

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11307 SENATE RESOURCES

evidence of actual use. Because of their physical characteristics, however, many of these remote waterbodies could be used for transporting people or goods if there was a need. Under these circumstances, they are considered legally navigable.

Transportation Must Be Conducted In the Customary Modes of Trade and Travel On Water. A finding of navigability does not require use or capability of use by any particular mode of transportation, only that the mode be customary. The courts have held that customary modes of transportation on water include all recognized types and methods of water carriage. Unusual or freak contrivances adapted for use only on a particular stream are excluded. Customary modes of trade and travel on water in Alaska include, but are not limited to, barges, scows, tunnel boats, flat-bottom boats, poling boats, river boats, boats propelled by jet units, inflatable boats, and canoes. In places suitable for harvesting timber, the flotation of logs is considered a customary mode of transportation.

The mode of travel must also be primarily waterborne. Boats which may be taken for short, overland portages qualify. The courts have ruled that the use of a lake for takeoffs and landings by floatplanes is insufficient, in and of itself, to establish navigability.

Without expressly rejecting the claim, at least two court decisions in Alaska have suggested that winter travel on the surface of a frozen river or lake is probably not evidence of navigability. The rivers involved in the two adjudicated cases were both found navigable based upon summer use by boats, however, and it appears likely that most waterbodies in Alaska that are used as highways in winter can also be travelled by at least small boats in the summer. Because of this, the state need not rely upon winter travel to support navigability.

Waters Must Be Navigable In Their Natural and Ordinary Condition. A waterbody which can be used for transportation only because of substantial man-made improvements to the condition of the watercourse is not navigable for title purposes. However, if transportation does or could occur on the waterbody even without the improvements and the improvements would only make transportation easier or faster or possible for larger boats (e.g., dredging), it is still considered navigable for title purposes.

The presence of physical obstructions to navigation (rapids, falls, log-jams, etc.) does not render a waterway non-navigable if the obstruction can be navigated despite the difficulties or if the obstruction can be avoided by other means, such as portaging, lining, or poling. A waterbody is also navigable even if seasonal fluctuations do not allow it to be navigated at all times of the year. However, a waterbody which is only navigable at infrequent and unpredictable periods of high water is not normally considered navigable. The fact that a waterbody may be frozen for several months of the year does not render it non-navigable if it is navigable in its unfrozen condition.

Title Navigability Is Determined As Of The Date Of Statehood. To be considered navigable for title purposes, the waterbody must have been

navigable in 1959 (when Alaska became a state). This element of the navigability test focuses on the physical characteristics of the waterbody and whether those characteristics have changed significantly since statehood. Most waterbodies have not physically changed enough since statehood to alter their navigability. Assuming there have been no significant changes in the physical characteristics of the waterbody, a waterbody that is navigable today would be considered legally navigable in 1959 as well. Exceptions might include the creation, by natural or man-made causes after statehood, of a totally new lake, river, or canal now used for navigation. Such a waterbody would not be considered navigable for title purposes. Conversely, a waterbody which was navigable in 1959 but, because of natural or man-made physical changes, is no longer navigable in fact would still be considered navigable for title purposes.

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NAVIGABILITY CRITERIA DISPUTES

Because of differing legal interpretations of court navigability decisions, several aspects of the criteria used by the state to determine navigability have been disputed by the federal government. As a direct result of these criteria disputes, many waterbodies considered navigable by the state have been determined non-navigable by the federal government.

The major criteria dispute has been over the type or purpose of the transportation required to establish navigability. The federal government has asserted that a waterway must be used, or capable of use, for transporting commerce to be considered navigable. Other, "noncommercial" transportation uses are not considered sufficient to establish navigability. In this context, the federal government has claimed that the only relevant "commercial" transportation is the distribution of goods for sale or barter, or the transportation for hire of people or things. The federal government has admitted that professionally guided transportation on Alaska's rivers, lakes and streams constitutes commerce, but nevertheless has argued that the waters are not being used as a navigable "highway" when recreation is involved, but rather more as an amusement park. The federal government has therefore claimed that waters used only for commercial recreation are legally nonnavigable even though they may be navigable in fact.

Through the work of the state's navigability program, this definition has been repeatedly rejected by the courts, most recently in the Gulkana River case. *Alaska v. United States*, 662 F.Supp.455 (D.Alaska 1986), affirmed sub nom. *Alaska v. Ahntna, Inc.*, 891 F.2d 1401 (9th Cir. 1989). Applying the correct definition of navigability, many of the submerged lands that the federal government attempted to convey to ANCSA corporations should have been recognized as belonging to the state. The state appealed many conveyances to protect its title. As occurred in the Kandik-Nation Rivers appeal, Appeal of Doyon, 86 I.D. 692 (ANCAB 1979), Alaska Native Corporations also found it necessary to

challenge erroneous federal determinations of non-navigability to insure they would not be deprived of any portion of their entitlement by being charged for submerged land owned by the state.

The federal government has also argued that aluminum boats, boats propelled by jet units, inflatable boats, and canoes are not customary modes of travel for the purpose of determining navigability in Alaska. As a result, many waterbodies navigated by these types of watercraft have been found legally non-navigable by the federal government. The claim is that these boats represent post-statehood technological advances, are too small to be considered "commercial", or that most "commercial" use of the watercraft developed after statehood.

Another navigability dispute involves remote, isolated lakes. The federal government has found many of these lakes legally non-navigable, even though they are physically capable of being navigated. The federal government's contention is that a navigable connection to another area is necessary to make travel on a remote lake worthwhile. Otherwise, the federal government views the lack of development in the area around the isolated lake as an indication that the lake will never be used for commercial transportation.

To resolve these navigability criteria disputes, the state has actively pursued a limited number of court cases challenging particular findings of non-navigability by the federal government. With the sole exception of floatplanes, the courts have agreed with the navigability criteria presented by the State of Alaska and have rejected the limitations suggested by the federal government. These cases include:

Gulkana River. In this case, both in the U.S. District Court and on appeal to the U.S. Court of Appeals, the federal courts rejected the federal government's restrictive interpretation of the phrase "highway of commerce" in the title navigability test. The federal district court stated that to demonstrate navigability, it is only necessary to show that the waterbody is physically capable of "the most basic form of commercial use: the transportation of people or goods." Because the Gulkana River can be used for the transportation of people or goods, the Gulkana River was found navigable. *Alaska v. United States*, 662 F.Supp.455 (D.Alaska 1987). On appeal, the court of appeals affirmed the district court's finding of navigability. *Alaska v. Ahtna, Inc.*, 892 F.2d 1401 (9th Cir. 1989). The court of appeals found that the modern use of the Gulkana River for guided hunting, fishing, and sightseeing trips is a commercial use and, since the physical characteristics of the river have not significantly changed since 1959, provides conclusive evidence that the river was susceptible of commercial use at statehood. The court also found that modern inflatable rafts can be used to establish navigability. In April 1990, the United States Supreme court denied a request by Ahtna, Inc. to reconsider and overturn the court of appeals decision. The Gulkana River precedent is now binding on all future navigability determinations in Alaska.

Kandik and Nation Rivers. In this administrative appeal, the State of Alaska and Doyon Limited, an ANCSA regional corporation, successfully

established that the use or susceptibility of use of a river or stream by an 18-24 foot wooden riverboat capable of carrying at least 1,000 pounds of gear or supplies is sufficient to establish navigability. Based upon the use of these types of boats for the transportation of goods and supplies by fur trappers, as well as extensive historic and contemporary canoe use, the court found the Kandik and Nation rivers, in Interior Alaska, navigable. Appeal of Doyon, 86 I.D.692 (ANCAB 1979).

Alagnak River. In this federal district court case, the Alagnak River, the Nonvianuk River, Kukaklek Lake and Nonvianuk Lake were all found navigable. These interconnected waterbodies are located in the Bristol Bay region of Alaska, south of Lake Iliamna. Their primary transportation use is for commercially guided hunting, fishing, and sightseeing and for government research and management. They also serve as a means of access for local residents to their homes and to the surrounding areas for subsistence hunting and fishing. After several years of litigation, the federal government conceded that these rivers and lakes are navigable. Alaska v. United States, No. 82-201 (D.Alaska Feb. 2, 1985).

Matanuska River. The recommended decision in this administrative appeal agreed with the State of Alaska's position that post-statehood commercial river rafting operations are sufficient to establish navigability. Based upon that type of use, the administrative law judge who heard the case recommended that the Matanuska River, in Southcentral Alaska, be found navigable. The Secretary of Interior, over the state's objections, assumed jurisdiction over the case and stayed implementation of the recommended decision. No action has been taken in the case since that time. Appeal of Alaska, No. 82-1133 (IBLA Rec. Decision Aug. 18, 1983)

Slopbucket Lake. The state claimed that the extensive use of floatplanes on Slopbucket Lake, a twenty acre lake adjacent to Lake Iliamna, was sufficient to establish navigability. The federal courts rejected this view. The courts reasoned that floatplanes do not use the lake as a navigable highway; they just take off and land there. Alaska v. United States, 754 F.2d 851 (9th Cir.) cert denied, 106 S. Ct. 333 (1985).

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IDENTIFICATION OF NAVIGABLE WATERS

Even if the criteria for determining navigability in Alaska were totally agreed upon, it still would be difficult to prepare a complete list of all of the navigable lakes, rivers, and streams in the state. Much of Alaska has not yet been surveyed and many maps are inaccurate and out-of-date. It is an immense and complex task simply to identify and locate all of the thousands of named and unnamed lakes, rivers, and streams in the state which might be considered navigable. Furthermore, once a potentially navigable lake, river, or stream has been

identified, detailed information about its size and uses is necessary for an accurate navigability determination. Because of Alaska's undeveloped and remote character, gathering navigability information is both time consuming and expensive. Finally, administrative navigability determinations made by the state or the federal government are always subject to legal challenge, since only the courts can authoritatively determine title to submerged lands.

Despite these difficulties, both the state and the federal government are frequently called upon to issue navigability determinations. Although the requirement that BLM adhere to the meandering requirements of the BLM Survey Manual has eliminated the need for navigability determinations on the larger rivers, lakes, and streams, which must now be meandered regardless of navigability, navigability determinations are still required for the smaller rivers, lakes, and streams to determine if they are to be meandered at the time of survey. Because of this, some navigability determinations are still made for nearly every federal land conveyance under ANCSA or the Alaska Statehood Act. The management plan for nearly every federal Conservation System Unit (CSU) also addresses the navigability issue.

Federal navigability determinations are reviewed by the state to insure that available information sources were used and interpreted correctly. Where the federal government determines non-navigable a waterbody which is considered navigable by the state, the state may provide the government with supplemental information about the uses and characteristics of the waterbody to obtain a redetermination of navigability. Under some circumstances the state needs to make its own navigability determinations, such as for a oil and gas lease sale, land disposal, material sale, mining claim, or another use of state land or resources requiring a determination of ownership of submerged lands within the affected area.

For large, undeveloped regions of Alaska there may be little or no accurate waterbody use or physical characteristics information available for making navigability determinations. When information is lacking, and it must make a navigability determination, the state is forced to rely solely upon the physical characteristics shown on maps and aerial photographs. In these cases, the state identifies as navigable all streams depicted on the U.S.G.S. maps with double lines (generally at least 70 feet wide) and having an average gradient over the length of the stream of no more than 50 feet per mile. With rare exceptions, the state's experience has been that streams of this type are deep enough and wide enough to be navigable by boats carrying persons or goods and must, therefore, be considered legally navigable. Streams depicted with single lines, although narrower in width, may also be listed as potentially navigable if they have gradients of substantially less than 50 feet per mile and are at least 10 miles.

If there is no public use or physical characteristics information readily available for lakes, those lakes which are shown on maps and aerial photographs as having a navigable water connection with other navigable waters, or which are accessible by short overland portages, are considered navigable regardless of the size of the lake. These

lakes are part of a system of interconnected navigable waters. If a lake is totally isolated, it will be included on the state's navigability maps if it is at least 1 1/2 miles long. That length insures that the lake can be used as a "highway". Future judicial decisions interpreting the "highway" requirement for isolated lakes could shorten or lengthen this 1 1/2 mile "rule of thumb."

The state recognizes that, under some circumstances, lakes smaller than 1 1/2 miles long can be and are used as navigable highways. In those cases, when known, these smaller lakes are also depicted on the state's navigability map. Moreover, as a matter of administrative policy and convenience only, the state may sometimes make an exception to the 1 1/2 mile standard in the extremely wet regions of the state, including some areas in the Yukon- Kuskokwim Delta, Yukon Flats, and on the North Slope. In these areas, an isolated lake might need to be 2-3 miles long to be included on the state's navigability maps. Although smaller lakes in these areas are capable of being used for transportation and should be found navigable by the courts, the state has decided to concentrate its limited resources in protecting the larger waterbodies first.

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NAVIGABLE WATERS WITHIN PRE-STATEHOOD FEDERAL WITHDRAWALS

Although disputes over which waters in Alaska are navigable are the most frequent cause of submerged land ownership disputes, there is another major legal issue which poses a threat to Alaska's sovereign claim to the beds of navigable waters. Even where navigability is conceded, the federal government often contends that title to the submerged lands did not vest in the state if the area was withdrawn or reserved by the federal government on the date of statehood. Within native conveyance areas, the federal government has used this claim of "reserved submerged lands" to justify its attempts to convey the beds of navigable waters in fulfillment of the native entitlements. Within state selections, the federal government has used the same claim to charge the acreage of submerged lands against the state's entitlement.

The state strongly disagrees with this federal claim and has actively pursued a number of court challenges to resolve the issue. In addition to numerous appeals from federal decisions to convey or charge for the beds of navigable waters, the state was actively involved as a friend of the court in one case before the United States Supreme Court and continues to be involved in another Supreme Court case which presents this issue. The pending case is *United States v. Alaska*, U.S. Supreme Court 84 Original (filed June, 1979).

On June 8, 1987 the Court issued its decision in *Utah v. United States*, No. 85-1772 (filed Oct. 14, 1986). In this case the federal government, in 1976, issued oil and gas leases for land underlying Utah Lake, a navigable waterbody located in Utah. The suit sought a declaratory judgement that Utah, rather than the United States, holds

the lands under navigable waters in the territories in trust for future states, and, absent a prior conveyance by the federal government to third parties, a state acquires title to such land upon entering the Union on an "equal footing" with the original 13 states.

