
February 28, 1992
Page 2

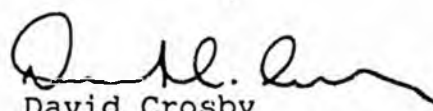
~~We appreciate your careful scrutiny of the bill and~~
attention to good drafting style; you have certainly raised valid questions regarding proper English usage. As you are aware, the bill and the settlement agreement were the product of years of negotiations that involved a number of lawyers, oil and gas experts, and land managers, each of whom made editorial changes to the documents. That process necessarily entails certain sacrifices of prose style in the interest of achieving conceptual agreement. In the instance you have highlighted, we believe the language agreed upon does clearly, from a legal if not a stylistic perspective, express the intent of the drafters -- ratification of the 1991 settlement agreement. As Commissioner Heinze, Oliver Levitt, and many others have testified, we believe this bill and the agreement it ratifies constitute a positive step forward for all the citizens of this state, and we hope we will have your continued support for this legislation. If there are any other questions that we could address for you, please let us know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

WICKWIRE, GREENE, CROSBY &
SEWARD

By: 
for Sarah Elizabeth Gay
Assistant Attorney General

By: 
David Crosby
Attorneys for ASRC

cc: Paul Fuhs
Deborah Behr

EXPLANATION OF HB416/SB369¹

"An Act relating to the approval of an agreement settling litigation between the State of Alaska and Arctic Slope Regional Corporation; and providing for an effective date."

The "1991 Settlement Agreement Between Arctic Slope Regional Corporation and State of Alaska" ("1991 Agreement") is an historically significant attempt to resolve disputes and forge new partnerships between the State of Alaska and Alaska Native Regional Corporations. The 1991 Agreement proposes to resolve a long-standing dispute between the State and the Arctic Slope Regional Corporation ("ASRC") over ownership of potentially valuable mineral lands on the North Slope. More importantly, it proposes to do so in a way that will remove impediments to title marketability and create a long term partnership between the State and ASRC aimed at maximizing revenues for both parties. Because the 1991 Agreement involves an exchange of the State's mineral estate and contemplates conferring new management powers on the Commissioner of Natural Resources unique to the 1991 Agreement, legislative approval is required.

The purpose of this memorandum is to acquaint the reader

¹ This document was prepared by counsel for Arctic Slope Regional Corporation. It is being supplied to House and Senate staff to assist in analysis of HB416/SB369. It replaces a draft supplied to House and Senate staff on January 30, 1992. Please refer any questions to counsel for ASRC, David C. Crosby (586-6262).

with the 1991 Agreement and HB416/SB369. This memorandum is organized in three parts: Section I explains the historical setting that gave rise to the 1991 Agreement. Section II is a more detailed section-by-section explanation of the 1991 Agreement. Section III explains the provisions of the Bill.

I. HISTORY OF THE DISPUTE LEADING TO NEGOTIATION
OF THE 1991 AGREEMENT.

Shortly after statehood, the State of Alaska filed selections in the delta of the Colville River immediately east of the National Petroleum Reserve No. 4 (since renamed the National Petroleum Reserve - Alaska, or "NPRA"). These lands are located approximately 50 miles west of Prudhoe Bay, and at the time of their selection were believed to be prospective for oil and gas. The selections were Tentatively Approved by the Secretary of the Interior and some of the lands were subsequently leased. An exploration program resulted in several dry holes.

In the mid-1960's the Arctic Slope Native Association filed aboriginal land claims to much of the North Slope, including the Colville Delta. The pendency of these and other Native claims led to the Secretarial land freeze order of 1968, and the eventual settlement of the claims of Alaska Natives by Congress in the Alaska Native Claims Settlement Act of 1971 ("ANCSA"). The basic land settlement contemplated selection of surface estate surrounding historic village sites by Village Corporations, with conveyance of the subsurface estate under the village land to the appropriate Native Regional Corporation. ANCSA identified roughly 200 Native villages and withdrew 25 townships of land, including lands previously Tentatively

Approved to the State, in the vicinity of each village. Within this area, eligible Village Corporations organized under ANCSA were permitted to select and receive title to up to three townships (69,120 acres) of lands Tentatively Approved to the State of Alaska.

The Colville Delta was the site of the historic Native Village of Nuiqsut (or "Nooiksut"), which was listed in Section 11(b) of ANCSA as a "Native village subject to this Act." That section also required the Secretary of the Interior to review the eligibility of listed Villages to determine whether they met the eligibility requirement of 25 or more residents as of the 1970 census. The Secretary's regulations defined "residence" broadly in terms of traditional Native occupancy patterns.

In 1974 the Secretary certified eight Inupiat villages in the Arctic Slope region as eligible to receive land benefits under ANCSA. The State of Alaska appealed the certification of two of these villages -- Nuiqsut and Pt. Lay -- on the ground that they did not satisfy the residency requirements for certification. Nuiqsut, because of its proximity to Prudhoe Bay and the possibility that ASRC would receive up to three townships of State TA'd lands in the Colville Delta if its certification were upheld, was of the greatest concern. The appeals were contested by ASRC on behalf of its villages.

While the appeals were pending before the Alaska Native Claims Appeals Board, ASRC proposed to settle the certification disputes by relinquishing its ANCSA entitlement to the Colville Delta subsurface. In return, the State would withdraw its selections and permit ASRC to select and receive conveyance to the surface and subsurface of approximately 65,000 acres of lands that had previously been TA'd to the State in the Point Lay area. When the federal government refused to cooperate on the ground that the Secretary had no discretion not to convey the subsurface estate under village surface conveyances, the settlement was hastily recast as a two party exchange of ASRC's subsurface in the Colville Delta for the slightly smaller amount of land owned by the State in fee in the Pt. Lay area. The deal was finalized in a "1974 Settlement Agreement" and the State's appeal of the village certifications was dismissed.

Although the 1974 Settlement Agreement contemplated an immediate exchange of quitclaim deeds to the parties' respective interests, the Department of Natural Resources declined ASRC's proffered conveyance, stating that it would prefer to await ASRC's receipt of conveyances to the Nuiqsut subsurface before finalizing the exchange. In 1977, the Alaska Supreme Court decided in State v. Lewis, 559 P.2d 630 (1977), strongly suggesting that any attempt to alienate the State's mineral estate without the prior consent of Congress and the Alaska Legislature would violate Section 6 of the Alaska Statehood Act.

The ruling cast a cloud on the State's ability to convey any mineral estate to ASRC at Pt. Lay.

Following inquiries by ASRC in 1977, neither side showed any further interest in implementing the 1974 Settlement Agreement until Texaco announced a discovery in the Colville Delta in 1985. When the Commissioner of Natural Resources served a demand that ASRC consummate the 1974 Settlement Agreement, ASRC filed suit in federal District Court asserting that the exchange provisions of the 1974 Settlement Agreement violated Section 6 of the Statehood Act and were unenforceable. The State countered by filing suit for specific performance of the 1974 Settlement Agreement in Superior Court.

The litigation posed significant problems for both parties. On the one hand, ASRC appeared to be reneging on a deal. On the other hand, the State was forced to concede in its briefing to the Court that it had no authority to deliver a significant portion of the agreed upon consideration -- the Pt. Lay mineral estate. To further complicate matters, subsequent events seemed to suggest that the Texaco discovery might not be as significant as it was initially believed to be and the Pt. Lay lands were known to contain substantial coal deposits that could prove valuable in the future.

Faced with the uncertainties of litigation and the highly

speculative values of both the Nuiqsut and Pt. Lay parcels, then Commissioner of Natural Resources Esther Wannicke and ASRC reached an agreement in principle in 1986 to settle the litigation by splitting the disputed lands in such a way that each side would receive half of the disputed lands at Pt. Lay and half of the disputed lands at Nuiqsut. In this manner, neither side "lost," and both sides spread the risk that one or the other of the two speculative tracts might prove to be substantially more valuable than the other. This "50/50" split remains at the heart of the 1991 Settlement Agreement.

After shaking hands on a conceptual settlement that was believed to be fair to both sides, the negotiations bogged down over the description of the lands that were subject to the settlement. The difficulties focused on the State's claims of ownership to submerged lands underlying bodies of water alleged to be navigable. ASRC took the position that a 1942 public land order (PLO 82) withdrew the entire North Slope of Alaska for national defense purposes and precluded the State from acquiring title to any submerged lands as a matter of law. The matter had been clarified to some extent in the Colville Delta by Section 1431(n) of ANILCA, which retained ownership of the principal channels (often referred to as the "named channels") of the Colville River "in public ownership" (without specifying whether "public" meant federal or State ownership). Since the United States concede the right of the State of Alaska to select

submerged lands in the area covered by the former PLO 82 withdrawal (which was rescinded shortly after statehood), and the State had in fact selected all available lands in the Colville Delta, there was no question that the State was the undisputed owner of submerged lands under the named channels. There, however, the agreement ended.

