

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 86/2**

**7176 HOUSE RESOURCES**

## Attachment

### Arctic Slope Regional Corporation Settlement Agreement

If the agreement is approved by the Legislature, no additional funds or positions will be needed to implement it.

If the agreement is not approved by the Legislature, the Department of Law would expend significant funds litigating the dispute. The Department of Natural Resources would need a portion of a position to support the litigation.

In addition, the settlement is needed if the state is to lease lands in the Nuiqsut area now scheduled for sale Oil and Gas Lease Sale 75 during December, 1992. If the agreement is approved this year, the lease sale could include approximately 60,000 acres of land covered in the agreement (about one quarter of the total acreage of Sale 75). If the agreement is not approved this session, the Nuiqsut acreage (assuming the litigation is settled) could not be leased until 1995 because of oil and gas lease sale procedural requirements. The Nuiqsut area lands have moderate oil and gas potential. Including them in the lease sale would bring significant new revenues to the state.

WALTER J. HICKEL  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 23, 1992

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would ratify the "1991 Settlement Agreement Between the State of Alaska and the Arctic Slope Regional Corporation" (1991 Settlement Agreement). This bill would resolve longstanding litigation between the State of Alaska and the Arctic Slope Regional Corporation (ASRC) over ownership of potentially valuable mineral lands in the Point Lay and Nuiqsut areas of the North Slope. The litigation arose out of a 1974 land exchange agreement (1974 Agreement), discussed below, which followed passage of the Alaska Native Claims Settlement Act of 1971 (ANCSA). The bill also would remove impediments to title marketability to the disputed lands and to create a long-term partnership between the state and ASRC, aimed at maximizing revenue for both parties.

The 1991 Settlement Agreement - Background

The 1991 Settlement Agreement resolves a dispute over land entitlement stemming from a 1974 land exchange agreement. The 1974 Agreement was intended to resolve state challenges to the BIA-certified eligibility of two ANCSA village corporations by requiring the state and ASRC to exchange certain lands in the Nuiqsut and Point Lay areas, in exchange for which the state agreed to withdraw its challenges to the ANCSA eligibility of Point Lay (Cully Corporation) and Nuiqsut (Kuukpik Corporation).

Under the 1974 Agreement, ASRC agreed to quitclaim any interest it had in 69,120 acres of Nuiqsut area subsurface then tentatively approved to the state, the surface of which Kuukpik Corporation could select under ANCSA. The state agreed to convey to ASRC about 65,000 acres of lands owned by the state in the Point Lay area. Although the state did withdraw its challenges to the eligibility of Point Lay and Nuiqsut, the land exchange provisions of the 1974 Agreement were never completed, for reasons which ASRC and the Department of Natural Resources (DNR) dispute.

The Honorable Ben Grussendorf  
January 23, 1992  
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In 1985 Texaco made a promising oil strike northeast of the Nuiqsut area lands. At that point, DNR sought to implement the land exchange provisions of the 1974 Agreement. ASRC refused, asserting that the state had abandoned the 1974 Agreement by 11 years of inaction and that the 1974 Agreement was in violation of the Alaska Statehood Act, the Constitution of Alaska, and various state and federal laws. Negotiations between the parties failed, and litigation was filed in state and federal court.

After the initiation of litigation and extensive motion practice, DNR and ASRC, faced with the uncertainties of litigation and the speculative values of both the Nuiqsut and Point Lay parcels, reentered negotiations and in 1986 reached an agreement in principle that contemplated an even split of the contested uplands at both locations. This "50/50" split of the lands subject to the 1974 Agreement remains at the heart of the 1991 Settlement Agreement.

However, after the basic settlement concept was agreed to in 1986, DNR and ASRC engaged in extensive research and discussions concerning the boundaries, extent, and location of uplands and of the state's wholly-owned submerged lands (to which ASRC was not entitled), and regarding which party would manage the lands involved and under what conditions.

The most difficult issue during settlement negotiations concerned the boundaries, extent, and location of submerged lands. ASRC claimed that the extent of the state's wholly-owned submerged lands (including submerged lands underlying lakes, rivers, and tidelands) totalled substantially less in acreage than that claimed by DNR. The parties realized that the inability to agree on the submerged lands would inevitably result in further litigation and make it difficult if not impossible for either party to market its respective interests. Therefore, the parties tentatively agreed to merge title to the uplands and submerged lands and share the revenue from oil and gas development on a section-by-section basis, with the state to get more than 50 percent when, arguably at least, there were submerged lands in a section.

For three years the parties analyzed aerial photos, maps, United States Fish and Wildlife Service and Bureau of Land Management data, and other data in an effort to reach a common data base for determining what the state's wholly owned submerged lands were and what the uplands to be split between the parties were. It took a settlement conference before a United States District Court judge to force the parties to resolve this issue; in that 1989 settlement conference the parties compromised their respective positions. Since then, the parties have continued to negotiate the details of how the lands would be managed.

The resulting 1991 Settlement Agreement, as recommended to me by Attorney General Cole, has the following principal components:

1. The litigation is dismissed and the rights of the parties under the 1974 Agreement are superseded unless the 1991 Settlement Agreement is overturned by a court.

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2. The state and ASRC acquire by exchange equal, undivided interests in the subsurface estate of all lands previously subject to the 1974 Agreement.

3. The state and ASRC merge their titles to uplands and submerged lands and establish a formula for percentages of undivided ownership, on a section-by-section basis. This merger would resolve all disputes regarding the existence, extent, and location of state-owned submerged lands and avoid, for all time, the ambiguities otherwise created by constantly shifting boundaries caused by accretion, reliction, and avulsion.

4. The state retains the "executive rights" (leasing authority) to lease all lands on behalf of ASRC and the state. ASRC has the opportunity to review and comment on proposed oil and gas lease terms, with a dispute-resolution mechanism in the event of disagreement. ASRC and the state each retain the right to separately enforce the lease with respect to their respective interests.

5. Revenue generated from the undivided interests is paid directly to the state and ASRC, respectively, in proportion to their percentage ownership interests in the subsurface estates.

6. The state did not give up any of its duties to the public imposed by law. The state will still have to determine whether a sale is in the best interest of the state, and must follow relevant procedural requirements for leasing or exploring for natural resources. The state retains all rights under state law to ensure that development of the subsurface complies with laws concerning natural resource management and protection.

The 1991 Settlement Agreement contains a number of complex, technical provisions dealing with existing oil and gas leases at Nuiqsut, status of state submerged lands, boundary problems, and land management rights and duties. The following describes in more detail the major provisions of the settlement agreement.

1991 Settlement Agreement - Substantive Provisions

Under the 1991 Settlement Agreement, the parties agreed to quantify the extent of state-owned submerged lands by splitting the difference between the state's calculations of submerged lands and those of ASRC. Title problems were resolved by combining 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 agreed-to uplands within each section, and the state receiving full (i.e., 100 percent) credit for any agreed-to submerged lands within the section. The state retains full sovereign powers over submerged lands, notwithstanding ASRC's undivided ownership interest.

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January 23, 1992  
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The net effect of the cross-conveyances called for in the 1991 Settlement Agreement is an exchange of undivided interests in the subsurface estate such that the titles to submerged lands and uplands are merged and the parties, for all time, will own their respective undivided percentage interests in each section according to the schedules set out in Exhibits E and F to the 1991 Settlement Agreement. This percentage is fixed and will not change regardless of the amount or location of submerged lands that may be contained in any section from time to time.

In order to eliminate any possible future disputes over the boundary of the settlement area along the coastline and along the National Petroleum Reserve-Alaska (NPRA) boundary, the parties agreed to extend section lines into the ocean and across the NPRA boundary so that the area subject to the 1991 Settlement Agreement will include only full sections whose location can be protracted at any time without reference to changes brought about by accretion, reliction, or avulsion. In this manner, approximately 4,000 acres of ocean submerged lands owned by the state outside the 1974 Agreement area, and approximately 9,000 acres of NPRA subsurface owned by ASRC also outside the 1974 Agreement area, were included in the 1991 Settlement Agreement. In each instance the parties' undivided percentage interest in any section so extended was adjusted to provide a 100 percent credit for lands contributed by the state or ASRC from outside the original 1974 Agreement boundaries.

Finally, the parties agreed that the state would hold the "executive rights" for both parties' interests. As defined in the 1991 Settlement Agreement, "executive rights" empower the state to enter into leases and other subsurface agreements on behalf of both ASRC and the state. The 1991 Settlement Agreement contemplates that the commissioner will exercise the executive rights consistent with statutory constraints; the agreement does not waive any sovereign powers of the state.

The parties to the 1991 Settlement Agreement also discussed the issue of section 6(i) of the Alaska Statehood Act, which generally prohibits the state from alienating any interest in mineral estates it owns. Congress has authorized an exception to this provision under sec. 22(f) of ANCSA, which authorizes exchanges of land with ANCSA corporations. In order to resolve any question as to whether the exchange contemplated in the settlement agreement would require approval of the Secretary of Interior, the state has requested, and expects to receive shortly, an opinion from the Interior Solicitor ruling that no Secretarial approval is required for the 1991 Settlement Agreement.

The Bill

The attached bill ratifies the 1991 Settlement Agreement and establishes procedures for implementing it. Section 1 of the bill sets out the overall purposes of the bill and settlement agreement.

The Honorable Ben Grussendorf  
January 23, 1992  
Page 5

Section 2 of the bill specifies that the 1991 Settlement Agreement is ratified "notwithstanding any provision of AS 38 or any other provisions of Alaska law." This clarifies that the exchange of undivided interests in land contemplated by the 1991 Settlement Agreement is not subject to the provisions, in particular, of AS 38.50.

AS 38.50 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. For example, AS 38.50 contemplates a voluntary exchange of land 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 under the settlement agreement 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 under AS 38.50.

In addition to addressing AS 38.50, the "notwithstanding any other provision of Alaska law" language is intended to ensure that no other provision of state law might subsequently be raised to challenge the settlement itself. The bill deliberately uses broad language to accomplish this result. This language is intended to make it clear, for example, that in carrying out the provisions of the settlement the commissioner is acting under the mandate of the legislature as provided in this bill and not exercising the commissioner's discretion under other statutory provisions that authorize administrative disposition of state lands. Specifically, this language, together with sec. 3 of the bill, discussed below, relieves the commissioner of any further notice, hearing, or public interest finding requirements before making the conveyances required by the 1991 Settlement Agreement.

The exemption as to other provisions of Alaska law extends, however, only to those actions mandated by the 1991 Settlement Agreement necessary to implement the settlement. The 1991 Settlement Agreement contemplates that, following conveyance, the commissioner will exercise management responsibilities consistent with statutory constraints, and does not waive any sovereign powers of the state. Any exploration and development activities that occur subsequent to the exchange will be fully subject to the normal statutory and regulatory procedures 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.

The Honorable Ben Grussendorf  
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Page 6

Section 3 of the bill provides that "no statutory or common law rules against perpetuities . . . or restraints on alienation of property shall apply to the settlement agreement . . . or to any interest or power created by it." The 1991 Settlement 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, including contemplation of sales, with respect to their lands for an indefinite period of time. The law is generally hostile to perpetual restrictions or restraints on alienation. For example, AS 34.27.010 provides that an interest that would violate the rule against perpetuities may be reformed by a court. If these rules were to apply, the 1991 Settlement Agreement might be challenged and stricken down or modified in ways that were never intended.

A major consideration for both the state and ASRC in entering into the 1991 Settlement Agreement is to improve the 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 unreasonable restraints on alienation. Accordingly, sec. 3 exempts the 1991 Settlement Agreement from these requirements.