The Supreme Court held that title did pass to the state upon Utah's admission to the Union. They held that there is a strong presumption against finding congressional intent to defeat a state's title, and, that in light of the longstanding policy of the federal government's holding land under navigable waters for the ultimate benefit of future state absent exceptional circumstances, an intent to defeat a state's equal footing entitlement could not be inferred from the mere act of the reservation itself. The United States would not merely be required to establish that Congress clearly intended to include land under navigable waters within the federal reservation, but would additionally have to establish that Congress affirmatively intended to defeat the future state's title to such land.

This decision has significant ramifications within Alaska, since over 95 million acres - more than 25% of the total area of the state - was enclosed within various federal withdrawals and reservations at the time Alaska became a state.

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NAVIGABLE WATERS WITHIN ANILCA CONSERVATION SYSTEM UNITS

On December 2, 1980, the Alaska National Interest Lands Conservation Act became law. This act created or added 104.3 million acres to various federal conservation system units. Because these "withdrawals" occurred after the date of statehood, there is no disagreement between the state and federal governments that navigable waters within the various CSU's are owned by the state. However, there is some disagreement on the amount of authority the federal land managers may have to regulate these state owned submerged lands.

The U.S. Constitution gives Congress certain limited powers to control uses on state owned submerged land. These are known as the Property Clause, Navigational Servitude and the Commerce Clause. The extent of these powers involves complex legal questions. However, even assuming that Congress has the power to regulate state-owned submerged lands in Alaska, the United States Supreme Court has ruled that Congress may choose not to exercise that power, thus leaving regulation totally up to the state. *Esplanada Co. v. Chicago*, 107 U.S. (17 Otto.) 678 (1883). Whether Congress has done that can only be determined by examining the federal laws passed by Congress dealing with Alaska lands. Another possibility is that the state and federal governments have concurrent jurisdiction, sharing the authority to regulate submerged lands.

In ANILCA, Congress did not take away the state's power to regulate state-owned submerged lands within federal CSU's in Alaska. Numerous

provisions in ANILCA recognize and respect the state's authority over state-owned land. In some cases, however, Congress may have attempted to give the federal land managers some concurrent authority to regulate navigable waters within CSU's.

The state, where possible, cooperates with rather than confronts the federal land managers. This cooperation often takes the form of a memorandum of understanding that discusses management issues and how they will be resolved. Differences do occur, however, over issues such as column management and restrictions on mining.

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II. LEGAL AND POLICY GUIDELINES GOVERNING MANAGEMENT OF SUBMERGED LANDS AND PUBLIC WATERS

PUBLIC TRUST DOCTRINE

The state has special duties and management constraints with respect to state-owned land underlying navigable waters. These special duties and management constraints arise from the Alaska Constitution. The Alaska Constitution contains numerous provisions embracing the principles commonly known as the public trust doctrine. The public trust doctrine is remarkable both for its age and for its vigor. Rooted in the customs of the seafaring Greeks and Romans, it has evolved to become one of the most effective safeguards of public rights. Basically, the trust reflects an understanding of the ancient concept that navigable waters, their beds and their banks, should be enjoyed by all the people because they are too important to be reserved for private use.

In America, the concept of public rights to public waters was recognized since the early days of the Massachusetts Bay Colony where the great Pond Ordinance of 1641 guaranteed the right to fish and fowl in ponds greater than 10 acres, along with the freedom to pass through private property to do so.

By 1821, American courts were pronouncing the law of public trust as we know it today. This does not mean that no water-related development can take place. The public trust doctrine permits states to improve waterways by constructing ports, docks and wharves, thus furthering the purposes of the trust. Generally speaking, the people's trust rights may be alienated only in ways that further overall trust uses, and in relatively small parcels.

Illinois Central Railroad Company v. Illinois, 146 U.S. 387,452 (1882), involved a grant by the State of Illinois of one thousand acres of the bed of Lake Michigan, constituting the entire harbor of the City of Chicago, to the Illinois Central Railroad. The U.S. Supreme Court held

that the grant was revocable, that the state held the land in trust for the public, and that it was powerless to relinquish its rights as trustee.

The court went on to say that land underlying navigable waters is much more than a simple property right.

[I]t is a title different in character from that which the state holds in lands intended for sale. It is different from the title which the United States holds in the public lands which are open to preemption and sale. It is a title held in trust for the people of the state that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties... The trust devolving upon the state for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property.

In the 19th century the purposes of the trust were generally described as "commerce, navigation and fishery." This was logical because the major waterways were essential highways of commerce. But as other values became increasingly important, courts began to recognize recreation and environmental protection among the purposes for which the trust exists. As a California court said in 1971, "with our ever increasing leisure time...and the ever increasing need for recreational areas it is extremely important that the public need not be denied use of recreational water...the rule is that a navigable stream may be used by the public for boating, swimming, fishing, hunting and all recreational purposes." *People ex rel. Baker v. Mack*, 19 Cal. App. 3d 1040, 1044 (1971).

The Alaska constitution provides protections similar to the public trust doctrine protections that cannot be disregarded by the legislature or overruled by the courts. Article VIII, Sec. 3 provides; "Wherever occurring in their natural state, fish, wildlife and waters are reserved to the people for common use." After reviewing the public trust doctrine in *Owsichek v. State, Guide Licensing*, 763 P.2d 483 (Alaska 1988), the Alaska Supreme Court explained that "the common use clause was intended to engraft in our constitution certain trust principles guaranteeing access to the fish, wildlife and water resources of the state."

In *CWC Fisheries, Inc. v. Bunker*, 755 P.2d 1115 (Alaska 1988), the Alaska Supreme Court applied the public trust doctrine to tidelands, holding that, even after conveyance, the title remains subject to continuing public easements for purposes of navigation, commerce and fishery.

The 1985 Alaska legislature recognized the constitution application of public trust doctrine principles in Alaska. In an Act relating to the public or navigable waters of the state, the legislature found that "the people of the state have a constitutional right to free access to the navigable or public waters of the state" and that the state "holds

and controls all navigable or public waters in trust for the use of the people of the state". 85 SLA Ch. 82. In the same act, the legislature ruled that submerged lands are "subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purpose for which the water is used or capable of being used consistent with the public trust."

Courts in other states over the years have defined in somewhat different ways the public uses that are permitted and protected by the public trust as it applies to submerged lands. In reviewing these other cases, it can clearly be seen that through time an ever expanding definition of the public uses protected by the public trust doctrine is being adopted. The California Supreme Court recently held that:

Although early cases had expressed the scope of the public's right in (lands subject to the public trust) as encompassing navigation, commerce and fishing, the permissible range of public uses is far broader, including the right to hunt, bathe or swim, and the right to preserve the (public trust) lands in their natural state as ecological units for scientific study. *City of Berkeley v. Superior Court of Alameda*, 606 P.2d 362, 365 (Cal. 1980)

It is clear under the Alaska Constitution that the State of Alaska has the responsibilities of a trustee with respect to management of land underlying navigable waters. Moreover, the Alaska legislature has adopted a broad view of the public uses protected or permitted by the public trust. Accordingly, the Alaska Attorney General's Office has determined that, until the Alaska Supreme Court rules on the question, the state should assume that a broad definition of public rights protected by the Alaska Constitution and the public trust doctrine applies in Alaska, similar to the one adopted by the California Supreme Court. 1982 Atty. Gen. Op. No. 3 (June 10, 1982).

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PUBLIC WATERS

It is not only the beds of navigable waters in Alaska that are reserved in public ownership for public use. Under article VIII, Section 3 of the Alaska Constitution, all waters occurring in their natural state are reserved to the people for common use. Article VIII, Section 14 of the Alaska Constitution also provides for the broadest possible access to and use of state waters by the general public.

Section 14. Access to Navigable Waters. Free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Pursuant to this grant of authority, the Alaska State Legislature, in

AS 38.05.365(12), defined "navigable waters" as follows:

"navigable waters" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes.

This definition of navigable waters does not define state ownership of submerged land in Alaska. The definition of navigability for ownership purposes was discussed earlier in this paper. This definition, however, does define what types of waterbodies in Alaska are available for public use under the Alaska statutes.

The Alaska State Legislature has broadly construed the constitutional protections for public use of the waters of the state. In an Act (85 SLA chap. 82, codified as AS 38.05.128) relating to the navigable or public waters of the state, the state legislature found:

(a) The people of the state have a constitutional right to free access to the navigable or public waters of the state.

(b) Subject to the federal navigational servitude, the state has full power and control of all of the navigable or public waters of the state, both meandered and unmeandered, and it holds and controls all navigable or public waters in trust for the use of the people of the state.

(c) Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark or subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purposes for which the water is used or capable of being used consistent with the public trust.

(d) This Act may not be construed to affect or abridge valid existing rights or create any right or privilege of the public to cross or enter private land.

AS 38.05.128 provides:

OBSTRUCTIONS TO NAVIGABLE WATER

(a) A person may not obstruct or interfere with the free passage by a member of the public on any navigable water as defined in AS 38.05.965 unless the obstruction or interference is:

- (1) authorized by a federal or state agency;
- (2) authorized under a federal or state law or permit;

- (3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);
- (4) caused by the normal operation of freight barging that is consistent with law; or
- (5) authorized by the commissioner after reasonable public notice

(b) A violation of (a) of this section is a class B misdemeanor.

(c) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.

(d) This section may not be construed to affect or abridge valid existing rights.

Thus, under the Alaska Constitution and this statute, any surface waters capable of use by the public defined in AS 38.05.365(12) are available to the public, irrespective of streambed ownership. Further, such public use is not considered a taking and is not subject to inverse condemnation action. Private ownership is subject to the public rights that are protected by the public trust.

In two Montana Supreme Court cases involving the nature of public rights where the submerged lands are privately owned, the court rules that public portaging, anchoring, and other uses incidental to the use of the water are allowed. The court also found that if travel on the water or streambed is obstructed, the public is allowed to use the adjacent private land to portage around the barrier in the least intrusive way possible, avoiding damage to the property holder's rights. However, the public does not have the right to enter into or trespass across private property in order to enjoy the recreational use of state-owned waters. The State of Alaska agrees with this ruling and believes a similar ruling would be made by our state courts.

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BOUNDARIES OF NAVIGABLE WATERS

The state is often asked where public ownership of water bodies ends and private ownership begins. There are two types of water body boundaries to address: 1) non-tidal water boundaries and 2) tidal water boundaries. Non-tidal boundaries are boundaries of lakes, rivers, and streams. Tidal boundaries are the boundaries along any body of water which is influenced by the rise and fall of the tides.

1. Non-tidal Water Boundaries

The boundary between public and private ownership is the "Ordinary High Water Mark" which is defined in 11 AAC 53.900(23) as being - The mark along the bank or shore up to which the presence and action of the non-tidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, vegetation, or other

distinctive physical characteristics. Also see the Alaska State Supreme Court definition in Department of Natural Resources v. Pankrantz 538 P.2d 984, 988-89 (Alaska 1975). The ordinary high water line can usually be observed by the laymen simply by noting the vegetation line or well defined stream banks.

2. Tidal Water Boundaries

The boundary between tidal water bodies and private/public owned uplands is the Mean High Water Line. Mean high water line as defined by 11 AAC 53.900(15) is: The tidal datum plane of the average of all the high tides, as would be established by the National Geodetic Survey, at any place subject to tidal influence.

This line is not readily observable because it is a line of known elevation which intersects the land surface. The mean high water line can be a considerable distance below the vegetation line because extreme high water will denude the beach above the line of mean high water. The only way that the location of mean high water line can be accurately determined is by differential leveling from known bench marks or by operating a tide gauge for a sufficient period of time to determine the mean high water elevation. The line of mean high water line can be approximated by time coordinated observations of the daily predictions for high and low waters, predicted by NOAA, as they relate to the published mean high water elevation. This method can be highly unreliable because small errors in the predictions or observations can transform into large errors in the horizontal location; this is especially true in areas where the beach gradient is very flat.

It is important to note that in some areas, such as Prince William Sound, the mean high water line boundary is considerably higher than the current mean high water line because the boundary became fixed at the 1964 pre-quake location. In this instance the boundary between state-owned tidelands and the uplands would be established at an elevation which equals the sum of the mean high water elevation plus the published amount of uplift or, in some cases, submergence.

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CONCLUSION

This paper describes the state's policies and procedures for managing and protecting state submerged lands and public waters. As further legal and practical developments occur in this area, these policies and procedures will be reexamined by the state and, if necessary, appropriate changes will be made.

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Senate Majority News

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Senate Stands Up for Alaska's Land Rights More than 60 million acres at stake

(Juneau) - Four pieces of legislation were introduced in the Senate today to further the assertion of ownership and management of the state's navigable waters and public access rights.

Senate President Gene Therriault (R-North Pole) introduced two bills regarding submerged lands.

Senate Bill 305 outlines the state's legal position on ownership of submerged lands and requires the commissioner of the Department of Natural Resources to compile a list of navigable waters.

"By making this blanket assertion we will protect the state's interest as the process moves along. With each passing year it becomes increasingly more difficult to prove which waters were navigable at statehood," Therriault said.

The navigable waters issue dates back to statehood, when Alaska received title to all submerged lands under navigable water and marine waters out to three miles, with the exception of land withdrawn at statehood. The federal government, however, has been slow to concede any navigability determinations and less than 20 rivers have been determined navigable by the federal courts. Approximately 60 million acres of submerged lands are at stake. The lack of federal cooperation has resulted in thousands of acres of clouded private land titles, which is particularly critical as Congress considers a deadline for completing the land selection and conveyance processes.

Senate Bill 305 is designed to begin the process for the state to identify its claims and to provide a mechanism to resolve clouded titles where previous conveyances have been made. Therriault was active last year in securing funding through the Legislative Budget & Audit Committee to contract with state agencies to push forward on these state's rights initiatives.

- more -

Senate Bill 295 renews the Joint Federal and State Navigable Waters Commission established in 2002. The commission was established to expedite the quiet title process to the state's submerged lands; determine which bodies of water are navigable or non-navigable; recommend to state and federal governments ways to improve the water navigability determination process and ways to clear title to the state's submerged lands fairly and expeditiously.

"We hope to use this commission to design a cooperative way to move forward on this issue," Therriault said.

Sen. Ralph Seekins (R-Fairbanks) introduced Senate Joint Resolution 27 regarding submerged land title disputes. The resolution encourages the Interior Secretary and the Alaska congressional delegation to support the continuation of the process for recording federal disclaimers of interests for securing title to submerged land. It also requests federal participation in the Navigable Waters Commission for Alaska and asks congress to amend the Quiet Title Act to ensure federal cooperation in resolving submerged land title disputes.

"Under the Quiet Title Act we can't activate a claim unless the federal government takes action that clouds the title. We want to change that so we don't have to wait for the federal government," Seekins said. "We want to speed up the process to determine who actually has title to the land. We want to work with the federal government and the state through the Navigability commission to find a way to do that."