The State contended that the extent of submerged lands under the named channels was substantially greater than ASRC was prepared to concede. In addition, the State claimed exclusive ownership of a number of other smaller channels and sloughs in the Colville Delta, as well as the Kukpowruk River running through the Pt. Lay lands, and a number of lakes in both places. ASRC contended that submerged lands, other than the named channels of the Colville mentioned in Section 1431(n) of ANILCA, should be treated as subject to the settlement and divided 50/50. The State insisted that since ANCSA did not entitle ASRC to receive conveyance to any submerged lands under navigable waters, these submerged lands were not subject to the settlement. To further complicate matters, the law provides that title to submerged lands changes as the banks and shores of water bodies shift due to accretion, reliction and erosion. Thus, the boundary line between State and ASRC lands would be constantly shifting, especially in the Colville Delta. This fact alone would tend to make titles uncertain and decrease the marketability of title for both owners. Future litigation over

the existence and extent of State ownership of submerged lands was almost a certainty.

Ultimately, the parties concluded that the settlement should anticipate and resolve as many future disputes as possible, even if those disputes did not, strictly speaking, have to be resolved in order to settle the controversy over the 1974 Settlement Agreement. The parties concluded that the optimal settlement would (1) dispose of the dispute regarding the enforceability of the exchange provisions of the 1974 Settlement Agreement; (2) lay to rest disputes regarding the existence and extent of State owned submerged lands; (3) resolve the ambiguity created by the problem of accretion, reliction and erosion; and (4) provide for common management of uplands and submerged lands.

The parties had already agreed in principle to a 50/50 split of lands subject to the exchange provisions of the 1974 Settlement Agreement. They next agreed to quantify the extent of State owned submerged lands by splitting the difference between the State's calculations and those of ASRC. Title problems were resolved by pooling the interests of the State and ASRC on a section-by-section basis with each party receiving an undivided percentage ownership reflecting a 50/50 division of the stipulated uplands within the section, with the State receiving full (i.e., 100 percent) credit for any stipulated submerged lands within the section. (The State retains full sovereign

powers over submerged lands, notwithstanding ASRC's undivided interest.) In order to eliminate any possible future disputes over the boundary of the settlement area on the coastline and the NPRA boundary (where the original 1974 settlement area followed the sinuosity of the constantly shifting ocean boundary and the west bank of the Nechelik Channel of the Colville River), the parties agreed to extend section lines into the ocean and across the NPRA boundary so that the area subject to the 1991 Agreement will include only full sections whose location can be protracted at any time without reference to changes brought about by accretion, reliction and erosion. In this manner, approximately 4,000 acres of ocean submerged lands owned by the State outside the 1974 Settlement Agreement area and approximately 9,000 acres of NPRA subsurface owned by ASRC and outside the 1974 Settlement Agreement area were included in the 1991 Agreement. In each instance the parties' undivided percentage interest in each section so extended was adjusted to provide a 100 percent credit for lands outside the original 1974 Settlement Agreement area.

Finally, the parties agreed that the State of Alaska would be the executive rights holder for both parties' interests. As defined by the 1991 Agreement, the State is authorized to enter into leases on behalf of both ASRC and the State. Lease sales will be conducted in the usual manner as provided by Title 38 of Alaska Statutes, subject to all legal requirements otherwise applicable to leasing of State lands. The 1991 Agreement

includes provisions to insure that ASRC is treated fairly in the leasing process.

Thus, the 1991 Agreement not only settles long-standing litigation between ASRC and the State, it anticipates and resolves disputes regarding the existence, extent and location of submerged lands owned by the State of Alaska. Finally, ASRC and the Department believe that by merging title to uplands and submerged lands and vesting executive rights in the State, the 1991 Agreement will result in maximum certainty and predictability for potential lessees, which in turn will make the interests of both the State and ASRC more marketable.

On November 28, 1989, the United States District Court for the District of Alaska approved the agreement in principle, including the section-by-section percentages set out in Exhibits E and F to the Agreement. (These percentages have since been adjusted slightly by mutual agreement to correct errors in calculation and make allowance for contingencies relating to future disposition of Native allotment claims.)

II. SECTION-BY SECTION ANALYSIS OF THE 1991 AGREEMENT

The following section provides a more detailed section-by-section explanation of the terms of the 1991 Agreement. Much of the complexity of the document derives from the confused state of title in the Colville Delta and the technical nature of the executive rights arrangement. The underlying consideration given by the parties -- the cross conveyance of 50% undivided interests in the lands subject to the 1974 parcel-for-parcel Exchange -- is straightforward.

No effort has been made to treat each subsection individually. Emphasis is placed on drawing attention to significant issues and summarizing complex technical provisions.

Introduction.

This section explains that the purpose of the agreement is to settle pending litigation between ASRC and the State regarding the enforceability of the 1974 Settlement Agreement and to eliminate the potential for future ownership disputes over submerged lands by exchanging undivided interests in the subsurface of submerged lands and uplands and establishing fixed revenue sharing percentages for the settlement lands that will not change in the event of accretion, reliction or avulsion.

Section 1: LEGISLATIVE APPROVAL.

This section provides for submission of the 1991 Agreement to the legislature (1.1) and commits the parties to the form of the legislation approving the same (1.2). The parties may withdraw at any time prior to enactment of an acceptable bill approving the 1991 Agreement (1.3(a)). If an acceptable bill is enacted, the litigation will be dismissed (1.4) and the 1991 Agreement will supersede the obligations of the parties under the 1974 Settlement Agreement, unless the statute, the 1991 Agreement or any conveyance authorized by the 1991 Agreement is set aside by the courts (1.3(b)). The parties commit not to create any third party interests in the lands subject to the 1991 Agreement pending deliberations on the bill (1.5).

Section 2: LANDS SUBJECT TO THE 1991 SETTLEMENT AGREEMENT

2.1 describes the intent of the parties with respect to inclusion of submerged lands in the 1991 Agreement, including offshore lands under the Beaufort Sea, the Chukchi Sea and the Kasegaluk Lagoon necessary to describe settlement lands by full sections.

2.2 describes the current ownership of the Nuiqsut subsurface, including ASRC's right to receive future conveyances, the status of outstanding third party interests created by either

the State or ASRC, and State claims of ownership to submerged lands.

2.3 explains possible changes regarding ownership of the Nuiqsut subsurface (and corresponding corrections to ownership percentages) contingent upon disposition of pending Native allotment applications and possible exclusion of sections from the settlement area in the event Kuukpik Corporation does not receive title to the surface estate. This latter provision is now moot. The BLM recently determined that Kuukpik was under-selected by approximately 500 acres, none of which may be selected from State TA'd lands. As a consequence, all of the lands identified in the Agreement will in fact remain in the Agreement. Any references to "over-selection" by Kuukpik should be disregarded.

2.4 provides a comparable analysis the State's title to the Point Lay subsurface.

Section 3: CONVEYANCE OF INTEREST IN LANDS

3.1 commits ASRC to convey to the State the applicable percentage undivided interest, according to Exhibit E, in each section of ASRC's Nuiqsut subsurface as soon as that section has been fully conveyed to ASRC, retaining to the State its own percentage interest, also according to Exhibit E. (Conveyances

are not called for until all title contingencies have been resolved.)

3.2(a) commits the State to convey the applicable percentage undivided interest in the Point Lay subsurface, including any submerged lands therein, as set forth in Exhibit F, to ASRC within 30 days of the final effective date of the 1991 Agreement, retaining its own percentage interest, also as described in Exhibit F.

3.2(b) obligates the State to make a cross conveyance to ASRC of the applicable undivided percentage interest in the Nuiqsut subsurface, including any submerged lands therein, as set forth in Exhibit E, retaining the applicable percentage interest to itself, also as described in Exhibit E.

3.3 states that no change in the boundary, location or extent of submerged lands or uplands will affect the percentage undivided interest conveyed pursuant to the 1991 Agreement.

The net effect of the cross-conveyances called for in Section 3 is an exchange of undivided interests in the subsurface estate such that the title to submerged lands and uplands has been merged and the parties, for all time, will own their respective undivided percentage interest in each section according to the schedules set forth in Exhibits E and F. This

percentage is fixed and will not change regardless of the amount or location of submerged lands that may be contained in the section from time to time.

Section 4: SUBSURFACE AGREEMENTS AFFECTING NUIQSUT SUBSURFACE AND POINT LAY SUBSURFACE; GRANT OF RIGHTS TO EXECUTIVE; RIGHTS AND DUTIES OF EXECUTIVE.

4.1 ASRC grants to the State of Alaska executive rights in the Point Lay and Nuiqsut subsurface. Executive rights are defined in section 11.8 as the right to formulate and issue Subsurface Agreement Solicitations and to negotiate and execute Subsurface Agreements -- primarily oil and gas leases -- on behalf of ASRC with respect to ASRC's interest in the Nuiqsut and Point Lay subsurface.

4.2 requires that the State will be held to a prudent landowner standard, except to the extent that obligations imposed on the State by law require it to act otherwise. The State must treat ASRC's interest in the same manner as it treats its own and may not act so as to benefit itself at the expense of ASRC. The limited prudent landowner standard does not create a fiduciary duty to ASRC by the State. The State may not assign its executive rights without the consent of ASRC (7.2).

4.3 provides for notice to and consultation with ASRC prior

to exercise of executive rights by the State. It also provides a mechanism for resolving disputes if the two parties are unable to agree on the substantive terms of subsurface agreements or solicitations. ASRC may refer disputes to a member of a panel of qualified independent consultants who is charged with determining whether the action proposed by the State is consistent with the limited prudent landowner standard. A decision in favor of the State is binding on ASRC without right of appeal. The State is not bound by a decision in favor of ASRC, but is exposed to future damages if it proceeds and a court subsequently upholds the qualified independent consultant.

