

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7595 SENATE RESOURCES



RECORDS



CERTIFICATION

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Jim Butler

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Date

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ALASKA MINERS ASSOCIATION HEARING,
2/12/92

ARCO HEARING - 2/4/92

CONFIRMATIONS 1991

ALLSWORTH/BURLEY, BOARD OF GAME

CARLISLE, BOARD OF FISH

CROXTON, BOARD OF FISH

DOUGLAS, OIL & GAS CONSERV. COMM.

HEINZE, COMMISSIONER, DEPT. NR

ROZIER, COMMISSIONER, DEPT. F&G/
(R. SOMMERVILLE, DEPUTY COMMISSIONER)

SANDOR, COMMISSIONER, DEPT. ENV.
CONS.

L. SMITH, OIL & GAS CONSERV. COMM.

WARDWELL, BOARD OF FISH

CONFIRMATIONS, 1992

BIG GAME ... BOARD/COM. FISH
ENTRY COMM.

BOARD OF FISH (L. EDFELT, ET AL)

BOARD OF GAME

DEC USER FEES HEARING - 3/23/92

DEPT. FISH & GAME OVERVIEW - 1/17/92

SEAFOOD QUALITY HEARING - 2/10/92

WATER RESOURCES BOARD MEETING - 2/26/92

WATER QUALITY STANDARDS HEARING - 5/4/92

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Ak. Miners

Assoc. Hrg.

2-12-92



Official Business

COMMITTEE:

SENATE RESOURCES

DATE: FEB 12, 1992

SIGN-IN

Subject of meeting:

ALASKA MINERS ASSOCIATION

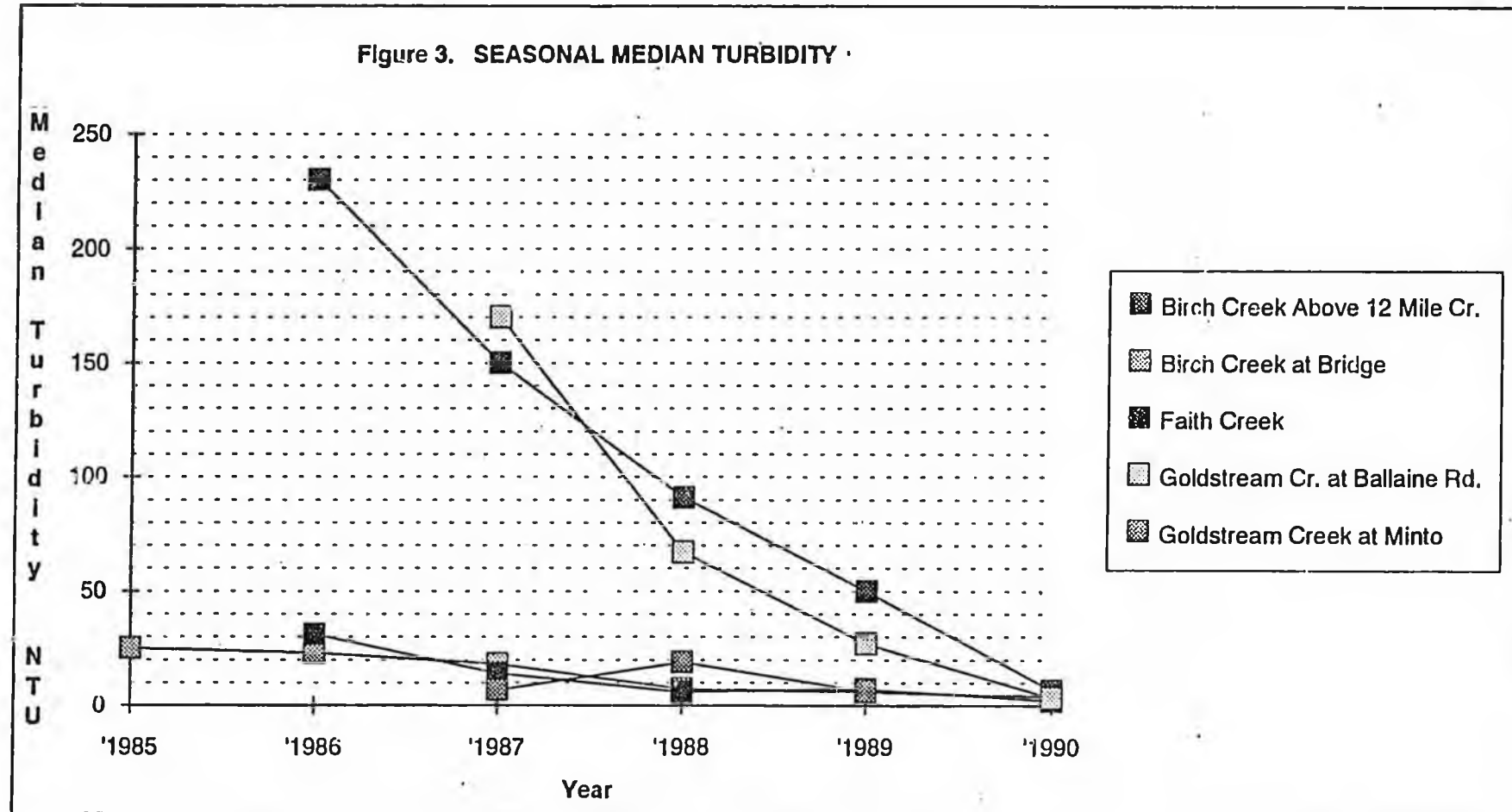
PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Steve Borell	501 W. Northern Lights, Anch, 99503	276-0347	Alaska Miners Assoc	Yes
Charlie Boehley	122 1st Ave - Suite 302 Fairbanks, AK 99701	452-2625	U.S. L.L. Coal Mine	Yes
Joe Petersen	5631 Sewardway, Suite # Anchorage, AK 99507	521-2023	Pease Dome US	Yes
Steve Newkirk	5660 B St Anch, AK 99518	561-7111	Cominco Alaska Exp.	yes
Karl Hanneuman	626 2nd St, Suite 201, Fairbanks AK 99701	452-2625	Alaska Power Development	Yes
Dennis DeBour	4488 Aniakway, Juneau AK 99801	556-1517	Seaboard Corp	No
STEPHEN SORENSON	Suite 301 Seward Plaza Bldg Juneau, AK 99801	586-2899	BAKCO, HOOPER	NO
M Clough	Box 110801 Seward	465-2017	DCED - DED	N.O
John Sines	422 E. ...	452-6640	Winnell Coal Mine	No

**ALASKA DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**

**1990
ANNUAL MINING REPORT**

Figure 3. SEASONAL MEDIAN TURBIDITY





ALASKA MINERS ASSOCIATION, INC.

3/20/91

LAND STATUS IN ALASKA
(Millions of Acres)

	<u>Total</u>	<u>Total "Wilderness"</u>	<u>Total Closed to Mining</u>	<u>Total Open to Mining</u>
<u>Federal Lands</u>				
National Park Service	54.7	32.8	54.7	0
U.S. Fish & Wildlife	77.1	18.5	77.1	0
U.S. Forest Service	22.8	5.7	5.7	17.1
Bureau of Land Mgmt.	57.9	2.4(2) 23.0(3)	2.4 23.0	32.5
Department of Defense	2.5		2.5	0
Subtotal	<u>215.0(1)</u>	<u>82.4</u>	<u>165.4</u>	<u>49.6</u>
<u>State Lands</u>				
State Parks	3.2		3.2	0
Administrative Mineral Closures	5.3		5.3	0
Other State Lands	77.9		0	77.9
Not Selected/TA'd	18.		0	18.
Subtotal	<u>104.4(1)</u>		<u>8.5</u>	<u>95.9</u>
<u>Private Lands</u>				
Native Corporations	45.6		0	45.6.(4)
Other private	0.5		0.5	0
Subtotal	<u>46.1</u>		<u>0.5</u>	<u>45.6</u>
Total	<u>365.5</u>	<u>82.5</u>	<u>174.4</u>	<u>191.1</u>

- (1) Final acres that will result after all State and Native land transfers.
- (2) Wild and Scenic River Corridors total approximately 2.4 million acres and these are managed the same as Wilderness designated lands.
- (3) National Petroleum Reserve Alaska is effectively managed as Wilderness.
- (4) Open to mining if leased from Native Corporations.



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

SUMMARY OF LEGISLATIVE CONCERNS OF THE ALASKA MINING INDUSTRY FEBRUARY 1992

Multiple Use of Lands/Land Availability Issues

- * - Protection from Mineral Closure
- * - Annual Land Withdrawal Report
- * - Oversight of Coastal Zone Management

State Policy Issues

- * - Permanent Exemption of In Place taxation
- State Land Selections
- Funding for an Alaska Mineral Assessment Program
- Mental Health Lands
- Resource Cabinet
- Continue Legislative Support And Funding of the Minerals Commission
- Continue AMEREF Funding Program
- University Level Education Programs
- RS 2477 Right-of-Way
- Navigable Waterways
- * - Road Development
- Fish And Game Management

Regulatory Reform

- * - Automatic Extension of Permits Affected by Court Proceedings

Environmental Regulation

- Department of Environmental Conservation
- Wetlands

Mine Operation Issues

- * - Flexible Work Week
- * - Time at the Face Underground

NOTE: AN "*" INDICATES LEGISLATION NEEDED



ALASKA MINERS ASSOCIATION, INC.

LEGISLATIVE CONCERNS OF THE ALASKA MINING INDUSTRY FEBRUARY 1992

MULTIPLE USE OF LANDS

The issue of multiple use of State lands is central to the future of mining in Alaska. Mineral deposits are rare and encompass a wide range of types and sizes. Because our understanding of the processes that generate mineral deposits is continually evolving, it is difficult to predict where they occur.

Only through high risk exploration dollars and evaluation efforts of trained professionals will Alaska's mineral resources be defined. To allow for the discovery and development of valuable minerals, it is imperative that State lands be managed for multiple uses without restrictive land use designations.

Before mineral closures or other restrictions on State land are allowed, the following requirements should be met: 1) management of the area is not possible unless some uses are excluded and 2) mitigation measures cannot be developed to allow full multiple use. When such findings are made and substantiated, the areal extent of State lands subject to restricted use must encompass the smallest practical size and the uses be restricted for the shortest practical length of time.

Approximately 60% of Alaska (Federal and State) is already closed to mineral entry and mining or any other form of development. Closures promulgated through area plans have often exceeded 100,000 acres per plan and are justified with findings of incompatibility. However, such findings are seldom either well substantiated or adequately documented. The past proliferation of mineral closures is a serious threat to responsible resource development. Because of the geologic uncertainties involved in discovering a mineral deposit, it should be assumed that a major mineral deposit could exist on any given parcel of land. To close that parcel to mineral entry would preclude discovery of the deposit. Many lands selected by the State were originally chosen for resource development; this objective should not be compromised.

LEGISLATION NEEDED: Protection from Mineral Closure

* We recommend that land use statutes be changed to require legislative action before greater than 640 acres or longer than 0.5 mile long strip along a drainage are closed to mineral entry.



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Legislative Concerns

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* We recommend that all administrative closures have a "sunset" date, not to exceed five years after the enactment of the closure. Mineral closures currently in existence would "sunset" five years after enactment of the legislation.

* We recommend that before any mineral closure is initiated, a well substantiated and documented evaluation of the mineral resources of the area must be completed and weighed objectively with other competing uses.

LEGISLATION NEEDED: Annual Land Withdrawal Report

* Require DNR to report to the legislature and the Governor at the start of each legislative session a detailed account of any State lands that were closed to mineral location and mining during the previous calendar year, specifying for each closure: 1) the known resource value of the area, 2) the reason for the closure, 3) the effective date, and 4) the legal description of the area.

This reporting requirement would allow the Governor, Legislature and the public to see clearly what closures occurred and would provide a measure of accountability of DNR for their past closures. It is currently very difficult to get a statewide picture of the closures that have occurred.

LEGISLATION NEEDED: Oversight of Coastal Zone Management

* As currently structured the local Coastal Resource Service Area (CRSA) boards are not responsible to the executive Branch. A bill providing oversight of Coastal Management Programs is needed in order to ensure that state and national concerns, as well as local concerns, are considered for resource development projects in the Coastal Zone.

Alaska CRSA boards view issues from a local perspective and try to use the Coastal Zone Management programs as a vehicle for zoning and resource management in their local areas. The decisions of these boards can tie up a project in expensive litigation for extended periods with no hope for timely resolution.