Sections 4 and 5 of the bill outline the authorities and duties of the commissioner of natural resources to carry out the terms of the 1991 Settlement Agreement, including issuing and recording the appropriate land conveyances.

Section 6 of the bill limits the time within which the bill or the 1991 Settlement Agreement can be challenged in court. In order to minimize the possibility that the exchange might be altered or invalidated by a court after the state and ASRC have committed themselves to making the conveyances and taking the other actions required by the 1991 Settlement Agreement, sec. 6 provides that any action challenging the legality of the 1991 Settlement Agreement must be commenced within six months after the effective date of the legislation. A joint lease sale involving lands subject to the settlement agreement is scheduled for December 1992. Any uncertainty as to the validity of the 1991 Settlement Agreement or the implementing legislation could adversely affect the marketability of the leases. Although the six-month limitation period is rather short, the parties most likely to have standing to challenge the settlement agreement are the state and ASRC or entities in privity with them. We believe that the short limitation period is reasonable in light of the extensive past negotiations between the parties and the need to provide some finality to the litigation and to allow for future uses of the lands. Also, sec. 6 of the bill provides that the bill may not be construed as creating any right in any party not privy to the 1991 Settlement Agreement to challenge that Agreement or the Act.

Finally, sec. 7 of the bill waives the sovereign immunity of the state to any suit brought by ASRC to enforce the 1991 Settlement Agreement if that action is commenced in a superior court of the state. The state does not waive its protection from suit in federal court under the eleventh amendment of the Constitution of the United States.

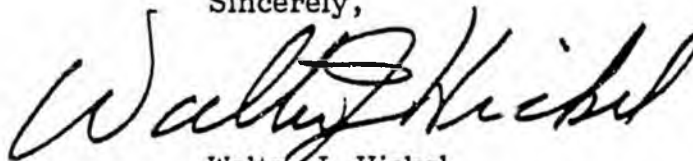
The Honorable Ben Grussendorf  
January 23, 1992  
Page 7

The 1991 Settlement Agreement is a compromise, and settles highly disputed issues. Because of that, it is not without risks to both the state and ASRC. However, I believe that these risks are outweighed by the benefits to the state of finally resolving this 18-year-old dispute. The 1991 Settlement Agreement not only settles long-standing litigation between ASRC and the state, it also anticipates and resolves disputes regarding the existence, extent, and location of submerged lands owned by the state in the Nuiqsut and Point Lay areas. Finally, 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.

Copies of the 1991 Settlement Agreement will be provided to the senate secretary and the clerk of the house. Additional copies are available through the Department of Natural Resources.

I urge your prompt consideration and passage of this bill.

Sincerely,



Walter J. Hickel  
Governor

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FACSIMILE: (907) 586-2754

February 10, 1992

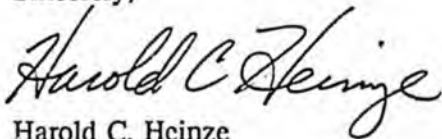
The Honorable Cliff Davidson  
Chairman, House Resources Committee  
State Capitol, Room 108  
Juneau, AK 99801-1182

Dear Representative Davidson:

During the February 5 hearing on HB 416, which ratifies the ASRC Settlement, two important questions were asked. I asked staff from the Attorney General's Office and the Division of Oil and Gas to provide detailed answers. Their response is enclosed.

I hope this information is useful. Please let me know if you have additional questions.

Sincerely,



Harold C. Heinze  
Commissioner

Enclosure

cc: Committee Members  
Paul Fuhs, Legislative Liaison  
Office of the Governor

**Questions and Answers**  
**HB 416 House Resources Committee Hearing**  
**February 5, 1992**

**Why does the legislature have to approve this settlement? It doesn't approve most settlements.**

First, the settlement requires the state to convey a portion of its mineral interest to ASRC. 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 ANCSA to permit the state 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 legislature finds the exchange to be in the public interest.

Second, AS 38.50 which provides authority for exchanges of interests in state lands 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. Because the agreement does not fit the process of AS 38.50, legislative approval provides the authority necessary to effectuate the exchange.

Third, Article VIII, Section 10 of the Alaska Constitution requires that "[n]o disposals...of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interests as may be prescribed by law." Public involvement in the settlement is provided through the process of legislative ratification, in order to avoid any potential constitutional infirmity.

**How are funds accounted for? Does this settlement evade the legislature's appropriation authority?**

Funds accruing to the state from oil and gas leases on state land go in part to the general fund and in part to the permanent fund. Leases issued under the ASRC agreement are no different. The agreement divides interests in land, but all revenue from the state's interest belongs to the state and is handled like "normal" state revenues. In addition, it is the lessee's responsibility to pay the appropriate share directly to the state and to ASRC. This divided payment is unusual for Alaska, but is a frequent occurrence in other parts of the United States where land status is more complex.

If, for example, the lessee owes \$100 in rent under the lease made under this agreement, and that lease happens to be on land that the state owns a 60% undivided interest and ASRC owns a 40% undivided interest, then the lessee must send \$60 to the state, and \$40 to ASRC. That \$60 is accounted for like other oil and gas revenues. Part goes to the general fund and part goes to the permanent fund.

STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Natural Resources & Law  
 Title: Short Title: ASRC Settlement BRU: Division of Oil & Gas  
 Components: \_\_\_\_\_  
 Sponsor: Rules Committee  
 Requestor: Governor COMPONENT SERIAL NO. 439

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	0.0	0.0	0.0

CAPITAL						
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REVENUE						
Funding Source:	N/A					

FUNDING: (Thousands of Dollars)

GENERAL FUND	N/A					
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	N/A	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0					
PART-TIME	0.0					
TEMPORARY	0.0					

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attachment

Prepared by: Bob Loeffler Phone: 762-2578  
 Division: Oil & Gas Date: 15-Jan-92

Approved by Commissioner: Harold C. Heinz Date: \_\_\_\_\_  
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,  
 & Impacted Agency(ies).

Attachment

Arctic Slope Regional Corporation Settlement Agreement

If the agreement is approved by the Legislature, no additional funds or positions will be needed to implement it.

If the agreement is not approved by the Legislature, the Department of Law would expend significant funds litigating the dispute. The Department of Natural Resources would need a portion of a position to support the litigation.

In addition, the settlement is needed if the state is to lease lands in the Nuiqsut area now scheduled for sale Oil and Gas Lease Sale 75 during December, 1992. If the agreement is approved this year, the lease sale could include approximately 60,000 acres of land covered in the agreement (about one quarter of the total acreage of Sale 75). If the agreement is not approved this session, the Nuiqsut acreage (assuming the litigation is settled) could not be leased until 1995 because of oil and gas lease sale procedural requirements. The Nuiqsut area lands have moderate oil and gas potential. Including them in the lease sale would bring significant new revenues to the state.

# ALASKA STATE LEGISLATURE

Representative Eileen Panigeo MacLean  
Co-Chair House Finance Committee  
P.O. Box 830  
Barrow, Alaska 99723



WHILE IN JUNEAU  
Box V  
Juneau, Alaska 99811  
465-4525  
465-4833

## HOUSE OF REPRESENTATIVES

District 22

North Slope  
Borough

Anaktuvuk Pass  
Atkasuk  
Barrow  
Kaktovik  
Nuiqsut  
Point Hope  
Point Lay  
Wainwright

Northwest Arctic  
Borough

Ambler  
Buckland  
Deering  
Kiana  
Kivalina  
Kobuk  
Kotzebue  
Noatak  
Noorvik  
Selawik  
Shungnak

### MEMORANDUM

DATE: January 29, 1991  
TO: Representative Cliff Davidson, Chairman  
House Resources Committee  
FROM: Representative Eileen P. MacLean *EPM*  
SUBJ: Committee Hearing on HB 416

This is to request a hearing on HB 416, 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.

HB 416 settles an 18 year land dispute between the State of Alaska and the Arctic Slope Regional Corp. The dispute arose when the federal government allowed Nuiqsut and Point Lay village corporations to choose lands for ownership that had been transferred to the state through the Alaska Native Claims Settlement Act. The state protested the selections and agreed to a land exchange however, the exchange was never completed. Oil was discovered in 1984 and both the state and ASRC filed lawsuits against each other.

The agreement provides that the state and ASRC will jointly own oil and gas rights, with the state maintaining a 57% share. This will be the first land agreement where the state and a Native Corporation jointly own land, and it is the first oil and gas sale involving the state and a private owner.

House Resources Committee  
page 2

If the legislature does not approve of the settlement this session the terms of the settlement could be called into question. According to DNR, litigation would continue and the state would delay oil and gas leasing of the potentially valuable land.

I respectfully request a hearing on HB 416 in the House Resources Committee at your earliest convenience. If you have any questions, please contact Rena Bukovich of my staff at 465-4525.

*I would appreciate your scheduling of the bill, as per our conversation the other day. Thanks Guyana*

# STATE OF ALASKA

**DEPT. OF NATURAL RESOURCES**

**DIVISION OF OIL AND GAS**

RECEIVED JAN 13 1992

WALTER J. HICKEL, GOVERNOR

P.O. BOX 107034  
ANCHORAGE, ALASKA 99510-7034  
PHONE: (907) 762-2553

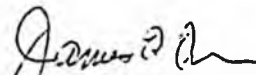
January 3, 1992

Dear Sir or Madame:

I am writing to inform you of a settlement agreement concerning certain mineral resources on the north slope. In December 1991, the State of Alaska and the Arctic Slope Regional Corporation (ASRC) settled a long-running legal dispute concerning land ownership on the north slope near Nuiqsut and Point Lay. The mineral estate of this land is potentially valuable for oil, gas, or coal. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange lands near Nuiqsut and Point Lay. The settlement is not effective until approved by the legislature. The Governor will submit the settlement agreement to the legislature at the beginning of the legislative session in January. Much of the Nuiqsut-area lands have existing oil and gas leases. Certain unleased portions of that area are scheduled to be offered for competitive leasing in Oil and Gas Lease Sale 75 in December 1992.

I am enclosing a copy of the settlement, and a summary of its terms prepared by the Division of Oil and Gas. If you would like more information, please contact Bob Loeffler of my staff at the address on the letterhead. He can be reached at 762-2578.