4.6 provides that the executive rights of the State with respect to a subsurface agreement cease upon execution of the agreement. Thereafter, each side may execute amendments or changes with respect to its own undivided interest only.

4.8 relieves the State, as executive rights holder, of any obligation to conduct operations on the lands. Rather, the 1991 Agreement contemplates that the State will fulfill its obligations by entering into agreements with third parties.

4.9 provides that the State has no right, obligation, or duty to enforce the terms of subsurface agreements once they are executed. ASRC is responsible for enforcing the terms of any such agreement as they relate to its interests, and the State is

not exposed to any liability for failure to enforce such agreements.

In order to acquire title to subsurface within NPRA, ASRC entered into an agreement with the surface owner, Kuukpik Corporation, not to develop the subsurface of any NPRA subsurface without first obtaining Kuukpik's consent. Approximately 9,000 acres (all deemed to be 100 owned by ASRC) are affected by this consent. Kuukpik may also have consent rights for lands in the vicinity of the village under Section 14(f) of ANCSA. Although the State will hold executive rights to all of this acreage, it is not liable for failure to lease any such land if Kuukpik's consent is required and cannot be obtained. The 1991 Agreement resolves title disputes between ASRC and the State of Alaska. It does not purport to affect the rights of Kuukpik as against ASRC or the State (or vice versa). Kuukpik and its counsel have been fully informed of the negotiations and have been supplied with copies of the Agreement, which it supports.

4.14 precludes communitizing settlement acreage in a lease with non-settlement acreage. Nor will the inclusion of two or more sections of acreage in a common lease result in pooling or communitizing of the interests in those sections. Revenues are shared strictly on a section-by-section basis according to the respective percentages set out in Exhibits E and F. This section prevents prejudice that might result to either party if

unproductive sections could be averaged in with productive sections.

4.15 provides that until sections become fully conveyed such that the parties are obligated to execute cross conveyances with respect to that section, neither party will grant third party interests in any such sections without the consent of the other party.

Section 5: MINIMUM COVENANTS REQUIRED IN ALL SUBSURFACE AGREEMENTS

This section describes certain minimum requirements for all subsurface agreements executed by the State in the exercise of its executive rights. Subsection 5.2 provides a limited exception to the general rule that the executive powers of the State cease following execution of a subsurface agreement. In the event the State exercises its discretion under a lease containing a term permitting the Commissioner to set or adjust royalty valuation, the Commissioner's determination shall bind ASRC's interest as well. This section does not require the Commissioner to exercise his discretion under any such lease and does not expose the State to any liability for the Commissioner's exercise (or refusal to exercise) of his discretion.

Section 6: SUSPENSION OF EXECUTIVE RIGHTS

The 1991 Agreement contemplates that the State, in the exercise of its executive rights, will be bound by all provisions of State law governing its conduct as a public land owner and sovereign. The 1991 Agreement further contemplates that occasions may arise in which the State concludes that entering into a subsurface agreement would not be in the public interest or would conflict with sovereign obligations. The State is not liable to ASRC in such instances. Section 6.1 (a) provides that after giving appropriate notice to the State, however, executive rights are suspended ASRC is then free to lease its own interest.² Executive rights return to the State if ASRC rescinds its election to suspend executive rights under Section 6.1(a) prior to executing a subsurface agreement with respect to its interest (6.3(a)). The State's executive rights are also suspended if either the State or ASRC exercise their power to terminate a subsurface agreement and the other party elects not to do so (6.1(b)). Executive rights return to the State automatically at such time as neither the State's nor ASRC's interest is subject to a subsurface agreement (6.3).

During any period of time that executive rights is suspended, the rights and duties of the parties to one another

² The respective rights of the parties would be governed by the common law of cotenancy. Because the lessee would be required to account to the State for its unleased 50 percent of any oil produced, such a lease would be economically unattractive and therefore improbable. In effect, the lessee would be required to pay a royalty to ASRC on 50% of the oil produced and give a 50% net profits working interest to the State.

are governed by the law of cotenancy in common. Either party may develop the subsurface and the other will still receive its percentage share of the proceeds, after deduction of the cotenant's costs of development.

Section 7: MISCELLANEOUS RESTRICTIONS ON BOTH PARTIES

7.1 provides that while the State holds executive rights, neither the State nor ASRC may become a lessee of the lands or engage in self-development without the consent of the other.

7.3 provides that neither side may convey its interest in the Point Lay subsurface or the Nuiqsut subsurface without the consent of the other, and any such consent may be conditioned on termination of executive rights. In such case, the respective holders of the percentage interests would be cotenants in common.

Section 8: STATE'S RIGHTS AS SOVEREIGN

8.1 explicitly provides that nothing in the agreement diminishes or affects the sovereign rights of the State with respect to regulation or management of submerged lands, fish and game, or natural resources. ASRC's only recourse is under subsection 8.2 to challenge the constitutionality of a statute, or the validity of a regulation, if it feels that the statute or regulation singles out settlement lands for different treatment

from that accorded to other land in the State, or causes injury-in-fact to any rights expressly granted to ASRC under the 1991 Agreement.

Section 9: PREEXISTING LEASES OF THE NUIOSUT SUBSURFACE

This section describes the current status of leases affecting the Nuiqsut subsurface, provides for separate administration and enforcement of the parties respective percentage interests in existing leases, and provides for an equitable division of revenues received by either party with respect to leased lands prior to the effective date of the 1991 Agreement. The Section is complicated by the fact that ASRC has not received conveyances from the United States for all the Nuiqsut subsurface to which it is entitled. 1991 Agreement does not contemplate an exchange of interests with respect to any section until that section has become fully conveyed to ASRC (as defined in Section 11.12). Also, the State has waived its administration rights with respect to leases on some of the lands conveyed to ASRC by the United States, but has not waived with respect to other lands so conveyed. Consequently, it took a lot of verbiage to align all the preexisting legal relationships so that they conform to the basic pattern contemplated by the 1991 Agreement. The principles, however, are straightforward.

Section 10: MISCELLANEOUS

This section contains a number of routine provisions relating to interpretation and administration of the 1991 Agreement. Notable provisions include a requirement that subsurface data be shared to the maximum extent permitted by preexisting legal constraints (10.3), subject to strict confidentiality requirements (10.1); subsection 10.11 commits the parties to joint defense of the 1991 Agreement, unless the challenge relates to ASRC's revenue sharing obligations to other ANCSA Corporations, in which case ASRC must defend, indemnify and hold the State harmless from such claims.

Section 11: DEFINITIONS

This Section defines key terms used throughout the 1991 Agreement.

EXHIBITS

Exhibits include the form of proposed legislation (Exhibit A, discussed in Section III, below), maps of the lands subject to the 1991 Agreement (Exhibits C and D), schedules of the respective percentage undivided interest in each section of land subject to the 1991 Agreement (Exhibits E and F), and specimen copies of various instruments called for in the 1991 Agreement (Exhibits G - J).

III. SECTION-BY-SECTION EXPLANATION OF HB416 AND SB369.

Section 1. PURPOSE. Provides that the purpose of the Bill is to provide for the settlement of outstanding litigation between the State and ASRC.

Section 2. RATIFICATION. This Section ratifies the 1991 Agreement "notwithstanding any other provision of law." Because the 1991 Agreement involves an exchange of the State's mineral interests in the Nuiqsut and Point Lay subsurface, legislative approval is required. Alienation of the State's mineral interest is prohibited by Section 6(i) of the Alaska Statehood Act. In 1976, however, Congress amended Section 22(f) of the Alaska Native Claims Settlement Act to permit the State of Alaska to enter into exchanges of land "for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes." Exchanges must be of equal value unless found to be in the public interest "by the appropriate Secretary." The United States has confirmed that its consent to the exchange is not required and that the requirements of Section 6(i) of the Statehood Act and 22(f) of ANCSA will be satisfied as long as the appropriate State approving authority finds the exchange to be in the public interest.

Chapter 50 of Title 38 of Alaska Statutes provides authority

for exchanges of the State's mineral estate, including the mineral estate in submerged lands. For a variety of reasons, however, that Chapter does not provide an appropriate vehicle for the settlement of litigation. Among other things, Chapter 50 contemplates a voluntary exchange for equal values and requires appraisals and a series of public hearings on proposed exchanges. Although the State and ASRC believe that the consideration given and received in the exchange is roughly equal, no effort has been made to appraise the lands. The terms of the exchange are influenced by factors other than land values (which are highly speculative, in any event), including each side's assessment of the risks of litigation. Finally, settlement negotiations have necessarily and appropriately been conducted in closed sessions. Public involvement is provided through the process of legislative ratification, but could not realistically have been provided earlier in the process, as contemplated for a voluntary exchange under Chapter 50. The "notwithstanding any other provision of Alaska law" will clarify that the exchange contemplated by the 1991 Agreement is not subject to the requirements of Chapter 50.

In addition to AS 38.50, the "notwithstanding any other provision of Alaska law" is intended satisfy any other provision of State law that might subsequently be raised to defeat the settlement itself. The Bill deliberately uses broad language to accomplish this result. Among other things, this language is intended to make it clear that in carrying out the provisions of

the settlement the Commissioner is acting pursuant to the mandate of the legislature and not exercising his discretion under other statutory provisions that authorize administrative disposition of ~~state lands.~~ Specifically, this language, ~~together with section~~ 3 of the Bill discussed below, relieve the Commissioner of any further notice, hearing or public interest finding requirements prior to making the conveyances required by the 1991 Agreement.