STATE POLICY ISSUES

Alaska needs to give a stronger positive signal regarding development in the State by providing a stable and intelligible regulatory and tax environment. The Green Creek and Red Dog mines, the first significant hardrock mines in Alaska since WWII,



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began operating 1989. However, the perception still held by most mining companies and lending institutions is that the Alaska State Government does not support mining or minerals development. In order to change this perception, the state must insure that projects will not be adversely affected by changes in or new interpretations of State regulations.

Headway was made in the 1991 legislative session with the repeal of the worldwide unitary corporate tax. This change in the corporate tax structure provides a positive signal to the international business community.

The issues on taxation, availability of lands, education, and infrastructure discussed below are areas where the State of Alaska needs to send a positive signal to international mining industry.

Taxation of In Place Resources

Prior to July of 1990 mineral reserves in place were taxable by municipalities. Oil and gas had a specific exemption but minerals did not. In the spring of 1990 the second session of the Sixteenth Legislature passed a two-year exemption for minerals and instructed the Department and Community and Regional Affairs, assisted by the Department of Commerce and Economic Development, to develop recommendations to the legislature regarding taxation of natural resources in place.

In place taxation is a bad policy for many reasons. It is extremely difficult to predict whether or not a "resource" will ever be economically minable. Market conditions, changes in regulations, geologic stability, ore grade, consumer buying, international events, etc. all affect mining costs and/or metal prices. Rock that is "ore" (material that can be mined at a profit) changes depending on these factors. Huge resources may exist but they often cannot be mined at a profit. Taxation of the resources in place would provide a major negative incentive for all types of mineral development.

LEGISLATION NEEDED: Permanent Exemption of In Place Taxation

* A permanent exemption for the in place taxation of natural resources is required before July 1992.



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State Land Selections - The Remaining 18 Million Acres

The State should use all geologic information now available to wisely choose the highest value lands to fulfill the remaining 18 million acres of state selections. The potential for future oil, gas and minerals should be the guiding factor in making the majority of these selections. Parts of the National Petroleum Reserve Alaska (NPRA), including 2.5 million acres along the southern edges of the reserve, should be included in these selections.

Funding for an Alaska Mineral Assessment Program

Geologic and geophysical information is valuable to all mineral industry representatives from prospectors to multi-nations corporations. Funds should be provided for geologic and geophysical field program to enhance the basic geologic understanding of the state which would in turn result in increased exploration activity. We support the Minerals Commission's recommendation that \$50 million dollars be provided for a decade-long initiative to be called the Alaska Mineral Assessment Program (AMAP).

Mental Health Lands

We would encourage the legislature to provide any appropriations necessary to insure that the objectives and mandates of Chapter 66 can be fully realized in a timely manner. A major part of the original SB 65 that was not addressed in the final version involves the current and future program needs of the mentally disabled.

Resource Cabinet

The Department of Commerce and Economic Development (DCED) should be included as part of the Resource Cabinet. For too long the State has floundered along without the DCED having an effective voice in the development of the States resources. Making DCED a part of the Resource Cabinet would help change this situation.

Continue Legislative Support and Funding of the Minerals Commission

The Alaska Mineral Commission was established in 1986 to help the State identify and resolve major issues that have adversely affected the minerals industry. Commission members donate many hundreds of hours of their own time at no cost to the State. Funding should be made available through DCED to provide travel expenses, per diem and staff support to allow the Comm'ssion to carry out its mandate.



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Continue AMEREF Funding Program

The Alaska Minerals and Energy Resource Education Fund (AMEREF) provides assistance to schools to interest and train young people in wise use of our state's minerals and the role that these minerals play in our lives. Funding for AMEREF is a joint effort between the minerals industry and the State with two thirds of the cost paid by industry.

University Level Education

AMA supports the continued legislative funding of the University of Alaska programs in mineral engineering, mining technology, earth sciences and the Minerals Industry Research Laboratory. The mining technology/vocational program to date has provided basic level training for several hundred people, most of whom have subsequently gone to work in mines in the State.

RS2477 Rights-of Way

A provision, RS2477, contained in an 1866 law gives states right-of-way across Federal lands on routes that have historically been used by the public. In Alaska, where the federal government controls so much land, these historic rights-of-way are crucial for access. However, Alaska must assert its rights and begin active management of all RS2477 roads and trails. Furthermore, the State must resist all Federal attempts to restrict access to state lands through administrative lands reclassification (e.g. Areas of Environmental Concern, Critical Habitat Areas) and the assessment of user fees for transit across Federal lands.

Navigable Waterways

Alaska should continue to actively pursue and actively protect its rights to waterways and should not allow the Federal government to usurp Alaska's rights. Cooperative agreements with federal agencies must not diminish the rights of Alaska or the rights of the citizens to use their waterways.

Road Development

Alaska should actively pursue extensions and upgrades to rural roads that will eventually provide highway access to areas that are currently inaccessible. The Denali Highway is an excellent example of how, over time, a poor quality trail can become an effective highway. The Department of transportation should begin actively and legally developing the road system in the State.



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LEGISLATION NEEDED: Road Development

* The lack of infrastructure, particularly roads and highways, has a serious negative effect on all aspects of the economy. Several roads that would provide access for recreational use as well as provide infrastructure for industry merit serious consideration:

- 1) Petersville Road Extension - west to the Collinsville Mining District and then south into the Beluga Coal Field.
- 2) Hatcher Pass Loop Road - upgrade for year around use.
- 3) Talkeetna Highway - from the Glenn Highway across the east flank of the Talkeetna Mtns. to the Denali Highway
- 4) Taku Highway - Juneau to Atlin, B.C.
- 5) Bradfield Canal Road - from near Wrangell to Cassiar Hwy
- 6) Copper River highway - reconstruct the right -of-way as a gravel road.
- 7) Healy Highway - from Healy east along the north flank of Alaska Range to the Richardson Highway
- 8) Coldfoot to Bettles - upgrade existing section and extend as needed
- 9) Stampede Road - from Healy to Kantishna
- 10) Whittier Road
- 11) Yukon to Kuskokwim Road - extend the existing Ruby to Poorman Road across to the Kuskokwim River
- 12) In the Nome area - Glacier Creek to Mt. Distin, Solomon Road, Skookum to Bluff, Council to Ophir Creek, Teller to Lost River, and Kougarak to Serpentine Hot Springs.

Fish and Game Management

Alaska must have a policy of active management of its resources as is required by the State Constitution. The current attitude of preserving natural habitat to the exclusion of any other uses must become more balanced. Alaska now contains more than 166,900,00 acres that are managed as "natural". Fish, wildlife and habitat should be actively managed, not just preserved. Environmental enhancement, along with recognition of the value of short term impacts, should become part of ADFG strategies.

REGULATORY REFORM

Even though there appears to be a partial resurgence in exploration and mining activity, the State of Alaska is slowly regulating itself out of a mining industry. The number of permits, time required to secure those permits, the number of agencies and the costs related to obtaining permits are out of control.



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A streamlined permitting process defining the DNR Division of Mining as the lead agency for mining projects is recommended. The identification of Division of Mining as lead agency would provide structure to accompany the expertise and statutory authority that already exists. This would be a major step toward cleaning up the costly, multiple permit system that has developed over the past decade.

LEGISLATION NEEDED: Automatic Extension of Permits Affected by Court Proceedings

* The following statement should be placed in statute:

"The term of any permit issued by the State of Alaska shall tolled (extended) during all periods while the issuance, validity, completeness, etc. of such permits is being challenged in the State or Federal courts and upon the termination of such litigation the term of such permit(s) shall continue to run until the term of the permit(s) has encompassed the time period originally defined by such permit(s)."

ENVIRONMENTAL REGULATION

Individuals within the Department of Environmental Conservation (DEC) must be accountable for their actions. Technically qualified personnel, with expertise pertaining to the industry which they are assigned to regulate, must be employed. Too often unqualified and inexperienced people are given the job of overseeing and inspecting in Alaska.

The DEC has all the authority needed to regulate industry. It must learn to use this authority in a reasonable, constructive and professional manner. We need to work together as a team to find solutions that promote development of natural resources as required by the State Constitution and protect the environment.

Wetlands

Alaska should be exempted from a strict application of the proposed national "no net loss of wetlands" policy until a suitable policy can be formulated specifically for Alaska that recognizes the unique type, quantity and value of Alaskan wetlands.



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MINE OPERATING ISSUES

Several laws are now in existence impose inefficient operating requirements on the mining industry. Some of these laws are a carry over from the past and no longer serve a purpose.

LEGISLATION NEEDED: Flexible Work Week

* A need exists to allow work schedules to be adjusted on a site by site basis which would result in more efficient work scheduling and provide a more desirable time-off pattern for employees. In Alaska this is particularly significant where mines are in remote locations and miners maintain their residence in a village or city far removed from the mine site.

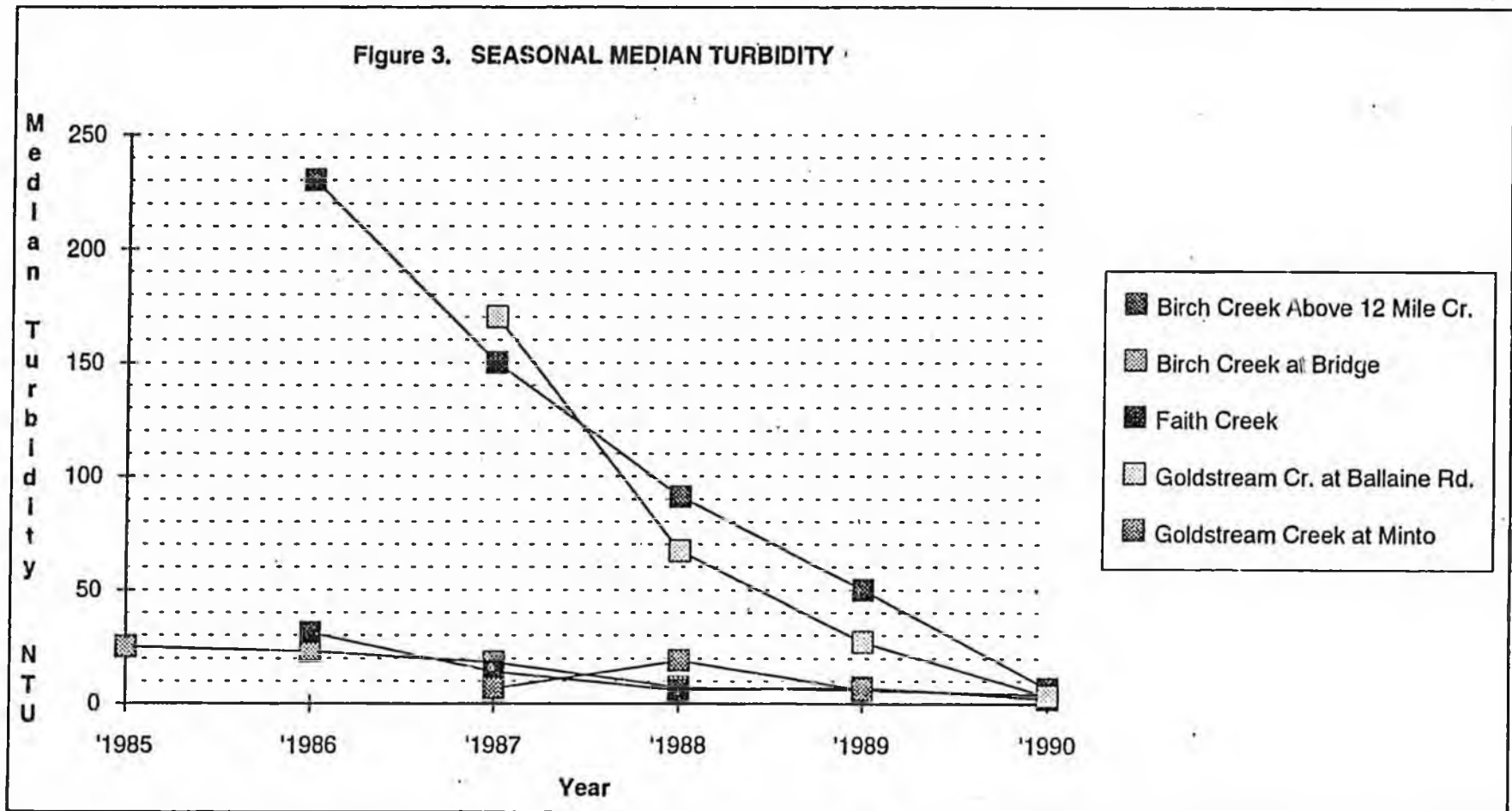
LEGISLATION CONCERN: Time at the Face Underground

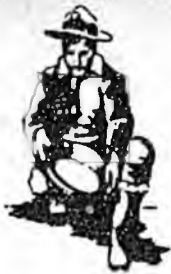
* There is need to remove the 8 hour limit for working time at the face in underground mines. The existing law is from a time in history when most work was done by hand. Today underground operations are highly mechanized and there is effectively no difference between working underground or on the surface.

