

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8445 SENATE RESOURCES

- **Limit Coverage to Offshore Facilities:** The \$150 million proof of financial responsibility requirement should be limited to those offshore oil exploration and production facilities traditionally regulated by MMS.
- **Use State Financial Responsibility Requirements:** The language in Section 1019 of OPA 90 should be changed to allow substitution of State financial responsibility requirements for federal requirements in State waters. The State of Alaska's financial responsibility requirements are some of the most comprehensive in the world.
- **Exempt Small Operations:** The proposed financial responsibility requirements do not discriminate among operations which pose different levels of spill risks. Some provisions should be made for *de minimis* exceptions. A logical threshold should be established to exempt responsible parties who pose minimal risk. In other words, the liability should be commensurate with the risk.
- **Develop a Risk-Based Approach:** The words "up to" should be inserted before "\$150 million" in all appropriate sections of the legislation. This change would allow MMS to assign liability levels for offshore facilities using a risk-based approach which considers the type and amount of crude oil or refined product which is produced, stored or transported by the facility.

In the event OPA 90 is to be amended, the State of Alaska would appreciate the opportunity to comment further on specific language changes.

CONGRESSIONAL INTENT

Breadth of Coverage

It is inconceivable that Congress intended to expand MMS's jurisdiction to the extent proposed by the *Advance Notice*. Regarding OPA 90 proof of financial responsibility provisions, a common-sense interpretation of Congressional intent would better serve the country than the very broad interpretation advanced by MMS.

Like similar legislation in Alaska, OPA 90 was enacted in the aftermath of the *Exxon Valdez* accident. The State believes Congress intended the new financial responsibility requirements to apply to facilities traditionally considered offshore facilities and deepwater ports. Because the OPA 90 definition of "offshore facilities" specifically mentions territorial waters, it appears Congress did not intend to include onshore areas. If Congress had intended to include onshore areas in the definition of offshore facilities, it would not have created a separate definition for "onshore facilities". Instead, Congress would have chosen a term other than "offshore facilities" if it meant to include "onshore facilities" in the definition.

Notwithstanding the issue of Congressional intent in defining "onshore facilities" or "navigable waters", the definition of "responsible party" narrows the type of facilities covered by the financial responsibility requirements. The definition of "responsible party" differentiates between vessels, onshore facilities and offshore facilities. The part of the definition which addresses offshore facilities limits responsible parties to the

lessee and permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301-1356) . . . (emphasis added)

This definition appears to exclude motor vehicles, aircraft, and facilities which do not require leases or permits. In addition, the State believes Congress intended "applicable State law" to include only laws which address offshore oil and gas lease sales, exploration and production. A thorough discussion of the limits imposed by the term "responsible party" is not included in the *Advance Notice*.

If Congress had intended to require small businesses, State agencies and local governments to provide proof of financial responsibility, it seems logical that it would have required a sliding scale of financial responsibility commensurate with the risk associated with a potential oil spill. Did Congress knowingly intend to require a small fuel distributor or local governments in rural Alaska to provide proof of financial responsibility for \$150 million when the financial risk of a potential spill would be far less?

We simply cannot believe Congress intended to place such a heavy burden on coastal communities and State agencies. Coastal communities often have multiple fuel storage sites, each of which would potentially trigger the \$150 million proof of financial responsibility requirement proposed in MMS's rulemaking. It is difficult to believe that Congress intended such absurd results. At \$150 million per site, communities, the small businesses within them, and regional school districts would be subject to obligations which they simply could not meet. Moreover, because of their limited risk, these types of facilities should never be categorized the same as offshore production platforms.

Environmental Protection

Assuming one of the basic purposes of OPA 90 is to protect the environment from oil spills, the limitations of financial responsibility requirements to meet this end should be recognized. While a Certificate of Financial Responsibility (COFR) may show that an operation has the capital to respond to an oil spill, it does not prevent an oil spill from occurring. The State of Alaska has placed priority on oil spill prevention. For example, the Alaska Department of Community and Regional Affairs and the Alaska Department of Environmental Conservation are working to assure that rural tank farms will not leak oil. Rather than focussing on financial responsibility requirements, the environment might be better protected if more federal funds were available to assure that oil spills will not occur.

RISK-BASED APPROACH

The \$150 million OPA 90 requirement for proof of financial responsibility does not differentiate between serious and negligible risks. Considering only oil and gas exploration and development activities, specific kinds of oil-related activities pose significantly different risks. For example, vessels transporting oil contribute to almost half the oil discharged into marine waters. Excluding atmospheric, natural, municipal and runoff sources of oil, transportation-related spills account for 97 percent of oil entering marine waters. On the other hand, facilities associated with offshore production cause less than three percent of the oil input into marine waters¹.

A reasonable financial responsibility assessment should base its requirements on risks related to a possible oil spill. It should reflect the location of the facility, the amount of oil or refined product, and the type of product associated with the facility.

INABILITY TO OBTAIN COVERAGE

Two questions should be answered before implementing the proposed financial responsibility requirements. First, will those affected be able to obtain coverage? Second, for those who could conceivably obtain coverage, would it be affordable? The State of Alaska believes that the answer to these questions is no for anyone other than a Fortune 500 company.

Obtaining \$150 million in financial responsibility will be costly to even those companies in the upper Fortune 500 category. Because of their financial strength, such companies would be able to purchase what is known as excess layers of coverage once they have provided approximately \$100 million in self insurance. It is likely that these companies would have to obtain the additional \$50 million of coverage from several different sources. Companies would pass these costs to the public.

Companies outside of the Fortune 500 category would not likely be able to meet the proposed proof of financial responsibility requirements. The availability of coverage is directly linked to the health and solvency of insurers and their capacity to provide coverage. Capacity, in this sense, means the legal and financial ability to provide coverage. Market availability of coverage is also dependent on the willingness of the insurance industry to accept certain risks. Many insurers are disinclined to write this form of pollution liability coverage.

Alaska, like all states, limits the amount of risk an insurer can undertake (AS 21.12.010). This risk limitation is based on the amount of a company's capital and surplus. An insurer who is licensed to sell insurance for risks in Alaska can only issue a policy with less risk

¹The figures were calculated using information from a publication by Dr. Michael Kennish entitled *Ecology of Estuaries: Anthropogenic Effects*.

exposure than ten percent of its capital and surplus. As used here, capital and surplus refers to the amount of money available for the payment of claims and other obligations. In other words, before a company can cover one policy for \$150 million, it must have at least \$1.5 billion in capital and surplus. There are few property and casualty insurers licensed in the United States which have the necessary surplus to legally write the required coverage proposed by the MMS.

When one considers the State-imposed risk limitation along with the willingness of insurers to provide pollution coverage, the options to obtain coverage decrease significantly. The State of Alaska knows of only three insurance conglomerates that are willing to write this form of pollution liability coverage. Two of these groups do not have the required surplus to issue a policy for the full liability limits of \$150 million as required by the proposed rulemaking.

In some circumstances where it is difficult to obtain insurance, states allow unlicensed companies to provide insurance. It is possible companies could obtain pieces of coverage through these unlicensed companies which would combine to provide the required \$150 million proof. These sources are not subject to much of State regulatory oversight, and as such, are not subject to the same financial oversight as licensed companies.

The reinsurance market is another alternative to provide the proposed financial responsibility coverage. Financial difficulties currently experienced by London-based reinsurance enterprises, however, make them unable to absorb additional risks of this magnitude.

Some oil-related companies which operate vessels obtain liability coverage from Protection and Indemnity Clubs (P&I Clubs) for their marine-related risks. These organizations provide coverage through a complex system. Usually, members must cover some of the costs of an oil spill, the group as a whole covers some of the costs, and reinsurance covers the remaining costs. It is unlikely, however, that P&I Clubs would have the ability or desire to cover onshore facilities affected by the proposed rulemaking.

Again, for even those companies which could obtain the proposed level of financial responsibility, there will be additional problems. Costs of providing this proof would likely be passed on to the consumer possibly placing commodities and services out of reach to most Alaskans and small businesses.

It should be noted that other means exist to assure adequate funding for oil spill clean up. For instance, the Oil Liability Trust Fund (26 U.S.C. 9509) is available for oil spill expenses authorized by Section 1012 of OPA 90. As well, many states have similar funds. Alaska's fund is known as the Oil and Hazardous Substance Release Response Fund (AS 46.08.010).

POTENTIAL ECONOMIC EFFECT

The potential economic consequences of the proposed rulemaking are overwhelming. Taken to an extreme, which appears to be the case in the *Advance Notice*, the proposed regulations would have wide-ranging effects. Activities in Alaska's wetlands, which comprise virtually half of the State, would require coverage of \$150 million of financial responsibility. The result would be a decline in general commerce, a decrease in essential government services, increased hardships in rural areas including Native villages, and a swift blow to Alaska's vital oil and gas industry. Each of these topics is discussed in more detail below.

General Effect on Commerce

The proposed rulemaking would likely have a crippling effect on Alaska's economy sending it into a tailspin which could result in a severe depression. Because of its unique abundance and geographic distribution of its populated communities, most of Alaska's commerce occurs in wetlands. While some of these areas may not appear to be wetlands at first glance, they have been defined by regulation to be so. Consequently, the proposed regulations potentially affect distribution of home heating oil, bulk storage of fuel, gas stations, outfitter-guide operations, eco-tourism operators, floatplane companies, and the trucking industry.

If only applied to fuel distributors, the proposed regulations would have a mind-boggling effect. Most rural Alaska communities use diesel fuel to generate electric power. Even assuming it would be possible to obtain a \$150 million proof of financial responsibility for distributions serving those communities, fuel prices would rise to an unreasonable level. Businesses which could afford to provide the required proof of financial responsibility would have to pass the costs to the consumer. Such a requirement would likely force rural fuel distributors and owners of storage facilities to cease operations.

The effect on the fishing industry would also be devastating. Vessels could no longer be legally fueled at refueling docks because the small companies operating these facilities would not be able to meet the financial responsibility requirements. As a result, the Alaska fishing industry would be forced to violate these regulations in order to remain in business.

Tourism, another important industry in Alaska, would decline because tourism-related companies which handle fuel would no longer be in business. It should be noted that most wilderness adventure businesses transport fuel for use in vehicles, boats, lanterns and camp stoves. Bush pilots also transport tourists and hunters along with fuel provisions to remote locations. Tour operators which store fuel for busses could also be forced out of business.

Also, the mining and timber industries would be adversely affected. Resource development companies must use fuel to carry out activities in wetland areas. Few of these companies could obtain proof of financial responsibility for \$150 million.

Effect on Government Operations

Many local and State government agencies would be affected by the proposed rulemaking. The State Department of Transportation stores fuel in locations across the State for highway maintenance operations. Rural village governments store diesel fuel to generate power and provide heat. In addition, field personnel must carry fuel with them during extended trips to field locations. Virtually every one of these operations would be covered by the proposed rulemaking.

Effect on Rural Villages

The proposed rulemaking could close rural schools, compel rural communities to abandon electric power generation facilities, and force rural residents into further poverty. There are no practical alternatives to diesel-powered electrical generation to most Alaska villages due to the limited extent of electrical interties. Besides the economic effect, social implications would be significant. Reduced availability of fuel would substantially curtail subsistence activities.

Consider just the effect the rulemaking would have on the operators of the 325 tank farms located in rural Alaska. The total capacity of all of these tank farms is approximately 1.5 times the amount of oil spilled by *Exxon Valdez*, yet rural Alaska would be burdened with the task of providing nearly \$48 billion of financial responsibility.

As an example of the effects the proposed rulemaking would have on rural Alaska, consider the Native village of Chevak, located in the Yukon-Kuskokwim delta. The population base of approximately 600 people is not enough to support the costs of obtaining proof of financial responsibility for facilities which handle or store oil or oil products. Consequently, the village's eight tank farms would have to close. Individual tank farms are operated by the village school, the local government, the electric utility, a Native corporation, and a private entity. The proposed rulemaking would limit or shut down operations at the school. The electric utility would no longer be able to generate power from diesel fuel. The airport would have to close, thereby limiting residents' contact with the rest of Alaska. Fuel would not be available to power vehicles. Residents would have to scavenge a limited supply of driftwood to fuel wood stoves. Subsistence activities would be curtailed because the villagers would no longer be able to obtain fuel to power outboard motors or snow machines.

The description of the effects of the proposed rulemaking on the residents of Chevak appears to be absurd, however, this scenario is a plausible result of implementing the rulemaking as MMS currently proposes. Effectively, the residents of this and other rural Alaska communities would be forced to accept a much reduced standard of living because of a senseless government standard. Implementing the proposed rulemaking would increase rural poverty, encourage depopulation of villages, and decrease health conditions and life expectancy.

Effect on the Oil Industry

Requiring proof of financial responsibility of \$150 million for responsible parties in the oil industry also will have negative effects, not only on Alaska but on the nation as well. While large oil companies may be able to meet this requirement, the smaller companies can not. The proposed regulations would force smaller companies to abandon operations in Alaska and throughout the lower 48 states. This result is entirely inconsistent with the Administration's stated goals of reducing imports, stimulating domestic production, reducing our balance of trade and general stimulating the domestic economy.

For example, none of the companies providing drilling services on the North Slope are likely to be able to obtain \$150 million of proof of financial responsibility. Similarly, geophysical survey companies which must store and transport fuel would be adversely affected. These companies transport fuel for use in completing remote seismic surveys. Likewise, the proposed rulemaking could lead to the shut down of other oil field support contractors who work on the North Slope and in Alaska's Cook Inlet region. Without the support provided by these small companies, lessees would have to provide these services, the cost of which would affect decisions regarding abandonment and production of marginal oil fields.

The proposed rulemaking would provide yet another disincentive for offshore oil and gas exploration in an area already characterized by high costs and low returns. Alaska is experiencing a decline in offshore exploration activities. Generally, implementation of this rulemaking would simply hasten the exodus of domestic explorationists. A reduction in domestic oil exploration and production would result in a tremendous loss of employment, add a greater burden on government to provide social services to unemployed workers, lead to greater dependence on foreign oil, and compromise national security.

Implementation of the proposed rulemaking would result in a further loss of federal and State oil and gas revenues. A decrease in production would result in decrease royalties. Considering remaining oil production, wellhead prices could rise due to increased costs to producers to provide the necessary proof of financial responsibility.

USE OF ALASKA FINANCIAL RESPONSIBILITY REQUIREMENTS

Section 1019 of OPA 90 provides for state enforcement of financial responsibility requirements in State navigable waters. We encourage the substitution of current State of Alaska financial responsibility requirements for those operations located in or under State navigable waters.

The financial responsibility requirements in Alaska are some of the most comprehensive in the world. They take into account varying levels of risk associated with each category of operator and differentiate between crude and noncrude oil. In addition, operators storing less than 5,000 barrels of crude oil, or less than 10,000 barrels of noncrude oil are exempt from financial responsibility requirements. Only tankships would be required by State law to

provide \$150 million or greater proof of financial responsibility. Alaska law requires crude oil pipelines and offshore exploration and production facilities to provide proof of financial responsibility of \$50 million.

It may also be appropriate to consider implementation approved methods of providing proof of financial responsibility in Alaska waters as outlined in statute (AS 46.04.040) and in the Alaska Administrative Code (18 AAC 75.205 et. seq.). When developing its approved means of providing proof of financial responsibility, the State of Alaska worked with the oil and insurance industries and other interested parties to assure these provisions were reasonable, practical and effective.