Sincerely,

  
James E. Eason  
Director

Enclosures

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034  
ANCHORAGE, ALASKA 99510-7034  
PHONE: (907) 782-2553

## SUMMARY OF THE 1991 SETTLEMENT AGREEMENT between ARCTIC SLOPE REGIONAL CORPORATION & STATE OF ALASKA January 1992

### INTRODUCTION

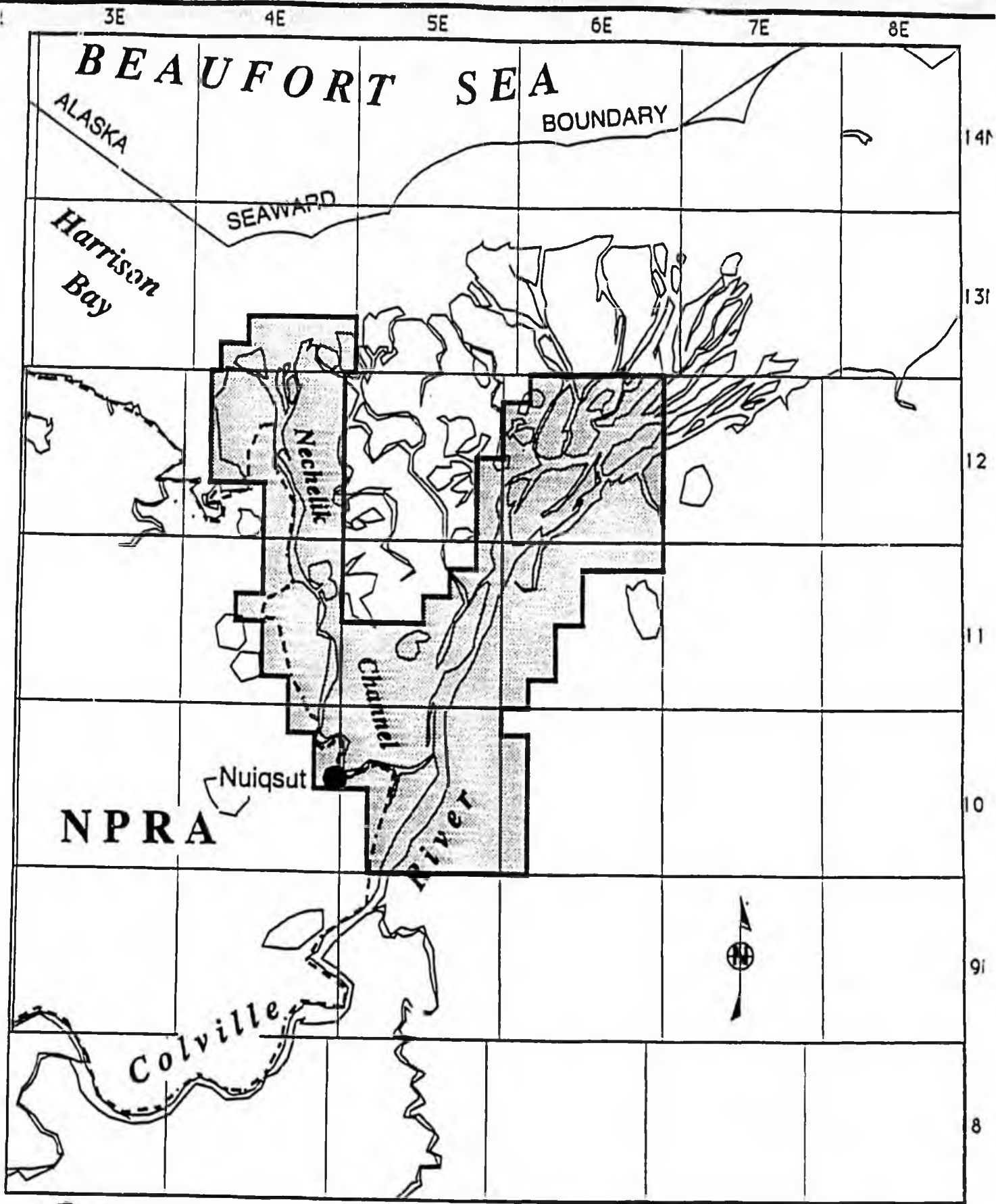
In December 1991, the State of Alaska and the Arctic Slope Regional Corporation (ASRC) settled a long-running legal dispute concerning north slope mineral ownership near Nuiqsut and Point Lay. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange lands near Nuiqsut and Point Lay. The settlement is not effective until approved by the legislature. The Governor will submit the settlement agreement to the legislature at the beginning of the legislative session in January. The area affected by the settlement is displayed in the maps on the next pages.

Under the settlement, the state and ASRC agree to jointly own undivided interest in the mineral estate of the disputed lands. The settlement also grants the state the right to hold oil and gas lease sales jointly for itself and for ASRC. Once a lease has been signed, the state and ASRC each separately administer its lease with respect to its own undivided interest in the subsurface.

Under the settlement agreement, the state does not give up any of its duties to the public imposed by law. The state would still have to determine whether a sale would be in the best interest of the state, and would follow relevant procedural requirements for leasing and for permitting the subsequent exploration for natural resources. The state retains all rights under state law to ensure that development of the subsurface complies with laws governing natural resource management and protection.

The agreement involves only mineral estate; it does not change the surface ownership. The surface estate of the Point Lay lands is state-owned; the Nuiqsut surface is owned by the village corporation for Nuiqsut, Kuukpik Corporation.

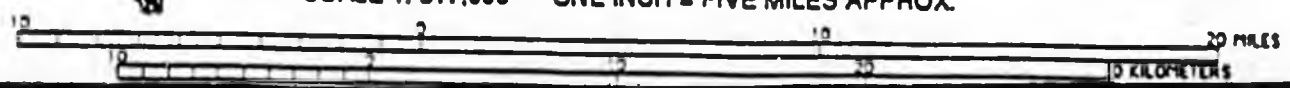
The land dispute began in 1973 when the federal government allowed the village corporations for Nuiqsut and Point Lay to select lands that had previously been transferred to the state. The state then protested the eligibility of those villages under the Alaska Native Claims Settlement Act. One year later, the state withdrew its protest and agreed to give up ownership of Point Lay mineral estate in return for ownership of the Nuiqsut mineral estate. For various reasons, the land exchanges expected by the 1974 agreement were never completed. This smoldering dispute erupted into lawsuits in 1985 after Texaco announced an oil discovery northeast of the Nuiqsut lands.



# Nuiqsut Subsurface

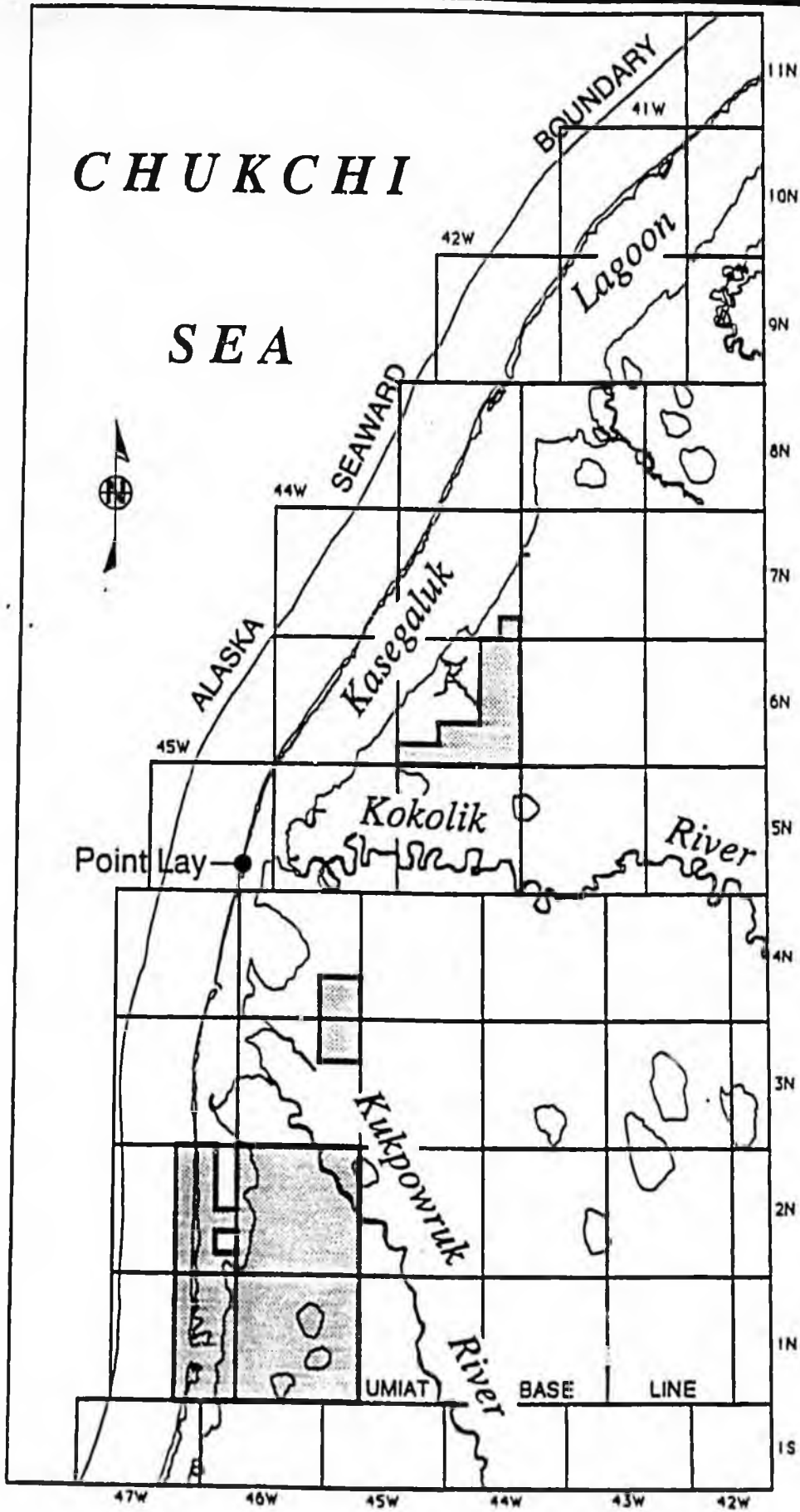
SCALE 1: 317,000 ONE INCH = FIVE MILES APPROX.

Alaska  
 Department of  
 Natural Resources  
 Division of Oil and Gas  
 12-4-91



# CHUKCHI

# SEA

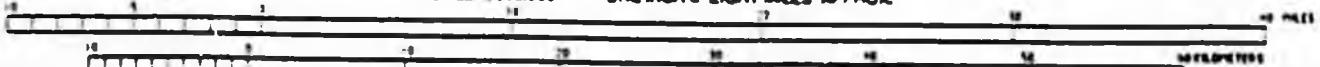


Point Lay



## Point Lay Subsurface

SCALE 1:500,000 ONE INCH = EIGHT MILES APPROX.



Alaska  
Department of  
Natural Resources  
Division of Oil and Gas  
12-4-91

The Point Lay area includes the mineral estate beneath approximately 84,000 acres (including all lands -- both the disputed uplands and the state-owned submerged lands). The Nuiqsut area includes the mineral estate beneath approximately 111,000 acres. However, the Nuiqsut-area acreage will eventually be reduced. The agreement concerns the subsurface estate conveyed to ASRC by the federal government. Conveyances in that area are not complete. The Nuiqsut area includes overselections, all of which will not be conveyed to ASRC. Sections not conveyed to ASRC will eventually be eliminated from the area affected by the agreement.

## SUMMARY OF THE ISSUES

**Land Ownership.** The dispute concerns the ownership of the subsurface estate beneath the uplands in the Nuiqsut and Pt. Lay areas. The agreement resolves the location and amount of the subsurface estate attributable to upland ownership. In concept, the state and ASRC agreed that submerged lands and the subsurface below them were state-owned. However, the location and amount of submerged lands were hotly disputed and difficult to resolve.

The agreement fixes the amount of submerged lands -- for purposes of oil and gas leasing -- for all time. This will eliminate administrative complexity for the state and ASRC, and for lessees who might otherwise be unsure who owns their lease tracts. The agreement also provides that the amount of submerged lands is agreed to for purposes of resolving this litigation only and has no further implication for the many other submerged lands disputes in which the state is involved.

According to the agreement, the state and ASRC own undivided interests in the subsurface estate of each section of land in the Nuiqsut and Pt. Lay areas. The interest that each owns reflects a 50/50 split of the uplands plus a state credit for 100% of the agreed-to submerged land acreage. The agreement establishes percentages for all times; the percentages will not change with changes in the extent of submerged lands (i.e., due to accretion, reliction, or erosion). Boundaries are "squared off" along the coast and along the NPRA border (i.e., the boundary includes entire sections). The squaring off allows for more efficient leasing. It also has the effect of giving ASRC a small share of lands in Harrison Bay which are already leased, and the state a small share of NPRA lands.

$$\text{State \%} = \frac{(\text{upland acres} * 50\%) + (\text{submerged land acres} * 100\%)}{\text{number of acres in the section (usually 640)}}$$

Crucial to the agreement is an exhibit that lists for each disputed section the state and the ASRC percentage ownership in that section. Revenue is calculated by section; it accrues according to the percentage ownership listed by section.