**ALASKA DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**

**1990
ANNUAL MINING REPORT**

Figure 3. SEASONAL MEDIAN TURBIDITY





ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

Agenda

Senate Resources Committee

Wednesday, February 12, 1992

1. Issues of Current Concern (Steve Borell)
 - A. In Place Taxation of Natural Resources
 - B. RS 2477 Rights of Way Regulations & Policies
 - C. Reclamation Regulations
 - D. Land Availability and Restrictions
 - E. State Adoption of Federal Clean Air Act
 - F. UAF School of Mineral Engineering

Status Updates by Individual Mining Companies:

2. Usibelli (Charlie Boddy)
3. Echo Bay (David Stone)
4. Fairbanks Gold
5. Alaska Placer Development (Karl Hanneman)
6. Cominco (Steve Newkirk)
7. Placer Dome (Joe Piekenbrock)
8. Cambior/Valdez Creek

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



USIBELLI COAL MINER

Vol. 11

Usibelli Coal Mine, Inc.

September, 1991

Usibelli Supplies Clean Energy for Alaska and the Pacific Rim

Usibelli Coal Mine, Inc. (UCM) was founded in 1943 and produces ultra-low sulfur subbituminous coal for domestic and export markets. In 1990, UCM supplied six Interior Alaska power plants with a total of 790,000 tons of coal while an additional 797,000 tons were shipped through the Port of Seward to the Republic of Korea.

Testing of Usibelli coal shows that it is among the lowest sulfur coal produced in the world. Other environmental benefits include a low nitrogen content, a high calcium content, and excellent performance in equipment designed to clean exhaust-gas emissions. Though the coal has a relatively low energy value, its environmental attributes and

climate and remote location, UCM has been innovative in its operations, using the most modern equipment and methods to maximize efficiency.

Adjacent to the mine, a 25 megawatt coal-fired power plant is owned and operated by the Golden Valley Electric Association (GVEA). The plant supplies over half of the electrical demand of the northern railbelt.

In 1989, the Healy Clean Coal Project was selected by the U.S. Department of Energy for matching funding under the federal Clean Coal Technology program. The project will construct a new 50 megawatt power plant adjacent to the existing GVEA plant. The new plant will demonstrate state-of-the-art technology



Usibelli Coal Mine produces ultra-low sulfur subbituminous coal from several seams in the Healyanna Creek valley near Healy, Alaska. Shown here are the No. 3 and No. 4 seams outcropping several miles upstream from the current Poker Flats mining pit.

ity and operated by GVEA. UCM University of Alaska Fairbanks, Fort to the Korea Electric Power

Arco

Hearing

2-4-92

Sen Resources + Oil + Gas
ARCO. Feb 4, 1992

Jim Davis
February 4, 1992
Address to Legislators

I very much appreciate the opportunity to talk to you today about the petroleum industry and the outlook for its future in Alaska.

As you may know, the suggestion for this informal briefing came from casual discussions last fall with several of the committee chairmen and ARCO Alaska's senior staff. It was suggested that the key House and Senate committees would benefit from an ARCO overview of the current state of the oil and gas industry in Alaska.

Given the sharp decline in the price of crude oil since those fall discussions, and its direct negative impact on the FY92 budget and the FY93 revenue projections, it seems particularly appropriate that we offer our thoughts to you today.

In particular I am going to concentrate on exploration, for it is the cornerstone and future of the industry. To state the obvious --you can't produce what you don't find. My job for ARCO is to find it.

I will offer you some reasons why a number of companies are abandoning Alaska exploration efforts--and why ARCO, the state's most active explorer, is continuing with its high level of effort. And I will suggest what the state can do to encourage other companies to invest in exploration in Alaska.

i. The fact that more than 85 percent of the state's income comes from royalties and taxes on oil production, it is disturbing to see that the Alaskan rig count ended 1991 at its lowest level in 17 years. There is not much promise of improvement for 1992.

If the oil industry is to remain healthy in the long term, we must continue to explore for new sources of oil and we must be successful. We must efficiently maximize production from existing fields, and in the face of lower oil prices and tougher competition, we must cut the cost of doing business.

ARCO Alaska is doing all of these things.

In terms of exploration, ARCO plans to spend \$600 million in exploration in Alaska over the next five years. In 1992, we expect to see between 15 and 25 exploration wells drilled in Alaska, and ARCO will participate in 75 to 80 percent of those wells.

In Cook Inlet, there is cause to celebrate the discovery of oil at the Sunfish prospect. A jackup rig is overwintering at Ilikiski to drill a followup well next summer, to further evaluate the discovery.

This winter, ARCO has five drilling rigs at work on exploration prospects-- the most activity of any company in Alaska. This includes the BLT well north of Anchorage, where we are looking for gas. This is a unique area in that the mineral ownership includes some private land. We have paid over \$400,000 to individuals for those rights. The state has also realized over \$2 million in lease bonuses. And the local economy benefits from 37 local people who are employed at the rig site, and more than \$1.5 million spent locally for services and supplies.

ARCO also is drilling the Cabot prospect in federal OCS waters offshore Barrow, which is the third Western Beaufort Sea exploratory well. If the Cabot well is not successful, it will may be the last in the area for some time.

And we recently spudded two wells in the Colville River delta, west of Kuparuk, which will be followed by three more wells this winter.

ARCO is looking for partners to explore the Kuvlum/Maktar prospect in the Eastern Beaufort. This prospect is important in proving up enough reserves in the area to justify shared production facilities and a pipeline to the trans Alaska pipeline. Unfortunately, several companies who had planned to participate have pulled out, and if that well isn't drilled this year, I fear it won't be drilled before leases expire. That could mean the end of activity in the Eastern Beaufort for the foreseeable future.

ARCO is the only company active in the interior basins. We have an agreement with Doyon in the Kandik Basin, near the Canadian border, where we have completed extensive geological studies and seismic and other geophysical studies. We are researching new drilling systems which are less costly and have less impact on the environment. We are looking for a partner to help us drill the prospects that have been identified.

This exploratory activity is aimed at preserving ARCO's future in Alaska.

Meanwhile, in order to maximize recovery from Prudhoe Bay, ARCO and its partners are making major investments, totaling more than \$2 billion, in gas handling facilities to make it possible to recover more oil from the reservoir.

When the field went on production in 1977, we expected ultimate recovery to be 9.6 billion barrels of oil. Today, we expect to recover more than 12 billion barrels. This increase didn't just happen. It is the result of aggressive investments in wells and facilities, technological advances, and the considerable efforts of a lot of people.

And we are cutting costs. Recently, we took the very painful step of cutting some 250 of our 2,900 Alaska employees. In addition, ARCO and BP are streamlining operations at Prudhoe Bay through consolidation and sharing of services. That meant the loss of 100 jobs, many of them contract employees.

Other oil companies, including many who do not have current production in Alaska, have announced in recent months they are giving up their exploration efforts in Alaska and intend to invest their exploration dollars in foreign countries.

This is disturbing news because it is in both the state's interest and ARCO's interest that Alaska maintain an aggressive exploration program, with a vigorous service industry supporting it.

You may wonder why ARCO wants competition in Alaska. First: given the high cost of exploration and the low chance of commercial success, we need partners to share the risk. Onshore, it costs from \$5 million to \$10 million to drill a single well; offshore, the cost can range from \$20 million to \$50 million or more. The only way to stay within a reasonable budget and still participate in a significant number of wells is to team up with other companies.

Second: Because of the way land is traditionally leased, in relatively small blocks, companies must form partnerships to create a leasehold large enough to justify an exploratory well. While we need such partnerships, coming to agreement on when a well will

be drilled, and how costs and production will be shared, is difficult, especially if the companies have differing views of Alaska.

Third: ARCO alone cannot support a viable service industry, to perform not only the actual exploration drilling but also to provide such services as earth moving, road building, well logging, well testing, camp building, seismic activities, and catering. As activity decreases, the cost of services increases, and so on. It's called a death spiral.

Now to a key question. Why is Alaska losing the battle for exploration capital?

To answer this question, we must understand a little about the exploration process. Exploration is a long term venture. Typically, it begins with broad regional geological studies of areas of considerable extent, involving areas of a few hundred miles square, or tens of millions of acres.

These studies reflect the fact that although the rocks have changed very little over human existence, our understanding of them is continually changing. To quote Parke Dickie, the pioneer petroleum geologist, "You can find oil in new places with old ideas, or in old places with new ideas. Seldom can you find oil in old places with old ideas. In the past, we thought we were running out of oil, but in fact we were running out of ideas." End of quote.

The next step in the exploration process is to conduct seismic and other geophysical studies over more local areas, tens of miles square, selected through geologic studies to be of the highest interest. Prospects identified then must pass rigorous economic screening before they are drilled. The economics include risk factors and costs of developing and marketing oil, if it is found.

This process takes at least five years, and must take place in advance of any lease sale. Once we are successful in acquiring leases through the competitive bid process, then the permitting process begins. An offshore well can require up to 30 permits or regulatory approvals from state, federal and local governments. Only when all approvals have been obtained can drilling begin. A delay of a few months can mean a year's delay in drilling where seasonal drilling restrictions are in effect.

The results of drilling that well, and perhaps others, are incorporated into existing geologic concepts and the process repeats itself.

If we are lucky and discover oil, another five to ten years will be needed for permits, design and construction to put the new field into production. Only then will we be in a position to begin to recoup the costs of exploration and initial development.

An example is ARCO's recent Sunfish discovery in the Cook Inlet. We began the basic studies four years ago, and developed new geologic concepts. In 1990, we tested these new geologic concepts by drilling the Sturgeon prospect at a cost of \$12 million. We didn't find oil, but it was a technical success because it confirmed these new concepts.

It encouraged us to drill the Sunfish prospect, at a cost of \$30 million. That was a successful test: We discovered oil! We are planning delineation drilling this year. If it is found to be economic, it will be five to ten years before production facilities are designed and the construction is completed.

Anything that adds uncertainty to this long-term process is undesirable because it increases the risk to the explorer and makes further exploration less desirable.

Uncertainty is one of the reasons the industry is exploring less in Alaska and the Lower 48 and is investing those dollars overseas. Just since 1985, the U. S. oil industry has increased its foreign investment from 40 percent to 80 percent of its total capital investment.

A recent Oil and Gas Investors article points out that democracies may seem inherently attractive and safe to Western eyes, yet they have a habit of making changes that affect the business community nearly as often as elections are held.

This is why the U.S. itself is increasingly regarded as being a high risk country compared to Canada, the U.K., or Indonesia, the article points out. "When viewing the spectrum of risks associated with foreign investment, the U.S. comes under a great deal of scrutiny. In terms of volatility and unpredictable tax law changes, the U.S. record is not the best." Unquote.

Uncertainty of regulation and increasing environmental costs could be added to this spectrum of risks. And exploration investments must be factored into companies' long-term planning.

Consider this analogy. Suppose you wanted to buy a lot on which to build a house five years from now. Say you had a choice between a subdivision in each of two towns. In one the town has committed to follow the building code standards that are recommended nationally and has a history of stable zoning and responsive permitting. The other has a history of imposing unique building codes, has no zoning, and is erratic in issuing building permits. Which lot would you buy? Would you even consider buying the latter lot?

The petroleum industry is faced with a similar decision. Generally speaking, an explorer overseas will know the taxation and permitting requirements prior to making any investment. In fact, foreign governments have shown willingness to be responsive to adverse conditions to accommodate marginal fields and hard economic times.

As an example: the government of Alberta has announced a royalty holiday for wells drilled in the next two years.

Companies also are not exploring in Alaska because they are being denied access to areas with oil potential, particularly federal lands onshore and offshore. Given the exploration process I have described, you can see it is impossible to know in advance precisely where your studies will lead you. Yet the federal government has withdrawn large blocks of acreage within offshore sale areas, leaving an unconnected collection of blocks. And the Coastal Plain of the Arctic National Wildlife Refuge, the most prospective onshore area in the U.S., continues to be off limits to exploration.