This exemption extends only to those actions mandated by the 1991 Agreement necessary to carry out the settlement and ratified by the Bill. Since the 1991 Agreement contemplates that the Commissioner will exercise his executive rights consistent with statutory constraints and does not waive any sovereign powers of the State of Alaska, any development activities that occur subsequent to the exchange will be fully subject to the statutory and regulatory procedures normally applicable to administration of State lands. Specifically, lease sales will be conducted in the normal manner and all regulatory requirements will be observed, including coastal zone consistency and public interest findings. To the extent that ASRC exercises powers as a landowner, this legislation does not exempt ASRC from federal, state or local requirements otherwise applicable to private landowners.

Section 2 also provides that "no statutory or common law rules against perpetuities or restraints of alienation of

property shall apply to the settlement agreement or to any interest or power created by it." The 1991 Agreement commits the State and ASRC permanently to merge their titles with no right of partition, to jointly lease and develop their interests, and to take a number of other steps with respect to their lands for an indefinite period of time. The law is generally hostile to such perpetual restrictions or restraints on alienation that might be deemed unreasonable. AS 34.27.010, for example, provides that an interest that would violate the rule against perpetuities may be reformed by a court. If the rules apply, the 1991 Agreement could be challenged at any time by the State or ASRC (or possibly in a citizen suit) and stricken down or modified in ways that were never intended.

A major consideration of both the State and ASRC in entering into the 1991 Agreement is improving marketability of title. This objective, and the benefits of the settlement, would be frustrated if the merging of title, prohibition against partition of those interests and executive rights provisions were ever successfully challenged as violative of the rule against perpetuities or as an unreasonable restraint on alienation. Accordingly, Section 2 exempts the 1991 Agreement from these requirements.

Section 3. COMMISSIONER AUTHORITY. This section affirmatively authorizes and directs the Commissioner to carry

out the exchange and makes it clear that in doing so he carried out the mandate of the legislature. The Commissioner is not authorized, however, to materially amend the 1991 Agreement without coming back to the legislature for approval.

Section 4. RECORDATION. This section requires the Commissioner to record the 1991 Agreement in the appropriate recording office, incorporate it into the DNR land record system, and deposit a signed original with the State Archivist.

Section 5. ACTIONS. In order to minimize the possibility that the exchange will have to be unwound after the State and ASRC have committed themselves to making the conveyances and taking the other actions required by the 1991 Agreement, this section provides that any action challenging the legality of the 1991 Agreement must be commenced within six months of the effective date of the legislation. Specifically this provision will insure that the State and ASRC will know whether the exchange is going to be challenged before the Colville Delta lands are leased in a State lease sale scheduled for December 1992. The Act itself may not be construed as creating any rights in any party not privy to the 1991 Agreement to challenge that Agreement or the Act. Finally, the Section waives the sovereign immunity of the State of Alaska to any suit brought by ASRC to enforce the 1991 Agreement, provided that any such action is commenced in a Superior Court of the State of Alaska.

Section 6. EFFECTIVE DATE. This Section provides for an immediate effective date in accordance with AS 01.10.070(c).

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1991 SETTLEMENT AGREEMENT
BETWEEN
ARCTIC SLOPE REGIONAL CORPORATION
AND
THE STATE OF ALASKA

**1991 SETTLEMENT AGREEMENT
 BETWEEN ARCTIC SLOPE REGIONAL
 CORPORATION AND THE STATE OF ALASKA**

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CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

**1991 SETTLEMENT AGREEMENT
BETWEEN ARCTIC SLOPE REGIONAL
CORPORATION AND THE STATE OF ALASKA**

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- B Stipulation for Dismissal and Order
- C Maps (Nuiqsut subsurface)

Exhibits

- D Maps (Point Lay subsurface)
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1991 SETTLEMENT AGREEMENT
BETWEEN ARCTIC SLOPE REGIONAL
CORPORATION AND THE STATE OF ALASKA

Introduction

The State of Alaska ("State") and Arctic Slope Regional Corporation ("ASRC") sued each other, in two separate lawsuits, over the validity of a March 1974 Agreement ("1974 Agreement"). The lawsuits were entitled:

- (1) *State of Alaska v. Arctic Slope Regional Corporation*, 3AN-85-15523 Civil, Alaska Superior Court, Third Judicial District, filed November 7, 1985.
- (2) *Arctic Slope Regional Corporation v. Lennie Boston-Gorsuch and Gary C. Gustafson*, Civil No. J85-026, United States District Court For Alaska, in Juneau, filed October 2, 1985.

In 1990, the federal court lawsuit was dismissed without prejudice to ASRC's right to refile it. The State and ASRC now wish to dismiss the state court lawsuit, also without prejudice, and settle claims and counterclaims made in the two lawsuits.

The State and ASRC have fully and independently analyzed the strength of their respective litigation positions regarding the enforceability of the 1974 Agreement. In settling, the parties^{1/} understand that each gives up the right to discover fully the strength or weakness of the other party's position in exchange for the certainties of settlement and in order to avoid the risk of an unfavorable outcome in the litigation. Resolution of the litigation and uncertainties relating to titles as set out in this Settlement Agreement will result in material benefit both to the State and its citizens and to ASRC, and is in the best interests of the public.

The litigation concerns a dispute between ASRC and the State over the ownership of lands located near Nuiqsut and Point Lay. To settle the dispute, the State and ASRC have agreed in

^{1/}Words and phrases printed in the text of this Agreement in boldface are defined in Section 11.

this Settlement Agreement to effect an exchange of undivided interests in the **subsurface** of all the disputed lands, as authorized under section 22(f) of ANCSA, so as to cause the **subsurface** in all these lands to be owned in undivided interests by the State and ASRC. The disputed lands have numerous bodies of water within or adjacent to them. The State claims that many of these bodies of water cover submerged lands which it wholly owns by virtue of the United States Constitution's equal footing doctrine and the federal Submerged Lands Act. For various reasons, ASRC disputes the State's claims. Moreover, the extensive nature of the bodies of water and seacoast makes the boundaries between uplands and submerged lands within portions of the areas subject to the potential of accretion, reliction, and avulsion. The possibility of future disputes about the ownership of and the boundaries between uplands and submerged lands would make it extremely difficult for either the State or ASRC to exploit the lands, whichever party a court might decide owned them. Therefore, in order to eliminate the potential for future ownership disputes, in this Settlement Agreement ASRC and the State have agreed to exchange undivided interests in the **subsurface** in the submerged lands and in the uplands and to establish a fixed revenue sharing percentage for the lands which would not change in the event of accretion, reliction, or avulsion. J

Except as provided below in section 6 (governing consequences of separate termination of a **Subsurface Agreement**) and subsection 9.5 (governing division of revenue from certain leases), this Settlement Agreement provides that all **subsurface revenues** related to, or generated by the exploration, development, production, or other exploitation of, or the lease, sale, or other disposition of, any interest in the **Nuiqsut subsurface** and the **Point Lay subsurface** will belong to ASRC or the State, respectively, as the owner of that interest pursuant to Section 3.

ASRC and the State further agree as follows:

1. STATE LEGISLATIVE APPROVAL.

1.1. 1992 Legislative Session.

ASRC and the State will submit this Settlement Agreement to the Second Session of the Seventeenth Alaska Legislature for the Legislature's approval.

1.2. Form of Approval; No Changes Without Mutual Consent.

ASRC and the State will submit a bill to the Legislature approving this Settlement Agreement as set out in Exhibit A. Neither ASRC nor the State will seek changes in the bill without the prior written consent of the other party.

1.3. Effect of Withdrawal of Either Party, Legislative Change, Legislative Approval, or Subsequent Court Invalidation.

(a) This Settlement Agreement will be wholly void and of no effect if either party withdraws from it before the **Final Effective Date**. After such a withdrawal, either party may seek a judicial declaration as to the validity of, and appropriate orders with respect to, the 1974 Agreement and pursue the claims, counterclaims, and defenses asserted in the two lawsuits cited in the Introduction above. Either party may withdraw, without cause, from this Settlement Agreement before the **Final Effective Date** by delivering written notice of withdrawal to the other party.

(b) Subject to paragraph 1.3(a), if the bill as set out in Exhibit A (or another bill approving this Settlement Agreement and mutually approved by the **Commissioner** of Natural Resources and ASRC) becomes law, then thereafter neither the State nor ASRC may seek to enforce the 1974 Agreement or pursue the claims, counterclaims, or defenses asserted in the two lawsuits cited above in the Introduction against each other unless:

(1) the law is adjudged, in a final state or federal court judgment, after all appeals are decided, wholly unconstitutional;

(2) the entirety of this Settlement Agreement is otherwise adjudged, in a final state or federal court

judgment, after all appeals are decided, to be wholly illegal or wholly unenforceable for any reason; or

(3) (i) any conveyance required by this Settlement Agreement, or its subsections 3.1, 3.2, sections 4, 5, 6, 7, 8, 9, or subsection 10.11 (singly or in combination) is determined in a final state or federal court judgment, after all appeals are decided, to be illegal or unenforceable for any reason, and (ii) either the State or ASRC gives written notice to the other that it has elected to rescind this Settlement Agreement within sixty (60) days after all appeals are decided and the judgment becomes final.