"We're saying to the federal government, if you think you have a claim, speak now or forever hold your peace," Seekins said.

Sen. Tom Wagoner (R-Kenai) introduced Senate Joint Resolution 26 asking the Interior Department and the U.S. Department of Justice to appeal to the U.S. Supreme Court the decision of the Ninth Circuit Court of Appeals in *The Wilderness Society v. United States Fish and Wildlife Service*.

The Wilderness Society sued to stop the stocking of Tustumena Lake with hatchery-reared salmon fry, contending that it violated provisions of the Wilderness Act. SJR 26 also asks for a temporary emergency stay of the decision to allow the project to continue this year while the decision is under appeal.

"The Ninth Circuit ruled that this was a commercial enterprise that isn't allowable in a wilderness area. However, the only use that takes place inside the wilderness area is a sport fishery targeting red salmon," Wagoner said.

"Unfortunately, we have to ask the federal government to act because the Knowles administration failed to defend the Alaskan interests at stake in the lawsuit," Wagoner said.



LAWS OF ALASKA

2002

Source
CSSB 219(FIN)

Chapter No.

71

AN ACT

Establishing and relating to the Navigable Waters Commission for Alaska.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Establishing and relating to the Navigable Waters Commission for Alaska.

2

3 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 STATE POLICY. The legislature determines that the efficient and orderly
6 development of the state will be better achieved if the state and the federal governments join
7 together in a carefully coordinated approach to land and water use planning and management.
8 The legislature recognizes that, although the state is the primary trustee of public trust
9 resources, it is in the best interest of the citizens if the state and federal governments, as
10 designated stewards of these resources, cooperate to the maximum extent possible in
11 determining their uses. However, the legislature also recognizes that, even without federal
12 participation, the state must proceed to make management decisions. The state is particularly
13 blessed with significant water resources that are invaluable in numerous ways to state
14 residents and all citizens of the United States. With the massive numbers of navigable
15 waterways and bodies of water in the state, the task of resolving submerged land ownership

1 and navigable water determinations has been painfully slow, counter-productive from an
2 orderly resource management standpoint, and unjustly as the state, private landowners, and the
3 federal government attempt to initiate long-range planning processes. For this reason, it is
4 determined by the legislature that the State of Alaska and the United States should cooperate
5 in establishing a joint state and federal commission or, if the federal government elects not to
6 participate, a state commission must be established to proceed efficiently and effectively to

7 (1) expedite the process of quieting legitimate title to the state's submerged
8 lands;

9 (2) determine, to the extent possible, which bodies of water are navigable or
10 non-navigable; and

11 (3) provide recommendations to the state and the federal governments
12 concerning ways to improve the process of making navigability determinations and ways to
13 quiet title to the state's submerged lands fairly and expeditiously.

14 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 NAVIGABLE WATERS COMMISSION FOR ALASKA. (a) A Navigable Waters
17 Commission for Alaska is established. If authorized by federal law, the commission shall be a
18 joint federal and state commission.

19 (b) The governor or the governor's designee shall serve as chair of the commission. If
20 federal participation is authorized by federal law, the member appointed by the President of
21 the United States or the United States Secretary of the Interior shall serve as co-chair of the
22 joint commission. The chair or co-chairs of the commission shall call meetings.

23 (c) If a joint commission is formed, four state and four federal members of the
24 commission constitute a quorum, and all decisions of the commission require concurrence by
25 at least four state and four federal members of the commission. Otherwise, four state
26 members of the commission constitute a quorum, and all decisions of the commission require
27 concurrence by at least four members.

28 (d) A vacancy in the membership of the commission does not affect its powers. The
29 vacancy shall be filled in the same manner in which the original appointment was made.

30 (e) Subject to procedures adopted by the commission, the chair or co-chairs, in
31 accordance with applicable laws, may

1 (1) appoint and fix the compensation of the commission staff and personnel as
2 they consider necessary; and

3 (2) procure temporary and intermittent services.

4 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 MEMBERSHIP OF THE COMMISSION. (a) The state membership on the
7 Navigable Waters Commission for Alaska is composed of the governor or the governor's
8 designee, two members appointed by the governor, two members appointed by the president
9 of the senate, and two members appointed by the speaker of the house, all of whom serve at
10 the pleasure of the appointing authority.

11 (b) The membership also includes individuals appointed under federal law if a joint
12 commission is authorized.

13 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 COMPENSATION AND PER DIEM. (a) A state member of the Navigable Waters
16 Commission for Alaska who is a state officer or employee serves without compensation in
17 addition to that received for regular employment. Other state members of the commission
18 receive compensation as authorized for the Board of Fisheries under AS 16.05.290.

19 (b) State members of the commission are entitled to per diem and travel expenses
20 authorized by law for boards and commissions under AS 39.20.180.

21 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 DUTIES OF THE COMMISSION. The Navigable Waters Commission for Alaska
24 shall

25 (1) establish a process for researching navigability determinations that affect
26 land title;

27 (2) develop procedures for involving private landowners and the general
28 public in the navigability determination process of the commission;

29 (3) undertake a process of navigable and non-navigable waters identification
30 under criteria established in law;

31 (4) make recommendations to improve coordination and consultation between

1 the state and federal governments in making navigability determinations and decisions
2 concerning title to submerged lands.

3 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 HEARINGS. The Navigable Waters Commission for Alaska or, on the authorization
6 of the commission, any subcommittee or member of the commission may, for the purposes of
7 carrying out its duties, hold hearings, take testimony, receive evidence, print or otherwise
8 reproduce and distribute all or part of commission proceedings and reports, and sit and act at
9 those times and places as the commission, subcommittee, or members consider desirable.

10 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 INFORMATION FOR THE COMMISSION. Each agency, department, board, or
13 commission of the state government is authorized to furnish to the Navigable Waters
14 Commission for Alaska, upon request of a chair or co-chair, information the commission
15 considers necessary to carry out its functions under this Act.

16 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 REPORTS. (a) On or before January 31 of each year, the Navigable Waters
19 Commission for Alaska shall submit to the President of the United States, the United States
20 Secretary of the Interior, the United States Congress, the governor, and the state legislature a
21 written report describing its activities during the preceding year and its recommendations
22 regarding its duties under sec. 5 of this Act.

23 (b) The commission shall submit its final comprehensive report at least 10 days
24 before the date the commission is terminated.

25 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 TERMINATION OF THE COMMISSION. The Navigable Waters Commission for
28 Alaska is terminated two years after the effective date of this Act.

SB

312

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB312-DNR-O&G-02-19-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title Conventional & Non-conventional Gas Leases RDU Resource Development
 Component Oil and Gas Development
 Sponsor Senate Resources
 Requester Senate Resources Component No. 439

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (1004 GF) +	**Indeterminate Positive Amount**					
---	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would eliminate the current over-the-counter shallow natural gas program. SB 312 would create a new gas only option under the competitive leasing and exploration licensing programs.

****Indeterminate positive fiscal note:** Moving from an over-the-counter program to a competitive program will result in increased revenue to the state. The commissioner will be able to set minimum rentals and bonus bid amounts based on technical analysis of the potential resources and economics of the lease or license area. While a best interest finding process will cost more up front, that cost will be more than offset by the gains in going to a competitive process. Also, having a best interest finding process at the leasing stage will facilitate a more efficient progression to exploration and development and provide the state with royalties and other revenues from development sooner.

Prepared by: Mark D. Myers Phone 269-8800
 Division: Oil and Gas Date/Time 2/19/04
 Approved by: Thomas Irwin, Commissioner Date 2/19/04
 Agency: Natural Resources

Exploration Licensing Public Process

- Company submits a proposal consisting of
 - Proposed license area (up to 500,000 acres)
 - Work commitment (\$\$ to be spent on exploration)
 - Term of license (up to 10 years)
- DO&G issues *Notice of Intent to Evaluate a License Proposal* and requests public comment
 - Public comment period must be for at least 30 days
 - Notice is:
 - placed in statewide and local newspapers
 - posted on state and division websites
 - mailed to addressees on division's mailing list
 - posted in local post offices
- DO&G issues *Request for Agency Information*
 - Sent to state and federal agencies, local governments and tribal organizations
 - Minimum of 60 days to submit information
- DO&G issues *Notice of Preliminary Best Interest Finding* and requests public comment; if within the coastal zone, DO&G also issues *ACMP Consistency Analysis*
 - 60-day public comment period
 - Notice is:
 - placed in statewide and local newspapers: 1-time posting
 - posted on state and division websites
 - mailed to addressees on division's mailing list
 - posted in local post offices
 - Display ads placed in statewide and local newspapers; 1 per week for 2 weeks
 - Division conducts public meetings to hear public testimony
- If within the coastal zone, DO&G issues *Proposed ACMP Consistency Determination*
 - 5 days to request elevation to resource commissioners (DNR, DEC, DF&G)
- DO&G issues *Notice of Final Finding, ACMP Consistency Determination*, and awards license
 - Those who participated in the public process have 20 days to request reconsideration by the commissioner

Contents of Best Interest Finding for Exploration Licenses and Areawide Lease Sales

1. Property descriptions and locations;
2. The petroleum potential of the license or sale area, in general terms;
3. Fish and wildlife species and their habitats in the area;
4. Current and projected uses in the area, including uses and value of fish and wildlife;
5. The governmental powers to regulate oil and gas exploration, development, production, and transportation;
6. Reasonably foreseeable cumulative effects of oil and gas exploration, development, production, and transportation on the license or sale area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources;
7. Stipulations and mitigation measures, including any measures to prevent and mitigate releases of oil and hazardous substances, to be included in the license or leases, and a discussion of the protections offered by these measures;
8. Method or methods most likely to be used to transport oil or gas from the lease sale or license area, and the advantages and disadvantages, and relative risks of each;
9. Reasonably foreseeable fiscal effects of the exploration license or lease sale and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the exploration license or lease sale, if any;
10. Reasonably foreseeable effects of oil and gas exploration, development, production, and transportation on the municipalities and communities within or adjacent to the exploration license or lease sale area; and
11. For lease sales: the bidding method or methods adopted by the commissioner;

For exploration licenses:

- a. describe the limitations, stipulations, conditions or changes from the proposal that are required to make the issuance of the license conform to the best interests of the state; and
- b. if only one proposal was submitted, identify the prospective licensee.

Areawide Leasing Public Process

- Lease sale placed on 5-year leasing schedule
- DO&G issues *Request for Agency Information and Call for Public Comments*
 - Sent to state and federal agencies, local governments and tribal organizations
 - Minimum of 60 days to submit information
 - Notice is:
 - posted on state and division websites
 - mailed to addressees on division's mailing list
- DO&G issues *Notice of Preliminary Best Interest Finding* and requests public comment; if within the coastal zone, DO&G also issues *ACMP Consistency Analysis*
 - 60-day public comment period
 - Notice is:
 - placed in statewide and local newspapers: 1-time posting
 - posted on state and division websites
 - mailed to addressees on division's mailing list
 - posted in local post offices
 - Display ads placed in statewide and local newspapers; 1 per week for 2 weeks
 - Division conducts public meetings to hear public testimony
- If within the coastal zone, DO&G issues *Proposed ACMP Consistency Determination*
 - 5 days to request elevation to resource commissioners (DNR, DEC, DF&G)
- DO&G issues *Notice of Final Finding, ACMP Consistency Determination*, and decision to lease 90 days prior to lease sale
 - Those who participated in the public process have 20 days to request reconsideration by the commissioner

SNG Leasing	Exploration Licensing	Areawide Lease Sales
Non-competitive	Competitive	Competitive
location of leases selected by applicant	location of license proposed by applicant	Sale area determined by commissioner
\$5,000 filing fee	\$1/acre licensing fee	Minimum Bonus \$\$/acre bid set by commissioner
No best interest finding (BIF) required	Best interest finding (BIF) required	Best interest finding (BIF) required
No ACMP Consistency Determination required	ACMP Consistency Determination required if in the coastal zone	ACMP Consistency Determination required if in the coastal zone
Notice of filing posted in newspaper; 60-day public comment period	Notice of license proposal posted in newspapers, in local post offices, and on state and division websites, mailed to division mailing list addressees ; 30-day public comment period	N/A
	Request for Agency Information Call for Public Comments	Request for Agency Information Call for Public Comments
Not Required	Preliminary BIF. Notice posted in newspapers, in local post offices, and on state and division websites; mailed to division mailing list addressees ; 60-day public comment period	Preliminary BIF. Notice posted in newspapers, in local post offices, and on state and division websites; mailed to division mailing list addressees ; 60-day public comment period
	Display ad in newspapers, 1 per week for 2 weeks	Display ad in newspapers, 1 per week for 2 weeks
	Division conducts public meeting(s)	Division conducts public meeting(s)
Not Required	Final BIF. Notice posted in newspapers, in local post offices, and on offices, and on state and division websites; mailed to division mailing list addressees ; 20-day reconsideration period	Final BIF. Notice posted in newspapers, in local post offices, and on offices, and on state and division websites; mailed to division mailing list addressees ; 20-day reconsideration period
		Lease sale conducted
Lease issued	License issued	Leases issued

Alaska State Legislature

Senate Resources Committee

Senator Scott Ogan, Chair

Senator Fred Dyson
Senator Kim Elton
Senator Georgianna Lincoln
Senator Ralph Seekins
Senator Ben Stevens
Senator Tom Wagoner



State Capitol, Room 103
Juneau, AK. 99801-1182
Phone: (907) 465-4907
Fax: (907) 465-3265

SPONSOR STATEMENT

SB 312 Conventional and Non-Conventional Gas Leases

Nine years ago shallow gas leasing legislation was passed. The intent of the original legislation was to create growth in private sector jobs, increase the tax base for local schools/governments, provide clean, inexpensive energy for rural Alaskan communities and continue development of our state's resources as mandated in our Constitution. This bill was based on the need to treat less economic, non-conventional gas, differently than deep-hole, high-pressure conventional oil and gas.

The original legislation, HB 394, allowed for acquiring leases on a first come, first serve basis. This was, in part, to encourage development of alternative gas resources in areas of the state not on the power grid. Due to the known shortage of natural gas in south central Alaska, interest in leasing on shore in the Cook Inlet Basin has skyrocketed. The unintended consequences of this, allowed leasing of state owned subsurface mineral estate in sometimes un-economic areas and areas that conflicted with a high density of homes and businesses. Without this legislation, another operator or speculator could immediately lease land relinquished by the original lessee. Also, land that is not currently leased is still subject to current over the counter standards. SB 312 is a critical first step to a long-term solution.