In the Lower 48, 40 per cent of the federal oil and gas lands on shore are now unavailable because of leasing moratoria or other restrictions. And there is a ban on offshore leasing from Maine to Florida and from Seattle to San Diego. For these reasons, the industry is not investing in pre-lease activities outside the Gulf of Mexico.

Industry has spent \$10 billion exploring the Alaskan OCS, through 1990, including 75 dry holes. More than \$6.5 billion of that went for

lease sale bonuses and rentals, while another \$3 billion went for actual drilling costs.

The majority of companies conducting Alaskan OCS exploration have had little participation in onshore drilling. Given the record of dry holes offshore, it should come as no surprise that these companies are reassessing their positions and are looking elsewhere.

Why isn't ARCO taking its exploration dollars out of the state?

Since the mid-eighties, we have had an exploration program balanced between the onshore and the offshore. With the troubles in the OCS, ARCO, unlike some of its competitors, was able to easily redirect efforts onshore.

We understand that exploration is a long term and technically based business. Over the past four years, ARCO has invested over 250 man years in basic regional studies of Alaska. This next summer marks the 37th consecutive year that ARCO has had geologic field parties. No other company matches that record. We believe these investments give us an edge over our competitors. This understanding has led us to aggressively invest in both state and federal acreage.

In addition, our people live and work in Alaska and are able to communicate routinely and in a timely way with the state agencies. But the most important reason ARCO maintains an aggressive exploration program in Alaska is that ARCO, or its predecessors, have had exploration success.

We made the discovery at Swanson River in 1957 that helped achieve statehood for Alaska. We also discovered Prudhoe Bay, Kuparuk, Lisburne, and Point McIntyre. Last fall, we announced a discovery at our Sunfish location in Cook Inlet. It was the first Cook Inlet oil discovery in 26 years.

ARCO is working hard to build a future here. Through continually evolving technology, we believe that Alaska offers a resource base that is as prospective as anywhere in the world. If we didn't, we would not be Alaska's most active explorer.

Let's look at Alaska's competitor countries overseas. Those countries offer a business environment that is compatible with the exploration process and encourages it.

They grant concessions on large contiguous blocks of acreage, from 250,000 acres to 25 million acres. Exploration rights are valid for a length of time that is appropriate to the process. Stipulations are known up front, including terms of operations, environmental requirements and development requirements. In addition, partnerships are known ahead of time as they are developed prior to joint bidding for the concessions.

Of course there are work requirements. But no company bids on these types of concessions unless they plan to conduct activities.

So what can the state do to reverse the trend to overseas investment?

For one thing, the state must be a strong advocate of a stable and truly area-wide federal OCS lease sale program in Alaska. And the state should also support the opening of the ANWR Coastal Plain-- not only for the windfall from bonuses it would receive, but because a discovery in ANWR could justify the construction of a pipeline to connect with the Trans Alaska Pipeline. Discoveries already made in the adjacent area appear to be too small to justify the costs of development. They most likely will not be developed unless additional reserves are found.

The state also must do more to entice explorers back onshore. While the state has done a good job in allowing access to state lands, and has provided reasonable stability in administrative processes, there is room for improvement.

We see a continual escalation of permitting requirements. Each additional permit is more stringent in its stipulations. The value of this escalation is doubtful, both from an environmental perspective and certainly from a cost/benefit viewpoint. As an example, it recently took three years to permit a new drill pad within the existing Kuparuk Field.

There is also opportunity to streamline the permitting process. More than time is lost in the maze of paperwork. ARCO employs 35 people full time, and others spend part of their time, to handle the permits

required to drill about a dozen exploratory wells each year, as well as for development projects in existing fields. If some of those people could be redirected to identifying exploration prospects, we could have a much better chance of finding the reserves both Alaska and ARCO need.

Another way the state could help is in encouraging the formation of exploration units. The exploration unit concept is a powerful way for the state to level the playing field in competition with other countries. It allows the combining of tracts with different expiration dates and different owners into a unit which is held together beyond individual lease expiration dates, as long as specified work is done.

We see the current process of forming units becoming more burdensome. What should take a week for administrative review by the state is now taking six months. The Legislature should let it be known that it supports this powerful concept and encourages the use of exploration units.

We are happy to hear that the state is considering the concession arrangement that is attracting capital overseas. The state and native corporations must work together, especially in the interior basins, to offer large blocks of land for exploration. It is an idea that could be used elsewhere in the state, in areas not adjacent to current production.

The completion of the state's land selections, which the Department of Natural Resources has identified as a top priority, offers a unique opportunity to aid the exploration process. Lands can be selected to preserve access to prospective oil and gas resources and for transportation corridors for pipelines, if exploration is successful.

It would be difficult to restore Alaska to previous high levels of exploration activity. But with the improvements I have suggested, I believe that the state can at least stem the tide of retreating exploration dollars and perhaps bring new life to Alaskan exploration.

I hope that this perspective is of help to you and I wish you all the best for this session. Thank you for your time and attention.

Confirm. '91

Allsworth

Burley

Brd. of Game

April 8, 1991

The Honorable Dick Eliason
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear President Eliason,

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointments:

Board of Game:

Burley, Richard - Fairbanks

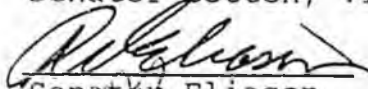
Term began 1/19/91 expires 1/31/94

There were no stated objections to the confirmation of any of the named individuals by committee members. This does not reflect an intent by any of the members to vote for or against the individuals during any further sessions for the purpose of consideration.

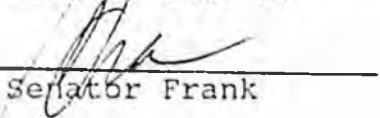
Respectfully,



Senator Cotten, Vice-Chair



Senator Eliason




Senator Frank



Senator Jones, Chair



Senator Holford



Senator Menard



Senator Zharoff

April 3, 1991

The Honorable Dick Eliason
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear President Eliason,

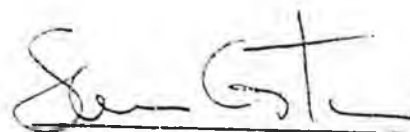
In accordance with AS 39.05.030, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointments:

Big Game Commercial Services Board:
Alsworth, Glen - Anchorage


Original term began 8/29/89 reappointed 6/15/90
expires 6/30/94

There were no stated objections to the confirmation of any of the named individuals by committee members. This does not reflect an intent by any of the members to vote for or against the individuals during any further sessions for the purpose of consideration.

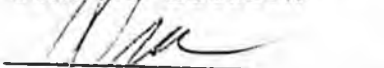
Respectfully,




Senator Cotten, Vice-Chair



Senator Eliason



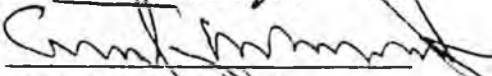
Senator Frank




Senator Jones, Chair



Senator Halford



Senator Menard



Senator Zharoff

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HRES

March 12, 1991

3:00 PM

Confirm. '91

Carlisle

Brd. of Fish

April 8, 1991

The Honorable Dick Eliason
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear President Eliason:

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointments:

Board of Fisheries


Carlisle, Irving - Soldotna

Term began 2/20/91 expires 1/31/94

Wardwell, Ken - Anchorage

Term began 2/19/91 expires 1/31/94

There were no stated objections to the confirmation of any of the named individuals by committee members. This does not reflect an intent by any of the members to vote for or against the individuals during any further sessions for the purpose of consideration.



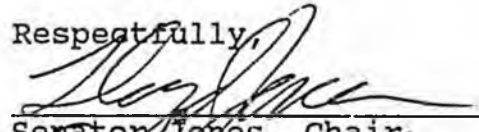
Senator Cotten, Vice-Chair

(Signed original of)

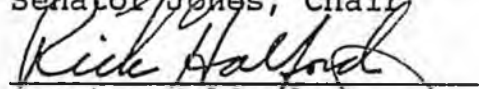
Senator Eliason

Senator Frank

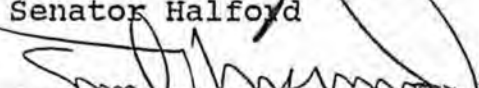
Respectfully,



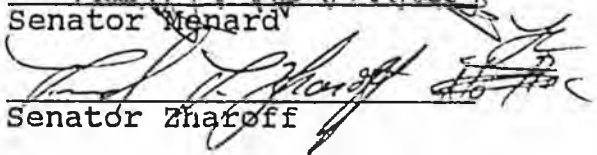
Senator Jones, Chair



Senator Halford



Senator Menard



Senator Zharoff

IRVING R. CARLISLE

CERTIFIED PUBLIC ACCOUNTANT

P. O. Box 2349

Soldotna, Alaska 99669

(907) 262-~~5386~~ 5389

I am a 21 year resident of the State of Alaska and served for more than 13 years as the secretary and vice president of the Kenai- Soldotna Fish & Game Advisory Committee. I was appointed to be a member of the Southcentral Sport Fishing Committee, the original Kenai River Task Force and was vice chair of the Kenai River Special Management Area Board.

I recently sold my accounting practice and retired from public accounting and have the necessary time to devote to the business that faces the Board of Fisheries.

I am primarily a sport fisherman, but have in the past worked as a setnet commercial salmon helper in Cook Inlet as well as fished commercial halibut on my own. In my CPA practice, I specialized in commercial fishing tax returns and prepared a large number of returns for commercial fishermen in virtually every Alaskan fishery. I have an understanding of the industry from that aspect. I have been active with many sport fishing and guide groups throughout this area on fisheries related issues. I am past president and board member of the Greater Soldotna Chamber of Commerce and served two terms as a board member of the Alaska State Chamber of Commerce.

IRVING R. "IRV" CARLISLE

PERSONAL INFORMATION

- A) Moved to Alaska (Anchorage) more than 21 years ago after graduation from Central Washington State College in Ellensburg, Washington.
- B) Moved to Soldotna in 1974 and started my own CPA accounting practice after working for Ernst & Ernst (A large national accounting firm) and the Alaska Department of Revenue.
- C) Married to wife Carla 25 years, she is an elementary school teacher in the Kenai Peninsula Borough School District. We have two sons ages 23 and 20 who both are graduates of Soldotna High School. Jeff, the oldest is a student at UAA in Anchorage. Kevin is in his second year of college in Phoenix, Arizona.
- D) I am a certified public accountant and recently sold my accounting practice after 22 years, 17 of those years being self-employed. We also have several parcels of both residential and commercial rental property in the Soldotna area. I am presently a member of the advisory committee for the Soldotna branch of the National Bank of Alaska. I am also presently selling and setting up computer systems, primarily in automotive applications as well as selling some other automotive related products and equipment.
- E) I am past president of the Greater Soldotna Chamber of Commerce as well as a past board member for many years. I served two terms as a director of the Alaska State Chamber of Commerce. I have served as a director for the Soldotna Rotary Club. I am presently a board member of the Kenai Peninsula Special Olympics. I am a director of Miss Alaska Pageant where I have served as pageant auditor for the past three years. I have been an active member of Civil Air Patrol for the past 16 years. I am a Vietnam Veteran.
- F) I enjoy virtually all outdoor activities in Alaska including fishing, hunting, hiking, camping, flying, gardening and raising bees. We own three mules which we pack and ride for our outdoor activities as well as berry picking in the fall. I own a Piper PA-18 Supercub which we fly on wheels, skis and floats. We also have a small collection of seven antique automobiles all of show quality.