**Land Management.** The state and ASRC agreed to a system where the state manages the land for both parties up to the point of leasing. In return for that management, the state owes ASRC a certain standard of performance. Once the lease has been signed, the state has for the most part

discharged its duty to ASRC. Thereafter, the state and ASRC each separately administers its lease with respect to its own undivided interest in the subsurface. The exception is that in some situations, the commissioner has the power to establish the royalty value of oil for the state. If that occurs the commissioner's decision will also establish the value for purposes of ASRC.

## TERMS OF THE AGREEMENT

**The State's Right to Lease on Behalf of ASRC: *The Grant of Executive Rights.*** Under the agreement, ASRC grants the state "executive rights" to lease the jointly held land on behalf of itself and ASRC. Thus, the state holds the lease sale, accepts bids, and signs the lease agreement with the lessee. The lease binds both the state and ASRC. In return for these executive rights, the state agrees to comply with a standard of performance with respect to ASRC's interest in the land. By this standard, the state agrees to act with "the degree of diligence and discretion that would be exercised by an average landowner, acting as a reasonable and prudent person...in seeking to cause his subsurface to be explored and developed..." The state and ASRC also agree that this standard of performance does not apply "to the extent that the state is prevented from complying with such standard because of its duties and obligations as sovereign or because of applicable federal or state statutes, regulations and constitutional provisions including, but not limited to, those that govern protection of natural resources and procedural requirements for disposal of interests in state lands..."

In other words, the state agrees to a standard of care, but does not give up any of its duties to the public imposed by law (i.e., we still have to determine whether a sale would be in the best interests of the state, etc.). If, for example, it is not in the state's best interest to lease because of potential environmental harm or another reason, the state can decline to lease (can decline to exercise its executive rights). In that case, ASRC has the same rights as any member of the public to appeal the state's finding, but cannot compel the state to act by virtue of this agreement. If the state refuses to lease, ASRC has the right to lease its own interest under the laws of mineral cotenancy. Finally, the state agrees to "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."

The state's liability under this standard could, in some circumstances, be quite significant. With knowledge gained by exploration, it is always possible to second-guess the terms of a past lease sale. To avoid claims made in hindsight that the state should have acted differently and did not live up to its promised standard, the parties agreed upon a dispute resolution process to resolve differences before the sale (and without going to court).

In this process, the state proposes "substantive terms and conditions" for a lease sale to ASRC. These terms include such variables as royalty rate and minimum bid, but they do not include sovereign powers of the state such as those that are exercised in best interest findings or in stipulations attached to land use permits. If they cannot agree on the "substantive terms and conditions" of the sale, the disagreement is referred to an expert (called a qualified independent

consultant). The expert determines whether the state's proposed "substantive terms and conditions" meet the standard of performance.

Three outcomes are possible: (1) the state and ASRC agree on terms and the lease sale goes forward; (2) they disagree, and the issue is referred to the expert who decides in favor of the state; or (3) they disagree, and the issue is referred to the expert who decides in favor of ASRC.

If either of the first two situations occurs (agreement or an expert decision favoring the state), ASRC forever waives the right to argue that the state violated its standard of performance. If the expert decides in favor of ASRC, the state can, of course, decide to adopt ASRC's recommendations. It can also go ahead under its own terms. If this occurs, however, ASRC may claim damages in court, arguing that the state violated the standard of performance that it promised in the agreement.

**After the Joint Lease: *Separate Administration.*** After the state signs the lease on behalf of itself and ASRC, the state and ASRC will each separately administer its own interest in the lease. The two parties have what is essentially identical but separate legal relationship with the lessee with respect to the same mineral estate. Although a new concept for Alaska, this is a frequent occurrence in other parts of the United States, like Texas, where landownership is more complicated.

Most state administration of oil and gas leases focuses on an operator's compliance with laws concerning natural resource management and protection (land use permits, etc.). This administration is based not upon the state's statutes for oil and gas leases, but on the state's sovereign powers. These regulatory decisions are made by the state alone. Decisions concerning whether the lessee has lived up to his lease obligation (e.g., paid rent, drilled for oil) are made under the requirements of the individual lease document. These decisions would be administered separately by the two parties with respect to their own interests.

There is an unlikely possibility that the state or ASRC will terminate its lease but that the other will not. In that case, the party with the unleased interest would be free to lease its interest on its own (though such a lease might be worth considerably less than a joint lease). In addition, the lessee may still explore and produce, but as long as part of the subsurface interest is unleased, production occurs under the laws of mineral cotenancy. These laws have not been tested in Alaska, but we expect that the lessee will owe the remaining lessor (the one with the lease) the royalty due under that lease, and will owe the other lessor (the one without a lease) the value of all oil after its share of production and development costs have been subtracted.

This system, while unusual for Alaska, is unlikely to create frequent conflict. The limited nature of decisions made under the lease and the self-interest of both the state and ASRC will likely result in consistent administration.

## **SUMMARY OF PROCESS BEFORE A JOINT LEASE SALE.**

The previous section explained the concept of the settlement agreement. This section explains the steps that precede a joint lease sale.

**The Grant of Executive Rights.** Once State and ASRC both have title to a section and the section is unleased, State has Executive Rights to lease both State and ASRC acreage for oil and gas. With those executive rights, the State is held to a "Standard of Performance" but does not give up its "Sovereign Powers."

1. State proposes "substantive terms and conditions" of the lease sale. At least 6 months before sale, State gives ASRC notice of proposed "substantive terms and conditions" for the sale.
  - 2a. If State and ASRC reach "Approval Agreement" -- that is, if State and ASRC agree on those terms, State goes forward and holds the sale. Go to Step 3.
  - 2b. If State and ASRC disagree - the Qualified Independent Consultant (QIC). If State and ASRC disagree, the disagreement is referred an expert, the Qualified Independent Consultant. State and ASRC show each other and the QIC their information; QIC decides whether State would breach its "Standard of Performance" in using those "substantive terms and conditions."
    - (i) If QIC decides for State. State holds lease sale. Go to Step 3.
    - (ii) If QIC decides against State. State has two choices:
      - (A) Change terms to those requested by ASRC and hold sale. Go to Step 3.
      - (B) Hold sale using State's proposed terms. Go to Step 4.
3. State holds Lease Sale -- Liability Ends. ASRC loses right to argue State breached Executive Rights "Standard of Performance" because ASRC agreed or lost in front of the QIC.
4. State holds Lease Sale -- Liability Continues. ASRC retains right to sue for damages that State breached "standard of performance." If they sue, court reviews decision of QIC based on the record before QIC. If, based on record before QIC, court decides that QIC's decision was "arbitrary and capricious" State is absolved of liability. If court upholds QIC, then court awards damages on State's failure to comply with "standard of performance."

**Grant of Executive Rights Ends -- State and ASRC Administer Own Interest Separately.** One partial exceptions to separate administration: ASRC agrees to use State's method for royalty evaluation.

**STANDARD OF PERFORMANCE.** The agreed standard of performance is reproduced from the agreement.

#### **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<sup>1</sup> and Subsurface Agreement Solicitations<sup>1</sup> 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 creates a fiduciary duty on the part of the State to ASRC.

#### **IMPORTANT DEFINITIONS**

**"Executive Rights"** means the exclusive right, power, and authority to formulate and issue Subsurface Agreement Solicitations<sup>1</sup> and to negotiate, formulate, agree upon, execute, and grant Subsurface Agreements<sup>1</sup> pursuant to the terms of this Settlement Agreement.

**"Limited Prudent Landowner Standard"** means the Prudent Landowner Standard except to the extent that the State is prevented from complying with such standard because of its duties and obligations as sovereign or because of applicable federal or state statutes, regulations, and constitutional provisions, including, but not limited to, those that govern protection of natural resources and procedural requirements for disposal of interests in state lands for leasing, exploration, and development of natural resources, subject, however, to the provisions of subsection 8.2.<sup>2</sup>

**"Prudent Landowner Standard"** means the degree of diligence and discretion that would be exercised by an average landowner, acting as a reasonable and prudent person who is familiar with prevailing practices and standards in the oil, gas, and mineral industry in the area at the time, in seeking to cause his subsurface to be explored and developed and to maximize subsurface revenues from such subsurface and protect such subsurface from drainage.

**"Substantive terms and conditions"** means, but is not limited to, timing of lease sales, lease tract identification and composition, bid terms, and lease terms but shall not include (i) the exercise by the State of its duties and obligations as sovereign, (ii) the State's compliance with applicable federal or state statutes, regulations, and constitutional provisions, including but not

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<sup>1</sup> "Subsurface Agreements" are essentially oil and gas, or coal leases. "Subsurface Agreement Solicitations" is the lease sale.

<sup>2</sup> Section 8.2 ensures that ASRC has not waived "its right to challenge the constitutionality of any statute or the validity of any regulation...that singles out the Nuiqsut subsurface or the Point Lay subsurface for treatment different from that accorded to other lands with the State of Alaska, or that causes any injury-in-fact to any rights expressly granted to ASRC under this Settlement Agreement."

o, those that govern protection of natural resources and procedural requirements for of interests in State lands for leasing, exploration, and development of natural resources, granting of exploration incentive credits against tax obligations or the State's royalty but not ASRC's royalty interest), or (iv) other exercise of the State's taxing power."

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Office of the Chief Clerk

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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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<sup>1/</sup> 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

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<sup>1/</sup>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 in 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 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

**Subsurface Agreement**; and the State 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 the State in the **subsurface** covered or affected by that **Subsurface Agreement**.

**4.7. Direct Payment of Subsurface Revenues.**

Without the prior written consent of ASRC, the State will not accept payment or delivery of any **subsurface revenues** paid or payable for or becoming due under any **Subsurface Agreement** negotiated or executed by the State in exercise of its **Executive Rights** hereunder if the **subsurface revenue** is attributable to the ASRC percentage interest in the **Nuiqsut subsurface** or the **Point Lay subsurface**. The State shall include in each **Subsurface Agreement** the requirement that all **subsurface revenues** attributable to the ASRC percentage interest be paid directly to ASRC as provided for in subsection 5.1, unless ASRC gives other written directions as to payment. If either the State or ASRC receives **subsurface revenues** attributable to the interest of the other, those **subsurface revenues** shall be held in trust and promptly paid over or delivered to the proper party. An exception to the direct payment requirement of this subsection may be made for bid deposits as set forth in subsection 5.1.

**4.8. No Duty of State to Conduct Operations.**

The State shall have no duty to ASRC to conduct or perform geological or geophysical studies or surveys or to conduct, perform, or supervise exploration, testing, drilling, mining, development, production, marketing, or other operations on or with respect to any portion of the **Nuiqsut subsurface** or the **Point Lay subsurface**. The parties intend that the State shall discharge its obligations under this agreement solely by issuing **Subsurface Agreement Solicitations** and by entering into **Subsurface Agreements** with third parties and shall not be obligated to undertake exploration, development, production, or marketing directly or for the account of ASRC.