SB 312 Conventional and Non-Conventional Gas Leases:

- Eliminates over the counter, first come first serve shallow gas leases and replaces it with area wide leasing or exploration licensing.
- Requires a best interest finding before any oil and gas leasing or exploration licensing. This will give the Department of Natural Resources (DNR) control of what land is leased, avoiding unnecessary surface owner conflicts.
- Creates a gas only section of area-wide leasing and exploration licensing identified in a best interest finding by DNR
- Differentiates conventional and non-conventional gas resources for the purposes of lease rentals.
- Defines conventional and non-conventional gas development and treats each appropriately. Recognizes that lease rights should not be determined by depth only. Creates a better environment for maximizing production.
- Encourages exploration licenses with a best interest finding as the method for non-conventional gas exploration outside of the area wide leasing (rural Alaska).
- Makes the leasing and regulations fit the activity
- Both processes are competitive, ensuring that the state receives maximum value.
- Best interest findings are a time tested public process.

The genesis of this bill was by request of citizens from the Mat-Su & Kenai Peninsula areas, input from public meetings held by DNR, and Senate Resources Committee members.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 26, 2004

SUBJECT: Amendment I.4 to Senate Bill 312 -- notes to accompany the draft
(Work Order No. 23-LS1552I.4)

TO: Senator Kim Elton

FROM: Jack Chenoweth
Assistant Revisor of Statutes

The tenth or last element of the Property Owners' Bill of Rights calls for institution of a competitive bidding process for coalbed methane to replace the existing lease nomination or lease application system that characterizes inception of shallow natural gas development. Given that direction, the approach for any bill draft should essentially repeal the simple lease nomination or lease application process of current AS 38.05.177 so that shallow natural gas development--the Department of Natural Resources has suggested substituting reference to "nonconventional gas" to cover coalbed methane and related recovery--will occur according to the process in place in AS 38.05.180 for conventional oil and gas exploration and development, modified to limit that recovery to "gas only" as appropriate. Senate Bill 312 does that, so this amendment does not deal in depth with this element of the Property Owners' Bill of Rights.

I

The first item in the Bill of Rights directs that "property owners must have the legal right to say if, when, where, and how anyone comes on to their private property to explore, develop and/or produce the subsurface mineral estate."¹ You asked that this be changed into a requirement for mediation and arbitration.

This element is addressed in an amendment to AS 38.05.130, shown as the new language in new bill section 14. The breadth of the application of this amendment necessitates a title change for the bill.

¹ As a sidebar to this first entry, the authors also asked for inclusion of provisions that the state (1) establish and maintain a legal fund which owners can access to hire legal counsel, and (2) protect owners from retaliatory lawsuits from developers. Because the Bill of Rights' authors did not suggest parameters for the legal fund or offer ideas about how protection from retaliation should be provided, I have not spent time on this part of that element.

II

The second element of the Bill of Rights calls for a buyback of existing leases and a moratorium on new leasing. You directed that this element be limited to a moratorium without a buyback.

The current administration-ordered moratorium on new leases will stay in place until changes to shallow natural gas leasing take effect, so I have not dealt with this element of the request.

III

The third element of the material calls for modification of the current public notice requirements.

The changes sought by this element are made as an amendment to the notice requirements of AS 38.05.177(c) made in bill section 28. The general notice requirements of AS 38.05.945(a) and (b) would operate, with the additional provisions applicable when the proposal involves nonconventional gas leasing.

IV

The fourth element of the Bill of Rights mentions revising the best interest finding process. The authors have enumerated items that they want to see included in the determination made by that finding:

Prior to issuing any leases, the state must conduct a best interest finding process to analyze the economic, environmental, and social costs and benefits of potential coalbed methane operations, including but not limited to the potential diminution in value to private and public properties.

This is, of course, at variance with the general reference to the content of the "best interest finding" as applicable to oil and gas leases, as set out in AS 38.05.035(g).

Because of the variance from the contents of the required finding for conventional oil and gas leases, this is handled as an amendment to the current best interest findings statute, AS 38.05.035(g)(2), shown as an amendment beginning at page 13, line 31.

V

The fifth element of the Bill of Rights addresses baseline studies and burdens of proof. It seeks inclusion of the following:

-- a baseline measure of water quality and water quantity in all areas proposed for leasing;

- a baseline measure of conditions for methane seepage;
- a baseline measure for hydrological and geological conditions;
- a baseline inventory of existing fish and wildlife populations that identify sensitive or critical wildlife areas.

In addition, the authors want to establish in law the presumption that, if water quality or quantity diminishes during or within five years of conclusion of coalbed methane operations, there is established a rebuttable presumption that the coalbed activities caused that diminishment, with the operator to have the burden of proving otherwise.

Because the changes sought under this element would be unique to coalbed methane development, they are set out as new provisions under AS 38.05.177(p) and (q), added by bill section 32.

VI

The sixth element questions exercise of local control. The directive says that "the state must ensure local governmental entities have maximum powers of self-government that enable them to regulate coalbed methane development to protect the health, safety, general welfare, and quality of life for local residents."

To address this element of the Bill of Rights, I propose only the repeal of AS 31.05.125 and AS 38.05.177(n) and to amend the text of sec. 1, ch. 45, SLA 2003, to eliminate the current "waiver of local planning authority approval and requirements relating to compliance with local ordinances and regulations" provision added during last year's First Session.

VII

Element seven of the document speaks to protection of critical habitat and recreational land. Again, no specifics are provided.

If critical or sensitive areas are identified as part of the best interest finding process, they could be eliminated from the proposed lease area or leased subject to appropriate safeguards. Without further detail provided by the authors of the Bill of Rights and in light of my understanding of how critical areas may be protected (set out below), I suggest that no drafting be done on this element of the request.

VIII

Element eight of the Bill of Rights addresses water protection.

Since the nature of the request involves on-site exploration and development activity, I believe these should be treated as limitations on and directives to the Alaska Oil and Gas Conservation Commission. AS 31.05.030(j) currently addresses shallow natural gas/coalbed methane oversight by that commission, so the material is handled as an amendment of that subsection.

IX

This element is covered under the catchall caption of "Property Owner Safeguards." It specifically asks for promulgation of regulations. But the adoption of regulations requires, as you well know, a sufficient basis in statute law, for a regulation may be no more than a "rule, . . . order, or standard of general application . . . adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure;" AS 44.62.630(3).

The Bill of Rights authors have asked for inclusion of

enforceable minimum statewide regulations that require best available technology and practices to ensure the health and safety of citizens on the issues of notice, air and water quality, setbacks, use and disposal of any toxics, and surface restoration and reclamation

as well as

standards . . . that increase the statewide and per incident bond requirement for all coalbed methane operators and developers to ensure full restoration of the surface [in] amounts . . . sufficient to provide the full pre-leasing fair market value of any property or business damaged by coalbed methane development.

The first of these features could be addressed as a reenactment of AS 38.05.177(f)² and handled as lease conditions or stipulations. The balance of the request is addressed as an amendment to AS 38.05.177(k) and would be a modification of the bond requirements already set out in that subsection.

*

Except as I have otherwise specifically noted, that should cover just about all of the request.

JBC:mdr
04-121.mdr

² Existing AS 38.05.177(f) addresses rent payment, but an amendment proposed in Senate Bill 312 added in AS 38.05.180(n)(2) covers that provision so the language of AS 38.05.177(f) is in effect superfluous.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ELTON

TO: SB 312

1 Page 1, lines 1 - 3:

2 Delete all material and insert:

3 ""An Act relating to natural resources; and providing for an effective date.""

4

5 Page 6, lines 19 - 23:

6 Delete all material and insert:

7 "(j) For exploration and development operations involving
8 nonconventional gas, the commission

9 (1) may not

10 (A) issue a permit to drill under this chapter if the well
11 would be used to produce gas from an aquifer that may serve as a source
12 of water for human consumption or agricultural purposes unless the
13 commission finds that the well will not adversely affect the aquifer or a
14 source of water for human consumption or agricultural purposes;

15 (B) allow

16 (i) injection of produced water except at depths
17 below known sources of water for human consumption or
18 agricultural purposes; or

19 (ii) the use of toxic hydraulic fracturing fluids;

20 (2) shall

21 (A) regulate hydraulic fracturing in nonconventional gas
22 wells to assure protection of drinking water quality;

23 (B) regulate the disposal of wastes produced from the

1 operations; and

2 (C) for the purposes of AS 46.04.030(b), [THE
3 COMMISSION SHALL] determine whether a well drilled for
4 nonconventional [SHALLOW NATURAL] gas may penetrate a formation
5 capable of flowing oil and, if so, whether the volume of oil encountered will be
6 of such quantities that an oil discharge prevention and contingency plan will be
7 required."

8
9 Page 7, line 18:

10 Delete "AS 38.05.177"

11 Insert "AS 38.05.965"

12
13 Page 13, line 30:

14 Delete "and"

15 Insert "[AND]"

16
17 Page 13, line 31, following "(2)":

18 Insert "for a gas only lease sale for nonconventional gas, in addition to the
19 requirements of (1) of this subsection, an analysis of

20 (A) the economic, environmental, and social costs and
21 benefits of the nonconventional gas exploration and development
22 operations on land that is the subject of the lease sale; and

23 (B) the effect on the value of property, both public and
24 private, that would be affected by the nonconventional gas exploration
25 and development operations on the land that is the subject of the lease
26 sale; and

27 (3)"

28
29 Page 14, following line 15:

30 Insert a new bill section to read:

31

1 "* Sec. 14. AS 38.05.130 is amended to read:

2 Sec. 38.05.130. Entry on land subject to prior agreement; damages
3 [DAMAGES] and posting of bond. Rights may not be exercised by the state, its
4 lessees, successors, or assigns under the reservation as set out in AS 38.05.125

5 (1) without reaching a prior written agreement with the owner
6 under which the state and its lessees, successors, or assigns may enter upon the
7 land in the exercise of the reserved right, subject to the following:

8 (A) if, after a reasonable period of negotiation over the
9 terms of entry on to the land, the owner and the lessee cannot agree, the
10 owner and lessee shall appoint a person mutually agreeable to the parties
11 to act as mediator in the dispute; the lessee shall bear the cost of mediation
12 under this subparagraph;

13 (B) if mediation has been used under (A) of this paragraph
14 without resolving the differences, the parties shall submit to arbitration to
15 be carried out under AS 09.43.030 unless otherwise agreed to by the
16 parties; the parties shall equally divide the costs of arbitration incurred
17 under this subparagraph; and

18 (C) only one written agreement authorizing entry onto the
19 land may be required under this paragraph to authorize activity by the
20 state, its lessees, successors, or assigns, or by their agents, attorneys, and
21 servants as allowed under this section; an agreement entered into under
22 this paragraph is

23 (i) for the duration of the period of production or
24 recovery operations unless the parties agree to a different duration;
25 and

26 (ii) a covenant running with the land;

27 (2) until the state, its lessees, successors, or assigns make provision to
28 pay the owner of the land full payment for all damages sustained by the owner, by
29 reason of entering upon the land; if [. IF] the owner, for any cause, refuses or neglects
30 to settle the damages, the state, its lessees, successors, assigns, or an applicant for a
31 lease or contract from the state for the purpose of prospecting for valuable minerals, or

1 option, contract, or lease for mining coal, or lease for extracting geothermal resources,
 2 petroleum, or natural gas, may enter upon the land in the exercise of the reserved
 3 rights after posting a surety bond determined by the director, after notice and an
 4 opportunity to be heard, to be sufficient as to form, amount, and security to secure to
 5 the owner payment for damages, and may institute legal proceedings in a court where
 6 the land is located, as may be necessary to determine the damages that [WHICH] the
 7 owner may suffer."
 8

9 Renumber the following bill sections accordingly.

10

11 Page 19, line 7:

12 Delete "AS 38.05.177(o)"

13 Insert "AS 38.05.965"

14

15 Page 20, line 13:

16 Delete "SURFACE]; and"

17 Insert "SURFACE; AND"

18

19 Page 20, line 14, through page 23, line 5:

20 Delete all material and insert:

21 "(2) DO NOT APPLY TO AUTHORIZE LEASE OF

22 (A) LAND

23 (i) THAT IS SUBJECT TO AN OIL AND GAS
 24 EXPLORATION LICENSE OR LEASE ISSUED UNDER
 25 AS 38.05.131 - 38.05.134; OR

26 (ii) THAT IS LEASED UNDER AS 38.05.180;

27 (B) THE LAND (i) THAT IS PROPOSED TO BE SUBJECT
 28 TO AN OIL AND GAS EXPLORATION LICENSE OR LEASE ISSUED
 29 UNDER AS 38.05.131 - 38.05.134; OR (ii) THAT IS DESCRIBED IN AND
 30 PART OF A PROPOSED OIL AND GAS LEASING PROGRAM
 31 PREPARED UNDER AS 38.05.180(b); HOWEVER, THE COMMISSIONER

1 MAY WAIVE THE LIMITATIONS OF THIS SUBPARAGRAPH;

2 (C) THE LAND THAT IS HELD UNDER A COAL LEASE
3 ENTERED INTO UNDER AS 38.05.150, UNLESS THE APPLICANT FOR
4 A SHALLOW NATURAL GAS LEASE IS ALSO THE LESSEE UNDER
5 AS 38.05.150 OF THAT LAND; OR

6 (D) THE VALID EXISTING SELECTIONS OF THE
7 ALASKA MENTAL HEALTH TRUST AUTHORITY MADE FOR THE
8 PURPOSE OF RECONSTITUTING THE MENTAL HEALTH TRUST
9 ESTABLISHED UNDER THE ALASKA MENTAL HEALTH ENABLING
10 ACT, P.L. 84-830, 70 STAT. 709 (1956), THAT BECOME SUBJECT TO
11 MANAGEMENT UNDER AS 38.05.801, OR OF LAND THAT HAS BEEN
12 DESIGNATED BY LAW FOR OR IS SUBJECT TO DESIGNATION FOR
13 CONVEYANCE TO THE ALASKA MENTAL HEALTH TRUST
14 AUTHORITY; HOWEVER, AFTER CONSULTATION WITH THE
15 ALASKA MENTAL HEALTH TRUST AUTHORITY, THE
16 COMMISSIONER MAY WAIVE THE LIMITATIONS OF THIS
17 SUBPARAGRAPH].