Confirm. '91

Croxton

Brd. of Fish



Alaska State Legislature

Senate

Office of the Secretary

PO BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

OFFICIAL BUSINESS

Date _____

The Honorable Dick Eliason
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear President Eliason:


In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

Board of Fisheries

Croxton, Loren - Petersburg
Term began 4/4/91 expires 1/31/93

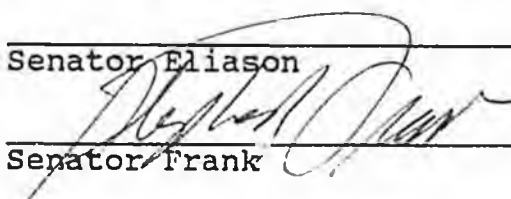
There were no stated objections to the confirmation of the named individual by committee members. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

Respectfully,



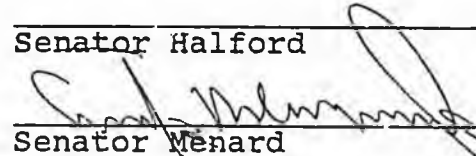
Senator Jones, Chair

Senator Cotten, Vice-Chair

Senator Eliason


Senator Frank

Senator Halford



Senator Menard

Senator Zharoff



Alaska State Legislature
Senate

Office of the Secretary

PO BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

OFFICIAL BUSINESS

April 10, 1991

M E M O R A N D U M

TO: Senator Jones, Chair
Resources Committee

FROM: Nancy Quinto
Secretary of the Senate

SUBJECT: Confirmation of Governor's Appointees

Pursuant to AS 39.050.080, President Eliason has referred the position noted to your committee for a hearing, recommendation and report:

Board of Fisheries
Croxtan, Loren - Petersburg
Term began 4/4/91 expires 1/31/93

NQ/hc

w/attached resume

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

MAY 10 1991

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

May 15, 1991

The Honorable Sam Cotten
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Cotten:

The issue of a potential conflict of interest involving Mr. Loren Croxton, Board of Fisheries appointee, has come up during confirmation hearings and the recent Board of Fisheries meeting. This issue was elevated because of his involvement as a plaintiff in a lawsuit challenging the constitutionality of Title VIII of ANILCA.

Because of the importance of conflict of interest issues and the credibility of the Board of Fisheries, we requested an Attorney General opinion. The Attorney General's Office has ruled that there is no conflict of interest in this case. I am enclosing a copy of that opinion for your information as you consider the Governor's appointments for confirmation.

Sincerely,



Carl L. Rosier
Commissioner

Enclosure

MEMORANDUM

State of Alaska

Department of Law

TO: Carl Rosier, Commissioner
Department of Fish & Game

DATE: May 15, 1991

FILE NO: 663-91-0464

TEL NO: 465-3600

SUBJECT: Fishery Board member as
plaintiff in federal
subsistence lawsuit:
Executive Ethics Act
(AS 39.52)

FROM: Douglas L. Blankenship *DLB*
Deputy Attorney General
Department of Law - Juneau

CONFIDENTIAL: EXECUTIVE ETHICS ACT

You have asked whether the fact that Fisheries Board member Loren Croxton is one of the plaintiffs in a federal court lawsuit challenging the federal subsistence law would, under the Executive Branch Ethics Act, AS 39.52, constitute a conflict of interest that would preclude Mr. Croxton's participation in the recent deliberations on Cook Inlet subsistence fishing regulations.

1/ On the facts presented by this situation, it does not appear that an Ethics Act problem is presented by Mr. Croxton's position as a plaintiff.

This question arises because in the Board of Fisheries meeting on May 14, 1991, the board chairman ruled that Mr. Croxton could not be involved in the Cook Inlet subsistence fishing issue as a result of his status as a plaintiff in the federal lawsuit.

2/ Mr. Croxton is a plaintiff in McDowell v. United States, F90-34 Civil, a federal district court case challenging title VIII

1/ We note that the Executive Branch Ethics Act specifically supersedes the common law on conflicts of interest applicable to public officers. AS 39.52.910(b).

2/ A review of the tape of the board discussion after which the chairman ruled that Mr. Croxton was disqualified from being involved in the Cook Inlet subsistence fishing issues reveals that the board members, including the chairman, were concerned in large part with what they perceived as a potential public perception problem if Mr. Croxton participated on the issue before the board. For good or ill, the legislature in enacting the comprehensive Executive Branch Ethics Act chose not to prohibit acts by Alaskans as public officers because of individual beliefs or philosophies. The Ethics Act thus only prohibits the conduct specified therein as improper. As described in this memorandum, it does not appear that any action Mr. Croxton could take as a Board of Fisheries member could further his personal interest as a member of a group of plaintiffs challenging the validity of the federal subsistence law.

Carl Rosier, Commissioner
Department of Fish & Game
Our file #663-91-0464

May 15, 1991
-2-

CONFIDENTIAL: EXECUTIVE ETHICS ACT

of the Alaska National Interest Lands Conservation Act, the federal law giving a priority to rural residents' subsistence uses on federal public land in Alaska. 16 U.S.C. § 3111 -- 16 U.S.C. § 3126. The State of Alaska is not a party to the lawsuit. The federal subsistence priority applies to the "taking on public lands of fish and wildlife for nonwasteful subsistence uses," and defines "public lands" in general as "land situated in Alaska which . . . are Federal lands." 16 U.S.C. § 3114; 16 U.S.C. § 3102.

The Alaska Board of Fisheries, of which Mr. Croxton is a member, is established in state law for "purposes of the conservation and development of the fishery resources of the state." AS 16.05.221. The board's responsibilities include implementing the state subsistence statute, AS 16.05.258. Since the Alaska Supreme Court decision in McDowell v. State, 785 P.2d 1 (Alaska 1989), the state subsistence protections do not include a rural component in the definition of "subsistence uses." AS 16.05.940. As a consequence of the fact that Alaska no longer defines "subsistence uses" in terms of "rural Alaska residents," the Board of Fisheries no longer implements the provisions of the federal subsistence law on federal lands in the state. This is because the federal law provides for state implementation only if the state provides, among other things, the "rural" component in the definition of "subsistence uses." 16 U.S.C. § 3115.

To summarize, then, Mr. Croxton is a plaintiff in a lawsuit in federal court challenging a federal law which applies to subsistence uses occurring on federal lands in Alaska. As a member of the Alaska Board of Fisheries, Mr. Croxton would not be involved in implementing that federal law. As discussed below, his position as a plaintiff does not appear to conflict with his board duties under the terms of the Executive Branch Ethics Act.

There is no doubt that Mr. Croxton is a "public officer," governed by the Ethics Act AS 39.52.960(21). The only provision of the act that could conceivably be implicated by the situation presented here is a section that prohibits public officers from taking or withholding "official action in order to affect a matter in which the public officer has a personal or financial interest." 3/

3/ The Ethics Act defines "personal interest" as "an interest held or involvement by a public officer . . . including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a
(continued...)

Carl Rosier, Commissioner
Department of Fish & Game
Our file #563-91-0464

May 15, 1991
-3-

CONFIDENTIAL: EXECUTIVE ETHICS ACT

As 39.52.120(b)(4). In this instance, it is not at all apparent that any action Mr. Croxton, as a Board of Fisheries member, would take in implementing the state subsistence statutes would in any way affect the outcome of the lawsuit filed in federal court challenging the federal subsistence law, which applies only to federal public lands in Alaska.

Based on the facts presented by this situation, including the scope of the federal lawsuit and the scope of the duties and powers of the Alaska Board of Fisheries, we do not believe that the Executive Branch Ethics Act would preclude Mr. Croxton's involvement in the Cook Inlet subsistence fishing issue.

DLB:nml

cc: Bruce Botelho
John Gissberg
Steve White
Assistant Attorneys General
Juneau AGO

Bonnie Harris
Assistant Attorney General
Anchorage AGO

3/ (...continued)
person or organization receives a benefit." As 39.52.960(18). The act defines "benefit" as "anything that is to a person's advantages or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value." As 39.52.960(3).



Alaska Native Brotherhood

Camp Number 2

320 West Willoughby Avenue, Suite 100
(907) 586-2049

Juneau, Alaska 99801

April 29, 1991

The Honorable Lloyd Jones
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Lloyd:

Please oppose the confirmation of Loren Croxten to the Board of Fish and Game because he is one of the plaintiffs who want to repeal Section VIII of ANILCA (McDowell vs. U.S.).

Thank you.

With best regards,

Al McKinley, Sr.
President

cc: Robert Willard

Confirm. '91

Douglas

O & G Conserv.

Comm.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 12, 1991

SUBJECT: Appointment of Oil and Gas Conservation Commission
Member (W.O. 17LS-1159)

TO: Representative Bill Hudson
Attn: Andy Spear

FROM: Jerry Luckhaupt *GPL/lms*
Legislative Counsel

QUESTIONS PRESENTED:

I. Is the appointment of Russell Douglass to the Oil and Gas Conservation Commission by Governor Cowper, prior to Governor Cowper leaving office, valid and binding on Governor Hickel?

ANSWER: Yes. See discussion I.

II. Can the legislature confirm Mr. Douglass' appointment absent any communication from Governor Hickel requesting Mr. Douglass' confirmation?

ANSWER: Yes. See discussion II.

III. What happens if the legislature does not act to confirm Mr. Douglass' appointment on its own or if the governor continues to fail to refuse to send Mr. Douglass' name down to the legislature for confirmation?

ANSWER: Mr. Douglass' appointment will be rejected by operation of law, AS 39.05.080(3), on the last day of the current legislative session. Governor Hickel will be free to appoint another person to Mr. Douglass' seat. See discussion III.

IV. Can Governor Hickel remove Mr. Douglas from his position on the Oil and Gas Conservation Commission and on what grounds?

ANSWER: Yes. For "cause" as provided in AS 31.05.007(d). See discussion IV.

FACTUAL BACKGROUND

The facts as I understand them are that a vacancy existed on the Oil and Gas Conservation Commission.^{1/} Governor Cowper in a letter to Mr. Douglass dated November 29, 1990, appointed Mr. Douglass to the vacant seat.^{2/} Mr. Douglass executed an oath of office, as required by art. XII, § 5 of the Alaska Constitution and AS 39.05.040, on December 4, 1990. Mr. Douglass remains in his position as a member of the Oil and Gas Conservation Commission and continues to be paid accordingly.^{3/} To date, Governor Hickel has not presented Mr. Douglass' name to the legislature for confirmation.

DISCUSSION

I

In answer to your first question, it appears that Mr. Douglass' appointment is valid and binding on Governor Hickel. AS 31.05.007(b) provides:

(b) A vacancy arising in the office of a commissioner shall be filled by appointment by the governor and confirmed by the legislature in joint session, and an appointee selected to fill a vacancy shall hold office for the balance of the full term for which the predecessor on the commission was appointed.

This section requires the governor at the time a vacancy exists to fill that vacancy by appointment, subject to the legislature's authority to confirm or fail to confirm the

^{1/} Sufficient information has not been provided to me so that I can determine if that vacancy was as a result of a resignation or by expiration of term. It appears that the vacancy was caused by resignation as the appointment by Governor Cowper was for a term ending December 31, 1994. Since Oil and Gas Conservation Commission members are appointed for six-year terms, AS 31.05.007, it appears that Mr. Douglass' appointment was for the balance of a full term. Regardless, the information that has been provided to me by your staff is that at the time of Mr. Douglass' appointment no one was currently occupying that particular seat on the Oil and Gas Conservation Commission and no one was receiving a salary for that position.

^{2/} Information supplied by your staff seems to indicate that the appointment occurred on November 26, 1990. The letter of appointment from Governor Cowper does not support this earlier date.

^{3/} The members of the Oil and Gas Conservation Commission are essentially full-time employees and receive an annual salary and are in the exempt service. AS 31.05.015.

appointee at a later time. This section is consistent with art. III, § 26 of the Alaska Constitution which states:

Section 26. Boards and Commissions. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.^{4/}

AS 39.05.080(4) further implements these sections. It provides:

(4) Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, and have the powers and be charged with the duties prescribed by law for the appointive positions or membership.

Based upon these provisions and the facts as presented, clearly there was a vacancy in the membership of the Oil and Gas Conservation Commission. Governor Cowper pursuant to statutory and constitutional directive appointed Mr. Douglass to fill that then existing vacancy. Mr. Douglass executed his oath of office, took office, and remains in the office to this day. Mr. Douglass' appointment appears to be entirely valid.

But is this appointment binding on Governor Hickel or may Governor Hickel withdraw Mr. Douglass' appointment because he has not been confirmed by the legislature? I believe that Mr. Douglass' appointment is binding on Governor Hickel and that Mr. Douglass may not be removed from office absent the legislature's failure to confirm him or the finding by Governor Hickel of sufficient "cause" as described in AS 31.05.007(d).

Support for this conclusion is found in the plain language of the Constitution and in the court decisions. The Constitution recites in art. III, sec. 26 that the members of those boards or commissions shall be "appointed" by the governor. To determine the meaning of "appointed" we can look to other provisions of the Constitution for assistance. Article II, sec. 5 of the Constitution refers to the terms "nominated,"

^{4/} It appears from an examination of their powers and duties that the Oil and Gas Conservation Commission is a regulatory, if not a quasi-judicial, commission as stated in art. III, § 26 so as to require that those appointed by the governor to a position on the commission are subject to confirmation by the legislature. In fact, AS 31.05.005(a) recites that the commission is an "independent quasi-judicial agency of the state. . . ."