**4.9. Separate Rights of ASRC and State to Enforce Subsurface Agreements and to Protect Subsurface Interests.**

The State shall have no right, authority, power, obligation, or duty to ASRC to enforce the termination provisions concerning an ASRC interest, or the obligations, duties, or covenants of any third party concerning an ASRC interest under or in connection with any Subsurface Agreement authorized herein and shall have no liability as executive to ASRC for failure or refusal by any third party to perform or observe termination provisions, or obligations, duties, or covenants. With respect only to its undivided interests, after execution of any Subsurface Agreement authorized herein, ASRC shall have the right and responsibility in its own discretion to enforce directly any termination provisions, obligations, duties, or covenants, express or implied, undertaken by or imposed by virtue of such Subsurface Agreement with respect only to ASRC's interests, subject only to the provisions of subsection 5.2 (if applicable); and (likewise subject to the provisions of subsection 5.2, if applicable) the State shall have like rights and responsibilities acting solely in its own behalf as owner of its undivided interests. In any instance where there is a potential drainage of oil or gas from the Nuiqsut subsurface or the Point Lay subsurface that may affect the rights of ASRC or the State in that subsurface, the State, acting in its own behalf and with respect to its interests in that subsurface, shall have the right to seek to prevent the drainage by causing development to take place by third parties pursuant to any applicable Subsurface Agreement or by petitioning the Alaska Oil and Gas Conservation Commission under AS 31.05 and 20 AAC 25 (or any other applicable statutes and regulations currently in effect or hereafter enacted). Likewise, ASRC, acting in its own behalf and with respect to its interests in the subsurface, shall have the independent right to seek to prevent such drainage by causing development to take place by third parties pursuant to any

applicable **Subsurface Agreement** or by petitioning the Alaska Oil and Gas Conservation Commission for such protection and orders as may be issued under AS 31.05 and associated regulations (or any other applicable statutes and regulations currently in effect or hereafter enacted).

**4.10. Interests Included in Lease.**

Any lease or other **Subsurface Agreement** authorized hereby may, as determined by the State:

(a) cover oil only, gas only, or any other mineral (limited to minerals included in the **subsurface**) only, or any two or more of these substances,

(b) cover all depths or be limited to a particular stratum or strata,

(c) cover one or more areas of differing sizes, and

(d) cover areas that are not contiguous, but subject to subsection 4.14 below.

**4.11. Kuukpik Corporation Consents.**

(a) The State shall endeavor to obtain any consents required under the **Kuukpik Agreement** that are necessary for the exploration and development of the **subsurface** and production of oil, gas, or other minerals pursuant to any **Subsurface Agreement** executed by the State as executive, if, and to the extent that the **Kuukpik Agreement** is valid, enforceable, and applicable; and the State shall also endeavor to obtain any consent required under section 14(f) of ANCSA, if applicable. ASRC will likewise exercise its best efforts to obtain Kuukpik Corporation's consent, if its consent is necessary; but ASRC shall not be liable or responsible to the State for failure or inability to obtain this consent, and shall have no obligation to pay or agree to pay any consideration to obtain this consent. Likewise, the State shall not be obligated to pay any consideration for any required consent or be liable to ASRC for any diminution in value of any of ASRC's undivided interest in the Nuiqsut **subsurface** due to the State's failure or inability to obtain a requisite consent; nor shall a failure to do so be deemed not to comply

with the standard set forth in paragraph 4.2(a) of this Settlement Agreement. Nor shall the State be required to lease or contract with respect to all or part of any section of land that includes subsurface for which consent was lawfully required but could not be obtained by the State in accordance with this Settlement Agreement. The State shall not have the right or power to commit ASRC to pay any consideration to Kuukpik Corporation for any consent required or asserted to be required under the Kuukpik Agreement or under section 14(f) of ANCSA or to grant or assign or commit ASRC to grant or assign to Kuukpik Corporation any interest in ASRC's interests in Nuiqsut subsurface or Point Lay subsurface or any subsurface revenues from them or attributable to them as consideration for or to induce Kuukpik Corporation to grant any consent required or asserted to be required under the Kuukpik Agreement or under section 14(f) of ANCSA without ASRC's prior written consent. Subject to paragraph 4.11(b), nothing in this Settlement Agreement is intended or shall be construed as an acknowledgment or agreement that the consent of Kuukpik Corporation is required for any particular activity.

(b) Each of ASRC and the State covenants and agrees that unless Kuukpik Corporation or any authorized representative of Kuukpik Corporation (i) contests or attacks the validity or legality of this Settlement Agreement or of the law approving this Settlement Agreement referred to in section 1 hereof, or (ii) opposes the adoption by the Legislature or the approval by the Governor of the bill approving this Settlement Agreement referred to in section 1 hereof, then neither ASRC nor the State shall at any time question, deny, or contest the validity or legality of any term or provision of the Kuukpik Agreement insofar as to any portion of the Nuiqsut subsurface therein provided to be covered or affected thereby. However, nothing in this paragraph is intended or shall be construed to limit or in anywise affect the right of ASRC and the State, and either of them, to assert and maintain any position as to the appropriate

and intended meaning, interpretation, construction, or effect of any term or provision of the Kuukpiik Agreement.

**4.12. Designated Party for Notices.**

In the event that ASRC conveys or assigns any of its undivided interest in the Nuiqsut subsurface or the Point Lay subsurface to one or more third parties under subsection 7.3 of this Settlement Agreement, ASRC and the one or more third parties shall be required to designate one party to receive and deliver all communications hereunder, including, but not limited to, notices, agreements, and protests under subsection 4.3 hereof; in the absence of a designation the State shall be entitled to deliver and receive communications solely with ASRC as the designated party to receive notices. In no event will the State be required to communicate both with ASRC and with other parties under this Settlement Agreement. Notices, agreements, or protests to or from the designated party shall constitute notices, agreements, and protests to and from ASRC and the third parties.

**4.13. Waiver of Partition.**

Both ASRC and the State are co-owners of the Nuiqsut subsurface and the Point Lay subsurface and recognize that circumstances may arise under subsection 6.1 or paragraph 7.3(a) whereby the parties each may own and independently negotiate and execute Subsurface Agreements covering their undivided interest only in portions of the subsurface, and it is not in the interest of the parties that their undivided interests be subject at any time to compulsory or involuntary partition. Therefore, the parties expressly waive any right to seek partition, and agree that partition may not be imposed as a remedy under any circumstance with regard to this Settlement Agreement or the Nuiqsut subsurface or the Point Lay subsurface or any part of or interest in it.

**4.14. No Outside Acreage in Leases; No Communitized Leases.**

The State as executive shall not have the right, power, or obligation to grant any oil, gas, or mineral lease or other **Subsurface Agreement** covering any part of ASRC's interest in the **Nuiqsut subsurface** or **Point Lay subsurface** and additionally covering any part of or any interest in additional lands that are not included in the **Nuiqsut subsurface** or in the **Point Lay subsurface**, as applicable. Further, the inclusion in one lease or **Subsurface Agreement** of interests in two or more sections of **Nuiqsut subsurface** or **Point Lay subsurface** in which the State and ASRC have varying undivided percentage interests shall not result in communitizing or pooling the interests of the State and ASRC in **subsurface revenues** under that lease or **Subsurface Agreement** from or attributable to such respective sections of **Nuiqsut subsurface** or **Point Lay subsurface**. Notwithstanding Section 14(g) of ANCSA, from and after the **Final Effective Date** of this Settlement Agreement, the royalty payable under any oil and gas lease covering any part or parts of the **Nuiqsut subsurface** issued before that date shall not be pooled or communitized. Oil or gas produced from any particular section or part of a section covered by any such lease shall be owned by the person or persons who own the **subsurface** in that particular section or part of a section, without regard to ownership of the **subsurface** in any other section or part of a section covered by that lease. The oil and gas is not shared with owners of the **subsurface** in any other section or part of a section of the land that may be contained in that lease. Thus, for example, any oil or gas produced after the **Final Effective Date** of this Settlement Agreement from a section of **Nuiqsut subsurface** in which the State and ASRC then own undivided interests in the **subsurface** as set out in Exhibit E shall be owned by the State and ASRC in proportion to their respective undivided interests in the **Nuiqsut subsurface** in that particular section without regard to the ownership of other sections or parts of sections that may be contained in that particular lease.

#### 4.15. Nuiqsut Subsurface Outside Fully Conveyed Sections.

The State as executive shall not have the right, power, or obligation to grant any oil, gas, or mineral lease or other **Subsurface Agreement** covering, or to exercise any power or authority as holder of executive rights under this Settlement Agreement with respect to, any part of or interest in the **Nuiqsut subsurface** in any section listed in Exhibit E before the date when that section becomes a **Fully Conveyed Section**. Until a section of **Nuiqsut subsurface** listed in Exhibit E has become a **Fully Conveyed Section**, no oil, gas, or mineral lease or other **Subsurface Agreement** or grant of any third party rights covering or affecting any interest in **Nuiqsut subsurface** in that section shall be made or granted by either the State or ASRC without the joint and mutual approval and consent in writing of both ASRC and the State; however, the State may grant or create 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 any such section.

#### 5. MINIMUM COVENANTS REQUIRED IN ALL SUBSURFACE AGREEMENTS.

Certain minimum covenants, described below, shall be part of and shall be deemed to be included in any **Subsurface Agreement** executed by the State as executive affecting the **Nuiqsut subsurface** or **Point Lay subsurface**:

##### 5.1. Direct Payment Covenant.

Whenever the State as executive enters into any **Subsurface Agreement** of any kind with any person which concerns ASRC's interest in the **Nuiqsut subsurface** or **Point Lay subsurface**, then in that **Subsurface Agreement** that person will expressly agree and covenant for itself and its successors and assigns to pay in money or in product, as applicable, any and all **subsurface revenues** attributable to the undivided interest owned by ASRC, and payable for or becoming due under the **Subsurface Agreement**, directly to ASRC, with payment in product to be delivered at the location provided for in the **Subsurface Agreement** and with monetary payments to be made to ASRC at

Arctic Slope Regional Corporation  
(1230 Agvik Street)  
P. O. Box 129  
Barrow, Alaska 99723  
Attention: President

or at such other address as the ASRC President or any Vice President of ASRC may notify the person of in writing.

Notwithstanding the foregoing provisions of this subsection, however, when the State enters into an agreement with a prospective bidder or bidders at a competitive lease sale or other bidding arrangement concerning offers or bids to enter into a **Subsurface Agreement** with the State as executive for the **Nuiqsut subsurface** or **Point Lay subsurface** under the terms of which arrangement bid deposits are required to be refunded to unsuccessful bidders, the agreement may provide that all of these bid deposits are to be paid to the State; however, each bid deposit will be held by the State in escrow pending its refund or acceptance of the related bid and the applicable ASRC percentage of each bid deposit that is not required to be refunded to the bidder shall constitute trust funds in the hands of the State and shall promptly be paid over by the State to ASRC when a determination is made that the bid deposit is not required to be refunded to the bidder.

#### 5.2. Royalty Valuation.

Notwithstanding the provisions of subsections 4.6, 4.9, and 5.1 of this Settlement Agreement, each **Subsurface Agreement** (if any there be) executed by the State as executive that includes a provision empowering or authorizing the **Commissioner** or the State to determine or establish the monetary value, or the minimum monetary value, of any share of oil, gas, or other substance payable to the State as royalty or otherwise pursuant to that **Subsurface Agreement** (as distinguished from calculating the monetary value solely by reference to specific objective factors described or provided for in the **Subsurface Agreement**) shall provide that if the monetary value, or the minimum monetary value, of any share of oil, gas, or other substance payable to

the State or payable to the State and ASRC under the Subsurface Agreement is, under the terms of the Subsurface Agreement, determined or established by the Commissioner or the State, then such determination or establishment shall be made solely by the Commissioner or by the State, as applicable (and not by ASRC or any of its officers), and shall be effective to establish the monetary value or minimum monetary value (as applicable) of the share of the oil, gas, or other substance payable both to ASRC and to the State under the applicable provisions of the Subsurface Agreement. If the Commissioner or the State determines, or agrees with the third person involved, that the monetary value, or minimum monetary value, of the share of oil, gas, or other substance payable to the State under a Subsurface Agreement is not required or permitted to be, or should not be, determined or established by the Commissioner or the State under the terms of that Subsurface Agreement, the decision of the Commissioner or the State in making such determination or agreement shall be binding upon ASRC, and ASRC shall not have the right to require that the monetary value, or minimum monetary value, of the ASRC percentage share of the oil, gas, or other substance payable to ASRC under that Subsurface Agreement be determined or established by the Commissioner or the State unless the Commissioner or the State shall thereafter change such determination or agreement with reference to determining or establishing the monetary value, or minimum monetary value, of the State percentage share of the oil, gas or other substance payable to the State under that Subsurface Agreement. Subject to the provisions of the last preceding sentence, if the State shall become involved in litigation or arbitration proceedings with a person holding a Subsurface Agreement involving a dispute whether the terms of the Subsurface Agreement require or permit the Commissioner or the State to determine or establish the monetary value, or the minimum monetary value, of the share of the oil, gas, or other substance payable to the State or ASRC under that Subsurface Agreement, the State shall notify ASRC of those

proceedings, and ASRC shall have the right to intervene and participate in the proceedings with reference to that dispute.