UNCERTAINTY RELATING TO THE PROPOSED RULEMAKING

Uncertainty regarding who is covered by the proposed regulations is exemplified in MMS documents concerning the proposed rulemaking. For example, the undated news release from the Alaska OCS Region which accompanied the August 25, 1993 MMS news release states that the financial responsibility requirements could affect facilities which handle oil or oil products including federal, state, municipal and private facilities. During our meeting with MMS personnel from Washington D.C., we were informed that federal facilities would not be affected by the proposed rulemaking. When addressing who will be affected, both the *Advanced Notice* and comments made by MMS personnel suggest certain groups "may" be affected. It is difficult to provide meaningful comments on proposed regulations when it is uncertain who these regulations are intended to affect.

It appears that MMS is also uncertain regarding Congressional intent. When addressing intent, MMS personnel referenced the OPA 90 Conference Report, but it is unclear what other sources have been investigated to determine Congressional intent. It also appears that limitations imposed by the definition of "responsible party" have not been carefully considered. Because this proposed rulemaking could potentially cripple commerce within Alaska and other states, we urge MMS to adopt a more practical approach and reevaluate its preliminary determination on the jurisdictional requirements of OPA 90.

CONCLUSION

In summary, MMS's interpretation of OPA 90 financial responsibility requirements would profoundly affect Alaska and other states. The proposed rulemaking would be an unwarranted impediment to commerce and government operations. Additionally, implementation of the proposed rulemaking would not provide reasonable protection of the environment. Failure to provide exemptions, exclusions or modifications to the application of the proposed regulations would force many government agencies and private businesses into non-compliance.

Since a large part of Alaska is considered navigable waters (i.e., wetlands), under the proposed regulations small businesses and local governments would be required to provide \$150 million proof of financial responsibility. Most facility operators, however, would not be able to obtain this level of financial responsibility. Noncompliance would subject them to astronomical fines and possible civil and criminal charges. Since most of these entities could not afford to pay the fines, the proposed financial responsibility requirements would force facility owners and government agencies to cease many vital services.

The State of Alaska respectfully requests MMS to restrict its rulemaking for the proof of financial responsibility portion of OPA 90 to those operations and activities traditionally within MMS's jurisdiction. We appreciate the opportunity afforded by MMS to comment and we look forward to the upcoming workshop in Anchorage.

Sincerely,

Paul C. Rusanowski
Director

WALTER J. HICKEL
GOVERNOR



P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 24, 1994

The Honorable Drue Pearce
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Pearce:

I endorse the resolution you recently introduced to the Legislature opposing federal proof of financial responsibility requirements. Senate Joint Resolution 40 responds to a poorly written federal mandate which has been interpreted in such a way as to be devastating to Alaska and its people.

The Oil Pollution Act of 1990 requires parties responsible for offshore facilities to prove coverage of \$150,000,000 to respond to a potential oil spill. While Congress may have intended this provision to apply only to offshore oil and gas facilities, the ambiguous language of the act has been interpreted by the Minerals Management Service to apply to almost all facilities in Alaska. Rulemaking by this federal agency could apply to all facilities handling any quantity of oil both offshore or onshore, including wetlands.

As you know, much of Alaska is considered wetlands. The coverage required by Congress could not be obtained by anyone other than the largest companies. Implementation of the proposed Minerals Management Service regulations would have a profound negative affect on growth and development in Alaska. The regulations would force individuals, private businesses, and government agencies to choose between noncompliance or going out of business.

Again, I applaud your efforts to stop this senseless and unnecessary regulation by the federal government. You have my full support.

With best regards.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel
Governor

REVISED
TESTIMONY BEFORE THE SUBCOMMITTEE ON
COAST GUARD NAVIGATION AND
SUBCOMMITTEE ON OCEANOGRAPHY, GULF OF MEXICO, AND
THE OUTER CONTINENTAL SHELF,
COMMITTEE ON MERCHANT MARINE AND FISHERIES

BY

TIMOTHY M. HEBERT
DEPUTY OIL SPILL COORDINATOR
OFFICE OF THE GOVERNOR
STATE OF LOUISIANA
P. O. BOX 94095
BATON ROUGE, LA 70804
PH (504) 922-3230

OCTOBER 26, 1993

Good afternoon Mr. Chairman and distinguished subcommittee members. The State of Louisiana appreciates the opportunity to present to you our recommendations and concerns regarding Certificates of Financial Responsibility (COFRs) for all facilities handling oil and oil products operating on the Outer Continental Shelf, as provided for in the Oil Pollution Act of 1990 (OPA '90).

INTRODUCTION

A lot of people associate offshore production with oil spills -- they specifically cite the 1989 spill in Prince William Sound, near Valdez, Alaska. However, the important point to remember about the Valdez incident is that it was caused by oil spilled from a tanker -- it was not caused by offshore production or production on or near a waterbody.

And while virtually all imported oil must be brought into this country by tanker, 95% of offshore oil, and most oil and gas produced on or near a waterbody, is brought ashore by pipeline.

Tankers and imported oil are where the environmental concerns should primarily lie. Tankers are responsible for about 45% of the oil discharged into the world's oceans, while world wide drilling operations are the source of only 1.5% of oil discharges. The contribution to global marine oil pollution from U.S. offshore production is less than one-tenth of one percent.

In the Gulf of Mexico, particularly in Louisiana state waters, the spill record from production facilities is equally superior. The risk of a spill caused by offshore production is continually being reduced by the invention of innovative spill prevention devices and the onslaught of spill prevention regulations promulgated in recent years. Just recently, a major oil company operating in Louisiana waters advised the MMS that its worst case discharge from an offshore production facility was 23,000 barrels of oil. Compared to the Jahre Viking, a tanker capable of carrying 4.5 million barrels of oil and which calls in the Gulf of Mexico, both the threat of a production related spill and the potential damages associated therewith are relatively minimal.

MMS' Preliminary Interpretation of the Extent of the Geographic Jurisdiction to which the ANPRM applies is exceedingly broad and is inconsistent with the legislative intent of OPA '90.

OPA '90 Section 1016(c) provides, in pertinent part, as follows: "... each responsible party with respect to an offshore facility shall establish and maintain evidence responsibility of \$150,000,000 ..."

The proposed regulations would be surprisingly broad in that they would apply to far more facilities than what is commonly considered "offshore" or OCS facilities. MMS has initially interpreted OPA '90 as requiring proof of financial responsibility for all offshore facilities in, on, or under U.S. navigable waters. As the Federal Register notice states, OPA '90:

defines U.S. navigable waters as the waters of the U.S. including the territorial sea. This includes all of the states of the U.S., the District of Columbia, the Commonwealth of Puerto Rico Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas and any other territory or possession of the U.S.

This broad definition of "offshore facility" would seem to make every marina and fuel dock in the country, every pipeline that crosses inland navigable waters, and facilities and pipelines located in wetlands subject to these financial requirements. As an example of this broad-reaching scope of "offshore facilities" the notice offers that:

"a company operating a petroleum pipeline that crosses the Ohio River below Pittsburgh, Pennsylvania, would be subject to the \$150 million financial responsibility provisions of these rules as would the operator of an oil well in the Great Lakes."

Clearly, there is absolutely no manifestation of legislative intent whatsoever in OPA '90 that Congress intended to burden these type of "inland/onshore" operations with \$150 million of financial responsibility. In fact, the consistent understanding of all congressional committees engaged in OPA's development was that requirements applicable to offshore facilities were limited to the context of oil production operations on the Outer Continental Shelf. Anyone involved in OPA's development understood that it represented a consolidation of four separate federal oil spill titles -- The Clean Water Act, The Trans-Alaska Pipeline Authorization Act, The Deepwater Port Act, and, relevant here, The Outer Continental Shelf Land Act (OCSLA), which is the historic genesis for the liability and insurance requirements for offshore facilities in OPA. Thus, in enacting OPA, Congress repealed title III of OCSLA, and replaced those requirements for liability and insurance for "offshore facilities" with those in OPA for "offshore

facilities". There is no evidence of any congressional intent to extend these historic OCSLA requirements to onshore facilities.

Without delving into a detailed, intricate legal analysis, the State of Louisiana respectfully asserts that MMS' expansive, initial legal interpretation of OPA Section 1016(c) is erroneous. First, this interpretation places an inordinate emphasis on the generic statutory definitions for "offshore facility", "facility" and "navigable waters" while ignoring the specific and controlling definition of a "responsible party for an offshore facility" (OPA Section 1001(32)(C)) which is obviously narrowed to the context of facilities engaged in OCS oil leasing activity, referring as it does, to only three potential types of entities: "lessee", "permittee", or "the holder of a right of use and easement granted under applicable state law or the Outer Continent Lands Act." Additionally, MMS' interpretation incorrectly ignores OPA's distinction between an "onshore facility" and an "offshore facility." However, OPA's legislative history contains the following clarifying statement concerning "onshore facilities":

"To the extent that docks, piping, wharves, piers, and other similar appurtenances that rest on submerged land and that are directly or indirectly connected to a land based terminal are deemed to the part of an onshore facility under the FWPCA, they are likewise deemed to be part of an onshore facility under the Conference Substitute, (emphasis added). H. Conf. Rep. No. 653, 101st Cong., 2nd Sess., 102 (1990)."

Thus, MMS incorrectly includes "onshore facilities" such as pipelines crossing inland rivers, storage tanks, marinas, and the like within the purview of "offshore facilities." Moreover, the Report of the Senate Committee on the Environment and Public Works, at page 16, states, in pertinent part, as follows: "There is no requirement for showing evidence of financial responsibility for onshore facilities."¹

While the foregoing analysis is not intended to be definitive nor exhaustive, it is at least an indication that something is awry in the initial interpretation given to OPA Section 1016(c) by the MMS. At a minimum, the State of Louisiana respectfully urges the MMS to confine the application of its financial responsibility requirements to those "offshore facilities" which are engaged in the exploration and production of oil on the Outer Continental Shelf (OCS), at the previous \$35 million financial responsibility level.

Finally, needlessly expanding Section 1016(c) to include all facilities, whether onshore or offshore, does absolutely nothing to enhance environmental protection or help prevent an oil spill from occurring.

¹S. Rep. No. 94, 101st Cong., 1st Sess. 16 (July 28, 1989).

The need for increasing the amount of COFRs for offshore facilities as well as the necessity of COFRs for offshore facilities needs to be re-analyzed. Factors which need to be taken into account include: spill risk, micro-economics of oil production and the existence of various industry oil spill contingency funds.

The establishment of a virtually limitless source of non-federal response funds, the Oil Spill Liability Trust Fund, completely addresses the concerns raised in this section concerning facilities. The Natural Gas and Oil industry is paying for this fund from dedicated fees and the federal fund has approximately a billion dollars in cash on hand.

The top 15 facility spills in history combined (even in '92 dollars) total only a mere fraction of response costs and damages in the Valdez spill. As you can see, the federal trust fund more than meets the needs for facility related incidents and will be replenished whenever needed. Most of these top 15 facility spills also occurred before the current operating equipment and procedures were in place. Further, operations today pose a declining risk of accidents.

Assuming that MMS' interpretation of OPA Section 1016(c) is upheld and a Final Rule is promulgated, the U.S., the State of Louisiana and its oil and gas industry will be financially and economically devastated.

Louisiana is the second most important energy producing state in this country. We have been in the natural gas and oil business for over one hundred years. In 1981, the State of Louisiana's oil and gas royalty and severance tax revenues amounted to \$1.1 billion dollars. By 1992, that figure had declined to \$640 million. Since the "oil bust" in the mid 1980's, Louisiana has lost over 70,000 of its 130,000 oil and gas related jobs. By comparison, employment in the domestic oil and gas industry has fallen by half, with over 450,000 jobs lost. In 1993, the Louisiana oil and gas industry only employs 60,000 residents. Accordingly, the \$150 million financial responsibility must be reduced to a level of assurance that is commensurate with the level of risk associated with the activity.

According to Dr. Robert Baumann at the LSU Center for Energy Studies, the economic impact from the proposed rule would literally shut down the oil and gas industry in Louisiana. There are approximately 2,000 oil and gas operators presently in our state. Assume that an operator is realizing a net operating profit of \$3 per barrel and that the preliminary cost estimates for surety bonds (which we doubt can be obtained) to satisfy COFR requirements under Section 1016(c) are as follows:

	<u>Large Major</u>	<u>Mid-size Major Large Independent</u>	<u>Small Independent</u>
Base Cost (A) (per \$1000 of coverage per year)	\$5	\$10	\$20-100

Based upon current production rates in Louisiana and the state of the oil and gas industry in Louisiana, if Louisiana operators could obtain a \$5 base cost per \$1000 of coverage per year for a surety bond to satisfy the \$150 million COFR, only 122 operators would be able to afford the coverage.² If the available price for that same coverage is \$10, then only seventy operators could afford that coverage. Finally, if the available price for that coverage is \$20 only thirty-seven operators in Louisiana could afford that coverage! Simply put, the COFR requirements as contemplated by MMS would devastate Louisiana's economy and state government! In particular, Louisiana's twelve coastal parishes which harbor 6700 wells and produce 1.1 billion cubic feet of natural gas and 140 million barrels of oil per year could cease to exist as financially viable political subdivisions and cultural centers. In addition, the Caddo-Pine Island field, a field in north Louisiana which has been in production since 1910, would completely shut down. Since no major oil companies operate in that field, every well in that field would cease operations.

²These estimates are based on an assumed profit margin and rate of production per operator.

This one, small section of this Act could totally destroy our state and industry as we know it. Extremely significant resources will be abandoned in the ground, much of it permanently lost, if this rule is promulgated. Thousands of jobs will be lost in the industry and untold more with its collapse. And again, all this for a provision that is unrealistic and unimplementable.

The United States, by direct past action in law and regulations, has placed its critically important domestic production needs largely in the hands of independent producers. Our entire economy is based on dependable access to domestic production. This unneeded overkill of financial guarantees will destroy the very segment of the industry we have turned to and in doing so, threatens our national security.

Also, this issue is equally destructive to manufacturers, public and private utility companies, all transportation industries, and just about every parish and county in every State in the country. No local governments are exempt. Every train line, trucking company, port authority, and most bridges would be shut down.

The cessation of production is tantamount to a loss in royalties and taxes. Thus, the State of Louisiana will suffer substantial damages from this federal takings in lost royalties and taxes. Is it the intention of the federal government to remedy this? That will be a tall order considering all states and territories will be as severely impacted.

It is no exaggeration to state that the full promulgation of this proposed rule will send this country, and send Louisiana, too, into a depression that will make the thirties look like a mild recession. This Section is so needlessly far reaching that it is impossible to see how it can be regulated and enforced. It is quite apparent that Section 1016(c) does not take into account the fact that all facilities are not identical, either in size, location or capacity to prevent or contain oil spills and minimize the amount of oil that may reach the environment.

The availability of legitimate options for demonstrating financial responsibility is severely restricted.

After an informal survey of numerous oil and gas operators in Louisiana, the reality is that no commercial entity, has come forth to date willing to accept the potential application of direct action under financial responsibility regulations. For example, surety companies strongly object and will not submit to any direct action requirements in these MMS regulations. The banking community vis a vis letters of credit share this concern. A medium sized major company recently received a priced quotation of a \$5.4 million per year for a \$150 million insurance policy with a \$20 million deductible. Additionally, it is estimated that only one third of the 300 largest U.S. publicly traded oil and gas producing companies have adequate financial resources to self-insure. It is quite obvious that the potential ways for demonstrating financial responsibility under Section 1016(c) are not yet commercial realities to the very people required by law to obtain them. This,

too, is a frightening thought. It is incumbent upon MMS to utilize whatever administrative flexibility it possesses to seek commercially viable solutions which redress the difficulty, and in some instances - impossibility, of obtaining COFR's under the present regulatory scheme. If such flexibility will not take place or cannot take place, for whatever reason, then the regulatory scheme itself must be changed.

CONCLUSION

The State of Louisiana is also concerned that most other states are unaware that they are all negatively impacted by this provision. The fact that MMS is handling this issue and that hearings are only scheduled in Louisiana, Texas, California and possibly in Alaska and Pennsylvania in 1994, has led most states to believe this is strictly an offshore or oil and gas issue, which it definitely is not.