"elected," or "appointed" as exclusive alternatives which are "clearly intended to catalogue the routes by which one may attain an 'office or position of profit.'" Begich v. Jefferson, 441 P.2d 27, 32 (Alaska 1968). In Alaska, "appointed" clearly does not mean "nominated."

That nominated and appointed are not synonymous terms in this state is further supported by the proceedings of the framers of our constitution. Art. III, § 26 of our constitution, as originally proposed in Committee Proposal No. 10a, by the Executive Branch Committee of the Alaska Constitutional Convention stated:

Whenever a board or commission is at the head of a principal department or of a regulatory or quasi-judicial body, the members thereof shall be **nominated and appointed** by the governor, with the advice and consent of the senate. . . .

This "nomination" language and reasoning was specifically rejected by the framers of our constitution as it was finally enacted.

The distinction between "nominated" and "appointed" is significant. In the federal system, the president "nominates" persons to the senate for confirmation. A federal "nominee" does not take office pending confirmation. In that situation:

There is no 'appointment' within the meaning of vesting final title to the office until acted upon affirmatively by the legislative branch of government. Justice Marshall states that until the legislature acts, the president is free to choose whom he will.

Munson v. Territory of Alaska, 16 Alaska 580 (1956). But, an "appointee" takes office and is vested with all the duties, powers, and responsibilities of the office subject only to the legislature's authority to fail to confirm the appointment. When a person is "appointed" and takes office and exercises the powers of the office, the governor has performed the "last act" necessary to vest the person with the powers of the office. The governor may not later withdraw or revoke the appointment except that he may remove the appointee as provided by law.

In Division of Elections v. Johnstone, 669 P.2d 537, 539-540 (Alaska 1983) the supreme court held that the term appointment as used in the Constitution means "to designate for office." The court also found that the appointment of a superior court judge was effective on the completion of the "last act" of the appointing authority, in that case, the letter of appointment issued to the judge by the governor.

The court cited McChesney v. Sampson, 232 Ky. 395, 23 S.W.2d 584 (1930) in support of this proposition. In McChesney, the Kentucky Supreme Court was confronted with a situation where the governor, having the authority to appoint

members of a board subject to confirmation by the Senate, appointed in the interim (between sessions of the legislature), McChesney who entered upon and performed the functions of the office. Several months later, before the legislature had again convened, the governor removed McChesney without cause and appointed another person. McChesney sued to retain his office. The court held that the governor's purported removal of McChesney was illegal. The court stated that the governor by naming and appointing McChesney had exhausted his power to appoint and performed the "last act" necessary to vest McChesney with his office, subject only to the state senate's authority to confirm or fail to confirm and to the governor's authority to remove McChesney for cause as provided by law. The court further contrasted the situation where an officer is "appointed" subject to confirmation by the legislature (as exists in Alaska by art. III, sec. 26 of the Constitution) with the situation where an officer is "nominated" subject to confirmation (as exists for federal appointments) and said:

Furthermore, in cases where the nomination must be confirmed before the officer can take the office or exercise any of its functions, the power of removal is not involved and nominations may be changed at the will of the executive until title to the office is vested. But under our system the appointee of the Governor takes the office, enters upon the performance of its duties, and is charged with responsibility. He holds then subject alone to the action of the Senate. His status is not that of a nominee awaiting confirmation, but that of an officer invested with the powers, privileges, and responsibilities of the position until the Senate acts. A recall of his designation would operate as a removal from office. It is argued that appointment to the office consists of two separate acts, one by the Governor and one by the Senate, and until both have acted there is no appointment such as to bring the incumbent within the protection of the law. Even so, the two powers do not act concurrently, but consecutively, and action once taken and completed by the executive is not subject to reconsideration or recall . . . What, then, constitutes an appointment insofar as the chief executive has to do with it? Appointment to an office by one possessing the appointing power is the designation of another person to discharge the duties of the office. [Citation.] It is completed when the appointing authority has performed the acts incumbent upon him to accomplish the purpose. [Citations.] The fact that the title to the office, and the tenure of the officer, are yet subject to the action of the Senate, does not render incomplete the act of the chief executive in making the appointment. The appointment alone confers upon the appointee for the time being the right to take and hold the office, and constitutes the last act respecting the matter to be performed by the executive power. [Emphasis supplied].

McChesney, supra, at 587.

The court concluded by stating: "Such power as flows from the act of the Governor in making the appointment is invested by the statute in the appointee, and may not thereafter be recalled or bestowed upon another unless the consent of the Senate is withheld." See also Barrett v. Duff, 114 Kan. 244, 217 P. 918 (1923).

The rule discussed in McChesney v. Sampson has been variously stated by courts and commentators to be the "majority rule," the "general rule," and to be "universally held." See e.g., Barrett v. Duff, supra; State v. Essling, 128 N.W. 2d 307, 311 (Minn. 1964) ("well settled"); State v. Brewster, supra; 89 ALR 135 ("general rule").

McChesney and the rule discussed in it are based upon Marbury v. Madison, 1 Cranch 137, 5 U.S. 137, 159-60, 2 L.Ed 60, 68-69 (1803) in which Justice Marshall stated:

[W]hen the officer is not removable at the will of the executive, the appointment is not revocable, and cannot be annulled. It has conferred legal rights which cannot be resumed. The discretion of the executive is to be exercised until the appointment has been made. But having once made the appointment, his power over the office is terminated in all cases, where by law the officer is not removable by him.

While the principle of a strong executive is embraced by our Constitution and recognized by our courts, Bradner v. Hammond, 553 P.2d 1, 3, n.3 (Alaska 1976), that principle does not mandate a different conclusion than that reached by the United States Supreme Court, the McChesney court and their progeny. To state that a subsequent governor has the authority to recall the appointments of a previous governor, absent constitutional or statutory authority, would render appointments to office personal to the particular governor and his term. This is contrary to our Constitution which establishes an office of governor and provides for succession to that office. Under our constitution there is a governor and a governor there will always be, though the individuals occupying the office may come and go. See e.g., People v. Shawver, 30 Wyo. 366, 222 P. 11 (1924); Barrett v. Duff, supra; State v. Brewster, 84 S.E.2d 231, 246 (W. Va. 1954); Tappv v. State, 82 So.2d 161, 169 (1955).

The fact that Mr. Douglass executed his oath of office one day after Governor Cowper left office does not appear to be particularly significant. When Governor Cowper appointed Mr. Douglass, that is, named him to the office in the letter of appointment, there was a present vacancy on the Oil and Gas Commission. Under the rationale of the Alaska Supreme Court in Johnstone, supra, Mr. Douglass was appointed at that time, while Governor Cowper was still in office, with all the powers, duties, and responsibilities of the Governor of Alaska. If Governor Cowper had attempted to appoint Mr. Douglass to a position where a vacancy did not then exist,

but for which a vacancy was anticipated in the future (for example, a seat on a commission that was currently occupied but the occupant's term was due to expire, say January 1, 1991), then I would conclude that a purported appointment by Governor Cowper to take effect in the future, after Governor Cowper had left office, would not be binding upon the subsequent administration.^{5/} Such is not the situation here.

This distinction was recognized in an Alaska Attorney General's opinion issued from Rodger Pegues to Vicki Clayman on December 10, 1979. (Copy attached). In that opinion the attorney general opined that appointments by an outgoing governor to take effect beyond the governor's term are not binding upon and may be withdrawn by the new administration. That opinion, though, recognizes that if "the appointments can be accomplished in their entirety before the expiration of the appointing authority's own term of office, midnight appointments make some sense." Presumably, if they make sense, then they are also effective and binding upon the new administration. If there is a present vacancy in office and when the governor performs that "last act," in this case the letter of appointment, then the appointment is effective and binding upon the new administration, subject only to the legislature's power to confirm or not to confirm and the statutory authority of the new governor to remove the appointee "as provided by law."

Finally, support for this conclusion is found in the settlement of a lawsuit brought by a former member of the Alaska Commercial Fisheries Entry Commission, Michael Whitehead against the state. Mr. Whitehead was appointed to a position on the commission on October 16, 1982, by then Governor Hammond. Governor Sheffield took office in December, 1992, and on February 28, 1983, Governor Sheffield appointed another person to fill the position occupied by Mr. Whitehead. AS 16.43.030(a) provided that the members of the commission could only be removed for cause. Governor Sheffield contended that he had the authority to withdraw Mr. Whitehead's appointment as Mr. Whitehead had not as yet been confirmed by the legislature.^{6/} Mr. Whitehead then sued to retain his position on the commission. The state settled the lawsuit by paying Mr. Whitehead his salary and benefits as a member of the commission up to June 16, 1982, and an additional \$75,000.

The similarities between the Whitehead case and the present case are numerous. The settlement by the state seems to support a conclusion that a subsequent administration may not withdraw or revoke the valid, effective appointments of a

^{5/} A purported "appointment" to take effect at some date in the future is in actuality a "nomination" because the "appointee" is not then, at the time of "appointment," vested with all the duties, powers, and responsibilities of the office.

^{6/} It was apparently the state's position that Mr. Whitehead was a "nominee" and that the "last act" necessary to make his appointment effective was confirmation by the legislature.

previous administration where the appointee has taken office and is exercising the powers, duties, and responsibilities of the office.

Be advised that the Alaska Attorney General in an opinion from James L. Baldwin to Kevin Bruce, dated February 3, 1983 (copy attached) advised the Sheffield administration that the governor had the authority to withdraw an appointment made by a previous governor. The opinion does not cite any authority for this position other than the Pegues opinion discussed earlier.

II

You have asked what the authority of the legislature is to hold confirmation proceedings for an appointee of the governor when the governor fails or refuses to transmit the name of the appointee, or notice of the appointment, to the legislature for confirmation.

Initially, in considering your question we must look to the constitution to determine the appointment power of the governor and the authority of the legislature to confirm or reject those appointments. Article III, sec. 25, of the Alaska Constitution provides:

The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of all principal departments shall be citizens of the United States.

And art. III, sec. 26 provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

These provisions provide that the governor has the authority to appoint the "head of each principal department" of the state and the members of each board or commission that "is at the head of a principal department or a regulatory or quasi-

judicial agency." These appointees are all subject to the legislature's constitutional authority to confirm or reject them.^{7/}

In Bradner v. Hammond, 553 P.2d 1, 7 (1976), the Alaska Supreme Court described the authority of the legislature to confirm the appointees described in sections 25 and 26 as:

not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government.

Therefore, the power of confirmation of the governor's appointees to the "head of each principal department" and to membership on each board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency," though normally an executive branch function, has been exclusively delegated to the legislature by the Alaska Constitution.

To implement this confirmation power granted by the constitution the legislature has enacted AS 39.05.080. This section provides that the governor:

shall, within 30 days of the convening of the legislature in regular session, present to the legislature the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature or either house of it; (B) persons appointed subject to confirmation to fill an existing position or membership vacancy; (C) persons to be appointed subject to confirmation to fill a position or membership the term of which shall expire before July 2, following the session of the legislature. If an appointment is made after the deadline but while the legislature is in session, the appointing authority shall, within five calendar days after the appointment is made, present to the legislature for confirmation the name of the person appointed. The deadline may be extended by the legislature by the approval of a concurrent resolution. . . .