18 * Sec. 28. AS 38.05.177(c) is amended to read:

19 (c) When the director considers an area for a nonconventional gas lease,
20 the [THE] director shall give notice under AS 38.05.945 [OF RECEIPT OF THE
21 LEASE APPLICATION] and call for comments from the public. The director's call
22 for public comments must provide opportunity for public comment for a period of not
23 less than 90 [60] days. In addition to the requirements of AS 38.05.945(b), the
24 director shall provide notice in at least one newspaper of general circulation in
25 the vicinity of the proposed action and in at least one newspaper of statewide
26 circulation, with each of these notices to be provided at least twice and at
27 intervals of not less than five days between publications, and shall provide
28 written notification by registered mail to each resident, municipality, tribe or
29 tribal organization, and community council within five miles of the proposed
30 action. Each published or mailed notice must include a detailed map of the area
31 considered for lease [IF, AFTER REVIEW OF INFORMATION RECEIVED

1 DURING THE PUBLIC COMMENT PERIOD, THE DIRECTOR DETERMINES
2 THAT THE DISCOVERY OF A LOCAL SOURCE OF NATURAL GAS WOULD
3 BENEFIT THE RESIDENTS OF AN AREA, THE DIRECTOR SHALL EXECUTE
4 A LEASE FOR THE AREA DESCRIBED IN (b) OF THIS SECTION. THE
5 DIRECTOR SHALL EXECUTE THE LEASE AFTER COMPLETION OF A TITLE
6 SEARCH, THE CLOSE OF THE PUBLIC COMMENT PERIOD, AND, IF REVIEW
7 IS REQUIRED UNDER AS 46.40, AFTER THE FINAL CONSISTENCY
8 DETERMINATION IS MADE UNDER AS 46.40. A LEASE ENTERED INTO
9 UNDER THIS SUBSECTION GIVES THE LESSEE THE EXCLUSIVE RIGHT TO
10 EXPLORE FOR, DEVELOP, AND PRODUCE, FOR A TERM OF THREE YEARS,
11 NATURAL GAS ON THE STATE LAND DESCRIBED IN THE LEASE; THE
12 RIGHT TO EXPLORE FOR, DEVELOP, AND PRODUCE IS LIMITED TO GAS
13 FROM A FIELD IF A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE
14 SURFACE].

15 * Sec. 29. AS 38.05.177(f) is repealed and reenacted to read:

16 (f) The director shall require that, for a gas only lease for the exploration and
17 development of nonconventional gas, the lessee or the lessee's agent shall use the best
18 available technology and practices at the time the lease was entered into with respect
19 to

20 (1) reasonable and appropriate measures to mitigate the noise of
21 compressors, engines, and other equipment operated by the lessee or the lessee's agent
22 of compressor stations on the lease; noise mitigation measures developed under this
23 paragraph must be determined with reference to the population density of the parcel or
24 parcels subject to the lease, the size of the owner's parcels, and the general character of
25 the land subject to the lease;

26 (2) appropriate setbacks governing the placement by the lessee or the
27 lessee's agent of compressor stations on the lease; setbacks developed under this
28 paragraph must be determined with reference to the population density of the parcel or
29 parcels subject to the lease, the size of the owner's parcels, and the general character of
30 the land subject to the lease;

31 (3) safeguarding of air and water quality; standards developed under

1 this paragraph must consider standards required by appropriate federal and state law;

2 (4) use and disposal of toxic and hazardous substances; standards
3 developed under this paragraph must consider standards required by appropriate
4 federal and state law, and

5 (5) surface restoration, reclamation, and abatement of the adverse
6 effects of the exploration and development operations on the lease using natural
7 revegetation or reseeded using endemic plant species; the lease may require the lessee
8 or the lessee's agent to consult with the director of the division of agriculture.

9 * Sec. 30. AS 38.05.177(k) is amended to read:

10 (k) For a gas only lease for the exploration and development of
11 nonconventional gas, the [THE] commissioner shall, [MAY

12 (1) ADOPT ONLY THE REGULATIONS THAT ARE
13 REASONABLE AND THAT ARE NECESSARY TO IMPLEMENT, INTERPRET,
14 OR MAKE SPECIFIC THE PROVISIONS OF THIS SECTION OR TO ESTABLISH
15 PROCEDURES TO GOVERN APPLICATION OF THE PROVISIONS OF THIS
16 SECTION; AND

17 (2)] in addition to any requirement for a bond under AS 38.05.130,

18 (1) establish by regulation a form and amount for statewide, areawide,
19 unit-wide, or per-lease bonds sufficient

20 (A) to secure damages that may be caused by the activities of a
21 lessee, or the lessee's successors or assigns, related to a [SHALLOW
22 NATURAL GAS] lease entered into under AS 38.05.180 and this section; the
23 amount of the bond required by this subparagraph must be sufficient to
24 provide the full pre-leasing fair market value of property or business
25 damaged by the activities; and

26 (B) to ensure full restoration of the surface against the
27 adverse effects of the exploration and development operations on the
28 lease; and

29 (2) [IF THE COMMISSIONER ACTS UNDER THIS PARAGRAPH,
30 THE COMMISSIONER

31 (A) SHALL] require a person applying for a lease under

1 AS 38.05.180 and this section to post the bond in the amount or amounts
 2 determined under (1) of this subsection as a condition for the director's
 3 executing the lease [;

4 (B) MAY NOT REQUIRE A BOND POSTED UNDER THIS
 5 PARAGRAPH FROM A PERSON APPLYING FOR A LEASE IF THE
 6 PERSON HAS ALREADY POSTED A BOND COVERING THE PERSON'S
 7 STATEWIDE OIL AND GAS LEASING ACTIVITIES IN AN AMOUNT OF
 8 AT LEAST \$500,000].

9 * Sec. 31. AS 38.05.177(l) is amended to read:

10 (l) A lessee holding [OBTAINING] a lease modified under
 11 AS 38.05.180(n)(2) [THIS SECTION] may exercise the rights authorized by this
 12 section and the lease. The rights granted by the lease must be exercised in a manner
 13 that does not unreasonably interfere with eventual development of other mineral
 14 deposits on the land leased. However, in a lease entered into under AS 38.05.150 for
 15 land that is already subject to a lease covered [LEASED] under this section, coal may
 16 not be mined or extracted by the coal lessee from the coal lease without prior
 17 agreement with the lessee holding the lease covered [ISSUED] under this section.

18 * Sec. 32. AS 38.05.177 is amended by adding new subsections to read:

19 (p) The commissioner may not enter into a lease covered under this section
 20 unless, for areas that may be proposed for leasing, the commissioner first obtains data
 21 from which to make baseline

22 (1) measures of water quality and water quantity;

23 (2) conditions of methane seepage;

24 (3) measures of hydrological and geological conditions; and

25 (4) measures or inventories of fish and wildlife populations that are at
 26 least sufficient to identify sensitive or critical wildlife areas.

27 (q) The owner may bring an action for damages based on diminishment of
 28 water quality or water quantity that may be caused by the activities of a lessee, or the
 29 lessee's successors or assigns, related to a gas only lease for nonconventional gas
 30 entered into under AS 38.05.180 and covered under this section. In an action brought
 31 under this subsection, evidence that, during the period before the lease is terminated or

1 abandoned and for a period of five years thereafter, water quality or water quantity
 2 diminished below the standards set in the baseline data obtained under (p)(1) of this
 3 section creates a rebuttable presumption that the lessee's exploration and development
 4 operations involving lease activities caused the diminishment."

5
 6 Renumber the following bill sections accordingly.

7
 8 Page 26, lines 22 and 23:

9 Delete "for purposes of this subparagraph, "nonconventional gas" has the
 10 meaning given in AS 38.05.177;"

11
 12 Page 38, following line 5:

13 Insert a new bill section to read:

14 "* Sec. 43. AS 38.05.180(n) is amended to read:

15 (n) The commissioner may establish by regulation that after a well has been
 16 plugged and abandoned, the rental rate which was in effect during the year of
 17 abandonment is maintained for the remainder of the term. Rental is payable in
 18 advance and continues until income to the state from royalty or net profit share
 19 exceeds rental income to the state for that year. Under this subsection,

20 (1) [OIL AND GAS] leases for oil and gas or for gas only shall
 21 provide for payment to the state of rental on the following basis:

22 (A) [(1)] for the first year, \$1.00 per acre;

23 (B) [(2)] for the second year, \$1.50 per acre;

24 (C) [(3)] for the third year, \$2.00 per acre;

25 (D) [(4)] for the fourth year, \$2.50 per acre;

26 (E) [(5)] for the fifth and following years, \$3.00 per acre;

27 (2) if the lessee under a gas only lease demonstrates to the
 28 commissioner that the potential resources underlying the lease are reasonably
 29 estimated to be only nonconventional gas, the rental payment is \$1.00 per acre
 30 until the lease expires or paying quantities of conventional oil or gas are
 31 discovered underlying the lease."

1

2 Renumber the following bill sections accordingly.

3

4 Page 38, lines 24 - 29:

5 Delete all material and insert:

6 **** Sec. 45.** AS 38.05.180 is amended by adding a new subsection to read:

7 (ff) The provisions of this section that authorize oil and gas leases also apply
8 to authorize the commissioner to issue leases for the production of gas only. In
9 authorizing and managing leases under this subsection, the terms "oil and gas" or "oil
10 or gas" as they are used in this chapter may be read and applied as appropriate as
11 referring to gas only. When a lease is authorized as a gas only lease, the lease does
12 not give the lessee the right to produce oil. If a well drilling for gas under a gas only
13 lease authorized by this subsection penetrates a formation capable of producing oil, the
14 owner or operator

15 (1) shall notify the department and the Alaska Oil and Gas
16 Conservation Commission; and

17 (2) may not conduct further operations in the drilled well until the
18 facility complies with all applicable laws and regulations relating to oil and gas
19 exploration and production; however, this paragraph does not prevent the owner or
20 operator from conducting activities that may be required by the Alaska Oil and Gas
21 Conservation Commission to plug, plug-back, or abandon a well."

22

23 Page 40, following line 6:

24 Insert a new bill section to read:

25 **** Sec. 49.** AS 38.05.965 is amended by adding a new paragraph to read:

26 (25) "nonconventional gas" means coal bed methane, shales containing
27 gas, or gas hydrates."

28

29 Renumber the following bill sections accordingly.

30

31 Page 42, line 18:

1 Delete "AS 38.05.177"

2 Insert "AS 38.05.965"

3

4 Page 44, line 5:

5 Delete "AS 38.05.177"

6 Insert "AS 38.05.965"

7

8 Page 44, line 16:

9 Delete "AS 38.05.177"

10 Insert "AS 38.05.965"

11

12 Page 45, following line 7:

13 Insert a new bill section to read:

14 "* Sec. 61. The uncodified law of the State of Alaska enacted in sec. 1, ch. 45, SLA 2003,
15 is amended to read:

16 LEGISLATIVE FINDINGS. The legislature finds that

17 (1) the development of shallow natural gas resources is in the best
18 interests of the State of Alaska;

19 (2) shallow natural gas is abundant and widespread in Alaska and
20 bears the promise of providing Alaskans, particularly Alaskans living in rural areas,
21 with an inexpensive and clean source of energy if those resources can be economically
22 developed;

23 (3) the development of shallow natural gas poses significantly fewer
24 risks and creates substantially less impact to the environment than traditional deep oil
25 and gas projects, which have served as the model for oil and gas industry and
26 environmental regulations to date in Alaska;

27 (4) the regulatory requirements developed and applied to traditional
28 deep oil and gas projects in Alaska are ill-suited and unduly onerous when applied to
29 shallow natural gas projects, threatening the economic viability of otherwise desirable
30 exploration and development projects;

31 (5) there is an immediate state and national need for the development

1 of clean and economical unconventional energy sources, such as shallow natural gas
2 resources;

3 (6) reform of existing laws and regulations is needed to remove
4 unnecessary regulatory burdens on the private sector to foster and encourage the
5 development in Alaska of these necessary resources;

6 (7) the legislature is acting in the interest of promoting the active
7 development of such resources, while ensuring that suitable measures are taken to
8 protect human health and safety and the natural environment,

9 (A) to remove impediments to the responsible development of
10 shallow natural gas; and

11 (B) to provide the proper state agencies with clear authority and
12 discretion to adopt regulatory practices appropriate to shallow natural gas
13 exploration and development projects, in recognition of the lower risks posed
14 by such projects to human health and safety and the natural environment [;
15 AND

16 (C) TO RESERVE ALL RIGHTS AND POWERS NOT
17 PREEMPTED BY FEDERAL LAW AND REGULATION IN ORDER TO
18 ASSERT STATE PRIMACY OVER THE REGULATION OF SHALLOW
19 NATURAL GAS]."

20
21 Renumber the following bill sections accordingly.

22
23 Page 45, lines 8 - 20:

24 Delete all material and insert:

25 "* Sec. 62. AS 31.05.125, 31.05.170(14); AS 38.05.177(b), 38.05.177(d), 38.05.177(e),
26 38.05.177(g), 38.05.177(h), 38.05.177(j), 38.05.177(m), 38.05.177(n), 38.05.177(o); and
27 AS 46.04.900(25) are repealed.

28 * Sec. 63. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 CERTAIN SHALLOW NATURAL GAS LEASES AND LEASE APPLICATIONS
31 TO BE ADMINISTERED UNDER FORMER LAW. The provisions of AS 38.05.177(a), (c),

1 (f), (k), and (l), amended by secs. 27 - 31 of this Act, as those provisions read on the day
2 before the effective date of amendment of those subsections, and the provisions of
3 AS 38.05.177(b), (d), (e), (g), (h), (j), and (m) - (o), repealed by sec. 62 of this Act, as those
4 provisions read on the day before the effective date of the repeal of those subsections, apply to
5 shallow natural gas

6 (1) leases issued under AS 38.05.177 and in effect on December 31, 2003; and

7 (2) lease applications under AS 38.05.177 that were received by the
8 Department of Natural Resources before January 1, 2004."