We respectfully urge these subcommittees to fully inform the appropriate federal agencies of the potential negative impacts of this ANPRM and solicit their comments as well.

Now is not the time to point fingers or attempt to lay blame as to why we are in this dilemma. Nor is it the time for parties to begin strategizing how to take back his or her pound of flesh lost somewhere in the OPA '90 process, if and when, OPA '90 is

revisited to resolve the problems encountered with the implementation of Section 1016(c). On the contrary, now is the time for all concerned to come together for the common good of ensuring our nation's economic stability and protecting the environment through cooperative dialogue with sound judgment and realistic facts dominating the process. This was made clear in the OPA conference report on Section 1016 which urged regulators to issue policy defenses necessary. "...to foster a continued market for providers of financial responsibility". This evidences Congress' intent that the financial responsibility regulations be consistent with commercial realities.

The State of Louisiana welcomes this opportunity to provide testimony before these subcommittees. We are eager to work with the MMS and the subcommittees' staff to develop specific administrative and legislative solutions to the problems outlined above and those which we may encounter in the future. I will be pleased to answer any questions.

OPENING STATEMENT
BY
THE HONORABLE BILLY TAUZIN
CHAIRMAN
COAST GUARD AND NAVIGATION SUBCOMMITTEE
OCTOBER 25, 1993

GOOD AFTERNOON LADIES AND GENTLEMEN. TODAY, THE COAST GUARD AND NAVIGATION SUBCOMMITTEE AND THE OCEANOGRAPHY, GULF OF MEXICO, AND THE OUTER CONTINENTAL SHELF SUBCOMMITTEE ARE HERE TO CONDUCT AN OVERSIGHT HEARING ON THE OIL POLLUTION ACT REQUIREMENTS FOR CERTIFICATES OF FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES. I WANT TO TAKE THIS TIME TO THANK CONGRESSMAN ORTIZ, CHAIRMAN OF THE OCEANOGRAPHY SUBCOMMITTEE FOR HIS PARTICIPATION AND ASSISTANCE IN THIS HEARING. I WOULD ALSO LIKE TO THANK THE STAFF WHO HAVE HELPED IN PREPARING FOR THIS HEARING.

ON AUGUST 25, 1993, THE MINERALS MANAGEMENT SERVICE PUBLISHED AN ADVANCED NOTICE OF PROPOSED RULEMAKING ANNOUNCING THE PROCESS OF DEVELOPING NEW REGULATIONS TO IMPLEMENT THE OIL SPILL FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OFFSHORE FACILITIES. CURRENTLY, MMS IS RECEIVING COMMENTS ON THIS ISSUE UNTIL DECEMBER 24, 1993.

IT IS APPARENT FROM THE CONCERNS I HAVE ALREADY HEARD THAT THIS RULEMAKING IS FAR-REACHING AND WILL HAVE DRASTIC IMPACTS ON BUSINESSES, INSURERS, AND COMMUNITIES THROUGHOUT THE UNITED STATES. THE ACT REQUIRES THAT CERTIFICATES OF \$150 MILLION WORTH OF COVERAGE ARE NEEDED FOR OFFSHORE FACILITIES IN ORDER TO COMPLY. BECAUSE OF THE DEFINITIONS OF OFFSHORE FACILITIES AND NAVIGABLE WATERS, MMS HAS HAD TO DEVELOP A VERY BROAD RULEMAKING.

YOU WILL HEAR TODAY, THAT THESE RULES WILL BE APPLICABLE TO MARINAS, OIL STORAGE FACILITIES, TRUCKS CARRYING OIL PRODUCTS, AND INLAND PIPELINES. THE UNDERLYING REASON WHY THESE RULES ARE BEING PROPOSED FOR SUCH BROAD APPLICATION IS THE DEFINITION OF THE TERM "NAVIGABLE WATERS" AS USED IN THE CLEAN WATER ACT. I WANT TO REMIND MEMBERS THAT THIS DEFINITION HAS CAUSED THE CURRENT CONTROVERSY OVER EXTENDING THE DEFINITION OF WETLANDS TO AREAS THAT WE OFTEN THINK OF AS DRY. THE OIL POLLUTION ACT ADOPTS THE IDENTICAL DEFINITION OF "NAVIGABLE" WATERS AS THE FEDERAL WATER POLLUTION CONTROL ACT. THE CONGRESS REDEFINED THE TERM "NAVIGABLE" WATERS TO MEAN "WATERS OF THE UNITED STATES". THIS TERM INCLUDES WETLANDS. ONE WOULD THINK THAT "NAVIGABLE" MEANS THE ABILITY TO NAVIGATE A VESSEL OF SOME SORT ON THE WATERS, OR AT A MINIMUM THE ABILITY TO WADE IN THE WATERS. HOWEVER, "NAVIGABLE" MEANS MERELY DAMP LAND. THIS HAS BEEN THE ROOT CAUSE OF THE WETLANDS CONTROVERSY AND TODAY'S HEARING WILL DEMONSTRATE THAT THE FAILURE TO ADOPT A CLEAR AND BROADLY UNDERSTOOD AND ACCEPTED DEFINITION OF "NAVIGABLE WATERS" CAN RESULT IN SEVERE UNINTENDED CONSEQUENCES.

OUR FOCUS TODAY WILL BE ON GATHERING INFORMATION ON THE POTENTIAL IMPACT THIS RULEMAKING WILL HAVE; THE FLEXIBILITY, IF ANY, MMS MAY HAVE IN DEVELOPING THESE REGULATIONS THAT WOULD BE ACCEPTABLE; AND THE POSSIBLE SOLUTIONS.

THE COAST GUARD HAS BEEN STRUGGLING FOR TWO YEARS TO PROPOSE RULES REQUIRING CERTIFICATES OF FINANCIAL RESPONSIBILITY FOR VESSELS CARRYING OIL INTO U.S. WATERS. THE COAST GUARD SUBCOMMITTEE HELD A HEARING ON THAT ISSUE IN NOVEMBER OF 1991 AND WE ARE STILL AT AN IMPASSE. THE INSURANCE COMPANIES ARE SAYING THEY WILL NOT PROVIDE INSURANCE TO VESSELS BECAUSE OF THE RISKS INVOLVED AND I SEE THE SAME THING HAPPENING FOR OFFSHORE FACILITIES.

BEFORE WE HEAR FROM OUR WITNESSES, I WOULD LIKE TO RECOGNIZE OTHER MEMBERS FOR THEIR OPENING STATEMENTS. FIRST, I WOULD LIKE TO RECOGNIZE THE DISTINGUISHED RANKING MINORITY MEMBER OF THE COAST GUARD AND NAVIGATION SUBCOMMITTEE CONGRESSMAN HOWARD COBLE.



This edition
sponsored by:

Usibelli Coal Mine, Inc.

Resource Review

October 1993 A monthly publication of the Resource Development Council, Inc.

Proposed liability bond requirement shocks Alaskans

Regulations would require \$150 million in liability insurance for any company or individual transporting or storing oil or oil products in any quantity

Alaska's business community and rural electric cooperatives are reacting with shock and disbelief over the development of new federal regulations that could require individuals, corporations and schools districts alike to post \$150 million worth of liability insurance before they can legally move or store oil or oil products across navigable waters in Alaska and elsewhere.

At issue are new regulations the U.S. Minerals Management Service is developing to implement provisions of the Oil Pollution Act of 1990 (OPA). The 1990 law increased the financial responsibility requirements for companies handling oil on the Outer Continental Shelf from \$35 million to \$150 million and expanded the requirement for financial responsibility to all operating in navigable waters.

"The financial responsibility requirement of OPA can be read to literally include any person or persons transporting or storing any oil or oil products on or over navigable waters," said Paul Glavinovich, a mining geologist and Executive Committee member of the Resource Development Council. In Alaska, Glavinovich noted that navigable waters would include not only coastal waters, but many rivers, streams, lakes and wetlands — a dominant portion of the state.

"The law makes no exceptions for quantity," Glavinovich noted. "If one moves as little as five gallons on a sled behind a snowmachine across navigable waters, they are responsible to the OPA requirements, as well as anyone operating a tank farm, fuel transfer business, refueling station or utility."

The OPA also increases the civil penalties for failure to comply from \$10,000 per incident to \$25,000 per incident per day.

(Continued to page 6)

"The impact of the rules if promulgated as proposed will merely create a nation of scofflaws."

- Tom Hawkins, Bristol Bay Native Corporation

"The law makes no exception for quantity. If one moves as little as five gallons on a sled behind a snowmachine across navigable waters, they are responsible to the OPA requirements, as well as anyone operating a tank farm, fuel transfer business, refueling station or utility."

- Paul Glavinovich, Mining Geologist

"Combined with the ludicrous definition of navigable waters, the liability requirement sets up a situation that is going to be impossible for most businesses in Alaska to comply with."

- Frank Dillon, Alaska Trucking Association

"As a practical matter, rural electric cooperatives cannot afford \$150 million in liability insurance even if it were available. Requiring \$150 million in insurance for these facilities is ridiculous."

- Dave Hutchens, Alaska Rural Electric Cooperative

Jeopardy

Alaskans at risk should MMS regulations move forward

(Continued from page 6)

"Utilizing expansive definitions of navigable waters and overreaching interpretations of fuel containers, the Minerals Management Service has proposed a system which would require kids with lawn mowing jobs to secure \$150 million liability policies from an unwilling insurance industry," said Tom Hawkins of the Bristol Bay Native Corporation.

Hawkins said it appears that the proposal was crafted as a new mission for an agency that has lost its will to accomplish the orderly leasing of minerals in the OCS.

"The impact of the rules if promulgated as proposed will merely create a nation of scofflaws," Hawkins said. "School districts, electrical cooperatives and other bulk fuel tank owners will have to run the risk that there will never be enforcement," Hawkins added. "It seems like an extremely inept way to address a problem which had a clear mandate from the public."

In a news release issued earlier this month, MMS confirmed that state, federal, and municipal facilities, including schools, airports, boat harbors and utilities, as well as privately-owned fuel storage facilities or caches, could be subject to the financial responsibility requirements resulting from the rule-making effort. The agency claims the \$150 million liability requirement is a statutory demand and that it is outside the scope of the regulations to provide relief from the higher liability level.

"The \$150 million liability requirement, combined with the ludicrous definition of navigable waters, sets up a situation that is going to be impossible for most businesses in Alaska to comply with," warned Frank Dillon, Executive Director of the Alaska Trucking Association. "The regulations are so

outrageous they don't warrant any real serious consideration."

There are no trucking companies operating in Alaska that will be able to acquire the mandated coverage, Dillon said. "Literally hundreds of people and businesses in Alaska would be in jeopardy should the regulation move forward," Dillon warned.

The Alaska Rural Electric Cooperative Association (ARECA), a non-profit corporation whose members consist of the numerous electrical cooperatives located throughout Alaska, has also voiced strong opposition to OPA's financial responsibility requirements.

"As a practical matter, rural electric cooperatives cannot afford \$150 million worth of insurance even if it were available," said David Hutchens, Executive Director of ARECA. "I can only hope that the Minerals Management Service uses some common sense in promulgating these regulations," Hutchens said. "Requiring \$150 million in insurance for these facilities is ridiculous. I firmly believe that when OPA '90 was enacted, Congress was thinking of oil platforms when drafting the financial responsibility requirements."

Under OPA, Alaska's rural tank farms are in the "unique position of being both offshore facilities and onshore facilities," Hutchens noted.

Electric cooperatives in rural Alaska for the most part rely upon diesel generation for power production. In turn, bulk fuel storage facilities are located in the villages to provide a ready supply of fuel for the diesel generators. These facilities in numerous instances are located on or near wetlands, and, in any event, most are supplied by a pipeline terminating on a lake, river or bay. Diesel fuel is delivered to these facilities by barge.

OPA '90 already has significantly

impacted these small electric cooperatives. Regulations promulgated by the Environmental Protection Agency and the U.S. Coast Guard require the cooperatives to prepare a response plan to deal with a worst-case scenario fuel spill. EPA regulations require such a plan if the fuel storage capacity is 42,000 gallons or greater and such facility is filled with fuel by a transfer over water. The Coast Guard regulations require a response plan if the storage capacity is 10,500 gallons. In addition, depending upon the volume of the facility, an Oil Discharge Prevention and Contingency Plan is required by the State Department of Environmental Conservation.

The most onerous of all requirements, however, will be MMS's financial responsibility regulations, Hutchens claims. He hopes MMS will bring reason to the process.

MMS initiated the process of developing the new regulations when it published an "Advance Notice of Proposed Rulemaking" in the Federal Register on August 25. The agency has since met with Alaska industry, native and community leaders to solicit information that will help regulators prepare "workable regulations."

"The law contains provisions aimed at strengthening oil spill prevention, response capability and cleanup efforts, as well as ensuring payment of damages resulting from oil spills should they occur," said MMS director Tom Fry. "Since MMS has the responsibility to implement and enforce this law, I want to make sure that those most affected have an opportunity to help us write rules that are as fair and equitable as possible under this statute."

RDC has requested that the MMS hold public meetings in Barrow, Nome, Fairbanks, Anchorage and Ketchikan on the proposed regulations. Comments should be mailed to the Department of the Interior, Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, Virginia 22070-4817; Attention: Chief, Engineering and Standards Branch. All comments must be received by December 24, 1993.

Call RDC at 276-0700 or the Minerals Management Service at 271-6070 for a packet outlining the rulemaking process.

Alaska State Legislature

During Interim:
3111 C Street, Suite 150
Anchorage, AK 99503 3925
(907) 561-2038
Fax (907) 561-4194



During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-4993
Fax (907) 465-3872

Senator Drue Pearce
District F

SPONSOR STATEMENT FOR SJR 40
Senate Resources Committee
24 January 1994

Urge Congress to Amend Oil Pollution Law

SJR 40 sends a message to Congress to act immediately in amending the Oil Pollution Act of 1990 so that the financial responsibility section would reflect the relative risks of oil operators.

As it stands now in statute the Mineral Management Service (MMS) intends to require any facility which uses oil or oil products in a wetland to provide proof of financial responsibility of \$150 million. The current interpretation allows only the biggest companies to demonstrate this liquidity and, in essence, self insure.

Thus, the Alaska State Legislature should request that congress act now before the financial responsibility section of OPA 90 has negative effects on Alaskan businesses, and citizens thereby becoming detrimental to the economy of Alaska and other states.