Neither the Commissioner nor the State shall have any liability to ASRC for or with respect to a decision made by the Commissioner or the State in fixing or determining the monetary value, or minimum monetary value, of the share of oil, gas, or any other substance payable to ASRC and to the State pursuant to any Subsurface Agreement or for a determination or agreement made by the Commissioner or the State that the Commissioner or the State is not required or permitted to, or should not, establish or determine the monetary value, or the minimum monetary value, of any oil, gas or other substances payable to ASRC and the State under the terms of a Subsurface Agreement.

### 5.3. Other Covenants.

Whenever the State as executive enters into a Subsurface Agreement with any person that concerns the Nuiqsut subsurface or the Point Lay subsurface, then in that Subsurface Agreement the person will expressly agree and covenant for itself, and its successors and assigns, with respect to that Subsurface Agreement and that Nuiqsut subsurface or Point Lay subsurface and the operations and activities of that person on it and in connection with it, to:

(a) file jointly with ASRC and the State all logs, geological and geophysical surveys taken, a description of all tests run for each well drilled on the leased area, and a plat showing the exact location of each well, within thirty (30) days after each well or survey has been completed, suspended, or abandoned; and, after conducting seismic exploration on the leased area, to provide both to ASRC and to the State the same notification and review privileges as is required to be provided to the State under 11 AAC 91.210 or other applicable regulations hereafter adopted;

(b) exercise reasonable diligence in mining, and in drilling, producing, and operating oil and gas wells;

(c) upon discovery of minerals, including oil or gas, in quantities sufficient to recover reasonable costs of mining, or in the case of oil or gas to recover reasonable costs of drilling, completing, and operating additional

well(s) in the same geological structure at other locations with a reasonable profit to the operator, expand the mining operation or drill such additional wells as a reasonable and prudent operator would;

(d) perform all operations with due care and in a good and workmanlike manner in accordance with modern methods and practices with due regard for the prevention of waste, and for the prevention (in the case of oil and gas) of water drainage to the oil- and gas-bearing sands or strata and to the preservation and conservation of the property for future productive operations, and to carry out at the person's expense all orders and requirements of public officials relative to the prevention of waste and to the preservation of the subsurface area subject to the Subsurface Agreement;

(e) securely plug in an approved manner any oil or gas well before abandoning it;

(f) drill such wells as a reasonable and prudent operator would drill to protect the premises from drainage of hydrocarbons;

(g) use modern geological and geophysical techniques in exploration and development;

(h) cause any identified commercial deposits or reservoirs to be reasonably developed and produced;

(i) subscribe to reasonable cooperative or unit agreements proposed by the State or ASRC, or otherwise legally imposed, provided that no voluntary pooling or unit agreement may be entered into without the written consent of each of ASRC and the State with respect to their respective interests;

(j) keep open for inspection and audit at all reasonable times all mines, wells, improvements, machinery, reports, and records relative to operations, surveys, or investigations, and furnish copies of and extracts from any such reports or records on demand, subject to reasonable confidentiality requirements;

(k) allow ASRC the option to take its ASRC percentage of the royalties or other interest in production in money (measured by such valuation provisions as are contained in the lease or other Subsurface Agreement applicable both to the interests of the State and of ASRC, or, in the absence of such provisions, measured by fair market value) or in product after proper notice as provided for in the Subsurface Agreement whether or not the State elects to do so, and provide further that all agreements for the sale or

mortgage or other disposition of an interest in oil, gas, or other minerals shall be made subordinate to these rights to take such royalty share of production in kind;

(l) allow ASRC to have the right to enforce all the terms of the Subsurface Agreement (whether express or implied) directly on its own behalf and with respect only to ASRC's undivided interests in subsurface covered thereby, including any provision allowing termination of the Subsurface Agreement for a breach of its terms, whether or not the State elects to do so with respect to the undivided interests of the State in that subsurface;

(m) allow ASRC to have the right to petition the Commissioner of Natural Resources or the Alaska Oil and Gas Conservation Commission for such unitization orders and other protections as may be allowed by law; and

(n) acknowledge and agree that the applicable terms of this Settlement Agreement are incorporated by reference.

## 6. SUSPENSION OF THE EXECUTIVE RIGHTS.

### 6.1. Suspension of the Executive Rights.

(a) Suspension of the Executive Rights for Refusal of the State to Act. At any time when ASRC believes that the State would be required by the Prudent Landowner Standard to issue a Subsurface Agreement Solicitation or execute a Subsurface Agreement with respect to any portion of the Nuiqsut subsurface or the Point Lay subsurface, ASRC may give written notice to the State identifying the portion of the subsurface involved and requesting that the State as executive issue or execute an appropriate Subsurface Agreement Solicitation or Subsurface Agreement with respect to that portion. If the State refuses to issue or execute a Subsurface Agreement Solicitation or Subsurface Agreement in response to ASRC's request, the State shall inform ASRC in writing whether (i) that refusal is based upon a conclusion by the State that the issuance or execution thereof would not be required under the Prudent Landowner Standard or (ii) that refusal is based upon a public interest determination or finding by the State that the State, in application of the Limited Prudent Landowner Standard to its conduct as holder of the Executive Rights, is prevented from

complying with the Prudent Landowner Standard with reference to issuance or execution of a Subsurface Agreement Solicitation or Subsurface Agreement as requested by ASRC because of its duties and obligations as sovereign or because of applicable federal or state statutes, regulations, and constitutional provisions. If the State's refusal to issue or execute a Subsurface Agreement Solicitation or Subsurface Agreement is based upon a public interest determination or finding as described in clause (ii) of the last preceding sentence, then ASRC shall have the right, at its election and at any time prior to the issuance or execution by the State as executive of a Subsurface Agreement Solicitation or Subsurface Agreement covering the subject portion of the subsurface, to give written notice to the State suspending the Executive Rights as to the portion of the subsurface as to which ASRC had requested that the State issue or execute a Subsurface Agreement Solicitation or Subsurface Agreement. Said notice shall describe the portion of the subsurface as to which the Executive Rights are to be suspended and shall be acknowledged by ASRC as required for the recordation of instruments affecting title to real property. Promptly upon receipt of said notice, the State shall execute and shall likewise acknowledge the notice to evidence its receipt thereof and shall record the same in the recording office of the appropriate recording district.

(b) Suspension of the Executive Rights Because of Separate Termination of Subsurface Agreement. As provided in subsections 4.6 and 4.9 and paragraph 5.3(1), ASRC and the State each has the independent right and power to enforce cancellation and termination provisions in Subsurface Agreements covered by this Settlement Agreement, insofar as to its undivided percentage interest in the subsurface covered or affected by the Subsurface Agreement. Upon cancellation and termination of a Subsurface Agreement, in whole or in part, by one only of ASRC or the State insofar only as to its undivided interest in a portion of the Nuiqsut subsurface or the Point Lay subsurface whereby the undivided interest of one only of ASRC or the State in any

portion of the Nuiqsut subsurface or the Point Lay subsurface is no longer subject to that Subsurface Agreement, then the Executive Rights shall be suspended as to that portion of the Nuiqsut subsurface or Point Lay subsurface.

**6.2 Rights and Duties During Suspension of the Executive Rights.**

Subject to subsection 6.3, it is stipulated and agreed that during any period while the Executive Rights of the State are suspended as to a portion of the Nuiqsut subsurface or Point Lay subsurface pursuant to subsection 6.1, the following shall occur:

(a) The Executive Rights of the State shall be suspended as to the percentage interest of ASRC in that portion of the Nuiqsut subsurface or the Point Lay subsurface and the State shall have no right, power, duty, or obligation as executive as to the interest of ASRC in that portion; and

(b) Each party shall own its undivided interest in that portion of the Nuiqsut subsurface or the Point Lay subsurface as a cotenant having all rights and obligations of ownership of such undivided interest, including, but not limited to, the exclusive power and right to execute Subsurface Agreements covering all or part of its undivided interest as to that portion of the Nuiqsut subsurface or the Point Lay subsurface.

**6.3. Return of the Executive Rights.**

After the suspension of the Executive Rights as to any portion of the Nuiqsut subsurface or Point Lay subsurface as provided in subsection 6.1, the Executive Rights will return to the State as to such portion under the following circumstances:

(a) If at any time after giving a notice suspending the Executive Rights as to any portion of the subsurface pursuant to paragraph 6.1(a) and prior to the execution by ASRC of a Subsurface Agreement covering ASRC's percentage interest in that portion of the subsurface, ASRC, at its election, executes, acknowledges, and records in the recording office of the appropriate recording district a notice terminating the suspension of the Executive Rights as to the portion of the subsurface described in such notice;

(b) If ASRC executes a Subsurface Agreement covering its undivided interest in a portion of the Nuiqsut

subsurface or Point Lay Subsurface as to which the Executive Rights have been suspended pursuant to paragraph 6.1(a), and if at any time thereafter neither ASRC's nor the State's undivided interest in that portion of the Nuiqsut subsurface or Point Lay subsurface then remains subject to any Subsurface Agreement; or

(c) If at any time after the suspension of the Executive Rights as to a portion of the Nuiqsut subsurface or Point Lay subsurface pursuant to paragraph 6.1(b) neither ASRC's nor the State's undivided interest in that portion of the Nuiqsut subsurface or Point Lay subsurface then remains subject to any Subsurface Agreement.

As to the portion of the subsurface described in a notice from ASRC terminating the suspension of the Executive Rights as to that portion pursuant to paragraph (a) of this subsection 6.3, and in either of the circumstances described in paragraph (b) or paragraph (c) of this subsection 6.3 when neither ASRC's nor the State's undivided interest in a portion of the Nuiqsut subsurface or the Point Lay subsurface is then subject to any Subsurface Agreement, the Executive Rights granted the State under section 4 of this Settlement Agreement shall automatically and immediately return to and be exclusively exercised by the State as to that portion of the Nuiqsut subsurface or Point Lay subsurface, subject, however, to the terms and provisions of sections 4, 5, and 7 and (if it thereafter again becomes applicable) this section 6.