ALASKA PROPERTY OWNERS' BILL OF RIGHTS

WHEREAS, Alaskans cherish their private property rights;

WHEREAS, coalbed methane (shallow gas) development threatens the rights of private property owners to enjoy the fruits of their labors;

WHEREAS, state law currently fails to adequately protect private property owners from the threats of coalbed methane development;

WHEREAS, Alaskans rely on public lands and waters for subsistence, recreation, and the operation of businesses that depend on the health of those lands and waters; and

WHEREAS, many Alaskans live adjacent to public and private lands that have been leased for coalbed methane development;

NOW, THEREFORE, BE IT RESOLVED WE ALASKANS DEMAND THE ADOPTION OF AN ALASKA PROPERTY OWNERS' BILL OF RIGHTS TO PROTECT OUR CLEAN AIR, PURE WATER, PLENTIFUL FISH AND WILDLIFE RESOURCES, AND QUALITY OF LIFE FOR FUTURE GENERATIONS; AND

BE IT FURTHER RESOLVED THAT IN ORDER TO PRESERVE AND SUSTAIN THESE VALUES AND OUR PRIVATE PROPERTY RIGHTS THE LEGISLATURE MUST ADOPT STATEWIDE LEGISLATION THAT INCLUDES ALL OF THE FOLLOWING PROTECTIONS:

- 1) **PROPERTY OWNER CONSENT:** Property owners must have the legal right to say if, when, where and how anyone comes onto their private property to explore, develop and/or produce the subsurface mineral estate. The state must provide a legal fund which surface owners can access to hire legal counsel. Private property owners must also be protected from retaliatory lawsuits from developers.
- 2) **BUYBACK & MORATORIUM:** The state must buy back all coalbed methane leases already let, and halt all further coalbed methane leasing until all the provisions of this Property Owners' Bill of Rights are enacted.
- 3) **PROPER NOTICE:** The state must provide all landowners within five (5) miles of a proposed coalbed methane lease with ninety (90) days actual written notice before a best interest finding process begins. Notice by registered mail must also be provided to local, municipal, and tribal entities with jurisdiction within the proposed lease areas. Notice by publication must also be provided at local post offices, in a local newspaper and a newspaper of statewide circulation. All notices described above must include, among other things, a detailed map of the affected area proposed for lease.

- 4) **BEST INTEREST FINDING:** Prior to issuing any leases, the state must conduct a best interest finding process to analyze the economic, environmental, and social costs and benefits of potential coalbed methane operations, including but not limited to the potential diminution in value to private and public properties.
- 5) **BASELINE STUDIES & BURDEN OF PROOF:** The state must measure baseline water quality and quantity in all areas proposed for leasing prior to granting any lease application, including all surface and well waters that may be affected. Prior to granting any lease application, the state must also measure baseline conditions for methane seepage, as well as for hydrological and geological conditions in all areas proposed for leasing. Finally, the state must conduct baseline inventory studies of existing fish and wildlife populations to identify sensitive or critical wildlife areas to be excluded from coalbed methane leasing. If a property owner's water quality or quantity diminish during or within five (5) years after coalbed methane operations on or around his/her property, there shall be a presumption such operations caused such diminishment or pollution, and the coalbed methane operator shall carry the burden of proving otherwise.
- 6) **LOCAL CONTROL:** The state must ensure local governmental entities have maximum powers of self government that enable them to regulate coalbed methane development to protect the health, safety, general welfare, and quality of life for local residents.
- 7) **PROTECT CRITICAL HABITAT & RECREATIONAL LANDS:** The state must identify and implement "no drill" zones, and prohibit coalbed methane leasing and development in sensitive or critical wildlife areas, particularly those areas used for subsistence, hunting, fishing and recreational activities.
- 8) **WATER PROTECTION:** The state must prohibit coalbed methane water extraction in groundwater aquifers that are the source of existing or future water wells, and prohibit the use of toxic or hydraulic fracturing fluids. Furthermore, the state must require the deep-well underground reinjection of all liquids and wastes produced and used during coalbed methane development, and it must ensure there is no hydrological connection between the waste injection zones and present or future drinking water sources.
- 9) **PROPERTY OWNER SAFEGUARDS:** The state must promulgate by December 2004 enforceable minimum statewide regulations that require best available technology and practices to ensure the health and safety of citizens on the issues of noise, air and water quality, setbacks, use and disposal of any toxics, and surface restoration and reclamation. New standards must also be established that increase the statewide and per incident bond requirement for all coalbed methane operators and developers to ensure full restoration of the surface. These amounts must be sufficient to provide the full pre-leasing fair market value of any property or business damaged by coalbed methane development.
- 10) **COMPETITIVE BIDDING:** In order to maximize the benefit of our natural gas resources, the state must re-institute a competitive bidding process for all coalbed methane (shallow gas) leases.

Submitted this 18th day of March, 2004, to all Alaskans and the Alaska Legislature.

A FEW CBM FACTOIDS

CBM LEASED LANDS IN ALASKA

Mat-su :300,000 acres

Homer: 22,000 acres

Healy: 47,000 acres

Hoolitina: 20,000 acres

Red Dog: 20,000 acres

Applied for: 80,000 acres

None of the bills currently in the legislature apply to the lands already leased.

IN THE MAT-SU VALLEY

--There are 12,396 lots leased to Coal Bed Methane in the Valley

--96% of the lots are privately owned

--The assessed value of the lots is \$235,000,000

--The market value is approximately \$800,000,000

--The total price the CBM companies paid to lease the subsurface rights:\$60,000. 60 leases at \$500 per lease and 300,000 acres at \$1 per acre.

ROYALTIES

--The state gets 12.5%

Mark Meyer[Oil and Gas Commission head]has stated that approximately 1/2 will go to administering CBM, and at present there are not sufficient personnel to do the job

GAS CONSUMPTION IN SOUTHCENTRAL

--Southcentral Alaska uses about 200 billion s of cubic feet of natural gas per year

--37% goes to LGN plant, 25% to Agrium plant, 13% for gas utilities use, 16.5% for power generation, 8% for field operations, 2.5% unaccounted for.

--Evergreen states [in the most optimistic scenerio]they could provide 25-30 billions of cubic per year for maybe 20 years. This is only 1/6 the amount we need. This of course has not been balanced against all the other assets we have in the Valley.

AMOUNT EVENRGEEN PAID LOBBYISTS IN 2003

--March: \$10,000 April: \$10,000 May: \$10,000 June: \$10,000 July: \$10,000
October 30: Another \$30,000 billed to Evergreen. This is \$80,000 total Evergreen paid lobbyists.

AMOUNT EVERGREEN PAID SCOTT OGAN

--Evergreen paid Sen. Ogan \$39,000 in 2003. That amounts to over \$100,000 over three years.

JOBS FOR ALASKANS

Evergreen has approximately 275 employees TOTAL. The Alaska operation, even performing at the top of their most optimistic projections, would only be a fraction of their total operations. How could they possibly provide "hundreds" of jobs to Alaskans?



Coastal Realty

Annie Whitney

Associate Broker

March 17, 2004

To Whom It May Concern:

I am writing this letter to express my recent professional experience in regards to the local Coal Bed Methane Lease issue. Because of the leases that were activated without public notice or input and the ensuing controversy, the market for raw land, in my opinion, has been compromised.

I have personally experienced a solid buyer (an investor who had purchased property through me in the past) who decided against several purchases when she found out they were in an area where the subsurface rights had been leased. I also have clients who purchased a property through me last summer call me and express grave concern and alarm because they had just found out that the property they had purchased off East End Road was part of the lease. They had anticipated moving their young family to this property to enjoy a quiet and rural lifestyle not available to them in southern Massachusetts. They are now discussing changing their plans and selling their property. However, the threat, now, of not being able to resell and recoup their losses is very real, since more and more buyers are refusing to purchase properties impacted by these leases.

In my opinion this was a VERY ill-advised decision made within the State of Alaska bureaucracy and it is impacting me personally and my personal ability to do business, as well as impacting property values and the ability of owners to sell their property.

Thank you for your attention to this matter.

Sincerely,

Anne C. Whitney
Associate Broker

anniew@xvz.net

www.anniesrealestate.com

203 W. Pioneer Avenue #1

(907) 235-7700

Homer, Alaska 99603

fax: (907) 235-1216

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Rapid Gas Field Expansion

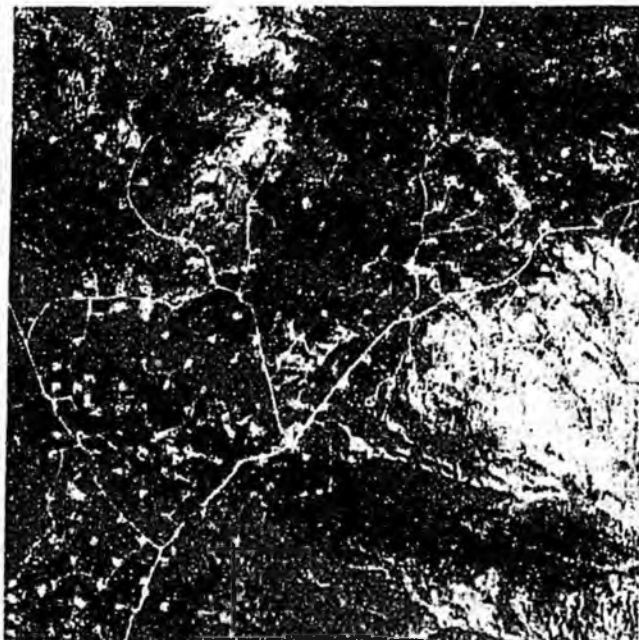
Jonah Field, WY

Images are of a **7 square mile area**, with **1 well per 40 acres**

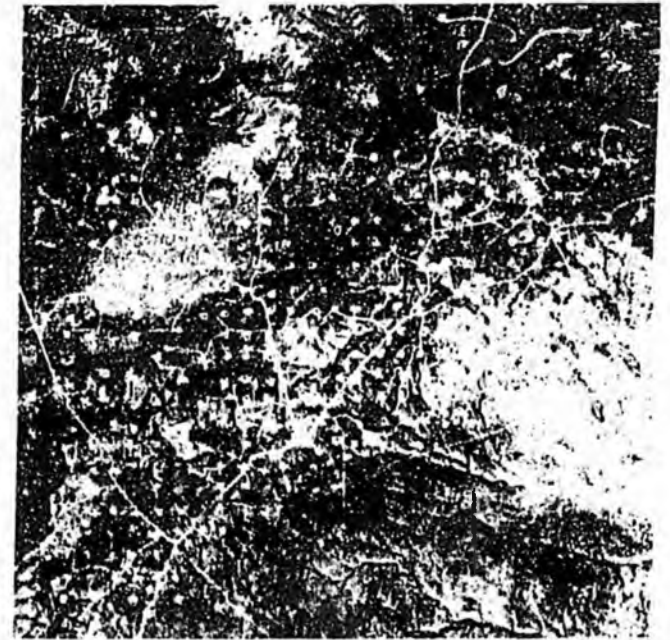
Encana, the operator, has applied to infill drill to **1 well per every 20 acres** – adding another **1,250 wells**



1996



1999



2002

Alaska State Legislature

Senate Resources Committee

Senator Scott Ogan, Chair

Senator Fred Dyson
Senator Kim Elton
Senator Georgianna Lincoln
Senator Ralph Seekins
Senator Ben Stevens
Senator Tom Wagoner



State Capitol, Room 103
Juneau, AK. 99801-1182
Phone: (907) 465-4907
Fax: (907) 465-3265

Memorandum

DATE: March 22, 2004
TO: All Senate Resources Committee Members
FROM: Senator Scott Ogan
Chairman, Senate Resources Committee
RE: SB 312

SB 312 "Conventional & Non-conventional Gas Leases" will be brought up this afternoon in Senate Resources for the purpose of introducing a conceptual amendment. Attached you will find a copy of "**The Alaska Property Owners' BILL OF RIGHTS**". This is the document that will serve as the conceptual amendment. Testimony will be taken.

It is still my intent to hear SB 355 "Waste Management/Disposal". This bill will be presented by D. E. C. Commissioner Ernesta Ballard. Depending upon time constraints, I expect that this piece of legislation will continue being heard on Wednesday.

If there are any questions, please contact my committee aide, Linda Hay at extension 4907.

Senator Scott Ogan
Chairman, Senate Resources Committee



SENATOR SCOTT OGAN 23RD Alaska State Legislature

Senate District H Lazy Mountain * Butte * Chugiak * Peters Creek * Fairview Loop

Knik-Goose Bay * Big Lake * Houston * Willow * Talkeetna * Trapper Creek

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Senator_Scott_Ogan@legis.state.ak.us

Http://www.akrepublicans.org/ogan

FACSIMILE TRANSMITTAL SHEET

TO: <u>JAEC Chenoweth</u>	FROM: <u>Linda Hay</u>
COMPANY:	DATE: <u>2-24-04</u>
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: <u>1</u>
PHONE NUMBER:	RE: <u>SB 312</u>

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

JAEC - Senate Resources yesterday adopted work draft 23-LS15521S 2/19/04 as the committee CS - no amendments as of yet - bill was heard + held.

Thank you
Linda

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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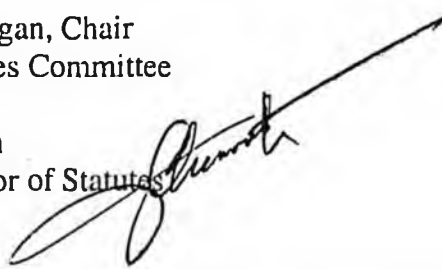
MEMORANDUM

February 19, 2004

SUBJECT: Draft CSSB 312(): notes to accompany the work draft
(Work Order No. 23-LS1552\S)

TO: Senator Scott Ogan, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes



The changes to the earlier "Q" version appear in this "S" version in bill sections 27 and 40.

I've set out language as submitted by the department but, in section 27, I'm not at all sure that AS 38.05.180(n)(2) necessarily *modifies* a lease. What the paragraph does do is change the rent that is due and payable on a gas only lease in which the lessee demonstrates that the recoverable resource is only nonconventional gas.

In bill section 40, the department deleted the second reference to "managed" in the phrase "authorized and managed" at the start of the third sentence, but made no change to "authorizing and managing" at the beginning of the second sentence. Is the difference in treatment something you and the department can live with?

JBC:med
04-213.med

Enclosure

23-LS1552S
Chenoweth
2/19/04

CS FOR SENATE BILL NO. 312()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RESOURCES COMMITTEE BY REQUEST

*adopted
as comment
C.S.
2-23-04*

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to natural gas exploration and development and to nonconventional
2 gas, and amending the section under which shallow natural gas leases may be issued;
3 and providing for an effective date."