CS FOR SENATE JOINT RESOLUTION NO. 40(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS PEARCE, Leman

A RESOLUTION

1 Urging the Congress to amend the Oil Pollution Act of 1990 with respect to the
2 financial responsibility requirements for offshore exploration and production
3 facilities.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 WHEREAS the Congress enacted the Oil Pollution Act of 1990 in order to prevent
6 shipping accidents and to ensure that there would be adequate money immediately available
7 to respond to oil pollution discharges, especially those discharges occurring in the ocean; and

8 WHEREAS the Act increased from \$36,000,000 to \$150,000,000 the amount of
9 financial responsibility that must be demonstrated by offshore exploration and production
10 facilities; and

11 WHEREAS the definition of "offshore" in the Act covers facilities in, on, or under
12 navigable waters of the United States; and

13 WHEREAS the Alaska State Legislature is concerned that this definition may be
14 interpreted to apply to all marinas, port authorities, utility companies, gas stations, trucking
15 companies, railroads, pipelines, farms, and airports in almost every area of Alaska; and

16 WHEREAS the potential effect on the Alaska economy could be severe because it is

1 unlikely that any but the largest companies will be able to demonstrate the \$150,000,000 of
2 financial responsibility required under the Act; and

3 **WHEREAS** the broad coverage of the Act is well beyond the historical purview of
4 the Minerals Management Service, United States Department of the Interior, which enforces
5 the Act; and

6 **WHEREAS** the Act provides a sliding scale for proof of financial responsibility for
7 vessels but requires \$150,000,000 of proof of financial responsibility for all offshore facilities,
8 regardless of risk to the environment from a potential spill; and

9 **WHEREAS** the Alaska State Legislature agrees with the requirements of the Act to
10 the extent that they relate to large companies conducting offshore activities on the outer
11 continental shelf, but does not agree that the same financial responsibility requirements should
12 apply to small companies that are only indirectly related to offshore activities;

13 **BE IT RESOLVED** that the Alaska State Legislature urges the Congress to amend
14 the Oil Pollution Act of 1990 so that the financial responsibility requirements of persons
15 involved in oil operations more closely reflect the relative risks of those operations; and be
16 it

17 **FURTHER RESOLVED** that, in particular, facilities on the outer continental shelf
18 should be the only facilities subject to the kind of high financial responsibility requirements
19 now contained in a

20 **COPIES** of this resolution shall be sent to the Honorable Al Gore, Vice-President of
21 the United States and President of the U.S. Senate; the Honorable Robert C. Byrd, President
22 Pro Tempore of the U.S. Senate; the Honorable Thomas S. Foley, Speaker of the U.S. House
23 of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski,
24 U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska
25 delegation in Congress.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSJR 40 (Res)

Revision Date: 1/28/94 Dept. Affected: None
 Title: Urge Congress to Amend Oil Pollution Law BRU: n/a
 Component: n/a
 Sponsor: Senate Resources Committee
 Requestor: Senate Resources Committee COMPONENT SERIAL NO. ---

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of any current year (FY94) cost: \$ ---

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Senator Mike Miller, Chairman Phone: 465-4907
 Division: Senate Resources Committee Date: 1/28/94
 Approved by: Michael W. Miller, Chair Date: 28 Jan 94
 Agency: Senate Resources Committee

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

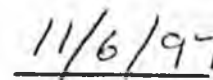


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

HB

59

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

January 29, 1993

The Honorable Richard Foster, Chair
House Military and Veterans' Affairs Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Foster:

Subject: HB 59, Appropriation bill for veterans' discount.

The Department of Natural Resources supports this bill. HB 134, enacted in 1991, allowed eligible veterans who were not permitted to claim a veteran's land discount between April 1, 1983 and July 6, 1984 to retroactively claim that discount. Veterans purchasing state land had been denied the discount during the period between the court's invalidation of the old discount law and the enactment of a new discount law.

According to the terms of HB 134, the department credited the veteran's discount against the remaining amount owed on the land. However, in cases where the land contract is paid off we are required to issue a refund to the veteran for the discount amount. We are also required to reimburse the University of Alaska for discounts credited to University land. No funds have yet been appropriated for these purposes. Attached is a status report on HB 134 discounts that have been approved. The opportunity to apply for a veterans' discount expired on June 27, 1992.

This bill would allow the department to fulfill the conditions of HB 134, enacted in 1991. The exact refund amounts are attached and match the requested appropriation.

Technical amendments are proposed on lines 9 and 10 to clarify that the opportunity to apply for a discount has expired. On line 9 change qualify to qualified and on line 10 delete "may" and change apply to applied.

Cordially,



Glenn A. Olds
Commissioner

enclosure

cc: Ron Swanson, Director, Division of Land
Janet Burleson, ~~Director, Division of Land~~



VETERANS OF FOREIGN WARS OF THE U.S.
DEPARTMENT OF ALASKA
P.O. Box 141988
Anchorage, Alaska 99514

March 17, 1993

Representative Al Vezey
Capitol Room 102
House of Representatives
Juneau, Alaska 99801-1182

Dear Representative Vezey,

House bill 59 makes a special appropriation to the Department of Natural Resources for refunds to veterans who purchased state land between April 1, 1983 and July 6, 1984. It also reimburses the University of Alaska for the veteran's land discount that applied to land that was transferred to the University of Alaska. This bill will allow DNR to fulfill the conditions of CSHB 134 (RES), enacted in 1991.

The Veterans of Foreign Wars, Department of Alaska supports this bill to appropriate \$74,600 to give those veterans who had purchased land from the state without receiving any discounts, due to the fact the program was repealed April 1, 1983 and the new program did not go into effect until July 6, 1984.

I would appreciate your support in resolving this long standing veterans issue.

Yours in Comradeship,

A handwritten signature in cursive script, appearing to read 'Larry G. Patch'.

Larry G. Patch
Commander

cc: Eldon Mulder

VFW LETTER OF SUPPORT

VETERANS OF FOREIGN WARS OF THE UNITED STATES

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

March 22, 1993

The Honorable Al Vezey
Alaska House of Representatives
Room 102, State Capitol
Juneau, AK 99801-1182

Subject: House Bill 59, Veterans' Land Discount Refund

Dear Representative Vezey:

I understand that at the House State Affairs Committee meeting on March 16, 1993 there were a number of questions raised concerning HB 59 (Veterans' Land Discount Refund). Therefore, I have prepared this letter which I hope will answer the questions posed at the hearing last week. Furthermore, I attach for your information a Fact Sheet used by the department to explain the program.

The committee requested additional information on how the department has administered Chapter 82, SLA 1991. The following is a summary report on the applications DNR received and how monies have been applied to those accounts that were approved. A detailed spread sheet, which was provided to the committee previously, is attached again for your information.

Applications:

Approved	36
Denied	6
Pending	0
Total Applications Received	42

Financial Status:

Total amount approved (non-university)	\$ 75,761.99
Total amount approved (university)	\$ 49,925.00
Total amount approved	\$125,686.99
Total in excess of credits - refund due:	\$ 24,605.13
Total University reimbursement	\$ 49,925.00
Total funds needed	\$ 74,530.13

In applying the discounts, all contracts had to be current before the discount was granted. If the contract was in default or had been foreclosed by the state or the university no discount was given. However, in the case of ADL 216514, the application of the discount is currently in dispute between Mr. Vail and DNR.

The Honorable Al Vezey
March 22, 1993
Page Two

The money due the university was the result of a lawsuit settlement commonly referred to as "uni/mun.". This case came about when the state transferred land to the Municipality of Anchorage to fulfill an obligation created by the Municipal Land Act of 1978. In the settlement the state transferred land and land sale contracts of equal value to the university. Given the application of the veterans' discount program, enacted by the legislature in 1991, the university did not receive what it was entitled to with respect to the land sale contracts it was granted under the terms of the uni/muni settlement. Thus, the money in HB 59 is simply to make the university whole.

With respect to the accuracy of the information provided to the committee, all of the figures were computed to exact amounts. The formula for computing veteran land sale discounts is:

Appraised Price - Nonallowable Costs x 25% = Discount Amount

The reason some figures are "round" is that those contracts did not involve any non-allowable survey costs. The appraised price is typically a "round" number so the application of the 25 percent discount results in a "round" number. Many university parcels, in particular, compute out evenly because many of the university parcels were lots near Lake Louise which were previously surveyed by the federal government and thus the state had no survey costs associated with them. For your information, the contracts owned by the university are those denoted on the attached spread sheet by a "U" in the narrow column between the columns entitled "Total Discount Amount" and "Univ".

To further assist you and the committee in interpreting the spread sheet which we have provided, the discount amount is always listed in the column entitled "Total Discount Amount". In addition, this figure is listed again in another column depending on the status of the contract. If the contract is completely paid off, then the veteran is due a refund which is reflected in the column entitled "Excess Credit (Refund)". In the event the contract is held by the university, the veteran will either receive the discount directly from DNR or by way of the university, depending on how the money is appropriated by the legislature. But in either case, the veteran will ultimately receive the funds.

If the contract is still active, then the contract principal will be reduced, and in the cases where the contract is held by the university the university is due to be reimbursed pursuant to the uni/muni settlement.

Finally, to my knowledge all of the contracts assumed by the university have been paid in full or are current, and thus none of the land sale contracts received by the university have been

The Honorable Al Vezey
March 22, 1993
Page Three

foreclosed upon. In any event, the State has already transferred title to the lands in question to the university, subject to the encumbrance of the land sale contracts. These transfers took place in 1988 as part of the university/municipality settlement.

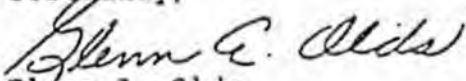
The university, therefore, is already in title to these properties and the veterans' discounts have been applied to the contracts encumbering the properties. Accordingly, reimbursements for the veterans' discounts should be paid directly to the university. Should the university subsequently foreclose on one of these contracts, the discount should not be revoked.

The State transferred these contracts to the university as part of the lawsuit settlement referenced above. Compensation to the university was based on the outstanding principal value of the contracts, not the value of the land encumbered. If the State had applied the discounts in 1983-84, when the contracts were executed, these veterans' contract values would have been smaller at the time of the 1988 settlement, and the university would have therefore received other land or contract compensation in order to replace the total value of the municipal lands lost.

I hope this information is helpful to the committee. The department supports passage of HB 59 as a means of assuring fair and equitable treatment of all veterans in terms of the discount program.

I appreciate your scheduling of the bill for the committee's consideration. My Special Assistant, Raga Elim, will attend the committee meeting on Tuesday, March 23, in order to answer any additional questions the committee may have. Please let me know if you need any additional information before the committee meeting.

Cordially,


Glenn A. Olds
Commissioner

cc: House State Affairs Committee Members
Representative Eldon Mulder
Martin Epstein, Director of Land Management,
University of Alaska
Kris Lethin, Legislative Liaison, Office of the Governor
Ron Swanson, Director, Division of Land

CSHB 59 (MLV)
SPONSOR STATEMENT

OVERVIEW

In 1978, the Land Discount Program was created by the Tenth Legislature. This program granted eligible persons a discount on the purchase price of land so d for residential use. The discount amounted to a rate of five percent of the price of the land for each full year that the purchaser had been a resident of the state. The discount was limited to 50% or \$25,000, whichever was less. To be eligible, a person must have been physically present in the state for at least 12 months.

This program was amended in 1979 to increase the discount for eligible veterans. Under the amended program, a veteran could receive a discount which was limited to 75% or \$37,500, whichever was less.

In *Gilman v. Martin*, 62 P. 2d 120 (Alaska 1983), the Alaska Supreme Court considered the granting of a land discount by a municipal ordinance based on the applicant's length of residence. Applying the decision from *Zobel v. Williams*, 457 U.S. 55 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982), the court ruled that the municipal ordinance was unconstitutional as it violated the equal protection clauses of the U.S. and Alaska Constitutions. The decision was published on April 1, 1983.

The state land discount program had not been examined in *Gilman v. Martin*, but considering its comparability to the municipal ordinance in question, the Department of Natural Resources stopped the implementation of the state land discount program. Subsequently, during the First Session of the Thirteenth Legislature, the land discount program (AS 38.05.058) was eliminated effective July 16, 1983.

The Second Session of the Thirteenth Legislature established the current veterans' land discount benefit, AS 38.05.940, effective July 6, 1984. This benefit program differed from the original in two major ways. One, an eligible veteran purchasing state land under this program was entitled to a flat 25% discount. Two, an eligible veteran is not allowed to use this discount toward the purchase of land offered under a restricted sale under AS 38.05.067 (the previous program allowed this).

A problem lied with veterans who had purchased land from the state between April 1, 1983 and July 6, 1984. These veterans had not been granted any discount at all, due to the fact that the program was not being implemented from April 1, 1983, was repealed on July 16, 1983 and the new program did not go into effect until July 6, 1984.

In an effort to correct this inequity, the Sixteenth Legislature passed CSHB 134(RES) which made the current veterans land benefit effective retroactively to April 1, 1983, when DNR stopped the implementation of the former discount program. CSHB 134(RES) did not contain any appropriation language, in effect it only authorized the payment of discounts to affected veterans. This allowed the DNR to credit the accounts of those veterans who were still making payments, but did not allow DNR to pay refunds to any veterans who had paid their land off prior to this legislation. House Bill 176, introduced in the Seventeenth Legislature, contained the appropriation for the Veterans Land Discounts that would allow the payment of these refunds. This legislation passed the House and was referred to the Senate, where it passed the Senate Resources and Finance Committees. HB 176 died in the Senate Rules Committee when the Seventeenth Legislature adjourned.

WHAT HOUSE BILL 59 DOES

House Bill 59 makes a special appropriation to the Department of Natural Resources for refunds to veterans who purchased state land between April 1, 1983 and July 6, 1984. It also reimburses the University of Alaska for veterans' land discounts that applied to land that was transferred to the university as the result of a lawsuit settlement with the state. In this settlement, the state transferred land and land sale contracts of equal value to the university. Some of these transfers were affected by the discount and therefore the university did not receive the full amount of the contract value granted under the terms of the settlement. This bill would allow DNR to pay the university to make them whole and refund veterans who have paid their contracts in full, fulfilling the conditions of CSHB 134 (RES), enacted in 1991.

The Department of Natural Resources has expressed their support for HB 59 with some suggested technical amendments (Amendments were made in the House Special Committee on Military & Veterans Affairs).

Department of Natural Resources

Bill Analysis on HB 59

HB 134 enacted in 1991 allowed eligible veterans who were not permitted to claim a veteran's land discount between April 1, 1983 and July 6, 1984 to retroactively claim that discount. Veterans purchasing state land had been denied the discount during the period between the court's invalidation of the old discount law and the enactment of a new discount law. According to the terms of HB 134, the department credited the veteran's discount against the remaining amount owed on the land. However, in cases where the land contract is paid off we are required to issue a refund to the veteran for the discount amount. We are also required to reimburse the University of Alaska for discounts credited to University land. No funds have yet been appropriated for these purposes. Attached is a status report on HB 134 discounts that have been approved. The opportunity to apply for a veterans' discount expired on June 27, 1992. This bill would allow the department to fulfill the conditions of HB 134, enacted in 1991. The exact refund amounts are attached and match the requested appropriation.

TIMELINE OF VETERANS' LAND DISCOUNT PROGRAM

VETERANS' LAND DISCOUNT PROGRAM
TIMELINE

<p>JULY, 1978</p>	<p>Land Discount Program created by Tenth Legislature</p>
<p>JULY, 1979</p>	<p>Land Discount Program amended to increase maximum discount for eligible veterans to 75% or \$37, 500</p>
<p>APRIL 1, 1983</p>	<p>Gilman v. Martin decision. DNR stops the implementation of Land Discount Program</p>
<p>JULY 16, 1983</p>	<p>13th Legislature repeals AS 38.05.058, eliminating Land Discount Program</p>
<p>JULY 6, 1984</p>	<p>13th Legislature establishes current Veterans Land Discount Benefit (AS 38.05.940)</p>
<p>JULY 28, 1991</p>	<p>16th Legislature passes HB 176, making the Veterans Land Discount Benefit effective retroactively to April 1, 1983.</p>

Veterans who purchased land during this period did not receive discounts and are affected by HB 59

...t sheet:

Veterans' Retroactive Land Discount



Alaska Department of
**NATURAL
RESOURCES**

Division of Land • November, 1991

Background

The 1979 Alaska legislature created a residency discount program for state land sales. That program gave Alaskan residents a 5 percent discount for every year they had lived in the state, up to 50 percent of the land sale price or \$25,000, whichever was less. Veterans could get an additional discount if they had lived in the state more than ten years. The total discount for veterans could equal 75 percent or \$37,500, whichever was less.

The Kenai Peninsula Borough adopted a similar land discount program, which was challenged in court and found to be unconstitutional. On advice from the Attorney General's Office, the Department of Natural Resources discontinued the state's land discount program on April 1, 1983.

The Veterans' Land Discount program, created by the legislature the following year, went into effect on July 6, 1984. This law, AS 38.05.940, allows an eligible veteran to receive a 25 percent discount on the purchase of state land.