But what if the governor fails or refuses to transmit the names of his appointments or a particular appointment, to the legislature? Is the legislature without authority to confirm or reject the appointment if the governor does not commence the confirmation process by transmitting the name? The Alaska Supreme Court has

^{7/}Other appointments subject to legislative confirmation include certain military officers, art. III, §19; the non-attorney members of the judicial council, art. IV, §8; members of the Commission on Judicial Qualifications, art. IV, §10, and members of the University of Alaska Board of Regents, art. VII, §3.

never considered this issue but the courts of several other states have. The leading case on the subject of the legislature's authority to confirm or reject a gubernatorial appointment in the absence of a communication by the governor appears to be People v. Shawver, 30 Wyo. 366, 222 P.2d 11 (1924). Shawver was cited by the Alaska Supreme Court in Bradner for the proposition that confirmation is actually a portion of the executive's appointment power that has been delegated to the legislature by the constitution. Bradner, *supra*, at 7, n. 19. In Shawver, the Wyoming Supreme Court after reaching this conclusion addressed the next part of the issue presented by that case: Whether the Wyoming Senate (granted the power to confirm the appointees of the governor by the Wyoming Constitution) could act to confirm or reject an appointee when the governor did not transmit the appointee's name to the Senate and did not ask that the appointee be confirmed? The case involved the appointment of an individual to a state office by a governor who was then succeeded by another governor. The new governor failed to submit the appointment to the Senate for confirmation. The court said:

But why may not the Senate act upon an appointment of which it has knowledge, if the Governor should refuse or neglect to ask for such action especially where the appointee is known to have entered upon the duties of the office? A provision for an appointment by the Governor with the consent of or to be confirmed by the Senate directs not only what shall be done, but also in effect what shall not be done. The affirmative act of the two governmental agencies is required to confer title to an office under such a provision. A completed appointment cannot be made in any other way than as so provided. [Citations omitted] While the Governor's act in selecting the person to be considered for an office may be the principal and perhaps the more important one of the two, it is not alone sufficient. A construction of such provision denying the right of the Senate to act in any case unless directly requested to do so by the Governor or by a communication from his office would obviously give him the power to ignore the coordinate right of the Senate, and might mean the abolition of that right, and certainly would make it entirely dependent upon the Governor's pleasure.

Shawver, *supra*, at 23 - 24. The court then held that the Wyoming Senate properly confirmed an appointee, though the governor had not requested the confirmation.

The Kansas Supreme Court reached a similar conclusion in Barrett v. Duff, 114 Kan. 220, 217 P. 918 (1923). That case involved the appointments to state offices by a governor during a recess of the legislature. The appointees entered upon the duties of their offices. A new governor took office and attempted to appoint others to the offices and removed the previous governor's appointees. By constitution, the Kansas Senate had the authority to confirm the appointees of the governor and the governor

could not remove the state officers involved here except as provided by law, for cause. The court said:

The plaintiffs deny any force or validity to the action of the Senate in considering and confirming the appointments of defendants because of the failure of the executive to directly transmit the names of defendants. No good reason is advanced why the Senate would not consider such recess appointments without such direct word from the executive. Judicial notice or knowledge is the cognizance of certain facts which judges and jurors may properly take and act upon without proof because they already know them. Judicial notice means that the court will bring to its aid and consider, without proof of the facts, its own knowledge of those matters of public concern which are known to all well-informed persons. Legislative notice is far broader than judicial notice. 23 C.J. 58. The legislative department is equipped to deal with any condition, general or special, however manifested or brought to the knowledge of the law-making power. The mass of individual legislation found among the statutes of all the states demonstrates this legislative attribute. [Citation omitted].

The offices in controversy are all located in the capitol building, in which the Senate holds its deliberations. They are important departments of the state government. The Senate may, and often does, have official business with them. It receives reports from them. It considers the service which the departments are, by law, required to perform. It considers the extent of such service and its requirements. It considers and passes appropriations in order that they may lawfully and properly function. Under all the circumstances, the Senate cannot shut its eyes to the facts as to whether their respective offices are filled; whether they are functioning under the law, or whether there is a vacancy therein. . . . The Senate, which has official knowledge of all of the acts of another state department, may not close its eyes to an existing fact merely because the executive has failed to transmit a communication giving it the advice. The fact that the Senate is called upon to consent to or confirm appointments presupposes an investigation upon which to base its judgment as to whether or not it should confirm or reject the named appointee. It is a matter of common knowledge that the Senate of Kansas, likewise the Senate of the United States, may, and frequently does, investigate the character, fitness, and ability of the appointee submitted for its consideration. The Senate must be permitted to investigate on its own initiative, and without communication from the Governor, the status of offices; otherwise the Governor could fill and refill them at his pleasure by simply failing to advise the Senate. . . . We conclude that the Senate did not go beyond its powers

in making the investigation concerning the offices held by the defendants, and, having satisfied itself, that it could properly exercise its judgment thereon. While it is the usual and customary course of the executive to transmit such facts to the Senate, we believe it the better view to hold that the Senate may, on its own initiative, if it so desires, ascertain the facts upon which to base its deliberative and final judgment in confirming or rejecting appointees of the Governor.

Barrett, supra, 925-926.

Virtually all other courts that have considered this issue have reached the same conclusion. See, e.g., Bell v. Sampson, 232 Ky. 376, 23 S.W.2d 575 (1930); McChesney v. Sampson, 232 Ky. 395, 23 S.W.2d 584 (1930); State v. Halladay, 219 N.W. 125 (S.D. 1928); State v. Brewster, 84 S.E.2d 231, 248 (W.Va. 1954); Commonwealth v. Stewart, 286 Pa. 511, 134 A. 392 (1926). Our research has disclosed only one court decision that has reached an opposite conclusion, Attorney General v. Warner, 299 Mich. 172, 300 N.W. 63 (1941). That court though, held that under the Michigan Constitution and that State's court decisions that the confirmation power of the legislature is a legislative power, not a delegation of the executive's appointment power. As such, its reasoning is contrary to the Alaska Supreme Court's decision in Bradner and is distinguishable on that ground.

Therefore, I conclude that the legislature may properly consider the confirmation or rejection of art. III, sec. 25 and 26 appointees of the governor, absent a communication from the governor of a particular appointment or appointments made during the interim and the session. While it is hoped that the governor will comply with the reasonable procedure for communication of appointments the legislature has provided in AS 39.05.080, if the governor fails or refuses the legislature may take notice of previous appointments and of the persons occupying the constitutional offices listed in sections 25 and 26. To hold otherwise would allow the governor to prevent the legislature from exercising its constitutional confirmation power at his whim, caprice, or neglect and would render the confirmation function a nullity. Shawver, supra. Such an absurd result was not intended by the framers of our constitution and would not, we believe, be embraced by our courts.

III

For your third question you ask what happens if the legislature does not act on Mr. Douglass' appointment on its own and if Governor Hickel continues to fail or refuse to transmit Mr. Douglass' name to the legislature for confirmation? The result of these inactions would be the failure of the legislature to confirm Mr. Douglass' appointment to the Oil and Gas Conservation Commission as required by art. III, § 26 of the Alaska Constitution. Such an act would be tantamount to a rejection under

AS 39.05.080(3) on the day the session adjourns.^{8/} Munson v. Territory of Alaska, discussed earlier in answer to question 1, reaches a similar conclusion.

Although, AS 39.05.080(3) does anticipate an orderly procedure for confirmation or rejection of all appointments by providing that all appointments will be presented to the legislature, (and if not confirmed they are rejected by operation of law), it does not anticipate the situation where an appointment has been made and a request for confirmation is not communicated to the legislature. But, just as the legislature may take notice of an appointment for the purpose of confirming an appointee, as discussed in answer to your second question earlier, so too, is the legislature charged with notice when it fails to confirm a gubernatorial appointee even without communication from the governor. Shawver, supra; Bell v. Sampson, supra. Therefore, if the legislature does not act to confirm Mr. Douglass with or without a communication from the governor, Mr. Douglass' appointment will have been rejected by the legislature on the day the legislature adjourns this session. At that time, there will be a vacancy on the Oil and Gas Conservation Commission and Governor Hickel will be free to appoint someone else to the seat.^{9/}

IV

The final question you posed was can the governor remove Mr. Douglass from his position on the Oil and Gas Conservation Commission and, if so, on what grounds?

AS 31.05.007(d) provides:

(d) The governor may remove a commissioner from office for cause including but not limited to incompetence, neglect of duty or misconduct in office. A commissioner, to be removed for cause, shall be given a copy of the charges and afforded an opportunity to be publicly heard in person or by counsel in the commissioner's own defense upon not less than 10 days' notice. If a commissioner is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the commissioner and the governor's finding based on the charges, together with a complete record of the proceedings.

^{8/} AS 39.05.080(3) provides in part: "Failure of the legislature to act to confirm or decline to confirm an appointment during the session in which the appointment was presented is tantamount to a declination of confirmation on the day the session adjourns."

^{9/} This new appointment will, of course, be subject to confirmation at the next regular session of the legislature.

From this section it appears that the members of the Oil and Gas Conservation Commission do not serve at the pleasure (or will) of the governor, but serve their entire term subject to removal by the governor for cause pursuant to the procedure provided in the statute.^{10/} "Cause" is not defined in AS 31.05, although, the listing in AS 31.05.007(d) of things included in "cause" is instructive of what "cause" is. The listing includes within the term "cause," "incompetence, neglect of duty or misconduct in office. . . ."

The only definition of "cause" that I could find in the Alaska Statutes was one pertaining to the removal of the commissioner of education "for cause." AS 14.05.-145(f). It provides that in that section "cause" means:

(1) incompetency which is the inability or the unintentional failure to perform the duties of the commissioner;

(2) immorality which is the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude; or

(3) malfeasance or misfeasance in office which includes, but is not limited to, the failure of the commissioner to comply with the rules or regulations adopted by the board.

Black's Law Dictionary defines "for cause" as:

With respect to removal from office 'for cause,' means for reasons which law and public policy recognize as sufficient warrant for removal and such cause is 'legal cause' and not merely a cause which the appointing power in the exercise of discretion may deem sufficient. . . . They do not mean removal by arbitrary or capricious action but there must be some cause affecting and concerning ability and fitness of official to perform duty imposed on him. The cause must be one in which the law and sound public policy will recognize as a cause for official no longer occupying his office.

Clearly, then the governor may only remove Mr. Douglass for a "cause," which appears to be directly related to Mr. Douglass' performance and exercise of the

^{10/} Subject, of course, to the legislature's power to fail to confirm them, thereby effecting their removal from office.

Representative Bill Hudson
April 12, 1991
Page 15

duties, powers, and responsibilities of his office and his ability and fitness to perform those functions.

If you have further questions, please contact me at your convenience.

GPL:pl
91-247.plm

Enclosures



Alaska State Legislature

Senate

Office of the Secretary

OFFICIAL BUSINESS

PO BOX 7
CAPITOL BUILDING
JUNEAU, ALASKA 99811

April 26, 1991

M E M O R A N D U M

TO: Senator Jones, Chair
Resources Committee

FROM: Nancy Quinto
Secretary of the Senate

RE: Confirmation of Governor's Appointees

Pursuant to AS 39.05.080, President Eliason has referred the position noted to your committee for a hearing, recommendation and report:

Alaska Oil and Gas Conservation Commission
Douglass, Russell - Anchorage
Term began 11/26/90 expires 12/31/94

w/attached resume

Alaska State Legislature



Sen. Lloyd Jones, *Chair*
Sen. Sam Cotten, *Vice Chair*
Sen. Dick Ellason, *Member*
Sen. Steve Frank, *Member*
Sen. Rick Halford, *Member*
Sen. Curt Menard, *Member*
Sen. Fred Zharoff, *Member*

P.O. Box V
Juneau, AK 99811


907 465-4907
Fax: 907 465-3922

Senate Resources Committee

MEMORANDUM

May 2, 1991

TO: Senate Resources Committee Members

FROM: Senator Lloyd Jones, Chair 

SUBJECT: CONFIRMATION OF RUSSELL DOUGLAS -
Alaska Oil and Gas Conservation Commission

The appointment of Russell Douglas as one of three commissioners to the Alaska Oil and Gas Conservation Commission has been referred to both the Senate Resources Committee and the Senate Special Committee on Oil and Gas.

It would be my intent to forego Senate Resources Committee hearings on Mr. Douglas. I am enclosing a copy of his resume for your information.

If there is no objection to this procedure, I would ask the members to sign a form indicating that the committee has reviewed the resume for Mr. Douglas and have no stated objections to his confirmation.

I would appreciate it if you would let me know your feelings on this by Monday, May 6.

Thank you.

BOARDS & COMMISSIONS

Russell A. Douglass
6750 Teshtar Drive
Anchorage, Alaska 99507
Hm. (907) 349-5896
Bus. (907) 279-1433

FEB 14 1991

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Colorado School of Mines - Golden, Colorado

Graduate Courses, University of Alaska Anchorage
Spring 1981: Well Testing Analysis
Fall 1981: Waterflood/Secondary Recovery Technology
Fall 1978: Arctic Engineering

EXPERIENCE:

August 1984 - Present: Senior Petroleum Reservoir Engineer, Alaska Oil & Gas Conservation Commission. In addition to responsibilities of the Reservoir Engineering position, prepare reports for the Commission concerning oil and gas reservoir performance in the State. Prepare draft conservation orders and administrative decisions relating to oil and gas operations in the state. Supervise two statistical technicians on the Commission staff.