(c) The running of any statute of limitations that might bar enforcement of the 1974 Agreement as between the State and ASRC is hereby suspended, until the earliest of: (i) the date when this Settlement Agreement becomes void pursuant to paragraph 1.3(a); (ii) the date when a judgment determining either the law to be wholly unconstitutional as described in subparagraph 1.3(b)(1) or this Settlement Agreement to be wholly illegal or wholly unenforceable as described in subparagraph 1.3(b)(2) becomes final (after all appeals are decided); or (iii) the date on which either the State or ASRC gives notice of rescission of this Settlement Agreement pursuant to subparagraph 1.3(b)(3).

(d) Should a judgment described in subparagraph (1) or (2) or a notice described in subparagraph (3) of paragraph 1.3(b) become final or be given, this Settlement Agreement shall be void and of no effect, and thereafter either party may seek a judicial declaration as to the validity of, and appropriate orders with respect to, the 1974 Agreement and pursue the claims, counterclaims, and defenses asserted in the two lawsuits cited in the Introduction above; provided only that the provisions of paragraphs 1.3(c) and 1.3(e) shall nevertheless be and remain effective.

(e) Should this Settlement Agreement become void as provided in paragraph 1.3(d), the State and ASRC each shall execute and deliver all conveyances and other documents and do all other things necessary or desirable to reconvey interests

conveyed prior to such voidance, to the extent such conveyances were made pursuant to Section 3 of this Settlement Agreement. Reconveyances shall be made subject to **Subsurface Agreements** and other third-party rights created after the Section 3 conveyance pursuant to this Settlement Agreement, if the third party or party to the **Subsurface Agreement** is not affiliated with the party that created the interest or executed the **Subsurface Agreement**, and the rights, estates, and obligations of such third parties shall not be affected or terminated by reason of this Settlement Agreement having become void.

1.4. Dismissal of Litigation.

Within ten (10) days after the **Final Effective Date** of this Settlement Agreement, ASRC and the State will file in Superior Court a Stipulation for Dismissal in the form set out in Exhibit B.

1.5. Creation of Third-Party Interests While Bill Is Pending.

Neither ASRC nor the State will create or grant any third-party interest in the **Nuiqsut subsurface** or the **Point Lay subsurface** before the **Final Effective Date** of this Settlement Agreement; thereafter, the creation of third party interests and the management of the **Nuiqsut subsurface** and **Point Lay subsurface** will be governed by the terms of this Settlement Agreement. However, before the **Final Effective Date** of this Settlement Agreement, the State may issue permits, rights-of-way, and the like authorizing surface activities or operations in the area, and either the State or ASRC (acting with respect to those oil and gas leases which it now has the right to administer) may authorize assignments of or routine amendments to existing oil and gas leases affecting sections of the **Nuiqsut subsurface**, so long as these actions do not create a permanent encumbrance with respect to the **subsurface** and the amendments do not materially alter the terms, conditions, or provisions of existing oil and gas leases.

2. LANDS SUBJECT TO 1991 SETTLEMENT AGREEMENT.

2.1. Submerged Lands and Seacoast Boundaries.

(a) ASRC and the State have been unable to reach agreement as to a specific legal definition of "submerged lands" or as to the boundaries, location, or extent of submerged lands included in the **Nuiqsut subsurface** or the **Point Lay subsurface** or as to the proper standards or legal principles or procedures to be applied to determine the existence, boundaries, location, or extent of submerged lands. They also recognize that the boundaries, location, or extent of submerged lands may change because of accretion, reliction, or avulsion. They also realize that the ability of each to lease or exploit or realize benefit from the **subsurface** would be adversely affected by the possibility that future changes in the boundaries, location, or extent of submerged lands could result in changes in ownership. Therefore, the respective undivided interests as provided for in Section 3 of the State and ASRC in the **subsurface** in the entirety of each section or portion of a section of land within the **Nuiqsut subsurface** and the **Point Lay subsurface** will not change or be altered by virtue of any future changes in the boundaries, location, or extent of submerged lands or uplands within a section or portion of a section of land. Conversely, this Settlement Agreement is not intended to be and may not be construed as, an agreement as to the actual extent, if any, of uplands or submerged lands in any area or section, or as an agreement as to the proper standards or legal principles or procedures to be used to establish the existence of, or the boundary between, uplands and submerged lands in any such area or section.

(b) Each reference in this Settlement Agreement to a "section" that includes any area which may now or hereafter be deemed submerged land under the Beaufort Sea, the Chukchi Sea, or the Kasegaluk Lagoon refers to the square or rectangular area (including any area now or hereafter situated within the Beaufort Sea, the Chukchi Sea, or the Kasegaluk Lagoon) encompassed within

a full square or rectangular section (protracted or projected to the extent it is within the Beaufort Sea, the Chukchi Sea, or the Kasegaluk Lagoon) containing approximately 640 acres.

(c) ASRC forever disclaims and quitclaims to the State any interest it now has or may have in the future in lands beneath the Kasegaluk Lagoon within T2N, R45 and R46W, and T1N, R46W, Umiat Meridian, which interest might derive from application of the doctrine of riparian ownership, whether or not these lands are considered submerged lands under federal law; however, nothing in this subparagraph is intended or shall be interpreted to disclaim or quitclaim to the State any interest in the **subsurface** within any of the specific sections of the **Point Lay subsurface** (including lands beneath the Kasegaluk Lagoon) to be conveyed from the State to ASRC under subsection 3.2 of this Settlement Agreement.

(d) The maps attached as Exhibit C (for the **Nuiqsut subsurface**) and as Exhibit D (for the **Point Lay subsurface**) are for illustrative purposes; under AS 09.25.040(6), in the event of a need to construe the descriptive part of any conveyance of real property made under this Settlement Agreement, the maps will be subordinate to the language of the conveyance in the event of any conflict with it.

2.2. Current Ownership of Nuiqsut Lands.

(a) The United States has made the following conveyances to ASRC:

- (1) Interim Conveyance No. 110 dated July 18, 1978;
- (2) Interim Conveyance No. 569 dated November 12, 1982;
- (3) Interim Conveyance No. 621 dated January 7, 1983;
- (4) Interim Conveyance No. 1161 dated April 22, 1986;
- (5) Interim Conveyance No. 1406 dated September 20, 1988; and
- (6) Interim Conveyance No. 1501, dated May 9, 1991.

ASRC warrants to the State that it has not created any oil and gas leases or other third-party interests in the **subsurface** of the lands covered by these interim conveyances except, with respect to Interim Conveyance No. 1406, the rights of Kuukpik Corporation under the **Kuukpik Agreement**.

(b) ASRC is entitled under **ANCSA** to receive from the United States patents to the **subsurface** described in the foregoing interim conveyances and additional interim conveyances, and patents for additional portions of the **Nuiqsut subsurface**. ASRC will not take any action or omit to take any action that might result in it not receiving the interim conveyances and patents to these lands.

(c) The State claims title to all submerged lands within the outermost boundaries of the lands described as the **Nuiqsut subsurface**, and ASRC likewise claims title to, or the right to acquire title to, the **subsurface** in certain of these submerged lands. However, neither the State nor ASRC has agreed as to the effect of Public Land Order 82 (January 22, 1943), 8 Fed. Reg. 1599 (February 4, 1943), or as to a specific legal definition of "submerged lands," or as to the existence, boundaries, location, or extent of submerged lands, or as to the proper standards, legal principles, or procedures to be applied to determine the existence or boundary, location, or extent of submerged lands in any area or section. Additionally, the State or ASRC may hereafter receive patents or interim conveyances from the United States to **Nuiqsut subsurface** within lands covered by one or more or all of the Alaska Native allotment applications described in paragraph 11.12(a), and ASRC may hereafter receive patents or interim conveyances from the United States to **Nuiqsut subsurface** within lands covered by one or more or all of the Alaska Native allotment applications described in paragraph 11.12(b).

(d) The State warrants to ASRC that it has issued only the following oil and gas leases (designated by its Alaska Division of Lands (ADL) numbers) in the **Nuiqsut subsurface**:

ADL No. 25526
ADL No. 25529
ADL No. 25530
ADL No. 356000
ADL No. 356001
ADL No. 356002
ADL No. 356003
ADL No. 356004
ADL No. 356005
ADL No. 365506 (terminated for nonpayment of annual rental
on December 1, 1986)
ADL No. 25535
ADL No. 25536
ADL No. 25537
ADL No. 25539
ADL No. 25556
ADL No. 25540
ADL No. 25541
ADL No. 25554
ADL No. 25555
ADL No. 25560
ADL No. 25561
ADL No. 25562
ADL No. 25563
ADL No. 25577
ADL No. 25578
ADL No. 25579
ADL No. 25596
ADL No. 25597
ADL No. 364466
ADL No. 364468
ADL No. 364469
ADL No. 366201
ADL No. 366202
ADL No. 366203
ADL No. 366204

In addition, the State has created other third party interests in the form of various types of authorizations (such as land or water use permits) with respect to use of or operations on the surface within the Nuiqsut subsurface area.