The 1991 legislature recognized that there was a period between the two programs when there was no land discount for veterans. In order to put all veterans who purchased state land on equal footing, it passed HB 134 (Ch 82, SLA 1991). That law allows eligible veterans who purchased state land during the period between the two discount programs to retroactively receive the veterans' land discount established in 1984.

Who qualifies under this program?
...qualified military

other than commercial or industrial use after March 31, 1983 and before July 6, 1984. You must not have received a land residency or other veteran's land discount either directly or by assignment. You are not eligible if you have relinquished your state land sale contract or it has been foreclosed upon.

At the time you purchased the land you must have been:

- a) a state resident for at least one year;
- b) previously on active duty for at least 90 days, unless tenure was shortened due to disability or early overseas separation and;
- c) honorably discharged from military service or have a general discharge under honorable circumstances.

Can I get the discount if I obtained the land by assignment?

No. This discount only applies to the original purchaser.

When can I apply?

You must submit a completed application together with a document showing the character of your discharge and the length of your active duty (for example, a "DD 214" form) by June 27, 1992 to:

*Department of Natural Resources
Division of Land
Contract Administration Unit
P.O. Box 107005
3601 C. St., Suite 1030
Anchorage, Alaska 99510-7005*

DNR FACT SHEET
VETERANS' RETROACTIVE LAND DISCOUNT

What happens after I apply?

Your application will be processed, and the Department of Natural Resources will tell you if you qualify. Your notice from the department will tell you how this will affect the status of your account.

What if I don't owe any more money on my contract?

If you owe less than the amount of the discount, you may be entitled to a refund. However, the legislature did not fund the law, and any refund is dependent on a future appropriation by the legislature.

My contract was transferred to the University of Alaska. Am I still eligible?

Yes. The law states that the University will provide credit to those persons who qualify for it. Your application should still be sent to the Department of Natural Resources' office listed above for processing. However, the law also states that the Department of Natural Resources will reimburse the University, but the legislature provided no funds to do so. These discounts will be delayed until funding is provided.

Where can I get more information?

Applications are available at the Division of Land's regional offices listed below. If you need further information, contact Ginger Gallus at 762-2235 or Art Goldberg at 762-2237. Both Ginger and Art are located in Anchorage at the address listed above.

*Department of Natural Resources
Division of Land*

*Southcentral Regional Office
3601 C Street, Suite 1034
P.O. Box 107005
Anchorage, AK 99510-7005
(907) 762-2492
Fax: 561-0221*

*Mat-Su Area Office
Cottonwood Creek Center
1830 E. Parks Highway, Suite 116A
Wasilla, Alaska 99687-9006
(907) 376-4595
Fax: -376-1612*

*Southeast Regional Office
400 Willoughby Avenue, 4th Floor
Juneau, AK 99801
(907) 465-3400
Fax: 586-2954*

*Northern Regional Office
3700 Airport Way
Fairbanks, AK 99709
(907) 451-2700
Fax: 451-2751*

COMMISSIONER

NOV 13 1991

DEPARTMENT OF NATURAL RESOURCES

3

CHAPTER R2 SLA 1991

7/1/92

ADL #	NAME	DATE APLN RECD	STATUS	APPROVAL DATE	CREDIT APPLIED TO ACCT	EXCESS CREDIT (REFUND)	TOTAL DISCOUNT AMOUNT	UNIV	COMMENTS
216600	Stafford, Bruce	11-Jul-91	Approved	30-Sep-91			8000.00	U	8000.00 Was subj to default
216634	Johnson, Bernard	18-Jul-91	Approved	24-Jul-91	0.00	5050.00	5050.00		
216514	Vall, Mark A.	29-Jul-91	Approved	29-Aug-91			2575.00		Discount used to bring current
216588	Allison, Danny R.	02-Aug-91	Approved	22-Aug-91	730.00	0.00	730.00		
216558	Brown, Delon A.	07-Aug-91	Approved	22-Aug-91	0.00	803.00	803.00		
216739	Muzgrove, John W.	07-Aug-91	Approved	22-Aug-91	0.00	3180.99	3180.99		
216593	Malette, David J.	20-Aug-91	Approved	30-Sep-91	0.00	8125.00	8125.00	U	
103704	Gross, Harvey B.	21-Aug-91	Approved	22-Aug-91	4141.40	0.00	4141.40		
216586	Sisson, Glen S.	28-Aug-91	Approved	30-Sep-91			6825.00	U	8025.00 Was subj to default
410017	Wilcox, Theodore C.	04-Sep-91	Approved	16-Sep-91	1711.23	0.00	1711.23		Was subj to default
203670	Lewis, James F.	15-Oct-91	Approved	13-Nov-91	3278.79	0.00	3278.79		
204483	Richardson, William	01-Oct-91	Approved	8-Nov-91	840.72	0.00	840.72		Was subj to default
410330	Weaver, Clay J.	06-Sep-91	Denied	26-Sep-91					
410332	Keltner, Tom R.	06-Sep-91	Denied	26-Sep-91					
216574	Unserfer, Hayden A.	09-Sep-91	Approved	16-Sep-91	1702.50	0.00	1702.50		
103589	Carpenter, George R.	11-Sep-91	Approved	20-Sep-91	7034.05	0.00	7034.05		
216825	Umlauf, Paul	12-Sep-91	Approved	30-Sep-91			5750.00	U	5750.00
103582	Nordmark, William D.	23-Sep-91	Approved	25-Sep-91	7227.61	0.00	7227.61		
103894	Lockhart, Greg	27-Sep-91	Denied	9-Oct-91					
103891	Ballantine, George	30-Sep-91	Approved	25-Nov-91	2336.24	0.00	2336.24		Was subj to default & on MH Land
206761	Christie, Chris	09-Oct-91	Approved	11-Oct-91	2025.00	0.00	2025.00		
216589	Hartley, Robert G.	08-Oct-91	Approved	8-Nov-91			6750.00	U	6750.00 Was subj to default
410333	Cool, Jack G.	10-Oct-91	Denied	15-Oct-91					
103543	Novy, Michael E.	10-Oct-91	Approved	24-Oct-91	1354.88	0.00	1354.88		
103565	McFarland, James	21-Oct-91	Approved	13-Nov-91	0.00	6534.57	6534.57		
408086	Ambuehl, Fred	24-Oct-91	Approved	3-Dec-91	523.46	0.00	523.46		
216630	Mundy, Wayne	01-Nov-91	Approved	22-Nov-91			5750.00	U	5750.00 Was subj to default
220912	Davis, Gordon	04-Nov-91	Denied	21-Nov-91					
103584	Cotman, Brian G.	21-Nov-91	Approved	22-Nov-91	7045.91	0.00	7045.91		
216642	Okulay, Marcus	12-Dec-91	Approved	19-Dec-91			10050.00	U	10050.00 Was subj to default
109826	Robinson, Benjamin P.	02-Jan-92	Approved	11-Mar-92	0.00	545.88	545.88	U	
106419	Holland, Bernard G.	09-Jan-92	Approved	29-Jan-92	948.75	0.00	948.75		Was subj to default

DISCOUNT STATUS CHART

CHAPTER 82 SLA 1991

ADL #	NAME	DATE APLN RECU	STATUS	APPROVAL DATE	CREDIT APPLIED TO ACCT	EXCESS CREDIT (REFUND)	TOTAL DISCOUNT AMOUNT	UNIV	COMMENTS
216601	Schwochert, John E.	17-Jan-92	Approved	6-Mar-92			7000.00	U	7000.00 Was subj to default
103710	Schweizer, Jeffrey L.	22-Jan-92	Approved	29-Jan-92	744.86	0.00	744.86		Was subj to default
103874	Franks, Dennis W.	05-Feb-92	Denied	25-Feb-92					See ADL 406830
213726	Soderstrom, Gary	13-Feb-92	Approved	2-Mar-92	0.00	1060.38	1060.38		
103706	Stokes, Richard L.	07-Feb-92	Approved	25-Feb-92	3719.29	0.00	3719.29		Received by Assgn - Was orig owner
103547	Hillis, Donald G.	31-Mar-92	Approved	8-Apr-92	0.00	1208.53	1208.53		
215864	Mallett, Eric S.	09-Apr-92	Approved	15-Apr-92	0.00	116.78	116.78		
216585	Kern, Edward D.	09-Apr-92	Approved	15-Apr-92	1071.02	0.00	1071.02		Was subj to default
409935	Maskott, David C.	11-May-92	Approved	12-May-92	1749.39	0.00	1749.39		Was subj to default
406539	Flaharty, Richard R.	22-May-92	Approved	10-Jun-92	398.76	0.00	398.76		Was subj to default
					48581.86	24805.13	125886.99		49925.00

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB59(MLV)

1994 LEGISLATIVE SESSION

Revision Date: 24-Jan-94 Dept Affected: Natural Resources
 Title: "An Act making a special appropriation to the BRU: Resource Development
Department of Natural Resources for refunds to certain veterans..." Component: Land Development
 Sponsor: Committee on Military and Veterans Affairs
 Requestor: Senate Resources Committee Component Serial No. 431

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

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

ANALYSIS:

(Attach a separate page if necessary)

This bill allows the department to fulfill the conditions of HB134, enacted in 1991. The exact refund amounts are attached and match the requested appropriation.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 24-Jan-94
 Approved by Commissioner: Harry A. Noah Date: 24-Jan-94
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

A	NAME	DATE APLN RECD	STATUS	APPROVAL DATE	CREDIT APPLIED CCT	EXCESS CREDIT INCFUNDI	TOTAL DISCOUNT AMOUNT	UNIV	COMMENTS	
216600	Stafford, Bruce	11-Jul-91	Approved	30-Sep-91			8000.00	U	8000.00	Was subj to default
216634	Johnson, Bernard	18-Jul-91	Approved	24-Jul-91	0.00	6050.00	6050.00			
216514	Veil, Mark A.	29-Jul-91	Approved	29-Aug-91			2575.00			Discount used to bring current
216500	Allison, Danny R.	02-Aug-91	Approved	22-Aug-91	730.00	0.00	730.00			
216550	Brown, Delon A.	07-Aug-91	Approved	22-Aug-91	0.00	803.00	803.00			
216739	Muegrove, John W.	07-Aug-91	Approved	22-Aug-91	0.00	3160.99	3160.99			
216593	Malotte, David J.	20-Aug-91	Approved	30-Sep-91	0.00	6126.00	6125.00	U		
103704	Gross, Harvey R.	21-Aug-91	Approved	22-Aug-91	4141.40	0.00	4141.40			
216506	Sisson, Glen S.	20-Aug-91	Approved	30-Sep-91			6625.00	U	6025.00	Was subj to default
410017	Wilcox, Theodore C.	04-Sep-91	Approved	16-Sep-91	1711.23	0.00	1711.23			Was subj to default
103670	Lewis, James F.	15-Oct-91	Approved	13-Nov-91	3276.79	0.00	3276.79			
204463	Richardson, William	01-Oct-91	Approved	8-Nov-91	840.72	0.00	840.72			Was subj to default
410330	Weaver, Clay J.	00-Sep-91	Denied	26-Sep-91						
410332	Kelmer, Tom R.	06-Sep-91	Denied	26-Sep-91						
216574	Unsdorfer, Haydon A.	09-Sep-91	Approved	16-Sep-91	1702.50	0.00	1702.50			
103569	Carpenter, George R.	11-Sep-91	Approved	20-Sep-91	7034.05	0.00	7034.05			
216625	Umlauf, Paul	12-Sep-91	Approved	30-Sep-91			5750.00	U	6750.00	
103502	Wardmark, William D.	23-Sep-91	Approved	25-Sep-91	7227.61	0.00	7227.61			
103894	Lockhart, Greg	27-Sep-91	Denied	9-Oct-91						
103891	Ballantine, George	30-Sep-91	Approved	25-Nov-91	2336.24	0.00	2336.24			Was subj to default & on Mill Land
206761	Christie, Chris	09-Oct-91	Approved	11-Oct-91	2025.00	0.00	2025.00			
216589	Hartley, Robert G.	08-Oct-91	Approved	8-Nov-91			8760.00	U	6750.00	Was subj to default
410333	Cool, Jack G.	10-Oct-91	Denied	15-Oct-91						
103543	Novy, Michael E.	10-Oct-91	Approved	24-Oct-91	1354.88	0.00	1354.88			
103565	McFarland, James	21-Oct-91	Approved	13-Nov-91	0.00	6534.57	6534.57			
4080	Ambuuld, Fred	24-Oct-91	Approved	3-Dec-91	523.40	0.00	523.46			
216630	Mundy, Wayne	01-Nov-91	Approved	22-Nov-91			6750.00	U	5760.00	Was subj to default
220912	Davis, Gordon	04-Nov-91	Denied	21-Nov-91						
103504	Coutman, Brian G.	21-Nov-91	Approved	22-Nov-91	7045.91	0.00	7045.91			
216642	Okuley, Marcus	12-Dec-91	Approved	13-Dec-91			10050.00	U	10050.00	Was subj to default
409026	Robinson, Benjamin P.	02-Jan-92	Approved	11-Mar-92	0.00	545.88	545.88	U		
408419	Holland, Bernard G.	00-Jan-92	Approved	29-Jan-92	940.75	0.00	940.75			Was subj to default

ADL #	NAME	DATE APLN RECD	STATUS	APPROVAL DATE	APPROV 7	CREDIT (REFUND)	DISCOUNT AMOUNT	UNIV	COMMENT	
216601	Schwachert, John E.	17-Jan-92	Approved	6-Mar-92			7000.00	U	7000.00	Was subj to default
103710	Schwelbar, Jeffrey L.	22-Jan-92	Approved	29-Jan-92	744.00	0.00	744.00			Was subj to default
103074	Franka, Dennis W.	05-Feb-92	Denied	25-Feb-92						See ADL 406030
213720	Soderstrom, Gary	13-Feb-92	Approved	2-Mar-92	0.00	1060.30	1060.30			
103706	Stokes, Richard L.	07-Feb-92	Approved	25-Feb-92	3719.29	0.00	3719.29			Re. oived by Assgn - Was org owner
103517	Hillis, Donald G.	31-Mar-92	Approved	0-Apr-92	0.00	1200.53	1200.53			
215064	Mallott, Eric S.	09-Apr-92	Approved	15-Apr-92	0.00	116.78	116.78			
216505	Korn, Edward O.	09-Apr-92	Approved	15-Apr-92	1071.02	0.00	1071.02			Was subj to default
409935	Maskett, David C.	11-May-92	Approved	12-May-92	1749.39	0.00	1749.39			Was subj to default
406539	Flehart, Richard R.	22-May-92	Approved	10-Jun-92	390.76	0.00	390.76			Was subj to default
					40501.00	24606.13	125606.99		49925.00	

FISCAL NOTE

STATE OF ALASKA 1993 LEGISLATIVE SESSION

BILL NO. HB 59
 Department Affected: Natural Resources
 Title: "Making a special appropriation for refunds to the Veteran's Land Discount" BRU: Resource Management
 Components: Land Management
 Sponsor: House Military and Veterans
 Requestor: House Military and Veterans Component Serial No. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE fund source:	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

1002 Federal Recelots	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Recelots	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY93) impact: \$ No fiscal impact anticipated

ANALYSIS: (Attach a separate page if necessary)
See Attached

Prepared by: Ron Swanson Phone: 762-2692
 Division: Land Management Date: 27-Jan-93
 Approved by Commissioner: Glenn A. Olds Date: 1/29/93
 Agency: Department of Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further information, contact the Department of Natural Resources, Office of

HEB

76



United States
Department of
Agriculture

Forest
Service

Alaska Region
S&PF

201 E. 9th Ave.
Suite 206
Anchorage, AK 99501
907-271-2575

Reply to: 3400

Date: March 12, 1993

Kimberley Benton, President
Communication Essentials
621 W. 90th Ave.
Anchorage, AK 99515

Dear Kimberley:

Thanks for your letter of February 28. Hopefully the following information will help clarify the spruce bark beetle/Kachemak Bay situation:

(1) Large areas of blowdown occurred in 1981 near the Aurora Spit/Mallard Bay areas. Approximately 2-3 years later, spruce bark beetle activity increased in these areas and has increased up through 1988. The following table shows, by year, the number of acres infested (also depicted in the enclosed graph), the general area(s) of the infestation, the number of acres infested that occur within the proposed Seldovia Native Association "Buy-out" lands and the percentage of the total infested area that occurs within or close to the proposed "Buy-out" lands.