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

5 * Section 1. AS 14.40.365(a) is amended to read:

6 (a) The University of Alaska may select and is entitled to receive the
7 conveyance of not less than 250,000 and not more than 260,000 acres of land
8 conveyed to the state under sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72
9 Stat. 339). The Board of Regents of the University of Alaska shall periodically submit
10 a list of selections to the commissioner of natural resources and, if the list of selections
11 contains land within the boundaries of a municipality, the Board of Regents of the
12 University of Alaska shall submit the list to the municipality. The Board of Regents
13 and the commissioner of natural resources shall periodically and jointly submit to the
14 legislature, within 30 days of the beginning of a regular legislative session, a list of the

1 selections of land proposed to be conveyed by the state to the University of Alaska
2 under this section. If the list submitted to the legislature contains land within the
3 boundaries of a municipality, the Board of Regents and the commissioner of natural
4 resources shall provide a copy of the list to the municipality. Each list must contain
5 not more than 25 percent of the total acres of land to which the university is entitled
6 after subtracting previous conveyances under this section, but not less than 25,000
7 acres or the remaining entitlement under this section, whichever is less. A list of
8 selections submitted shall be considered approved for conveyance to the University of
9 Alaska unless the legislature acts to disapprove the list during the legislative session
10 during which the list was submitted. If the amount of land to be conveyed exceeds the
11 balance due the university under this section, the university shall set out the land to be
12 conveyed in priority order. Land may not be selected if, on the date of its selection by
13 the university, it

14 (1) is identified in AS 16.20, AS 41.15.300 - 41.15.330, or AS 41.21 or
15 has been reserved by law from the public domain;

16 (2) is located within a municipality unless the land is vacant,
17 unappropriated, unreserved land; if land included on the list of selections is selected
18 by the municipality with remaining selection rights under AS 29.65 within 120 days of
19 receiving the Board of Regents' list of selections under this subsection, the university
20 may not select the land unless a binding agreement between the university and the
21 municipality is negotiated to allow the selection; if the municipal selection is
22 disapproved, in whole or in part, the university may select the land, or any available
23 portion of the land, and that selection will relate back to the date of the Board of
24 Regents' list of selections under this subsection and shall have priority over all other
25 selections or claims made subsequent to that notice; in this paragraph, "vacant,
26 unappropriated, unreserved land" has the meaning given in AS 29.65.130;

27 (3) is land

28 (A) included in a five-year proposed [OIL AND GAS] leasing
29 program under AS 38.05.180(b); or

30 (B) leased under, or for which a lease application is pending
31 under, AS 38.05.180(d) or 38.05.150;

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(4) is subject to

(A) an oil, gas, or coal lease, or coal prospecting permit;

(B) a mining claim, offshore prospecting permit, a prospecting site, an upland mining lease, or a mining leasehold location;

(5) is necessary to carry out the purpose of an interagency land management agreement; or

(6) is subject to conveyance under a land exchange or land settlement agreement.

* Sec. 2. AS 14.40.365(e) is amended to read:

(e) The list of selections of land submitted to the legislature may not include a land selection made by the University of Alaska under this section if the commissioner of natural resources determines in writing that the proposed selection

(1) includes land that the commissioner, in consultation with the commissioner of fish and game, determines has demonstrated value to the public as a habitat area that is especially critical to the perpetuation of fish or wildlife;

(2) includes land for which, at the time of its selection under this section, a municipality has made a selection under AS 29.65 unless the land selection is, at a later date, rejected by the commissioner of natural resources or relinquished by the municipality;

(3) includes land that the commissioner reasonably believes may be selected by a newly formed municipality under AS 29.65.030, but the commissioner may not withhold selection under this paragraph for more than three years after the municipality's incorporation;

(4) includes land within the boundaries of a municipality, the municipality has a remaining entitlement under AS 29.65, and the municipality selects the land under AS 29.65 within 120 days after receipt by the municipality of the Board of Regents' list of selections under (a) of this section;

(5) includes land that, at the time of its selection under this section,

(A) is subject to an [OIL AND GAS] exploration license issued under AS 38.05.131 - 38.05.134; or

(B) the commissioner reasonably believes will be made part of

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an [OIL AND GAS] exploration license issued under AS 38.05.131 - 38.05.134; the commissioner may not refuse to convey title to land to the University of Alaska under this subparagraph for more than two years after its first selection by the University of Alaska; or

(6) includes land the commissioner of natural resources reasonably believes would not be in the best interests of the state to convey outside of state ownership.

* Sec. 3. AS 19.40.200(b) is amended to read:

(b) The prohibition on disposal of state land under (a) of this section does not apply to a disposal

(1) to a licensed public utility or a licensed common carrier under AS 38.05.810(e);

(2) for the reauthorization of leases that were in effect on January 1, 1994, for nonresidential purposes within the following development nodes:

(A) Coldfoot:

Township 28 North, Range 12 West, Fairbanks Meridian

Sections 3 - 4

Sections 9 - 10

Sections 15 - 16

Sections 20 - 22

(B) Yukon River Crossing:

Township 12 North, Range 10 West, Fairbanks Meridian

Sections 6 - 7

Township 12 North, Range 11 West, Fairbanks Meridian

Sections 1 - 2

Section 12

Township 13 North, Range 10 West, Fairbanks Meridian

Sections 29 - 32

Township 13 North, Range 11 West, Fairbanks Meridian

Section 22

Sections 25 - 27

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Sections 34 - 36

(3) for nonresidential development within the following development

nodes:

(A) Deadhorse:

Township 10 North, Range 14 East, Umiat Meridian

Township 10 North, Range 15 East, Umiat Meridian

Section 8

Sections 17 - 20

Section 30

(B) Coldfoot:

Township 28 North, Range 12 West, Fairbanks Meridian

Sections 3 - 4

Sections 9 - 10

Sections 15 - 16

Sections 20 - 22

Township 29 North, Range 12 West, Fairbanks Meridian

Sections 23 - 27

Sections 34 - 35

(C) Franklin Bluffs:

Township 4 North, Range 14 East, Umiat Meridian

Sections 3 - 4

Sections 9 - 10

Sections 15 - 16

(D) Happy Valley:

Township 3 South, Range 14 East, Umiat Meridian

Sections 19 - 20

Sections 29 - 30

(E) Yukon River Crossing:

Township 12 North, Range 10 West, Fairbanks Meridian

Sections 6 - 7

Township 12 North, Range 11 West, Fairbanks Meridian

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Sections 1 - 2

Section 12

Township 13 North, Range 10 West, Fairbanks Meridian

Sections 29 - 32

Township 13 North, Range 11 West, Fairbanks Meridian

Section 22

Sections 25 - 27

Sections 34 - 36; or

(4) necessary for

(A) an oil and gas lease or gas only lease under AS 38.05.180;

(B) exploration, development, production, or transportation of oil and gas north of 68 degrees north latitude; or

(C) a state lease or materials sale for

(i) exploration, development, production, or transportation of oil or [AND] gas;

(ii) reconstruction or maintenance of state highways; or

(iii) construction or maintenance of airports.

* Sec. 4. AS 31.05.030(j) is amended to read:

(j) For the purposes of AS 46.04.030(b), the commission shall determine whether a nonconventional gas well [DRILLED FOR SHALLOW NATURAL GAS] may penetrate a formation capable of flowing oil and, if so, whether the volume of oil encountered will be of such quantities that an oil discharge prevention and contingency plan will be required.

* Sec. 5. AS 31.05.060(c) is amended to read:

(c) Notwithstanding the requirements of (a) and (b) of this section that relate to fixing a date for a hearing and causing notice of the hearing to be given, for an action under this chapter that involves the exploration for or development of nonconventional [SHALLOW NATURAL] gas and that has application to a single well or a single field, upon the request of a lessee or operator, the commission may, where operations might be unduly delayed, approve a variance from the commission's regulations that apply to the well or field without providing notice and opportunity to

1 be heard. In the exercise of its authority to issue the variance,

2 (1) the commission may approve the variance if

3 (A) the approval provides at least an equally effective means of
4 accomplishing the requirement set out in the commission's regulation; or

5 (B) the commission determines that the request is more
6 appropriate to the proposed operation than compliance with the requirement of
7 the regulation; and

8 (2) the terms of the approval of the variance may include exempting
9 the lessee or operator from a requirement of a regulation if the commission determines
10 that the requirement is not necessary or not suited to the well or field taking into
11 consideration

12 (A) the nature of the operation involved;

13 (B) the characteristics of the well or field for which the
14 variance is sought; and

15 (C) the reasonably anticipated risks of the exemption from the
16 requirement to human safety and the environment.

17 * Sec. 6. AS 31.05.170 is amended by adding a new paragraph to read:

18 (16) "nonconventional gas" has the meaning given in AS 38.05.965.

19 * Sec. 7. AS 36.30.850(b)(25) is amended to read:

20 (25) acquisition of confidential seismic survey data necessary for pre-
21 sale oil and gas lease or gas only lease analyses under AS 38.05.180;

22 * Sec. 8. AS 36.30.850(b)(33) is amended to read:

23 (33) contracts between the Department of Natural Resources and
24 contractors qualified to evaluate hydrocarbon development, production, transportation,
25 and economics, to assist the commissioner of natural resources in evaluating
26 applications for [OIL AND GAS] royalty increases or decreases or other [OIL AND
27 GAS] royalty adjustments, and evaluating the related financial and technical data,
28 entered into under AS 38.05.180(j);

29 * Sec. 9. AS 38.04.065(i) is amended to read:

30 (i) An oil and gas lease sale or gas only lease sale is not subject to this
31 section. Oil and gas lease sales and gas only lease sales are subject to the planning

1 process established under AS 38.05.180.

2 * Sec. 10. AS 38.05.035(e) is amended to read:

3 (e) Upon a written finding that the interests of the state will be best served, the
4 director may, with the consent of the commissioner, approve contracts for the sale,
5 lease, or other disposal of available land, resources, property, or interests in them. In
6 approving a contract under this subsection, the director need only prepare a single
7 written finding. In addition to the conditions and limitations imposed by law, the
8 director may impose additional conditions or limitations in the contracts as the director
9 determines, with the consent of the commissioner, will best serve the interests of the
10 state. The preparation and issuance of the written finding by the director are subject to
11 the following:

12 (1) with the consent of the commissioner and subject to the director's
13 discretion, for a specific proposed disposal of available land, resources, or property, or
14 of an interest in them, the director, in the written finding,

15 (A) shall establish the scope of the administrative review on
16 which the director's determination is based, and the scope of the written
17 finding supporting that determination; the scope of the administrative review
18 and finding may address only reasonably foreseeable, significant effects of the
19 uses proposed to be authorized by the disposal;

20 (B) may limit the scope of an administrative review and finding
21 for a proposed disposal to

22 (i) applicable statutes and regulations;

23 (ii) the facts pertaining to the land, resources, or
24 property, or interest in them, that the director finds are material to the
25 determination and that are known to the director or knowledge of which
26 is made available to the director during the administrative review; and

27 (iii) issues that, based on the statutes and regulations
28 referred to in (i) of this subparagraph, on the facts as described in (ii) of
29 this subparagraph, and on the nature of the uses sought to be authorized
30 by the disposal, the director finds are material to the determination of
31 whether the proposed disposal will best serve the interests of the state;

1 and

2 (C) may, if the project for which the proposed disposal is
3 sought is a multiphased development, limit the scope of an administrative
4 review and finding for the proposed disposal to the applicable statutes and
5 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
6 pertain solely to the disposal phase of the project when

7 (i) the only uses to be authorized by the proposed
8 disposal are part of that phase;

9 (ii) the disposal is a [AN OIL AND GAS] disposal of
10 oil and gas, or of gas only, and, before the next phase of the project
11 may proceed, public notice and the opportunity to comment are
12 provided under regulations adopted by the department unless the
13 project is subject to a consistency review under AS 46.40 and public
14 notice and the opportunity to comment are provided under
15 AS 46.40.096(c);

16 (iii) the department's approval is required before the
17 next phase of the project may proceed; and

18 (iv) the department describes its reasons for a decision
19 to phase;

20 (2) the director shall discuss in the written finding prepared and issued
21 under this subsection the reasons that each of the following was not material to the
22 director's determination that the interests of the state will be best served:

23 (A) facts pertaining to the land, resources, or property, or an
24 interest in them other than those that the director finds material under (1)(B)(ii)
25 of this subsection; and

26 (B) issues based on the statutes and regulations referred to in
27 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
28 subsection;

29 (3) a written finding for an oil and gas lease sale or gas only lease sale
30 under AS 38.05.180 is subject to (g) of this section;

31 (4) a contract for the sale, lease, or other disposal of available land or

1 an interest in land is not legally binding on the state until the commissioner approves
2 the contract, but if the appraised value is not greater than \$50,000 in the case of the
3 sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or
4 interest in land, the director may execute the contract without the approval of the
5 commissioner;

6 (5) public notice requirements relating to the sale, lease, or other
7 disposal of available land or an interest in land for oil and gas, or for gas only,
8 proposed to be scheduled in the five-year oil and gas leasing program under
9 AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

10 (A) before a public hearing, if held, or in any case not less than
11 180 days before the sale, lease, or other disposal of available land or an interest
12 in land, the director shall make available to the public a preliminary written
13 finding that states the scope of the review established under (1)(A) of this
14 subsection and includes the applicable statutes and regulations, the material
15 facts and issues in accordance with (1)(B) of this subsection, and information
16 required by (g) of this section, upon which the determination that the sale,
17 lease, or other disposal will serve the best interests of the state will be based;
18 the director shall provide opportunity for public comment on the preliminary
19 written finding for a period of not less than 60 days;

20 (B) after the public comment period for the preliminary written
21 finding and not less than 90 days before the sale, lease, or other disposal of
22 available land or an interest in land for oil and gas or for gas only, the director
23 shall make available to the public a final written finding that states the scope of
24 the review established under (1)(A) of this subsection and includes the
25 applicable statutes and regulations, the material facts and issues in accordance
26 with (1) of this subsection, and information required by (g) of this section,
27 upon which the determination that the sale, lease, or other disposal will serve
28 the best interests of the state is based;

29 (6) before a public hearing, if held, or in any case not less than 21 days
30 before the sale, lease, or other disposal of available land, property, resources, or
31 interests in them other than a sale, lease, or other disposal of available land or an

1 interest in land for oil and gas or for gas only under (5) of this subsection, the director
2 shall make available to the public a written finding that, in accordance with (1) of this
3 subsection, sets out the material facts and applicable statutes and regulations and any
4 other information required by statute or regulation to be considered upon which the
5 determination that the sale, lease, or other disposal will best serve the interests of the
6 state was based; however, a written finding is not required before the approval of

7 (A) a contract for a negotiated sale authorized under
8 AS 38.05.115;

9 (B) a lease of land for a shore fishery site under AS 38.05.082;

10 (C) a permit or other authorization revocable by the
11 commissioner;

12 (D) a mineral claim located under AS 38.05.195;

13 (E) a mineral lease issued under AS 38.05.205;

14 (F) an exempt oil and gas lease sale or gas only lease sale
15 under AS 38.05.180(d) of acreage subject to a best interest finding issued
16 within the previous 10 years or a reoffer oil and gas lease sale or gas only
17 lease sale under AS 38.05.180(w) of acreage subject to a best interest finding
18 issued within the previous 10 years, unless the commissioner determines that
19 substantial new information has become available that justifies a supplement to
20 the most recent best interest finding for the exempt oil and gas lease sale or
21 gas only lease sale acreage and for the reoffer oil and gas lease sale or gas
22 only lease sale acreage; however, for each oil and gas lease sale or gas only
23 lease sale described in this subparagraph, the director shall call for comments
24 from the public; the director's call for public comments must provide
25 opportunity for public comment for a period of not less than 30 days; if the
26 director determines that a supplement to the most recent best interest finding
27 for the acreage is required under this subparagraph,

28 (i) the director shall issue the supplement to the best
29 interest finding not later than 90 days before the sale;

30 (ii) not later than 45 days before the sale, the director
31 shall issue a notice describing the interests to be offered, the location

1 and time of the sale, and the terms and conditions of the sale; and

2 (iii) the supplement has the status of a final written best
3 interest finding for purposes of (i) and (l) of this section;

4 (G) [A SHALLOW GAS LEASE AUTHORIZED UNDER
5 AS 38.05.177 IN AN AREA FOR WHICH LEASING IS AUTHORIZED
6 UNDER AS 38.05.177;

7 (H)] a surface use lease under AS 38.05.255;

8 (H) [(I)] a permit, right-of-way, or easement under
9 AS 38.05.850;

10 (7) the director shall include in

11 (A) a preliminary written finding, if required, a summary of
12 agency and public comments, if any, obtained as a result of contacts with other
13 agencies concerning a proposed disposal or as a result of informal efforts
14 undertaken by the department to solicit public response to a proposed disposal,
15 and the department's preliminary responses to those comments; and

16 (B) the final written finding a summary of agency and public
17 comments received and the department's responses to those comments.