## 7. MISCELLANEOUS RESTRICTIONS ON BOTH PARTIES.

### 7.1. Prohibitions on Self-Development.

Absent the written consent of the other party, neither the State nor ASRC may alone or in a joint venture or other joint enterprise of any sort with any person, become a lessee of or explore, develop, produce from, or otherwise exploit any portion of the Nuiqsut subsurface or the Point Lay subsurface as long as that portion is subject to the Executive Rights granted in this Settlement Agreement. However, nothing in this section prohibits

(a) ASRC or the State from entering the lands to inspect and observe the activities of a person who has a Subsurface Agreement concerning the Nuiqsut subsurface or the Point Lay subsurface;

(b) ASRC or the State from entering the lands to perform such actions as are reasonably necessary to take its share of **subsurface revenues** earned under this Settlement Agreement in kind;

(c) the State, when acting as the executive, from conducting, at its sole risk and expense or by agreement and in conjunction with ASRC, seismic or other geological or geophysical surveys of the **Nuiqsut subsurface** or the **Point Lay subsurface**; or

(d) the State from exercising any sovereign power it may have over uplands, submerged lands, or water, regardless of any ownership interest in the **Nuiqsut subsurface** or **Point Lay subsurface**, or from conducting resource assessment programs on state-owned lands, subject, however, to the provisions of subsection 8.2 of this Settlement Agreement.

#### 7.2. **Assignments of Executive Rights.**

The State may not assign or delegate the **Executive Rights** granted under section 4 of this Settlement Agreement without the prior written consent of ASRC, except as allowed under subsection 7.3.

#### 7.3. **Conveyances Prohibited.**

(a) Except as to **Subsurface Agreements** authorized under subsection 6.2 of this Settlement Agreement, neither the State (acting solely on its own behalf, and not as executive) nor ASRC (acting solely on its own behalf) may convey, by sale, exchange, or otherwise, all or any interest in its undivided percentage interest in all or any portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** without the prior written consent of the other party. Both the State and ASRC may condition consent to a conveyance upon the termination of the **Executive Rights** and rights, duties, and obligations of the executive with respect to the undivided interest of the nonexecutive in the portion of the **Nuiqsut subsurface** or **Point Lay subsurface** to be conveyed. If such consent is given, and the **Executive Rights** are terminated as to that portion of the **Nuiqsut subsurface** or **Point Lay subsurface** affected, then the rights and obligations of the owners of that portion affected will be as described in subsection 6.2 of this Settlement Agreement and

there shall be no return of the **Executive Rights** as provided in subsection 6.3.

(b) If the State (acting solely on its own behalf, and not as executive) or ASRC (acting solely on its own behalf) makes a conveyance, by sale, exchange, or otherwise, to another person of all or any interest in its undivided percentage interest in all or any portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** after having obtained the consent of the other party to make that conveyance as required in paragraph 7.3(a) above, the consideration received by the State or ASRC, as applicable, for the conveyance shall not be deemed to be **subsurface revenues** for purposes of this Settlement Agreement, so that the other party (whose undivided interest in the **Nuiqsut subsurface** or the **Point Lay subsurface** is not being conveyed to that other person) shall have no right to receive any share of that consideration pursuant to this Settlement Agreement.

(c) The State's consent under paragraph 7.3(a) to a transfer of ASRC's entire interest in the **Nuiqsut subsurface** and the **Point Lay subsurface** is not required if the transfer occurs because of ASRC's merger or consolidation with another corporation under AS 10.06.530-10.06.582 or AS 10.06.960 (or any similar or successor corporate merger or consolidation legislation hereafter enacted).

(d) Subject to the terms, conditions, limitations, and provisions of paragraphs (a), (b), and (c) of this subsection 7.3, any assignment or conveyance by ASRC or the State to any person of any interest in its undivided percentage interest in all or any portion of the **Nuiqsut subsurface** or the **Point Lay subsurface** shall, to the extent (and only to the extent) applicable under the terms and provisions of this Settlement Agreement, be made expressly subject to this Settlement Agreement and the assignment of **Executive Rights** provided herein.

## 8. STATE'S RIGHTS AS SOVEREIGN.

8.1. Neither the State's conveyance to ASRC of an interest in the **Nuiqsut subsurface** or the **Point Lay subsurface**, including submerged lands, nor any term or provision of this Settlement Agreement, is intended or may be construed to waive, give up, alter, or affect in any way any sovereign right of the State (as that right or rights may exist at any time under applicable law) to regulate or manage navigable or nonnavigable rivers, streams, creeks, lakes, or ponds, or other bodies of water extending over submerged lands, or to regulate the appropriation of water, or to manage fish and game resources or other natural resources, including, but not limited to, laws and regulations that govern protection of natural resources and procedural requirements for disposal of interests in State lands for leasing, exploration, and development of natural resources. In exercising or declining to exercise the **Executive Rights** conferred and imposed on the State under this Settlement Agreement, the State shall be entitled to and shall observe and conform to statutes and regulations governing these resources, subject, however, to the provisions of subsection 8.2.

8.2. Nothing in this Settlement Agreement, including this section 3, shall be construed as a waiver by ASRC of its right to challenge the constitutionality of any statute or the validity of any regulation enacted or adopted after the **Final Effective Date** of this Settlement Agreement that singles out the **Nuiqsut subsurface** or the **Point Lay subsurface** for treatment different from that accorded to other lands within the State of Alaska, or that causes any injury-in-fact to any rights expressly granted to ASRC under this Settlement Agreement. It is agreed, however, that such a challenge will not challenge or attempt to void or terminate the rights of a third party under a **Subsurface Agreement** executed by the State in exercise of the **Executive Rights** in accordance with the terms and conditions of this Settlement Agreement.

9. PREEXISTING LEASES OF THE NUIQSUT SUBSURFACE.

9.1. Lease Description.

(a) In 1983, the State waived the right to administer the following oil and gas leases affecting portions of the Nuiqsut subsurface which had already been conveyed to ASRC by the United States:

<u>LEASE</u>	<u>MONTH/DAY RENTAL DUE DATE</u>	<u>ANNUAL RENTAL</u>	<u>PER DAY ALLOCATION (ANNUAL RENTAL/365=)</u>
ADL No. 356000	Feb. 1	\$ <u>3720.00</u>	\$ <u>10.19</u>
ADL No. 356001	Feb. 1	\$ <u>3840.00</u>	\$ <u>10.52</u>
ADL No. 356002	Feb. 1	\$ <u>1920.00</u>	\$ <u>5.26</u>
ADL No. 356003	Feb. 1	\$ <u>5760.00</u>	\$ <u>15.78</u>
ADL No. 356004	Feb. 1	\$ <u>1920.00</u>	\$ <u>5.26</u>
ADL No. 356005	Feb. 1	\$ <u>3840.00</u>	\$ <u>10.52</u>
ADL No. 25540	Feb. 1	\$ <u>2560.00</u>	\$ <u>7.01</u>
ADL No. 25541	Feb. 1	\$ <u>2560.00</u>	\$ <u>7.01</u>
ADL No. 25554	Feb. 1	\$ <u>2560.00</u>	\$ <u>7.01</u>
ADL No. 25555	Feb. 1	\$ <u>2560.00</u>	\$ <u>7.01</u>

(b) The State has not yet waived the right to administer the following State oil and gas leases affecting portions of the Nuiqsut subsurface which have already been conveyed to ASRC by the United States by interim conveyance or patent:

<u>LEASE</u>	<u>MONTH/DAY RENTAL DUE DATE</u>	<u>ANNUAL RENTAL</u>	<u>PER DAY ALLOCATION (ANNUAL RENTAL/365=)</u>
ADL No. 25526	Feb. 1	\$ <u>1055.00</u>	\$ <u>2.89</u>
ADL No. 25529	Feb. 1	\$ <u>2015.00</u>	\$ <u>5.52</u>
ADL No. 364469	Aug. 1	\$ <u>10674.00</u>	\$ <u>29.24</u>
ADL No. 366201	Feb. 1	\$ <u>1230.00</u>	\$ <u>3.37</u>
ADL No. 366202	Feb. 1	\$ <u>1181.00</u>	\$ <u>3.24</u>
ADL No. 366203	Feb. 1	\$ <u>640.00</u>	\$ <u>1.75</u>
ADL No. 366204	Feb. 1	\$ <u>531.00</u>	\$ <u>1.45</u>

(c) Additionally, the following State oil and gas leases affect portions of the Nuiqsut subsurface that may in the future be conveyed to ASRC by the United States:

<u>LEASE</u>	<u>MONTH/DAY RENTAL DUE DATE</u>	<u>ANNUAL RENTAL</u>	<u>PER DAY ALLOCATION (ANNUAL RENTAL/365=)</u>
ADL No. 25530	Feb. 1	\$ 30.00	\$ 0.08
ADL No. 25535	Feb. 1	\$ 1920.00	\$ 5.26
ADL No. 25536	Feb. 1	\$ 640.00	\$ 1.75
ADL No. 25537	Feb. 1	\$ 2437.00	\$ 6.68
ADL No. 25539	Feb. 1	\$ 1808.00	\$ 4.95
ADL No. 25556	Feb. 1	\$ 1179.00	\$ 3.23
ADL No. 25560	Feb. 1	\$ 2560.00	\$ 7.01
ADL No. 25561	Feb. 1	\$ 1288.00	\$ 3.53
ADL No. 25562	Feb. 1	\$ 1920.00	\$ 5.26
ADL No. 25563	Feb. 1	\$ 2560.00	\$ 7.01
ADL No. 25577	Feb. 1	\$ 2560.00	\$ 7.01
ADL No. 25578	Feb. 1	\$ 1949.00	\$ 5.34
ADL No. 25579	Feb. 1	\$ 2491.00	\$ 6.82
ADL No. 25596	Feb. 1	\$ 2501.00	\$ 6.85
ADL No. 25597	Feb. 1	\$ 2512.00	\$ 6.88
ADL No. 364466	Aug. 1	\$ 13029.00	\$ 35.70
ADL No. 364468	Aug. 1	\$ 11112.00	\$ 30.44

**9.2. Leases Covering Fully Conveyed Sections on Final Effective Date.**

(a) On the Final Effective Date of this Settlement Agreement, as to each of the leases identified in paragraphs 9.1(a) and 9.1(b) (subject to the provisions of subsection 9.4 below, if applicable):

(1) as to the applicable State percentage in Nuiqsut subsurface covered by each lease, the State shall have the right and responsibility, with respect only to its undivided interests, in its own discretion to administer and enforce directly any termination provisions, duties, and covenants, express or implied, undertaken by or imposed by virtue of each lease as provided in subsections 4.6 and 4.9 of this Settlement Agreement in the same manner as if that lease had been executed pursuant to this Settlement Agreement, and the State shall likewise have the right and responsibility, as contemplated in subsections 4.7 and 5.1 of this Settlement Agreement, to receive payment directly from the lessee of the applicable State percentage of all subsurface revenues attributable to the Nuiqsut subsurface which the lessee is thereafter obligated to pay under the terms of the lease; and

(2) as to the applicable ASRC percentage in Nuiqsut subsurface covered by each lease, ASRC shall have the right and responsibility, with respect only to its undivided interests, in its own discretion to administer and enforce

directly any termination provisions, duties, and covenants, express or implied, undertaken by or imposed by virtue of each lease as provided in subsections 4.6 and 4.9 of this Settlement Agreement in the same manner as if that lease had been executed pursuant to this Settlement Agreement, and ASRC shall likewise have the right and responsibility, as contemplated in subsections 4.7 and 5.1 of this Settlement Agreement, to receive payment directly from the lessee of the applicable ASRC percentage of all subsurface revenues attributable to the Nuiqsut subsurface which the lessee is thereafter obligated to pay under the terms of the lease.

(b) On the Final Effective Date of this Settlement Agreement, each of the leases described in paragraphs 9.1(a) and 9.1(b) of this Settlement Agreement will become subject to the rights of the State and ASRC under and pursuant to sections 4 and 5 and the other provisions of this Settlement Agreement as if those leases had been executed pursuant to and in full compliance with the rights, powers, duties, and obligations of the State as executive under this Settlement Agreement, and any reservation to the State, or any release or transfer from the State to ASRC of rights to "administer" these leases as provided in section 14(g) of ANCSA shall thereafter be waived and ineffective to the end that the administration of these leases shall be governed and controlled by the terms and provisions of this Settlement Agreement.