YEAR	TOTAL ACRES INFEST.	AREAS	SNLA ACRES	% OF TOTAL
1992	12,454	AURORA SPIT; HALIBUT	100	0.8
1991	6,820	AURORA SPIT--BATTLE	15	0.2
1990	10,000	AURORA SPIT--BATTLE	275	3.0
1989	10,000	AURORA SPIT--BATTLE	10	0.1
1988	10,000	AURORA SPIT--BATTLE	55	0.5
1987	2,587	MALLARD BAY	20	0.7
1986	3,660	MALLARD BAY/BEAR COVE	0	0.0
1985	200	MALLARD BAY	25	12.5
1984	312	AURORA SPIT--MALLARD	30	10.0
1983	0		0	0.0
1982	0		0	0.0
1981	0	BLOWDOWN OCCURRED		

As you can see, very few of the infested areas have and are occurring in the proposed "buy-out" area. The majority of the infestation has occurred in the Halibut Cove/Aurora Spit and Mallard Bay areas. The infestation has gradually spread towards Battle Creek and not towards Seldovia.

Caring for the Land and Serving People



US FOREST SERVICE LETTER
RE: SPRUCE BARK BEETLE/KACHEMAK AREA

FS-6200-28 (7-82)



Kimberley Penton

2

(2) Even though the number of acres infested in 1992 is 12,454 vs. 6,820 in 1991, I don't believe this represents a significant increase in spruce beetle activity. These differences probably represent mapping errors brought about by weather conditions that affect visibility when mapping and different aerial survey crews. Aerial sketch mapping is not meant to be a precise tool but rather a method of obtaining a good estimate.

(3) The species of spruce occurring on Seldovia Native Association lands is Sitka spruce (Picea sitchensis). Research studies have demonstrated that white spruce is the "best" host in terms of progeny production followed by the hybrid, Lutz spruce, followed by Sitka spruce. Black spruce is rarely attacked. The majority of past spruce beetle outbreaks have occurred in the white and Lutz spruce stands of south-central and interior Alaska. Sitka spruce stands are less susceptible to spruce beetle outbreaks. This is primarily due to the suitability differences noted above and the harsher climatic conditions associated with maritime Sitka spruce stands which moderate spruce beetle dispersal and developmental times. However, spruce beetle outbreaks in Sitka spruce have and are occurring as is evident in the Kachemak Bay, Haines, and Glacier Bay National Park areas.

I hope this answers your questions. If you need further clarification or information, please give me a call at 271-2573.

Sincerely,

EDWARD H. HOLSTEN
Forest Entomologist

Enclosure

cc:

R. Burnside-DOF/State of Alaska



Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

HOUSE BILL 76 (PURCHASE OF INHOLDINGS AND TIMBER RIGHTS IN KACHEMAK BAY STATE PARK)

HISTORY OF KACHEMAK BAY BUYBACK

IN 1970 THE ALASKA STATE LEGISLATURE SET ASIDE 250,000 ACRES ACROSS FROM HOMER, CREATING KACHEMAK BAY STATE PARK IN ORDER TO PROTECT THESE PRISTINE LANDS AND WATERS FOR THEIR UNIQUE AND EXCEPTIONAL SCENIC BEAUTY AND RECREATIONAL USE.....

DURING THE YEARS 1971 THRU 1974, THE ALASKA NATIVE CLAIMS SETTLEMENT ACT ALLOWED THE SELDOVIA NATIVE ASSOCIATION (SNA) TO MAKE A SELECTION OF 69,000 ACRES OF LAND IN THE SELDOVIA AREA; HOWEVER, THE STATE PROTESTED TWO OF SNA'S SELECTIONS LEAVING THEM NO ALTERNATIVE BUT TO SELECT THE REMAINING 30,000 ACRES WITHIN KACHEMAK BAY STATE PARK.

IN 1975, THEN GOVERNOR JAY HAMMOND AGREED THAT THE STATE WOULD WORK WITH THE SELDOVIA NATIVE ASSOCIATION TO ATTAIN A LAND TRADE FOR SNA'S PARK INHOLDINGS.

FOUR YEARS LATER, SNA SIGNS A MEMORANDUM OF UNDERSTANDING TO EXCHANGE ITS INHOLDINGS FOR STATE LANDS OF EQUIVALENT VALUE.

FOUR MORE YEARS GO BY, AND DURING THE PERIOD OF 1982 THRU 1986, ONLY TWO SMALL LAND TRADES TAKE PLACE TOTALING 5,000 ACRES AND FURTHER NEGOTIATIONS FAILED TO TRADE THE REMAINING INHOLDINGS DUE TO A SHRINKING POOL OF STATE LANDS AND DISAGREEMENTS OVER LAND VALUES.

SGN
4-21-93

IN 1987 LAND TRADE NEGOTIATIONS FAILED AGAIN WITH THE STATE AND THE SELDOVIA NATIVE ASSOCIATION SELLS ITS TIMBER RIGHTS TO TIMBER TRADING COMPANY (TTC).

THE STATE IN 1988 APPROACHES TIMBER TRADING AND THE SELDOVIA NATIVE ASSOCIATION WITH AN OFFER OF A TREES-FOR-TREES AND A LAND-FOR-LAND TRADE.

A YEAR LATER, THE STATE, (SNA) AND (TTC) SIGN A PRELIMINARY EXCHANGE AGREEMENT OUTLINING THE PROCESS FOR CONDUCTING APPRAISALS AND CREATING REPLACEMENT POOLS FOR LAND AND TIMBER. THAT SAME YEAR, SNA'S LAND VALUE IS APPRAISED BY SEPARATE APPRAISERS AT DIFFERENT AMOUNTS AND A THREE PARTY REVIEW PANEL MAKES A DETERMINATION AS TO A LAND CASH VALUE. TIMBER TRADING RECEIVES APPRAISAL FIGURE FOR THE SELDOVIA AREA TIMBER WHILE A COMBINED STATE AND TTC ARBITRATER SETS THE VALUE AT A DIFFERENT LEVEL FOR EXCHANGE PURPOSES.

FORMER GOVERNOR STEVE COWPER, IN 1990, INTRODUCES AN APPROPRIATIONS BILL TO PROVIDE FOR THE CASH PURCHASE OF SNA'S PARK INHOLDINGS AND TTC'S TIMBER IN LIEU OF THE STATE PRESENTING ANY TIMBER OR LAND EXCHANGE PACKAGE. FOUR DAYS BEFORE THE CLOSE OF THE LEGISLATIVE SESSION, COOK INLET REGION, INC. (CIRI) ENTERS THE PROPOSED PURCHASE FOR SUBSURFACE RIGHTS WITHIN THE PARK. THE APPROPRIATIONS BILL FAILS THE HOUSE ON A 20-20 VOTE.

FOLLOWING THE BILL'S FAILURE, TCC BEGINS THE APPLICATION PROCESS TO SECURE THE NECESSARY PERMITS TO BEGIN TIMBER HARVESTING.

IN 1991, LEGISLATION IS INTRODUCED IN BOTH THE HOUSE AND SENATE TO PURCHASE LAND, TIMBER AND SUBSURFACE RIGHTS WITHIN KACHEMAK BAY STATE PARK. NEITHER BILL IS ENACTED AND TCC FORMALLY SUBMITS PRELIMINARY PERMIT APPLICATIONS TO THE STATE OF ALASKA. THE STATE HOLDS PUBLIC HEARINGS IN ANCHORAGE, HOMER AND SELDOVIA.

MAJOR FOCUS IS ON THE KACHEMAK BAY BUYBACK DURING 1992. SNA, TCC AND CIRI AGREE TO A \$22 MILLION CASH BUYOUT PACKAGE. LEGISLATION IS INTRODUCED IN BOTH THE HOUSE AND SENATE FOR THE PURCHASE FROM EXXON OIL SPILL MONIES AND/OR THROUGH A CONTINGENT APPROPRIATION FROM THE RESTORATION ENDOWMENT. LEGISLATION FAILS TO PASS THE 17TH LEGISLATURE.

BEFORE THE 18TH LEGISLATURE CONVENES ON JANUARY 11, 1993, THE FOLLOWING EVENTS OCCURED: \$20,500,000 IS DEPOSITED IN THE ALYESKA SETTLEMENT FUND FROM AN AGREEMENT & CONSENT DECREE (CIVIL SETTLEMENT) ENTERED NOVEMBER 25, 1992 WHICH INCLUDES AN ALLOCATION OF \$7,500,000 FOR THE PURCHASE OF THE INHOLDINGS IN KACHEMAK BAY STATE PARK; ADDITIONALLY THE EXXON OIL SPILL TRUST COUNCIL OKAYS A \$7,500,000 APPROPRIATION FROM EXXON SETTLEMENT FUNDS FOR KACHEMAK PURCHASE AND HOUSE BILL 76, WHICH REPRESENTATIVE GAIL PHILLIPS INTRODUCES ON JANUARY 22, PROVIDES FOR THE REMAINING APPROPRIATION OF \$7,000,000 FROM THE CRIMINAL FINES LEVIED AGAINST EXXON TO COMPLETE THE FUNDING PACKAGE FOR THE PURCHASE.

ON MARCH 4, GOVERNOR HICKEL FORMALLY ANNOUNCES AN AGREEMENT BETWEEN ALL CONCERNED PARTIES TO BUYBACK THE PRIVATE INHOLDINGS IN KACHEMAK BAY STATE PARK. THE AGREEMENT IS FORMALLY SIGNED BY THE SELDOVIA NATIVE ASSOCIATION, COOK INLET REGION, INC., TIMBER TRADING COMPANY, INC., AND THE STATE OF ALASKA.

**AGREEMENT FOR SALE AND PURCHASE OF LANDS AND INTERESTS WITHIN
KACHEMAK BAY STATE PARK**

THIS AGREEMENT is made by and between the Seldovia Native Association (SNA), Timber Trading Company (TTC), Cook Inlet Region, Inc. (CIRI), as "Sellers", and the State of Alaska as "Purchaser" (collectively, the "Parties").

1. **GRANT OF OPTION.** Sellers hereby each grant to Purchaser the exclusive option to purchase all Sellers' property rights within the Kachemak Bay State Park, as more particularly described in Attachment A ("the Property"), such purchase to be made in accordance with the terms and conditions of this Agreement.
2. **EXERCISE OF OPTION.** Purchaser hereby agrees, subject to all appropriations required to be made by the Alaska Legislature to provide for payment of the purchase price and subsequent approval of such appropriations by the Governor of Alaska, to exercise its exclusive option to purchase the Property in accordance with the terms and conditions of this Agreement.
3. **OPTION TERMS.** The option payment is Ten Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged by Sellers. The option may be exercised during the period beginning with Purchaser's execution of this Agreement and ending December 31, 1993 unless extended in writing by the parties. This option shall be exercised by written notice from Purchaser to Sellers at the below provided addresses.
4. **PURCHASE PRICE.** The purchase price for the Property is \$22 million, with agreed upon payments of \$15.5 million to SNA, \$4.5 million to TTC, and \$2 million to CIRI.
5. **INTEREST CONVEYED.** At closing, Sellers each shall execute and deliver to Purchaser such deeds or assignment documents as may be necessary to convey their respective interests to the property. SNA and CIRI do hereby warrant and represent to Purchaser as follows: (1) that SNA and CIRI are vested with title to the property to the extent conveyed to SNA and CIRI pursuant to BLM Interim Conveyance Numbers 139, 304 and 372 with respect to SNA and Interim Conveyance Numbers 102, 140, 305 and 373 with respect to CIRI, and (2) that no liens, encumbrances, defects or third party interests have been created in the Property, except that SNA has conveyed certain timber rights on the Property to TTC pursuant to the Timber Sale Agreement dated May 30, 1987 ("Timber Agreement"). TTC does hereby warrant and represent to Purchaser as follows: (1) that TTC holds all interests in the Property conveyed by the Timber Agreement; and (2) that no liens, encumbrances, defects or third party interests have been created in the interest conveyed to TTC by the Timber Agreement. At closing, Sellers each shall execute and deliver to Purchaser such deeds or assignment documents warranted as above described as may be necessary to convey their respective interests to the Property. If any Seller fails to convey title or other interest as required by this Agreement, Purchaser is no longer bound by this Agreement with respect to any Seller. No Seller shall be liable for the acts or inability of another Seller to convey title.
6. **RIGHT TO ENTER PROPERTY.** Sellers agree that from the date this Agreement is fully executed by the Parties, Purchaser and its agents, upon reasonable notice, shall have the right to enter the Property for all lawful purposes in connection with this Agreement, including environmental audit purposes, provided Purchaser provides sufficient indemnification to the Sellers.
7. **CLOSING PLACE AND DATE.** The Parties agree to endeavor in good faith to close on or before 60 days after all appropriations made by the Alaska Legislature have been made and approved by the Governor, including those related to funds provided by the Alyeska settlement and the Exxon Valdez Trustee Council; provided, however, if documents that are required to be provided or completed and executed by the Parties have not been tendered by that date, the closing shall

take place within 60 days after receipt of such documentation. The date, time and location of closing shall be set by Purchaser.

8. OTHER AGREEMENTS AND ACTIONS. The Parties agree to take other action or enter into other agreements reasonably necessary to the exercise and closing of this Agreement, including Attachment C.

9. TERMINATION. Unless otherwise agreed to in writing by each of the parties, this Agreement shall terminate upon closing or on December 31, 1993, whichever is earlier; provided, however, this Agreement shall automatically terminate if, during its 1993 session, the Legislature does not appropriate all funds required to be appropriated to provide for payment of the purchase price, or if the Governor vetoes such appropriation by the Legislature.

10. SEVERABILITY. In the event any of the provisions of this Agreement are deemed to be unenforceable, the enforceability of the remaining provisions of this Agreement shall not be affected.

11. SIGNATURE AUTHORITY. Each signatory to this Agreement represents that he has the authority to bind his principal to this Agreement. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute the same instrument.

12. NOTICE. Written notices shall be provided to the parties at the following addresses:

Seldovia Native Association
P.O. Drawer L
Seldovia, AK 99663-0250

State of Alaska
Department of Natural Resources
Director, Division of Land
P.O. Box 107005
Anchorage, AK 99510-7005

Cook Inlet Region, Inc.
P.O. Box 93330
Anchorage, AK 99509-3330

Craig Tiliery
State of Alaska
Attorney General's Office
1031 West 4th Ave. Suite 200
Anchorage, AK 99501

Timber Trading Company, Inc.
3501 Denali St., Suite 202
Anchorage, AK 99503

Seldovia Native Association

Timber Trading Company, Inc.

By: Fred H. Johnson

By: John L. Stanger

Its: PRESIDENT

Its: President

Date: 3-10-93

Date: 3/15/93

Cook Inlet Region, Inc.