2.3. Possible Changes Regarding Nuiqsut subsurface.

(a) Native Allotment Applications. The State's and ASRC's percentages in certain sections of the Nuiqsut subsurface may vary dependent upon the ultimate ownership of the subsurface rights in lands covered by certain pending Alaska Native allotment applications. It is possible that in some situations

either the State or ASRC, or in some cases neither the State nor ASRC, will receive a final conveyance from the United States of the **subsurface** rights in the lands covered by those allotment applications. Exhibit E sets forth the State's and ASRC's percentage ownership for different circumstances resulting from the existence of these Alaska Native allotment applications as described in Exhibit E. A conveyance made pursuant to section 3 from the State to ASRC, or from ASRC to the State, shall use the percentages set forth in Exhibit E that correspond to the appropriate situation as described in Exhibit E.

(b) Kuukpik Overselections. Each of the sections of the Nuiqsut **subsurface** described in Exhibit E has been selected by Kuukpik Corporation for conveyance of the surface estate from the United States to Kuukpik Corporation pursuant to ANCSA. If such a conveyance is made, ASRC will receive an interim conveyance or patent from the United States under ANCSA to the **subsurface** of those lands. A possibility exists, however, that the total number of acres within the area selected by Kuukpik Corporation may be determined to exceed the total number of acres to which it is entitled to receive a conveyance of the surface estate from the United States under ANCSA. If a selection by Kuukpik Corporation of the lands available for selection by it in all of any section or in a part of a **Final Partial Section** described in Exhibit E shall hereafter be rejected or relinquished (so as to terminate the entitlement of Kuukpik Corporation to receive a conveyance of the surface of the lands available for selection by it in that section or part of a section under ANCSA), that section or part of a **Final Partial Section**, as more fully described in paragraph 11.12(c), as applicable, shall automatically be excluded from the Nuiqsut **subsurface** and shall not be deemed to be Nuiqsut **subsurface** for purposes of this Settlement Agreement.

2.4. Current Ownership of Point Lay Lands.

The United States has made conveyances to the State that include **Point Lay subsurface** as described in the following patents and tentative approval decision:

- (a) U.S. Patent No. 50-84-0776 dated September 25, 1984;
- (b) U.S. Patent No. 50-84-0777 dated September 25, 1984;
- (c) U.S. Patent No. 50-84-0778 dated September 25, 1984;
- (d) U.S. Patent No. 50-84-0781 dated September 25, 1984; and
- (e) Tentative Approval Decision dated December 23, 1965.

The State also claims title to all submerged lands within the outer boundaries of the lands described as **Point Lay subsurface**, although neither the State nor ASRC has agreed as to the effect of Public Land Order 82 or as to a specific legal definition of "submerged lands" or as to the existence, boundaries, location, or extent of submerged lands or as to the proper standards, legal principles, or procedures to be applied to determine the existence of or the boundary, location, or extent of submerged lands in any area or section. The State warrants to ASRC that it has not issued any oil, gas, or mineral lease with respect to the **Point Lay subsurface**. The State has, however, created other third party interests in the form of various types of authorizations (such as land or water use permits) with respect to use of or operations on the surface within the **Point Lay subsurface area**.

3. CONVEYANCE OF INTEREST IN LANDS.

3.1. ASRC Conveyances.

- (a) Fully Conveyed Sections on Final Effective Date.

Within thirty (30) days after the **Final Effective Date** of this Settlement Agreement, ASRC will convey to the State an undivided interest equal to the applicable "State percentage" set out in

Exhibit E in that portion of the **Nuiqsut subsurface** (without regard to whether that **Nuiqsut subsurface** is within uplands or within submerged lands) in each **Fully Conveyed Section** existing as of that date to which ASRC has heretofore acquired title or shall hereafter acquire title before that date, or may thereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within that section. Within thirty (30) days after the **Final Effective Date** of this Settlement Agreement, ASRC will execute and deliver to the State a warranty deed as set out in Exhibit G which conveys the applicable State percentage as set out in Exhibit E for that portion of the **Nuiqsut subsurface** in each **Fully Conveyed Section**, retaining to ASRC an undivided interest equal to the applicable ASRC percentage as set out in Exhibit E with respect to that portion of the **Nuiqsut subsurface** in each section.

(b) Sections That Become Fully Conveyed Sections After the Final Effective Date. As to each section of the **Nuiqsut subsurface** that is not a **Fully Conveyed Section** on the **Final Effective Date** of this Settlement Agreement, this Settlement Agreement will also require that when that section becomes a **Fully Conveyed Section** after the **Final Effective Date**, ASRC shall convey to the State an undivided interest equal to the applicable State percentage set out in Exhibit E in that portion of the **Nuiqsut subsurface** (without regard to whether that **Nuiqsut subsurface** is within uplands or within submerged lands) in that section to which ASRC has acquired title by virtue of an interim conveyance or patent from the United States, or may hereafter acquire title by virtue of any future change in the boundary, location, or extent of submerged lands or uplands in that section. ASRC will execute and deliver to the State a warranty deed as set out in Exhibit G which conveys the applicable State percentage as set out in Exhibit E for that portion of the **Nuiqsut subsurface** in that section no later than thirty (30) days following the date when that section becomes a **Fully Conveyed Section**, retaining to ASRC an undivided interest equal to the

applicable ASRC percentage as set out in Exhibit E with respect to that portion of the Nuiqsut subsurface in the section. Notwithstanding the foregoing, however, as to the Final Partial Section, if any, the warranty deed shall not include or describe any portion of the Final Partial Section that is not included in the portion of that section which is deemed to be a Fully Conveyed Section. The applicable State and ASRC percentages set out in Exhibit E shall not be changed as to the portion of a Final Partial Section included in a Fully Conveyed Section by virtue of the exclusion of the remainder of that Final Partial Section from the Nuiqsut subsurface.

3.2. State Conveyances.

(a) Point Lay. Within thirty (30) days after the Final Effective Date of this Settlement Agreement, the State will convey to ASRC an undivided interest equal to the applicable ASRC percentage set out in Exhibit F in the subsurface in all portions of the Point Lay subsurface (without regard to whether that Point Lay subsurface is within uplands or within submerged lands) which the State presently holds title to or acquires title to before that date, or may acquire title to after that date by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within the Point Lay subsurface. Within thirty (30) days after the Final Effective Date of this Settlement Agreement, the State will execute and deliver to ASRC a patent, as set out in Exhibit H, which conveys the applicable ASRC percentage as set out in Exhibit F in those portions of the Point Lay subsurface, retaining to the State an undivided interest equal to the applicable State percentage as set out in Exhibit F with respect to the portion of the Point Lay subsurface in each of these sections.

(b) Nuiqsut.

(1) Fully Conveyed Sections on the Final Effective Date. Within thirty (30) days after the Final Effective Date of this Settlement Agreement, the State will convey to ASRC an undivided interest equal to the applicable ASRC

percentage set out in Exhibit E i. all portions of the Nuiqsut subsurface (without regard to whether the Nuiqsut subsurface is within uplands or within submerged lands) in each Fully Conveyed Section existing as of that date to which the State presently holds title or acquires title to before that date, or may acquire title to after that date by virtue of any future change in the boundary, location, or extent of submerged lands or uplands within that section. Within thirty (30) days after the Final Effective Date of this Settlement Agreement, the State will execute and deliver to ASRC a patent as set out in Exhibit H which conveys the applicable ASRC percentage as set out in Exhibit E in those portions of the Nuiqsut subsurface in each of these Fully Conveyed Sections, retaining to the State an undivided interest equal to the applicable State percentage set out in Exhibit E in those portions of the Nuiqsut subsurface in each section.

(2) Sections That Become Fully Conveyed Sections After the Final Effective Date. There may be sections of Nuiqsut subsurface that are not Fully Conveyed Sections on the Final Effective Date of this Settlement Agreement. When that date occurs, this Settlement Agreement will also require that, when a section becomes a Fully Conveyed Section, the State shall convey to ASRC an undivided interest equal to the applicable ASRC percentage set out in Exhibit E in all portions of the Nuiqsut subsurface (without regard to whether that Nuiqsut subsurface is within uplands or within submerged lands) within that section which the State presently holds title to or acquires title to before that date, or may acquire title to after that date by virtue of any future change in the boundary, location, or extent of submerged lands or uplands in that section. The State will execute and deliver to ASRC a patent, as set out in Exhibit I, conveying to ASRC an undivided interest equal to the applicable ASRC percentage, as set out in Exhibit E, in those portions of the Nuiqsut subsurface no later than thirty (30) days following the date when that section becomes a Fully Conveyed Section,

retaining to the State an undivided interest equal to the applicable State percentage, as set out in Exhibit E, in those portions of the Nuiqsut subsurface in that section; however, as to the Final Partial Section, if any, the patent shall not include or describe any portion of the Final Partial Section that is not included within the portion of that section which is deemed to be a Fully Conveyed Section. The applicable State percentage and ASRC percentage set out in Exhibit E shall not be changed as to the portion of any Final Partial Section included in a Fully Conveyed Section by virtue of the exclusion of the remainder of that Final Partial Section from the Nuiqsut subsurface.

3.3. Changes Relating to Submerged Lands.

No change in the boundary, location, or extent of submerged lands or uplands within any section or part of a section of the Nuiqsut subsurface or the Point Lay subsurface will alter, increase, or diminish the percentage of the subsurface owned by ASRC or by the State, respectively, in the Nuiqsut subsurface or the Point Lay subsurface in the land affected by such a change as set out in Exhibits E or F, as applicable.