July 1982 - August 1984: Petroleum Reservoir Engineer, Alaska Oil & Gas Conservation Commission. Same responsibilities as Acting Reservoir Engineer.

December 1980 - July 1982: Acting Reservoir Engineer, Alaska Oil & Gas Conservation Commission. Responsible for updating 3-D reservoir model of the Prudhoe Bay Sadlerochit Reservoir. Gather and analyze well logs, well tests, fluid data and core data for ultimate input into 3-D simulator and overall reservoir surveillance. Preparation of reports and recommendations to Commission concerning model and reservoir performance (GOC movement, well test analysis, log analysis and well performance). Initiate studies of new fields and discoveries in Alaska.

August 1976 - November 1980: Petroleum Engineer for the Oil & Gas Conservation Commission. Responsible for reviewing oil and gas exploration and production operations taking place in the State of Alaska with particular attention to safety aspects, prevention of physical waste and protection of correlative rights. Make recommendations to Commission on problems and situations arising as a result of oil and gas operations in Alaska. Witness well tests and crude oil measurements to insure proper production accounting in the State's interest. Estimate reserves of oil and gas, reservoir potential and evaluate recovery methods and their efficiency. Furnish technical advice on problems associated with but not limited to well spacing, equipment, safety, pollution, unitization and secondary recovery methods.

May 1973 - June 1976: Petroleum Engineer with H.K. van Poollen and Associates Inc. Responsible for general petroleum engineering such as log interpretation, reservoir fluid analysis, well test design and analysis, well stimulation design and application, report writing and coordination of education course reviews and updates. Included field work in well testing, safety equipment inspection and workover operations.

HONORARY & PROFESSIONAL ACTIVITIES:

Licensed Petroleum Engineer--State of Alaska since August 16, 1979 EP4772.

Member, Society of Petroleum Engineers (SPE)

1988 - Present: Continuing Education Chairman

June 1990: Elected Treasurer for one year term

Member, Chugach Electric Association, Member Advisory Council (MAC)

Served one year as Vice-Chairman and one year as Chairman

REFERENCES: See attached

Confirm. '91

Heinze, ...

Dept. N R



Alaska State Legislature

Senate

Office of the Secretary

PO. BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

OFFICIAL BUSINESS

Date 4/23/91

The Honorable Dick Eliason
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

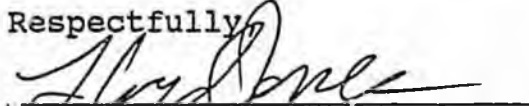
Dear President Eliason:

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

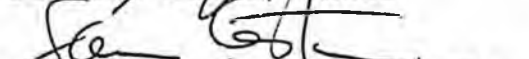
Department of Natural Resources
Commissioner Harold Heinze

There were no stated objections to the confirmation of any of the named individual by committee members. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

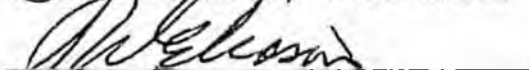
Respectfully,



Senator Jones, Chair



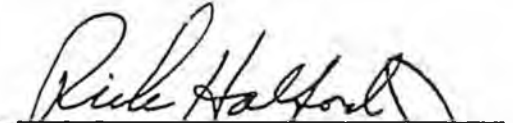
Senator Cotten, Vice-Chair



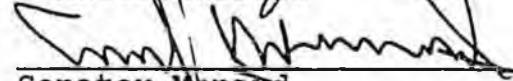
Senator Eliason



Senator Frank



Senator Halford



Senator Menard

Senator Zharoff

FROM
DNR

HAROLD C. HEINZE

Background and Experience

Born on November 6, 1942 in Flushing, New York.

Attended public elementary school in Flushing, New York and Wantagh, New York.

Graduated from Wantagh High School in 1960 with a New York Regents Diploma. Awarded Bausch and Lomb Science Medal.

Worked as office boy/clerk for Reliable Reporting Service (Rockville Center, New York) during high school and first summer of college.

Attended the Colorado School of Mines (Golden, Colorado) during 1960-1964, and graduated with High Honors in receiving a B.S. in Petroleum Engineering.

Student Body President and a member of several campus organizations including Blue Key (Leadership), Tau Beta Pi (Academic Honorary), Sigma Gamma Epsilon (Earth Science Honorary), BARBS (non-fraternity students), and Alpha Phi Omega (Service). Outstanding Military Science student award all four years in the course of completing Army Engineer ROTC.

Commissioned as 2nd Lt. in U.S. Army Corps of Engineers Reserves following summer camp in 1964.

Employed during college at CSM as a research assistant (at \$1/hr.) doing computer programming (1961-1963).

Worked summers for: Atlantic Refining Co. (1962) in Casper, Wyoming, field production office; Atlantic Refining Co. (1963) in Dallas, Texas, staff headquarters; and Esso Production Research (1964) as a research assistant.

Attended the University of Tulsa for two semesters in 1964-65 in the M.S. Program for Petroleum Engineering. After finishing course work (and getting married), left graduate school without completing thesis.

Joined Atlantic Refining Co. in summer of 1965 as a Junior Engineer in Lafayette, Louisiana, working on reservoir mapping of local salt dome oil fields.

Entered two years active duty in the U.S. Army in September, 1965. Graduated first in class of three month Engineer Officer Basic Training at Fort Belvoir, Virginia. Served as instructor in pipeline construction, building construction, and water purification during remainder of tour at Fort

Belvoir Engineer School. Left active duty as a 1st Lt. in September, 1967. Resigned commission upon completion of military obligation in the early '70's.

1967-1969: Rejoined Atlantic Richfield Co. as a Junior Engineer in Midland, Texas, working on production and reservoir engineering issues of Andrews County Waterflood projects.

1969-1972: Engineer with Alaska District of Arco's North American Producing Division (Anchorage), working on reservoir engineering issues of Prudhoe Bay. One of two engineers doing Arco bid evaluation for September, 1969, lease sale (\$900MM!).

Homeowner in Oceanview, Anchorage.

1972-1973: During TAPS construction freeze, worked in the staff Reservoir Engineering Group (Arco) in Dallas doing consulting on reservoir simulation work in West Texas and Louisiana.

1973-1976: Reservoir Engineer and District Reservoir Engineer for Arco in Anchorage, working on Prudhoe Bay reservoir simulation, unitization, and production facility design.

Homeowner in College Gate, Anchorage.

1976-1979: Engineering Manager for Arco in Anchorage. Served as staff chief during Prudhoe Bay Unit negotiations. Responsible for production and reservoir engineering functions during Prudhoe Bay Field startup.

1979-1981: In Los Angeles headquarters headed the upstream group of Arco's Corporate Planning doing staff work in support of senior management.

1981-1982: In Dallas, Texas, served as Planning Manager for Arco Oil and Gas Co. doing headquarters staff work.

1982-1983: Mid-continent District Manager in Tulsa, Oklahoma, responsible for Arco's oil and gas business activities in North Texas, Oklahoma, Kansas, and Arkansas. Vice-President of Atlantic Richfield. Taught economics in local junior high school as part of Junior Achievement Project Business.

1983-1987: As President of Arco Alaska Inc. in Anchorage, responsible for production activities in Alaska. Senior Vice-President of Atlantic Richfield.

Homeowner in Huntington Park, Anchorage and 10-acre recreation lot in Talkeetna.

Various community involvements included: Board and Executive Committee of Anchorage Chamber of Commerce; Board of Alaska Pacific University's Center for Entrepreneurship; Board and Executive Committee of Alaska Oil and Gas Association; Board and Loan Committee of United Bank Alaska; Board of Providence Hospital Foundation; Board of Junior Achievement; and Board of Commonwealth North.

Special projects included: Co-Chair of the Alaska State Chamber of Commerce's Commission on Strategic Planning for the 1990's; Chair of the Challenge of Leadership Committee of Compass North; and Chair of the 1985 Anchorage United Way Campaign.

Board member of the Foundation for Research on Economics and the Environment (FREE) with headquarters in Bozeman, Montana and Seattle, Washington.

1987-1990: As President of Arco Transportation Co. in Long Beach, California, responsible for pipeline and tanker activities. TAPS owner representative for Arco pipeline.

Various community involvements included: Board and Executive Committee of Long Beach Area Chamber of Commerce; Founder and Co-Chair of the Bottomline (a non-profit) -- Childcare Solutions for Business; and member of the California Joint Select Task Force on the Changing Family (appointed by Assembly Speaker Willie Brown).

Summer of 1990: Announcement of decision to leave Atlantic Richfield and pursue other opportunities.

PUBLIC OPINION MESSAGE

DEAR: SENATOR JONES

NAME: SONJA TOBIESSEN

TITLE:

ADDRESS: BOX 3522

CITY: HOMER

ZIP: 99603

PHONE: 235-4224

BILL NO:

SUBJECT: CONFIRMATION OF HAROLD HEINZE

MESSAGE: I REQUEST THAT YOU DO NOT CONFIRM MR. HEINZE'S APPOINTMENT TO THE COMMISSIONER OF DNR. HE DOES NOT BRING TO DNR THE BALANCE THAT IS NEEDED BETWEEN ENVIRONMENTAL CONCERNS AND INDUSTRY. HIS ADMISSION THAT NO COMMON GROUND EXISTS BETWEEN HIMSELF AND THE AK ENVIRONMENTAL COMMUNITY DOESN'T GENERATE TRUST IN US.

POIID: 18180440

DATE: 91/05/07

TIME: 18:04:40

LICNAME: HOMER INFORMATION OFFICE

COPIES: REPRESENTATIVES SENATORS

NAVARRE	FISCHER
G.PHILLIPS	COTTEN
DAVIDSON	MENARD
LINCOLN	HALFORD
IVAN	ELIASON
HOYER	ZHAROFF
FINKELSTEIN	FRANK
CARNEY	
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR JONES

NAME: GEORGE RIPLEY

TITLE:

ADDRESS: POB 2074

CITY: HOMER

PHONE: 235-5635

ZIP: 99603

BILL NO:

SUBJECT: CIRI GRAVELS IN KACHEMAK PARK

MESSAGE: THE CIRI GRAVELS IN KACHEMAK BAY ARE NOT SIGNIFICANT ENOUGH TO THE PARK AREA THAT CONCERN ABOUT THEM SHOULD NEGATE THE BUYBACK. TELL CIRI TO SIT ON IT IF THEIR PRICE IS UNREASONABLE BUT DO VOTE FOR THE LAND AND TIMBER BUYBACK.

POMID: 18172705

DATE: 91/05/07

TIME: 17:27:05

LIONAME: HOMER INFORMATION OFFICE

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	ELIASON
DONLEY	ELLIS	FAHRENKAMP
FINKELSTEIN	FOSTER	FISCHER
GONZALES	GRUENBERG	FRANK
GRUSSENDORF	HANLEY	HALFORD
HUDSON	IVAN	HOFFMAN
JACKO	KOPONEN	KERTTULA
KUBINA	LARSON	MENARD
LEMAN	LINCOLN	PEARCE
HACKIE	MACLEAN	FOURCHOT
MARTIN	M.A.MILLER	RODEY
M.W.HILLER	MOYER	SHULTZ
HAVARRE	PARNELL	STURGULEWSKI
G.PHILLIPS	R.PHILLIPS	UEHLING
SHARP	TAYLOR	ZHAROFF
ULMER	ZANACKI	

PUBLIC OPINION MESSAGE

DEAR: SENATOR JONES

NAME: DAN DELMISSIER

TITLE:

ADDRESS: 144 W. PIONEER AVE.

CITY: HOMER

PHONE: 235-8620

ZIP: 99603

BILL NO:

SUBJECT: CONFIRMATION OF HAROLD HEINZE

MESSAGE: NO! ON HEINZE. WE NEED TO FIND SOMEBODY BETTER SUITED AS A STEWARD FOR ALASKA'S RESOURCES.

POMID: 18173024

DATE: 91/05/07

TIME: 17:30:24

LIONAME: HOMER INFORMATION OFFICE

COPIES: REPRESENTATIVES SENATORS

HAVARRE	FISCHER
G.PHILLIPS	COTTEN
DAVIDSON	MENARD
LINCOLN	HALFORD
IVAN	ELIASON
MOYER	ZHAROFF
FINKELSTEIN	FRANK
CARNEY	
HUDSON	
LEMAN	
ZANACKI	