State of Alaska

By: Margaret L. Mowbray

By: Craig Tiliery

Its: Senior Vice President

Its: Attorney General

Date: 3/17/93

Date: 3-10-93

ATTACHMENT A

SNA LANDS TO BE ACQUIRED BY STATE

* All land described below is within Seward Meridian and is identified in BLM Interim Conveyances 139, 304, 372

<u>Legal Description</u>	<u>Approximate Acreage</u>
Township 7 South, Range 12 West	
A. Section 13 (fractional): S $\frac{1}{2}$, NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$	575
B. Sections 22 (fractional): excluding Lot 1 of USS 3606	370
C. Section 29: excluding ADL 41084-41085 located in NW $\frac{1}{4}$ SW $\frac{1}{4}$	410
D. Section 30: excluding USS 3912, USS 3977, Tracts A, C, and D of ASLE 76-114, ADL 41704, located in SW $\frac{1}{4}$ SW $\frac{1}{4}$	408
E. Sections 19 (fractional), 20 (fractional), 21 (fractional), 23 (fractional), 24 (fractional) 25 (fractional), 26, 27 (fractional), 28, 31, 32, 33, 34, 35, 36: All	7,029
Township 8 South, Range 12 West	
A. Sections 1, 2, 3, 4, 7, (fractional), 8 (fractional), 9, 10, 11, 12, 13, 14, 15, 22, 33, 24, 25, 26, 27, 28: All	12,385
B. Section 5 (fractional); excluding ADL 49431 located in the W $\frac{1}{2}$ W $\frac{1}{4}$ SW $\frac{1}{4}$	615
C. Section 6 (fractional): excluding ADL 48787 and ADL 49431 located in the E $\frac{1}{2}$ SW $\frac{1}{4}$; ADL 46149, ADL 46150, ADL 46151, ADL 46152, ADL 46153, and ADL 46650 located in the N $\frac{1}{2}$ SE $\frac{1}{4}$; and ADL 41043 located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$	300
D. Section 16 (fractional); excluding ADL 46773 located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$	615
E. Section 21 (fractional); excluding ADL 47665 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, ADL 41036 located in the N $\frac{1}{2}$ SW $\frac{1}{4}$, ADL 41300 located in the S $\frac{1}{2}$ SW $\frac{1}{4}$	495
Cumulative Total	23,802

Attachment A

CIRI Lands Remaining w/in Kachemak Bay State Park

Seward Meridian, Alaska

Township 7 South, Range 12 West

Sec. 12, W2, SE4, S2NE4;
 Sec. 31, all;
 Sec. 33-34, all.

Containing 2,469.00 acres, more or less.

Township 8 South, Range 12 West

Sec. 2, W2;
 Sec. 3-4, all;
 Sec. 5, (fractional), excluding ADL 49431;
 Sec. 6, (fractional), excluding ADL 48787, ADL 49431, ADL 46149, ADL 46150, ADL 46151, ADL 46152, ADL 46153, ADL 46650 and ADL 41043;
 Sec. 7-8, (fractional), all;
 Sec. 9-11, all;
 Sec. 13-15, all;
 Sec. 16, (fractional), excluding ADL 46773;
 Sec. 21, (fractional), excluding ADL 47665, ADL 41036 and ADL 41300;
 Sec. 22-27, all;
 Sec. 28-29, (fractional), all;
 Sec. 30, (fractional), excluding U. S. Survey 3605;
 Sec. 31-33, (fractional), all;
 Sec. 34, all.

Containing 15,408.83 acres, more or less.

Township 8 South, Range 13 West

Sec. 24, Lot 8 of U. S. Survey 4742.

Containing 5.00 acres.

Township 9 South, Range 13 West

Sec. 1, (fractional), all;
 Sec. 2, E2, NW4;
 Sec 11, NE4.

Containing 1,275.00 acres, more or less.

Aggregating 19,157.83 acres, more or less.

ATTACHMENT B

Any and all property in which Timber Trading Company has an interest in the following described Seldovia Native Association land outside Kachemak Bay State Park - Peterson Bay and Island Peninsula.

Township 7 South, Range 12 West, Seward Meridian.

Section 10: USS 4737, Lots 1, 2, and 3
 : That portion of Tract "A" excluding: USS 1539

Section 11: That portion of Tract "A" excluding: USS 1557
 USS 3362 - Tract B, Lots 1 and 2

Section 14 & 15: That portion of Tract "A" excluding:
 USS 1539
 USS 2893
 Tract A of USS 3362
 USS 3908
 USS 3918
 Lots 1, 2, 3, and 4 of USS 3973
 Lots 1 and 2 of USS 4736
 Lots 1 and 3 of USS 4737
 Lots 1-13 inclusive, Block 1, Harbor Heights Subdivision
 Lots 1-11 inclusive, Block 2, Harbor Heights Subdivision

Attachment C

**AGREEMENT REGARDING TIMBER HARVEST RIGHTS
ON LANDS ADJACENT TO PETERSON BAY**

State of Alaska agrees that nothing in that Agreement for Sale and Purchase of Lands and Interests Within Kachemak Bay State Park (the "Agreement") shall restrict the ability of Timber Trading Company, Inc. ("TTC") to pursue the permits necessary for timber harvest operations on lands subject to the Agreement provided, however, TTC shall not commence timber harvest operations on such lands until such time that the Agreement has terminated. TTC agrees not to exercise its timber harvest rights on lands adjacent to Peterson Bay, including Island Peninsula, before April 30, 1999, as more particularly described in Attachment B to the Agreement or to convey such harvest rights to any other entity except to Seldovia Native Association ("SNA"), provided if the transfer is to SNA it will be subject to this restriction against harvest prior to April 30, 1999.

Timber Trading Company, Inc.

State of Alaska

By: *John Sturgeon*
Its: *President*

By: *Charles L. Lyle*
Its: *Attorney General*

Date: *3/15/93*

Date: *3.10.93*

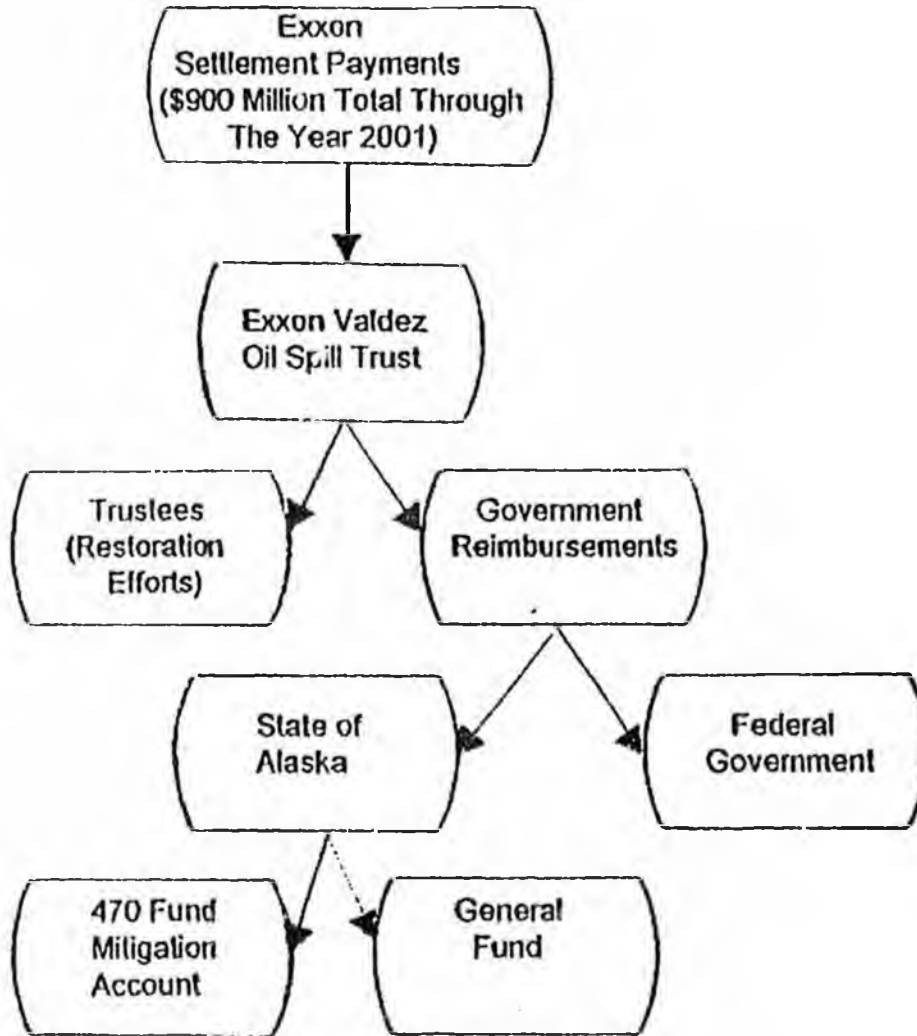
Revised and Acknowledged

Seldovia Native Association

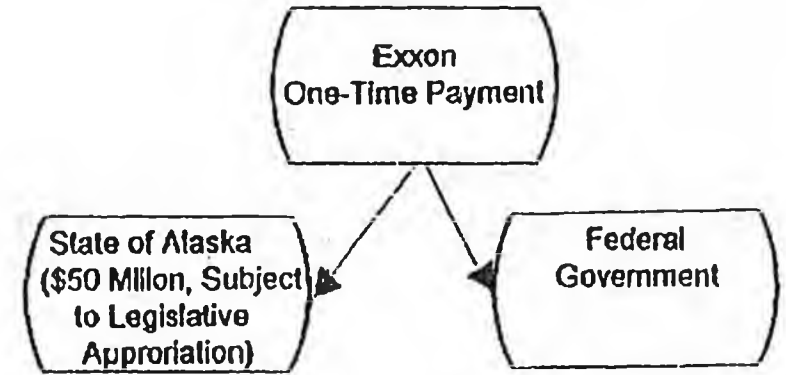
By: *Fred H. Edwards*
Its: *PRESIDENT*

Date: *3-10-93*

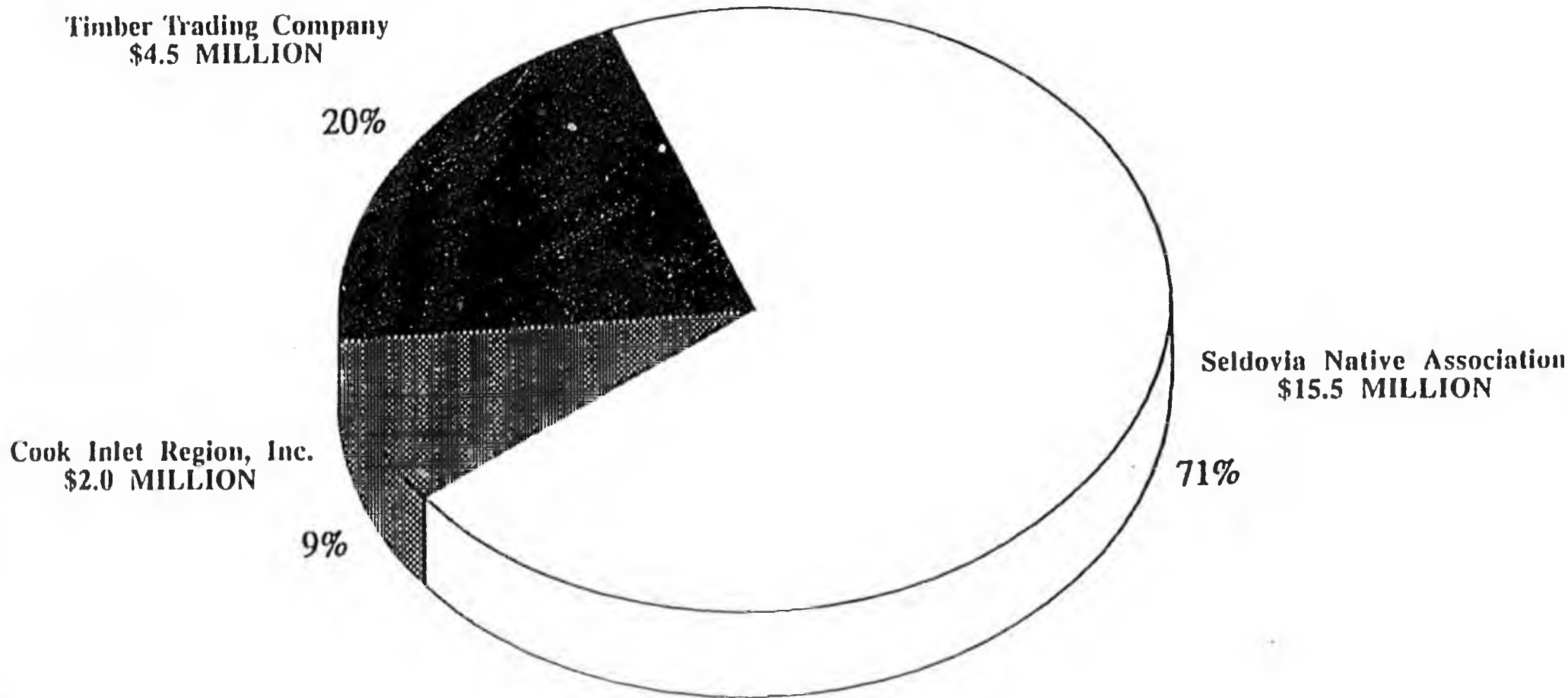
Civil Settlement



Criminal Settlement



KACHEMAK BAY \$22 MILLION PURCHASE



KACHEMAK BAY \$22 MILLION FUNDING



November 1992 - \$32 million Alyeska Settlement announced. \$7.5 million included in settlement for the purchase of Seldovia Native Association, Timber Trading Company and Cook Inlet Region, Inc. inholdings in Kachemak Bay State Park.

January 1993- Exxon Valdez Oil Spill Trustee Council approved \$7.5 million from the \$900 million civil penalty monies for acquisition of imminently threatened habitat within Kachemak Bay State Park.

January 1993- House Bill 76 and Senate Bill 63 introduced appropriating \$7 million from \$50 million Exxon criminal penalty monies for purchase of inholdings of Seldovia Native Association, Timber Trading Company and Cook Inlet Region, Inc. within Kachemak Bay State Park.

NEWS RELEASE

STATE OF ALASKA

OFFICE OF THE GOVERNOR
Post Office Box 110001
Juneau, Alaska 99811-0001

WALTER J. HICKEL
Governor

JOSEF P. HOLBERT
Director of Communications



JOHN MANLY
Press Secretary

JOHN HENDRICKSON
Deputy Press Secretary
Anchorage Office: 561-4228

BRIAN HART
Assistant Press Secretary

907-465-3500
FAX: 907-586-8369

FOR RELEASE: March 4, 1993
No. 93-053

GOVERNOR HICKEL ANNOUNCES KACHEMAK BUYBACK

JUNEAU--Kachemak Bay State Park will be made whole again under an agreement to buyback private inholdings announced today by Governor Walter J. Hickel.

The purchase agreement between the State of Alaska and the Seldovia Native Association, Timber Trading Company and Cook Inlet Region Inc., would transfer all rights to 23,802 acres of timberland within the park back to the state. The purchase price is \$22 million.

"This has taken a long time to put together, but I think we have a workable agreement where everybody wins," Governor Hickel said. "I want to thank all the interested parties for their patience and perseverance. And I hope the Legislature will look the agreement over and act quickly to approve it."

Of the \$22 million purchase price, \$15.5 million will go to SNA, \$4.5 to TTC, and \$2 million to CIRI. The agreement is subject to the Legislature appropriating \$7 million from the \$50 million criminal restitution fund resulting from the Exxon Valdez spill and endorsing the Alyeska settlement, which provides another \$7.5 million. The Exxon Valdez settlement trustees have agreed to fund the final \$7.5 million.

House Majority Leader Gail Phillips, R-Homer, commented, "Many, many Alaskans have worked for years to get to this day. My appreciation goes to the Governor and the A.G. and all Alaskans for achieving this finality. I'm very, very pleased for the Seldovia Native Association for their lands issue finally to be resolved."