4. SUBSURFACE AGREEMENTS AFFECTING NUIQSUT SUBSURFACE AND POINT LAY SUBSURFACE; GRANT OF RIGHTS TO EXECUTIVE; RIGHTS AND DUTIES OF EXECUTIVE.

4.1. Grant of Executive Rights.

ASRC, on behalf of itself and its successors and assigns, hereby grants and conveys the Executive Rights to the State as executive with respect to (i) the undivided interests in Point Lay subsurface and Nuiqsut subsurface which are conveyed by the State to ASRC from time to time pursuant to this Settlement Agreement, effective as of the effective date of the conveyance of those respective interests to ASRC, and (ii) the undivided interests in Nuiqsut subsurface retained by ASRC in Fully Conveyed Sections in which ASRC conveys undivided interests to the State from time to time pursuant to this Settlement

Agreement, effective as of the effective date of the conveyance of an undivided interest in the subsurface in those respective Fully Conveyed Sections from ASRC to the State.

4.2. Standard of Performance.

(a) The State shall exercise the Executive Rights granted herein in compliance with the Limited Prudent Landowner Standard, as defined herein, as to the substantive terms and conditions of all Subsurface Agreements and Subsurface Agreement Solicitations to be executed or issued by the State as executive pursuant to this Settlement Agreement. In exercising such Executive Rights, the State shall treat ASRC's interest in the same manner as it treats its own interest and shall not act in a manner intended to benefit itself at the expense of ASRC.

(b) Neither the Limited Prudent Landowner Standard nor any other provision of this Settlement Agreement create a fiduciary duty on the part of the State to ASRC.

4.3. Notice and Consultation; Resolution of Disputes.

(a) Right of ASRC to Review Subsurface Agreements and Subsurface Agreement Solicitations. ASRC will have the right to have its representatives review and make comments or suggestions concerning proposed drafts of Subsurface Agreements and Subsurface Agreement Solicitations proposed to be recommended by the Director to, or executed by, the Commissioner (subject to lawful or, if not required by law, reasonable confidentiality requirements), and to observe any otherwise private negotiations between the State and third parties concerning proposed Subsurface Agreements and Subsurface Agreement Solicitations. The State may in its discretion incorporate ASRC's comments.

(b) Notice of Proposed Action to ASRC; Consultation. The State will consult in good faith with ASRC before the State as executive issues any Subsurface Agreement Solicitation. If a Subsurface Agreement is not preceded by a Subsurface Agreement Solicitation, the State will consult in good faith with ASRC before executing that Subsurface Agreement. In either instance, consultation will occur prior to the Director's recommendation to

the Commissioner, or in the absence of a Director's recommendation, before issuance or execution, as appropriate, by the State as executive. The State may in its discretion incorporate ASRC's comments. At least one hundred and eighty (180) days before execution or issuance of a Subsurface Agreement or Subsurface Agreement Solicitation, the State will deliver to ASRC a written Proposed Action Notice describing in as much detail as is reasonably possible the location of the Nuiqsut subsurface or the Point Lay subsurface involved, and the nature (and, to the extent then known by the State, the proposed terms) of the proposed Subsurface Agreement or Subsurface Agreement Solicitation to be recommended by the Director or executed or issued by the Commissioner, as applicable.

(c) Approval Agreements. ASRC and the State shall endeavor in good faith to agree in a written Approval Agreement upon the substantive terms and conditions of all proposed Subsurface Agreements and proposed Subsurface Agreement Solicitations with respect to which a Proposed Action Notice is given to ASRC. If the State, within six (6) months after the execution of an Approval Agreement, executes or issues a Subsurface Agreement or Subsurface Agreement Solicitation consistent with the substantive terms and conditions of the Approval Agreement, ASRC shall not thereafter have a right to make any claim against the State based on an assertion that the execution or issuance of that Subsurface Agreement or Subsurface Agreement Solicitation failed to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, and ASRC shall be held to have agreed that such execution or issuance was in compliance with the standard set forth in paragraph 4.2(a) hereof.

(d) Failure to Agree; Action Notice. Unless an Approval Agreement with respect to a Proposed Action Notice has already been executed, the State will give a written Action Notice to ASRC by certified mail, return receipt requested, no sooner than twenty-five (25) days after giving the Proposed

Action Notice but at least fifteen (15) days before the Director makes a recommendation to the Commissioner for execution or issuance of (or, in the absence of a recommendation by the Director, before the execution or issuance by the Commissioner of) any Subsurface Agreement or Subsurface Agreement Solicitation referred to in the Proposed Action Notice. The Action Notice will describe the Nuiqsut subsurface or the Point Lay subsurface involved and will set forth in detail the substantive terms and conditions of the proposed Subsurface Agreement or Subsurface Agreement Solicitation.

(e) Protest Notice; Effect of Failure to Protest.

ASRC may, within ten (10) days after receipt of an Action Notice, give a written Protest Notice to the State by certified mail, return receipt requested. The Protest Notice shall state in reasonable detail ASRC's objections to substantive terms and conditions of the proposed Subsurface Agreement or Subsurface Agreement Solicitation described in the Action Notice, and shall request that the dispute be referred to a Qualified Independent Consultant. If ASRC does not give a Protest Notice to the State within ten (10) days after receipt of an Action Notice, and if the State executes or issues a Subsurface Agreement or Subsurface Agreement Solicitation consistent with the Action Notice within six (6) months of ASRC's receipt of the Action Notice, ASRC shall not thereafter have a right to make any claim against the State based on an assertion that the execution or issuance of that Subsurface Agreement or Subsurface Agreement Solicitation failed to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, and ASRC shall be held to have agreed that such execution or issuance was in compliance with the standard set forth in paragraph 4.2(a) hereof.

(f) Referral of Protests to Qualified Independent Consultant. If ASRC timely gives a Protest Notice with respect to an Action Notice, the protest shall be referred to a Qualified Independent Consultant to be selected by random drawing. The random drawing shall be effected promptly, and in any event

within five (5) days after delivery of the Protest Notice, and shall be conducted in the presence of representatives of the State and ASRC. The names of all the Qualified Independent Consultants who are then members of the Consultant Group shall be placed on identical cards in a covered container, and one name shall be drawn at random from it to select the Qualified Independent Consultant to whom the Protest Notice shall be referred. If the Qualified Independent Consultant so selected is not available (or becomes unavailable for any reason after selection but before rendering a Consultant Opinion), then the Protest Notice shall be assigned promptly to another Qualified Independent Consultant selected by random drawing as described above, and so on, until a Qualified Independent Consultant has been selected who renders a Consultant Opinion with respect to the Protest Notice.

(g) Deferral of Decision Pending Consultant Opinion.

If ASRC timely gives a Protest Notice with respect to a proposed Subsurface Agreement or Subsurface Agreement Solicitation described in an Action Notice, the State will take no further action with respect to the same until a written Consultant Opinion has been issued by a Qualified Independent Consultant to whom the Protest Notice has been referred.

(h) Qualifications, Selection, Removal, and Replacement of Qualified Independent Consultants.

(1) Establishment of Consultant Group. The Consultant Group shall initially consist of and include the following six (6) persons, each of whom shall be a Qualified Independent Consultant:

Cass Arley
3108 Wentworth
Anchorage, Alaska 99508

Harry Jamison
P. O. Box 4666
Sun River, Oregon 99707

Marv Mangus
1045 East 27th Avenue
Anchorage, Alaska 99508

Tom Marshall
1569 Birchwood
Anchorage, Alaska 99508

Fritz Nagel
6442 Geronimo Circle
Anchorage, Alaska 99504

Tom Wilson
766 Dos Hermanos Road
Santa Barbara, California 93111

(2) "Independent" Defined. A person shall not be deemed to be "independent" from the State and ASRC if that person is an employee, officer, director or elected official of the State or any agency, bureau, or department of the State or of ASRC or any subsidiary of ASRC or other person controlled by ASRC or a shareholder of ASRC or if that person is engaged as an agent, consultant, or independent contractor to provide services to or perform services for the State or any agency, bureau or department of the State or ASRC or any subsidiary of ASRC or other person controlled by ASRC; however, the engagement of a member of the Consultant Group to render a Consultant Opinion with reference to a dispute between ASRC and the State under this subsection 4.3 shall not cause that member to cease to be "independent."

(3) Removal of Qualified Independent Consultants. By written agreement, the State and ASRC can, at any time or times, remove any person from the Consultant Group and substitute another person as a member of the Consultant Group. Further, if at any time a member of the Consultant Group is not independent from both the State and ASRC, then either the State or ASRC shall have the right, by giving written notice to the other, to remove that member from the Consultant Group.

(4) Replacement of Qualified Independent Consultants. If at any time any member of the Consultant Group

shall decline to serve as a member of the Consultant Group, shall be removed, or shall resign or otherwise become unavailable to serve as a member of the Consultant Group, then upon written request given by the State or ASRC to the other, the State and ASRC shall endeavor to agree in writing upon a replacement. If agreement is not reached within fifteen (15) days after delivery of the request, then at any time thereafter, before a replacement has been named by agreement of the State and ASRC, either the State or ASRC may give written notice to the remaining members of the Consultant Group and require that those remaining members, by majority vote, select and name a replacement. Any replacement so named shall be, as determined in the good faith judgment of a majority of the remaining members, independent from both the State and ASRC and qualified by training and experience to render opinions as to whether a proposed **Subsurface Agreement** or **Subsurface Agreement Solicitation** complies with the standard set forth in paragraph 4.2(a) of this Settlement Agreement. At any time, the State and ASRC may, by written agreement, either increase or decrease the number of members of the Consultant Group, in which event the agreement shall specify, as applicable, the existing member or members to be removed from the Consultant Group or the additional persons to be added to the Consultant Group.