(c) Within thirty (30) days after the Final Effective Date of this Settlement Agreement, ASRC and the State will join in executing and will deliver to each of the lessees under the leases described in paragraphs 9.1(a) and 9.1(b) a notice of the provisions of and of the rights of the State and ASRC, respectively, with respect to those leases under this subsection 9.2, in the form set out in Exhibit J.

### 9.3. Additional Outstanding Leases.

(a) Subject to the provisions of subsection 9.4 below, in each instance after the Final Effective Date of this Settlement Agreement when a section of Nuiqsut subsurface covered by any lease identified in paragraph 9.1(c) becomes a Fully

Conveyed Section, then, effective immediately and automatically as of that date:

(1) as to the applicable State percentage in Nuiqsut subsurface covered by that lease, the State shall have the right and responsibility, with respect only to its undivided interest, in its own discretion to administer and enforce directly any termination provisions, duties, and covenants, express or implied, undertaken by or imposed by virtue of that lease as provided in subsections 4.6 and 4.9 of this Settlement Agreement in the same manner as if the lease had been executed pursuant to and in full compliance with the rights, powers, duties, and obligations of the State as executive under this Settlement Agreement, and the State shall likewise have the right and responsibility, as contemplated in subsections 4.7 and 5.1 of this Settlement Agreement, to receive payment directly from the lessee of the applicable State percentage of all subsurface revenues attributable to the Nuiqsut subsurface that the lessee is thereafter obligated to pay under the terms of the lease; and

(2) as to the applicable ASRC percentage in Nuiqsut subsurface covered by the lease, ASRC shall have the right and responsibility, with respect only to its undivided interest, in its own discretion to administer and enforce directly any termination provisions, duties, and covenants, express or implied, undertaken by or imposed by virtue of that lease as provided in subsections 4.6 and 4.9 of this Settlement Agreement in the same manner as if the lease had been executed pursuant to and in full compliance with the rights, powers, duties, and obligations of the State as executive under this Settlement Agreement, and ASRC shall likewise have the right and responsibility, as contemplated in subsections 4.7 and 5.1 of this Settlement Agreement, to receive payment directly from the lessee of the applicable ASRC percentage of all subsurface revenues attributable to the Nuiqsut subsurface that the lessee is thereafter obligated to pay under the terms of the lease.

(b) When a section of Nuiqsut subsurface covered by a lease described in paragraph 9.1(c) becomes a Fully Conveyed Section after the Final Effective Date of this Settlement Agreement, then (subject to subsection 9.4 below, if applicable) that lease will become subject to the rights of the State and ASRC pursuant to sections 4 and 5 and the other provisions of this Settlement Agreement as if the lease had been executed pursuant to and in full compliance with the rights, powers,

duties, and obligations of the State as executive under this Settlement Agreement, and any reservation to the State or release or transfer from the State to ASRC of rights to "administer" that lease as provided in section 14(g) of ANCSA shall thereafter be waived and ineffective to the end that the administration of the lease shall thereafter be governed and controlled by the terms and provisions of this Settlement Agreement.

(c) Within thirty (30) days after any section of Nuiqsut subsurface covered by a lease described in paragraph 9.1(c) becomes a Fully Conveyed Section after the Final Effective Date of this Settlement Agreement, ASRC and the State will join in executing and will deliver to the lessee under that lease a notice of the provisions of and of the rights of the State and ASRC, respectively, with respect to that lease under this subsection 9.3, in the form set out in Exhibit J.

#### **9.4. Segregation of Leased Lands.**

On or before the Final Effective Date of this Settlement Agreement as to leases described in paragraph 9.1(b), and effective on or before the date when a section of Nuiqsut subsurface covered by a lease described in paragraph 9.1(c) becomes a Fully Conveyed Section, the State is entitled to and shall segregate out those leased lands not included in a Fully Conveyed Section of Nuiqsut subsurface covered by that lease and thereby create two leases out of the lease, so as to make the provisions of subsection 9.2 or 9.3 (as applicable) effective only as to that lease covering the Nuiqsut subsurface that is coextensive with the lands included in one or more Fully Conveyed Sections of Nuiqsut subsurface.

#### **9.5. Division of Revenue From Certain Leases.**

Payments of bonus and rentals have been and may be made by lessees under oil and gas leases covering portions of the Nuiqsut subsurface. All of these bonus payments have been received by the State, and either or both the State and ASRC have received certain rental payments made under various leases listed in subsection 9.1 of this Settlement Agreement. To avoid any

dispute as to entitlement to receive or retain these bonus or rental payments and any other subsurface revenues attributable to the Nuiqsut subsurface that the lessees hereafter become obligated or elect to pay under the leases, the parties agree that:

(a) Payments Received Before 1991. The State shall be entitled to retain all bonus payments paid to the State before January 1, 1991, for and in connection with all leases identified in section 9 of this Settlement Agreement.

(b) 9.1(a) Leases. ASRC shall be entitled to retain all annual rentals paid to it under each lease listed in paragraph 9.1(a) of this Settlement Agreement before the Final Effective Date of this Settlement Agreement, except that the portion of the annual rentals for the year of the lease term during which the Final Effective Date occurs (allocated on a per day basis over that entire year of the lease term) attributable to the period after the Final Effective Date of this Settlement Agreement shall be prorated between ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest in the Nuiqsut subsurface covered by the lease. All subsurface revenues paid under that lease after the Final Effective Date of this Settlement Agreement shall be paid directly to and owned by ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest, respectively, in the Nuiqsut subsurface covered by that lease.

(c) 9.1(b) Leases. The State shall be entitled to retain all annual rentals paid to it under each lease listed in paragraph 9.1(b) of this Settlement Agreement prior to the Final Effective Date of this Settlement Agreement, except that the portion of the annual rentals attributable to Nuiqsut subsurface for the year of the lease term during which the Final Effective Date occurs (allocated on a per day basis over that entire year of the lease term) attributable to the period after the Final Effective Date of this Settlement Agreement shall be prorated between ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest in the Nuiqsut subsurface covered by that lease. All subsurface revenues paid under that lease attributable to Nuiqsut subsurface after the Final Effective Date of this Settlement Agreement shall be paid directly to and owned by ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest in the Nuiqsut subsurface covered by that lease.

(d) 9.1(c) Leases. The State shall be entitled to retain all annual rentals paid to it under each lease listed in paragraph 9.1(c) of this Settlement Agreement before the later of (i) the **Final Effective Date** of this Settlement Agreement or (ii) the date when a section of Nuiqsut subsurface covered by the lease becomes a **Fully Conveyed Section**, except that the portion of the annual rentals attributable to that **Fully Conveyed Section** for the year of the lease term during which that section of Nuiqsut subsurface becomes a **Fully Conveyed Section** (allocated on a per day basis over that entire year of the lease term) attributable to the period after that section of Nuiqsut subsurface became a **Fully Conveyed Section** shall be prorated between ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest in the Nuiqsut subsurface in that **Fully Conveyed Section** covered by that lease. All subsurface revenues paid under each lease attributable to Nuiqsut subsurface in a **Fully Conveyed Section** after the date when that section has become a **Fully Conveyed Section** shall be paid directly to and owned by ASRC and the State in proportion to the ASRC percentage interest and the State percentage interest in the Nuiqsut subsurface in that **Fully Conveyed Section** covered by that lease.

(e) Cash Settlement. A cash settlement shall be made between the State and ASRC within thirty (30) days after the **Final Effective Date** of this Settlement Agreement and within thirty (30) days after each section of Nuiqsut subsurface covered or affected by a lease described in paragraph 9.1(c) becomes a **Fully Conveyed Section**, to effect the proration of the subsurface rentals required by paragraphs 9.5(b), (c), and (d). In the event that funds have not been appropriated to make any necessary cash payment to ASRC, the State will seek an appropriation in the first available Session of the Legislature.

**9.6. No Waiver as Against Lessees.**

Nothing in this section 9 is intended or shall be construed as a waiver by ASRC or by the State of any right as against any lessee under any of the leases described in paragraphs 9.1(a), (b), and (c), including, without limitation, any right with respect to rentals or other subsurface revenues becoming payable by these lessees under the terms of their leases before the **Final Effective Date** of this Settlement Agreement or, as to leases listed in paragraph 9.1(c), becoming payable by these lessees under the terms of their leases with respect to Nuiqsut subsurface in any section before the date when that

section becomes a Fully Conveyed Section. As to leases listed in paragraph 9.1(a), the State shall be entitled to retain all rentals or other subsurface revenues, if any, that the lessees become obligated or elect to pay to the State under the lease terms before the Final Effective Date of this Settlement Agreement. As to leases listed in paragraph 9.1(b), ASRC shall be entitled to retain all rentals or other subsurface revenues, if any, that the lessees become obligated or elect to pay to ASRC under the lease terms before the Final Effective Date of this Settlement Agreement. As to leases listed in paragraph 9.1(c), ASRC shall be entitled to retain all rentals or other subsurface revenues, if any, that the lessees become obligated or elect to pay to ASRC under the lease terms attributable to Nuiqsut subsurface in any section before the date that the section becomes a Fully Conveyed Section.

#### 10. MISCELLANEOUS.

##### 10.1. Confidentiality.

Except as otherwise required by law, all information, including but not limited to geological, geophysical, and well data that either ASRC or the State receives from the other party as a result of either party's respective rights and obligations under this Settlement Agreement that is not otherwise publicly available will be considered proprietary information and kept strictly confidential. Before any disclosure of this information by either party that is made on the grounds that disclosure is "required by law," the party seeking to make disclosure will confer with the other party, identify the information to be disclosed, identify the person(s) to whom disclosure is to be made, and state the basis for its conclusion that disclosure is "required by law."

##### 10.2. Audit and Review.

Upon reasonable notice, ASRC and the State will be entitled to audit and review all books, records, federal or state tax returns, data, and information possessed by the other party that is potentially relevant to the calculation, determination,

or payment of subsurface revenues that have been incorrectly or improperly received or are otherwise required to be held in trust and paid over to the other party under section 4 or 5 of this Settlement Agreement.

### 10.3. Subsurface Data Disclosure.

If, before the Final Effective Date of this Settlement Agreement, ASRC has received or has access to and the right to obtain copies of well logs, reports of well tests, and other geological and geophysical data, obtained from the Nuiqsut subsurface or the Point Lay subsurface, ASRC will provide the State with access to and copies of this information except when restricted by contract or law from doing so. If the State is entitled by law to this information from third parties, it will first seek to obtain the information from them. ASRC will make a good faith effort to obtain the consent of the lessee (if consent is contractually required), to provide the State with access to and copies of all logs, reports, and data concerning the leases, but ASRC will not be required to pay money or any other consideration to a third party to obtain their consent. The State will provide ASRC with access to and copies of well logs, reports of well tests, and other geological and geophysical data it has heretofore obtained or hereafter obtains, or has access to and the right to obtain copies of, except when restricted by contract or by law from doing so. The State will make a good faith effort to obtain consent for release of this information to ASRC when consent is required, but the State will not be required to pay money or any other consideration to a third party to obtain that consent. In each instance when either the State or ASRC grants a license or permit to any person to conduct seismic exploration within the Nuiqsut subsurface area or Point Lay subsurface area (which license or permit is not a Subsurface Agreement as defined in subsection 11.27), any person accepting such a license or permit or conducting or causing to be conducted any seismic exploration operations within the Nuiqsut subsurface area or Point Lay subsurface area pursuant to any such license or