Rep. Mike Navarre, D-Kenai, who's been working on the issue for many years, said, "I was always confident this would eventually be

- more -

NEWS RELEASE

2-2-2-2

93-053

Mar. 4, 1993

accomplished, and I'm glad to see it's finally been resolved. I'm hopeful the Legislature and the SNA board will approve the components of the agreement. My congratulations to Governor Hickel and Charlie Cole and to the Citizens' Coalition for all their help."

Senator Suzanne Little, D-Soldotna, added, "While the progress we've made is terrific, there's much remaining to be done. There are three bills currently in, but a lot needs to be done to put together the legislation. I'm looking forward to working on it."

All three legislators expressed their thanks to SNA President Fred Elvsaas for his tenacity on the issue.

####

HB

132



Representative Tom Brice

ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

MEMORANDUM

TO: Senator Mike Miller
Chairman, Senate Resources Committee

FROM: Representative Tom Brice *TB*

DATE: March 7, 1994

SUBJECT: CSHB 132 (FIN)

The natural resource development permits that are most frequently subject to legal proceedings are federal permits. Language directly referencing federal permits needs to be added to this legislation in order to provide relief for state permits when the permittee is unwilling to operate due to a challenge to a federal permit.

Please review the attached blank SCSCSHB 132(), which makes the necessary changes to include challenges to federal permits. This change is within the bounds of the title according to the drafting attorney in consultation with the Revisor of Statutes. Thank you.

Attachment





Charlie Boddy
Vice President Government Relations

- March 23, 1993

Representative Tom Brice
Alaska State Legislature
Juneau, Alaska

HOUSE BILL NO. 132 - An Act Extending the Time Periods of Permits

Dear Representative Brice,

I wish to take this opportunity to thank you and your staff for keeping me apprised of the continuing work on this most important piece of legislation. I offer these comments and observations prior to your hearing schedule starting. For your reference, similar comments were included in a report forwarded to Governor Hickel as part of a task force report on regulatory reform.

The net usable term of a permit or other delivered authorization sometimes is reduced significantly or even eliminated entirely when a person or company is prohibited from using it due to some action by an intervening third party. Any third party may challenge administrative decisions regarding permits and other authorizations for a variety of frivolous reasons. A person or company can then become damaged by the foreshortening of durable time guaranteed by a permit or other authorization.

This legislation will provide for more equal footing by restoring the time guaranteed in the original approval. You have provided in this legislation a remedy to those who suffer monetary or other damage, a mechanism for recovery that has been sorely missing for many years. I am sure that others from the mining community will provide the committees numerous comments and examples of past problems.

If I can be of any assistance during hearing process, please don't hesitate to call. With best regards, I remain,

USIBELLI COAL MINE, INC. • 122 First Avenue - Suite 302 • Fairbanks, Alaska 99701

Telephone 907 462 2696 • Fax 907 462 2697

LETTERS OF SUPPORT

March 26, 1993

To: Representative Tom Brice

C. C. Harley - 515 road
From: Chuck Hawley, Mining Geologist, # 300-941 E Dowling,
Anchorage, Ak 99518

Subject: H B 132, a bill to extend the time period for permits

This brief note is to support H B 132. It would be an important tool to support warranted development in Alaska.

My view is derived from the circumstances surrounding a project that I was involved in at Nyac, Alaska during the early 1980's, and still am involved in trying to clean up.

Briefly, Nyac is an important placer mining camp in Southwest Alaska, about 100 miles east of Bethel. It has been mined nearly continuously by bucket-line dredges and washing plants since 1928. In 1980, I was general partner in Northland Gold Dredging.

Our company leased mining claims at Nyac, and in 1980 rebuilt a dredge at a cost in excess of \$1,000,000. We operated in 1981 and 1982. In 1983, we began to repermit the operation so that we could move the dredge to the lower part of the reserves and begin a systematic "upstream" operation in the broad flood plain of the Tuluksak River. Mining "upstream" in a broad valley with a bucket line dredge, means that you have a bank of tailings below the operation that assists in filtering any effluent of the operation and protects downstream water quality.

We were successful, in a difficult two-year period, of obtaining the necessary permits to mine. The main permits came from Corps of Engineers, BLM, EPA, on the federal side and DEC and DFG on the State side. We also passed Coastal Zone consistency review.

After Northland received its permits, the agencies granting the permits were sued. Critical suits were in Federal Court against the BLM, and in State Court against a favorable Coastal Zone management decision. (Nyac was not in the coastal zone, but it could be construed that the operation might affect the coastal zone).

Although the lawsuits were never fully resolved, and indeed coastal zone was never heard, the ultimate result was that the project finally failed.

It would be inappropriate to say that a bill like H B 132 would have saved the project, because the circumstances were more complex. But at all times, we had difficulty holding our investment base, partly because of the uncertain nature of our permits after the conclusion of the lawsuits.

It appears that H B 132 would not have a negative environmental effect, because if lawsuits against the project were successful, the resolution of litigation should be that a project could be modified so that it accepts necessary and valid corrections.

Finally, I would like to express my appreciation to the committee for considering this legislation. It means that they are aware of the tremendous impediments to development that exist in Alaska. I believe the results at Nyac were not even close to a win-lose situation, let alone a win-win deal. No one won anything. The investors finally lost nearly \$3,000,000; southwest Alaska lost about 25-well paying jobs that would have been in existence for many years. The environmental work done over many years at Nyac shows that mining resulted in gains as well as losses to the biologic productivity of the region, but on balance gains from mining appear to at least equal any losses that could have occurred because of mining—so there was not even an environmental gain from killing the project.



ALASKA MINERS ASSOCIATION, INC.

501 West Northern Lights Boulevard, Suite 202, Anchorage, Alaska 99503 fax: (907) 278-7997 telephone: (907) 278-0347

March 26, 1993

Honorable William Williams
Chairman
House Resources Committee
Alaska State Legislature
Juneau, AK 99801-1182

Re: HB-132, An Act Extending The Time Period of Permits

Dear Representative Williams,

I am writing on behalf of the Alaska Miners Association in support of House Bill 132.

The cost of developing a mine or any other resource project in Alaska is significant and the potential problems are many. In particular, when a company decides to develop minerals in Alaska there are many challenges that are expected. These challenges include the lack of infrastructure, the climate, the difficulty of locating an economic ore deposit, the difficulty of obtaining the financing and finally the difficulty of obtaining all the myriad of permits. These challenges are part of the business.

There are however other impediments to developing a mine that are not based on the merits of the project. One such case is where third party suits are filed. Such suits and opposition are often based on a philosophical viewpoint that there should be no development in Alaska the "big park" or at least "not in my backyard". HB-132 seeks to address one aspect of this issue.

We see two important benefits associated with passage of this bill. The first and most obvious benefit is that although the project owner may be delayed, he will not lose the investment made in obtaining the necessary permits and will not run the risk of being forced to go through the permitting process before he has the opportunity to exercise the permits. If third party litigation against the project delays start-up until the term of the permits has lapsed, or nearly lapsed, the project owner would be forced to go through the permitting process again. This bill would require that the term of the permits be extended for whatever period the project owner was affected by the litigation.

The second benefit is less material but yet it may be even more important for the future of the State. This benefit is the in the message that such a bill will have for the international mining



ALASKA MINERS ASSOCIATION, INC.

industry. That message is that Alaska wants to see mineral development and that the State wants to change the negative image that continues to prevail in the industry.

There are two locations in the bill that should be modified. The first is on page one line 12. We would suggest the phrase be modified to read "...shall be extended by the agencies issuing the permits if the holder of the permits or an agency...". In most instances it is an agency involved in some aspect of issuing a permit that is the sued rather than the company receiving the permit. The suggested change would insure that the permits would be extended if an agency, in addition to the applicant, is sued.

The second modification is on page two line 19 where we would suggest referencing the existing definitions with the words "...all permits relating to resource extraction or removal as defined by 46.35.200(4) that are affected by litigation...". This minor modification will further clarify the applicability of this new Section 1.

Alaska is now in fierce competition for exploration and development funding with countries all around the world. Many countries are changing their laws for mining, investment, ownership of property, repatriation of profits and permitting to encourage minerals investment. We must also do everything practical and possible to improve the business climate or Alaska will not experience the mineral development and associated job creation that is otherwise possible.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Representative Tom Brice

provided by Representative Tom Brice

Sectional Summary of CSHB 132(FIN)

Title change: Names issuing agencies, includes administrative review of permits as a basis for extension, and sets permittee unwillingness to operate due to proceedings as standard, rather than an injunction.

Section 1:

Adds a new section AS 46.35.300

(a) The department will extend the time period of resource extraction or removal permits under certain conditions:

(a)(1) The permittee is unwilling to engage in the resource operation due to a third party administrative or legal challenge.

(a)(2) The permittee is allowed to proceed at resolution of legal proceedings.

(b) The department may not extend a permit:

b)(1)(A) unless the permittee provides a sworn statement of their unwillingness to proceed due to the challenge to the issuing department; and,

b)(1)(B) upon the conclusion of legal proceedings, the permittee notifies the department of the conclusion and outcome.

(b)(2) No extension for any time that permittee has been operating.

(b)(3) No extension if it would conflict with applicable federal law

(b)(4) No extension if a state law, regulation, or contractual provision would extend permit.

(c) The permit holder would be held to the standards in force at the time the original permit would have been or was issued.

(d) Length of extension shall be from time of sworn statement of unwillingness to proceed to conclusion of legal proceedings.

(e) The named agencies have authority to adopt regulations to implement.

(f)(1) Defines legal proceedings to include administrative challenges.

(f)(2) Broadly defines permit.

Section 2:

(a) Applies to resource extraction or removal permits issued after the effective date of this Act.

(b) Permit has the meaning of AS 46.35.300(f) in Sec. 1 above.



Representative Tom Brice

ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

Sponsor Statement for CSHB 132(FIN)

Many resource development projects in Alaska are delayed by time consuming litigation and administrative proceedings. These delays can not only drive up the costs of a project, they can kill it.

While the developer is tied up in court, the clock is still running on the other state permits for the project. Even if the permit holder wins, the useful time span of state permits will be shortened or may even run out, requiring another round of permit applications and fees.

CSHB 132(FIN) will help to fix this problem. Permits relating to a resource extraction or removal project will be extended when the permit holder or issuing agency is challenged in legal or administrative proceedings over the issuance of a permit and the permit holder or agency wins in court. The state permits will then be extended by the amount of time lost to the lawsuit, not to exceed the original length of the permit. The state would not be able to impose a fee or charge for the extension.

The Alaska Minerals Commission and the Governor's Task Force on Regulatory Reform both recommend extensions for permits foreshortened by court proceedings.



House Bill 182

The Department of Commerce and Economic Development supports passage of House Bill 182.


Resource developers are frequently faced with third-party legal challenges after they have received agency approvals for their projects. Permits are typically issued for a defined period of time. The usable term of a permit may be reduced or eliminated if a permittee is prohibited from operating under the permit by a court as the litigation proceeds. Even if the court rules in favor of the permittee, the permittee is damaged not only by the project delay, but also by the loss of operational time originally allowed under the permit.

This legislation eliminates the loss of operational time allowed a permittee under a permit which is issued by the state and is caused by legal actions initiated by persons other than the state.

House Bill 182 provides those who have successfully met the regulatory requirements of the state an assurance that the state will be aggressive in its support of the operational term of the permit. House Bill 182 also helps limit the utility of third-party use of the courts to impair the development of approved projects.

The effectiveness of this legislation could be improved by:

1. Defining "permit" to mean a permit, lease, authorization, license, or any other determination necessary for completion of a project.
2. Expanding the application beyond resource extraction or removal projects to include any type of development project, including infrastructure developments (ports, schools, etc.).


Paul Fuhs, Commissioner
3-25-93
Date

dgl/172pp.ed

ALASKA MINERALS COMMISSION
1993 Report to the Governor
and Alaska State Legislature

Table of Contents

EXECUTIVE SUMMARY Page iv

FINDINGS AND RECOMMENDATIONS

PART A: ISSUES REQUIRING STATE ACTION

INCENTIVES	Page 1
GEOPHYSICAL & GEOLOGIC MAPPING	Page 1
MENTAL HEALTH LANDS	Page 2
WATER QUALITY	Page 2
AIR QUALITY	Page 3
ACCESS	Page 3
STATE LAND SELECTIONS	Page 4
STATE MINERAL POLICIES	Page 4
STATE LAND WITHDRAWALS AND MANAGEMENT	Page 4
STATE REGULATORY REFORM	Page 5
CITIZEN'S ADVISORY COMMISSION ON FEDERAL AREAS	Page 6
COASTAL ZONE MANAGEMENT	Page 6
COAL ISSUES	Page 7
EDUCATION AND RESEARCH	Page 7
USER FEES	Page 8

PART B: FEDERAL ISSUES OF STATE CONCERN

MINING LAW OF 1872	Page 8
WETLANDS	Page 8
ANILCA PROVISIONS	Page 9
FEDERAL LAND MANAGEMENT PLANNING	Page 9
BERINGIAN HERITAGE INTERNATIONAL PARK	Page 9
U.S. - CANADA ACCESS AGREEMENTS	Page 10

APPENDICES

A. ALASKA MINERALS COMMISSION STATEMENT OF PURPOSE AND STATUTE AUTHORIZING COMMISSION	Page 12
B. LEGISLATION REFERENCED IN THIS REPORT	Page 14

THE COMMISSION RECOMMENDS THAT:

14. *The Governor should direct the Commissioner of the Department of Natural Resources to take the necessary steps to allow Miscellaneous Land Use Permits to be issued for periods of up to 5 years.*

FINDING: There is currently a requirement that a best interest finding be made before an offshore prospecting permit (OPP) can be issued by the DNR. The process of generating a best interest finding is being used to restrict DNR from normal issuance of OPPs.

THE COMMISSION RECOMMENDS THAT:

15. *The Governor should direct the Commissioner of the Department of Natural Resources to review regulations governing offshore prospecting permits such that they not be required to be subject to best interest findings, being exempted in a manner similar to leases of land for onshore fishery sites, mineral claims or upland mining leases. A.S.38.05.035(e) should be changed by adding "(b) an offshore prospecting permit or lease issued under A.S.38.05.250."*

FINDING: The usable term of a permit may be reduced or eliminated when a permittee is prohibited from operating under their permit due to third party litigation challenging the issuance, validity, completeness or other aspects of the permit. Though the litigation may not be successful, the permittee has still been damaged. Statutory action should be taken to remedy this situation.

THE COMMISSION RECOMMENDS THAT:

16. *The Legislature should enact legislation creating an automatic extension of permits foreshortened by court proceedings.*

CITIZEN'S ADVISORY COMMISSION ON FEDERAL AREAS

FINDING: The Citizens Advisory Commission on Federal Areas was established by the Alaska Legislature in 1981 shortly after the enactment of the Alaska National Interest Lands Conservation Act. The Commission is composed of 16 members, half of whom are appointed by the Governor and half by the Legislature, including four sitting legislators. The Commission analyzes federal legislation, regulations and management decisions, determines the impact of these actions on Alaska's citizens, and makes recommendations to both State and Federal agencies for corrective actions to problems identified.

Development of Federal lands and regulations for access across them is important to the State's economy. The Commission provides a valuable and cost-effective mechanism through which State concerns regarding management of all Federal lands can be expressed.

THE COMMISSION RECOMMENDS THAT:

17. *The Governor and Legislature should provide expanded budgetary and programmatic support to the Citizen's Advisory Commission on Federal Areas.*

COASTAL ZONE MANAGEMENT

FINDING: Alaska Statute, Sec. 46.40.100 (b) does not allow applicants to petition the Coastal Policy Council when relief is sought on decisions made by the coastal resource district or state agency. The State administration is evaluating the role and functions of the Coastal Policy Council in relation to the power it has over decisions