(5) Confidentiality. The State and ASRC may each require that any **Qualified Independent Consultant** execute a confidentiality agreement agreeing to observe reasonable confidentiality restrictions with respect to any data or information provided by the State or ASRC, respectively, to the **Qualified Independent Consultant**, including any confidentiality restrictions imposed by law with respect to data or information provided by the State.

(6) Liability of Qualified Independent Consultants. No **Qualified Independent Consultant** shall have any liability whatsoever to the State or ASRC for an opinion expressed in good faith in a **Consultant Opinion**, regardless of

whether the opinion may thereafter be determined to be correct or incorrect. No Qualified Independent Consultant shall be rendered ineligible for future employment by either ASRC or the State by reason of serving as a Qualified Independent Consultant or rendering a Consultant Opinion. Any Qualified Independent Consultant may accept employment in any matter if tendered by the State or ASRC, subject only to the right of the State or ASRC to remove that Qualified Independent Consultant from the Consultant Group pursuant to subparagraph 4.3(h)(3) above.

(7) Payment of Qualified Independent Consultant's Fees and Expenses. ASRC shall pay the reasonable fees and expenses of each Qualified Independent Consultant to whom a Protest Notice is referred for rendition of a Consultant Opinion. If, however, the Consultant Opinion concludes that the execution or issuance of the proposed Subsurface Agreement or Subsurface Agreement Solicitation described in the State's Action Notice would not be in compliance with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, the State shall reimburse ASRC for the reasonable fees and expenses of each Qualified Independent Consultant to whom that Protest Notice was referred.

(i) Procedures Before Qualified Independent Consultant. ASRC and the State shall be entitled to provide any written information or materials they desire and to have their representatives, economists, geologists, and other consultants and experts make oral presentations to the Qualified Independent Consultant to whom a Protest Notice is referred. Copies of all documentary information, written arguments, or other materials of whatever nature presented to the Qualified Independent Consultant by either ASRC or the State shall be served on the other party. Either the State or ASRC may impose reasonable confidentiality restrictions on any confidential material thus served on the other party. There will be no ex parte communications by the State or ASRC with the Qualified Independent Consultant. The State and ASRC shall each have the right to be present when oral

presentations are made to the Qualified Independent Consultant, and these oral presentations shall be recorded by the Qualified Independent Consultant. Subject to such confidentiality restrictions as are imposed under subparagraph 4.3(h)(5) above, the Qualified Independent Consultant shall also have the right to consult with others and to make whatever other investigations and inquiries as the Qualified Independent Consultant sees fit to assist in formulating the Consultant Opinion. The Qualified Independent Consultant shall preserve a complete record of all documentary information, written and oral arguments and presentations, and other information, data, and opinions or materials considered by the Qualified Independent Consultant in formulating the Consultant Opinion.

(j) Consultant Opinion and Timeliness. Except in response to a direct request for information from the Qualified Independent Consultant, neither the State nor ASRC may present information to the Qualified Independent Consultant after day fifteen (15) following the day the Qualified Independent Consultant receives referral of the Protest Notice pursuant to paragraph 4.3(f). A Qualified Independent Consultant to whom a Protest Notice is referred shall deliver a written Consultant Opinion to the State and ASRC within twenty (20) days after the date on which the Qualified Independent Consultant receives written notice from either ASRC or the State of the referral of the Protest Notice to that Qualified Independent Consultant pursuant to subparagraph 4.3(f). The Consultant Opinion shall explain whether, in the opinion of the Qualified Independent Consultant, the execution or issuance by the State, as executive, of the proposed Subsurface Agreement or Subsurface Agreement Solicitation described in the Action Notice which is the subject of ASRC's Protest Notice would be in compliance with the standard set forth in paragraph 4.2(a) of this Settlement Agreement.

(k) Effect of Consultant Opinion Upholding Proposed Action by Executive. If a Consultant's Opinion concludes that the execution or issuance by the State as executive of a proposed

Subsurface Agreement or Subsurface Agreement Solicitation would be in compliance with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, and the State within six (6) months thereafter executes or issues a **Subsurface Agreement or Subsurface Agreement Solicitation** consistent with the **Consultant Opinion**, then ASRC shall not thereafter have a right to make any claim against the State based on an assertion that the execution or issuance of that **Subsurface Agreement or Subsurface Agreement Solicitation** failed to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, and ASRC shall be held to have agreed that such execution or issuance was in compliance with the standard set forth in paragraph 4.2(a) hereof.

(1) Effect of Consultant Opinion Not Upholding the Executive. If a **Consultant Opinion** concludes that the execution or issuance by the State as executive of a proposed **Subsurface Agreement or Subsurface Agreement Solicitation** would not be in compliance with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, the State shall nevertheless have the power as executive to execute or issue that proposed **Subsurface Agreement or Subsurface Agreement Solicitation** and thereby bind both the State and ASRC as owners of the **Nuiqsut subsurface** or the **Point Lay subsurface** involved; however, ASRC shall have the right, subject to any applicable statute of limitations, to institute suit against the State in a state superior court to recover any damages that may have been suffered by ASRC as a result of the failure of any of the **substantive terms and conditions** of that **Subsurface Agreement or Subsurface Agreement Solicitation** to which ASRC objected in its **Protest Notice** to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement. If a suit is filed, the court shall give effect to the determination of the **Qualified Independent Consultant** in the **Consultant Opinion** that the State's action in executing or issuing the **Subsurface Agreement or Subsurface Agreement Solicitation** failed to comply with the standard set

forth in paragraph 4.2(a) of this Settlement Agreement, unless the court determines, based solely on a review by the court of the record compiled by the **Qualified Independent Consultant** as required in paragraph 4.3(i) (rather than in a *de novo* trial of the issue), that the decision of the **Qualified Independent Consultant** in the **Consultant Opinion** was arbitrary and capricious or contrary to applicable law. If the state superior court sustains the **Consultant Opinion** of the **Qualified Independent Consultant**, it shall proceed to determine (in a *de novo* trial of the issue) the amount of the damages, if any, that have been suffered by ASRC as a result of the failure of any of the **substantive terms and conditions of the Subsurface Agreement or Subsurface Agreement Solicitation** to which ASRC objected in its **Protest Notice** to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement.

(m) **Unauthorized Action by Executive.** If the execution or issuance by the State as executive of a **Subsurface Agreement or Subsurface Agreement Solicitation** is an **Unauthorized Action** as defined in subsection 11.30 of this Settlement Agreement, then ASRC shall have the right, subject to any applicable statute of limitations, to institute suit against the State in a state superior court; and, if ASRC shall establish in that suit (in a *de novo* trial of the issue) that **substantive terms and conditions of that Subsurface Agreement or Subsurface Agreement Solicitation** did not comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement, ASRC shall have the right to recover any damages that were suffered by it as a result of such failure of the State to comply with the standard set forth in paragraph 4.2(a) of this Settlement Agreement. A suit by ASRC under this paragraph shall not affect the rights of a lessee or other third party under a **Subsurface Agreement** that has been executed by the State in exercise of the **Executive Rights** granted in this Settlement Agreement. The fact that execution or issuance by the State as executive of a **Subsurface Agreement or Subsurface Agreement Solicitation** is an **Unauthorized**

Action as defined in subsection 11.30 of this Settlement Agreement shall not invalidate any **Subsurface Agreement** executed by the State as executive in exercise of the **Executive Rights** granted in this Settlement Agreement.

4.4. Subsurface Agreements to Be in Writing.

Any **Subsurface Agreement** affecting the Nuiqsut subsurface or the Point Lay subsurface which the State executes as executive will be void and unenforceable unless in writing. The State shall deliver a copy of it to ASRC within ten (10) days of its execution.

4.5. Effect of Confidentiality Provisions in Subsurface Agreements.

In accepting delivery of a copy of a **Subsurface Agreement**, ASRC agrees to be bound by whatever lawful or, if not required by law, reasonable requirements of confidentiality exist in the **Subsurface Agreement** between the State and the third party; however, no confidentiality agreement shall prohibit ASRC from introducing in evidence whatever information concerning the **Subsurface Agreement** that may be necessary or appropriate to prove the nature of the action taken by the State in a suit filed by ASRC which is authorized under the provisions of paragraph 4.3(1) or 4.3(m).

4.6. Powers of Executive Following Execution and Delivery of Subsurface Agreement.

After execution and delivery of a **Subsurface Agreement** by the State, except only as specifically provided in subsection 5.2 below, the State shall have no right, power or duty as executive to negotiate or execute any amendment or change of or with respect to that **Subsurface Agreement** insofar as to the interests of ASRC in the subsurface covered or affected by that **Subsurface Agreement**. Rather, subject only to subsection 5.2 below, ASRC shall have sole responsibility for and the right and power to negotiate and execute any amendment or supplement of or with respect to that **Subsurface Agreement** insofar only as to the interests of ASRC in the subsurface covered or affected by that