18 * Sec. 11. AS 38.05.035(g) is amended to read:

19 (g) Notwithstanding (e)(1)(A) and (B) of this section, when the director
20 prepares a written finding required under (e) of this section for an oil and gas lease
21 sale or a gas only lease sale scheduled under AS 38.05.180, the director shall consider
22 and discuss

23 (1) in a preliminary or final written finding facts that are known to the
24 director at the time of preparation of the finding and that are

25 (A) material to issues that were raised during the period
26 allowed for receipt of public comment, whether or not material to a matter set
27 out in (B) of this paragraph, and within the scope of the administrative review
28 established by the director under (e)(1) of this section; or

29 (B) material to the following matters:

30 (i) property descriptions and locations;

31 (ii) the petroleum potential of the sale area, in general

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terms;

(iii) fish and wildlife species and their habitats in the area;

(iv) the current and projected uses in the area, including uses and value of fish and wildlife;

(v) the governmental powers to regulate the [OIL AND GAS] exploration, development, production, and transportation of oil and gas or of gas only;

(vi) the reasonably foreseeable cumulative effects of [OIL AND GAS] exploration, development, production, and transportation for oil and gas or for gas only on the sale area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources;

(vii) lease stipulations and mitigation measures, including any measures to prevent and mitigate releases of oil and hazardous substances, to be included in the leases, and a discussion of the protections offered by these measures;

(viii) the method or methods most likely to be used to transport oil or gas from the lease sale area, and the advantages, disadvantages, and relative risks of each;

(ix) the reasonably foreseeable fiscal effects of the lease sale and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the lease sale, if any;

(x) the reasonably foreseeable effects of [OIL AND GAS] exploration, development, production, and transportation involving oil and gas or gas only on municipalities and communities within or adjacent to the lease sale area; and

(xi) the bidding method or methods adopted by the commissioner under AS 38.05.180; and

(2) the basis for the director's preliminary or final finding, as

1 applicable, that, on balance, leasing the area would be in the state's best interest.

2 * Sec. 12. AS 38.05.036(a) is amended to read:

3 (a) The department may conduct audits regarding royalty and net profits under
4 oil and gas contracts, agreements, or leases under this chapter and regarding costs
5 related to [OIL AND GAS] exploration licenses entered into under AS 38.05.131 -
6 38.05.134 and exploration incentive credits under this chapter or under AS 41.09. For
7 purposes of audit under this section,

8 (1) the department may examine the books, papers, records, or
9 memoranda of a person regarding matters related to the audit; and

10 (2) the records and premises where a business is conducted shall be
11 open at all reasonable times for inspection by the department.

12 * Sec. 13. AS 38.05.127(e) is amended to read:

13 (e) The establishment of easements or rights-of-way for oil and gas, gas only,
14 and mineral leases under (a) of this section need not be made until the leases are ready
15 to be developed.

16 * Sec. 14. AS 38.05.131(a) is amended to read:

17 (a) Unless specifically provided otherwise in AS 38.05.132 - 38.05.134, the
18 provisions of AS 38.05.005 - 38.05.037, 38.05.140(f), 38.05.180, 38.05.182 -
19 38.05.184, and 38.05.920 - 38.05.990 apply to the issuance of [OIL AND GAS]
20 exploration licenses and leases for oil and gas, or for gas only, as appropriate,
21 under AS 38.05.132 - 38.05.134.

22 * Sec. 15. AS 38.05.132(a) is amended to read:

23 (a) To encourage exploration for oil and gas on state land, the commissioner
24 may issue [OIL AND GAS] exploration licenses. The commissioner may limit the
25 exploration licenses under AS 38.05.132 - 38.05.134 to exploration for and
26 recovery of gas only.

27 * Sec. 16. AS 38.05.132(b) is amended to read:

28 (b) An [OIL AND GAS] exploration license issued under this section gives
29 the licensee

30 (1) the exclusive right to explore, for a term not to exceed 10 years,
31 [FOR DEPOSITS OF OIL AND GAS] on unleased state land described in the

1 exploration license for deposits of oil and gas, or for deposits of gas only, as
2 appropriate, unless the exploration license is terminated under (d)(1) of this section
3 or the land is earlier relinquished, removed, or deleted under (d)(2) of this section; and
4 (2) unless the exploration license is terminated under (d)(1) of this
5 section, the option to convert the exploration license for all or part of the state land,
6 except the land that is deleted or removed from the land described in the exploration
7 license under (d)(2) of this section, into an oil and gas lease, or a gas lease only, as
8 appropriate, upon fulfillment of the work commitments contained in the exploration
9 license.

10 * Sec. 17. AS 38.05.132(c) is amended to read:

11 (c) An exploration license awarded under this section

12 (1) is not subject to the acreage limitations imposed by
13 AS 38.05.140(c) or 38.05.180(m);

14 (2) may cover, subject to the maximum acreage limitation on
15 exploration licenses by one licensee under AS 38.05.131(e), an area of not less than
16 10,000 acres and not more than 500,000 acres, that must be reasonably compact and
17 contiguous;

18 (3) must be conditioned upon an obligation to perform a specified
19 work commitment, in total for the term of the license, expressed in dollars of direct
20 exploration expenditures; the specified work commitment

21 (A) may include a provision that adjusts the total amount of
22 work commitment, expressed in dollars of direct exploration expenditures, to
23 account for inflation;

24 (B) must include a requirement that the licensee complete at
25 least 25 percent of the licensee's total specified work commitment by the fourth
26 anniversary of the effective date of the issuance of the [OIL AND GAS]
27 exploration license;

28 (4) must be conditioned upon the posting of a bond or other security
29 acceptable to the commissioner, in favor of the state and subject to the following
30 requirements:

31 (A) the bond or other security must be renewed annually;

1 (B) the annual bond or other security shall be calculated as the
2 entire work commitment expressed in dollars, less the cumulative direct
3 exploration expenditures of the licensee as of the last day of the most recent
4 project year, divided by the number of years remaining in the term of the
5 exploration license;

6 (5) is subject to an annual review and revocation if the commissioner
7 determines that the licensee has failed to provide or maintain in effect the bond or
8 other security required by (4) of this subsection;

9 (6) must be conditioned upon the licensee's payment to the state of a
10 nonrefundable [OIL AND GAS] exploration license fee of \$1 for each acre of land or
11 fraction of each acre that is subject to the exploration license; and

12 (7) must be conditioned upon an agreement that exploration
13 expenditures are subject to audit by the commissioner.

14 * Sec. 18. AS 38.05.132(f) is amended to read:

15 (f) In this section,

16 (1) "direct exploration expenditure" means cash expenses undertaken
17 in performance of a specified work commitment under the provisions of AS 38.05.131
18 - 38.05.134 and necessarily incurred by the licensee in the permitting, mobilization,
19 conducting, demobilization, and evaluation of geophysical and geological surveys, or
20 the drilling, logging, coring, testing, and evaluation of oil and gas or gas only wells;
21 the term

22 (A) includes direct labor costs, including the cost of benefits,
23 for employees directly associated with the work commitment programs, the
24 cost of renting or leasing equipment from parties not affiliated with the
25 licensee, the reasonable costs of maintaining and operating equipment,
26 payments to consultants and independent contractors not affiliated with the
27 licensee, and costs of materials and supplies;

28 (B) does not include noncash expenses such as depreciation
29 and reserves, interest or other costs of borrowed funds, return on investment,
30 overhead, insurance or bond premiums, or any other expense that is
31 unreasonable or that the licensee has not incurred to satisfy the licensee's work

1 commitment;

2 (2) "work commitment" includes the drilling of one or more
3 exploration wells or the gathering of data from activities described in (1) of this
4 subsection, or both.

5 * **Sec. 19.** AS 38.05.133(a) is amended to read:

6 (a) The procedures in this section apply to the issuance of an [OIL AND GAS]
7 exploration license under AS 38.05.132.

8 * **Sec. 20.** AS 38.05.133(f) is amended to read:

9 (f) After considering proposals not rejected under (d) of this section and public
10 comment on those proposals, the commissioner shall issue a written finding
11 addressing all matters set out in AS 38.05.035(e) and (g), except for
12 AS 38.05.035(g)(1)(B)(xi). If the finding concludes that the state's best interests would
13 be served by issuing an [OIL AND GAS] exploration license, the finding must (1)
14 describe the limitations, stipulations, conditions, or changes from the initiating
15 proposal or competing proposals that are required to make the issuance of the
16 exploration license conform to the best interests of the state, and (2) if only one
17 proposal was submitted, identify the prospective licensee whom the commissioner
18 finds should be issued the exploration license. The commissioner shall attach to the
19 finding a copy of the exploration license to be issued and the form of lease that will be
20 used for any portion of the exploration license area subsequently converted to a [AN
21 OIL AND GAS] lease under AS 38.05.134.

22 * **Sec. 21.** AS 38.05.133(h) is amended to read:

23 (h) If competing proposals are submitted, and the commissioner's finding
24 under (f) of this section concludes that an [OIL AND GAS] exploration license should
25 be issued, the commissioner shall issue a request for competitive sealed bids, under
26 procedures adopted by the commissioner by regulation, to determine which
27 prospective licensee should be issued the exploration license. The finding provided to
28 the prospective licensees and the public under (f) of this section must contain notice
29 that (1) the commissioner intends to request competitive sealed bids, (2) a prospective
30 licensee who intends to participate in the bidding must notify the commissioner in
31 writing by the date specified in the notice, and (3) a prospective licensee's notice of

1 intent to participate in the bidding constitutes acceptance of issuance of the
2 exploration license, as limited or conditioned by the terms contained in the finding and
3 by the exploration license to be issued and the form of lease to be used that have been
4 attached to that finding, if the prospective licensee is the successful bidder. The
5 successful bidder is the prospective licensee who submits the highest bid in terms of
6 the minimum work commitment dollar amount.

7 * Sec. 22. AS 38.05.134 is amended to read:

8 **Sec. 38.05.134. Conversion to lease.** If the licensee requests and the
9 commissioner determines that the work commitment obligation set out in an [OIL
10 AND GAS] exploration license issued under AS 38.05.132 has been met, the
11 commissioner shall convert to one or more [OIL AND GAS] leases all or part, as the
12 licensee may indicate, of the area described in the exploration license that remains
13 after the relinquishments, removals, or deletions required by AS 38.05.132(d)(2). A
14 lease issued under this section

15 (1) is subject to the acreage limitations imposed by AS 38.05.140(c);

16 (2) is subject to AS 38.05.180(j) - (m), (o) - (u), and (x) - (z);

17 (3) must be conditioned upon a royalty in amount or value of not less
18 than 12.5 percent of production, except that

19 (A) the lessee who, proceeding under AS 38.05.131 -
20 38.05.134, under a lease issued in the Cook Inlet sedimentary basin who is the
21 first to file with the commissioner a nonconfidential sworn statement claiming
22 to be the first to have drilled a well discovering oil or gas in a previously
23 undiscovered oil or gas pool and who is certified by the commissioner within
24 one year of completion of that discovery well to have drilled a well in that pool
25 that is capable of producing in paying quantities shall pay a royalty of five
26 percent on all production of oil or gas from that pool attributable to that lease
27 for a period of 10 years following the date of discovery of that pool, and
28 thereafter the royalty payable on all production of oil or gas from the pool
29 attributable to that lease shall be determined and payable as specified in the
30 lease; the payment of the five percent royalty under this paragraph is
31 authorized only to a holder of a lease who meets the requirements of

1 AS 38.05.180(f)(4); and

2 (B) for nonconventional gas that is not produced in direct
3 competition with gas on which a royalty at a rate of at least 12.5 percent is
4 payable, if the licensee requests, the commissioner may negotiate with the
5 licensee and set a royalty rate for the gas of at least 6.25 percent; for
6 purposes of this subparagraph, "nonconventional gas" has the meaning
7 given in AS 38.05.965;

8 (4) must include an annual rent of \$3 per acre or fraction of an acre
9 initially paid to the state at inception of the lease and payable annually after that until
10 the income to the state from royalty under that lease exceeds the rental income to the
11 state under that lease for that year; and

12 (5) is subject to other conditions and obligations that are specified in
13 the lease.

14 * Sec. 23. AS 38.05.140(a) is amended to read:

15 (a) A person may not take or hold coal leases or permits during the life of coal
16 leases on state land exceeding an aggregate of 92,160 acres, except that a person may
17 apply for coal leases or permits for acreage in addition to 92,160 acres, not exceeding
18 a total of 5,120 additional acres of state land. The additional area applied for shall be
19 in multiples of 40 acres, and the application shall contain a statement that the granting
20 of a lease for additional land is necessary for the person to carry on business
21 economically and is in the public interest. On the filing of the application, [EXCEPT
22 AS PROVIDED BY AS 38.05.177(a)(2)(C),] the coal deposits in the land covered by
23 the application shall be temporarily set aside and withdrawn from all other forms of
24 disposal provided under AS 38.05.135 - 38.05.181.

25 * Sec. 24. AS 38.05.140(f) is amended to read:

26 (f) The submerged and shoreland lying north of 57 degrees, 30 minutes, North
27 [NORTH] latitude and east of 159 degrees, 49 minutes, West [WEST] longitude
28 within the Bristol Bay drainage are designated as the Bristol Bay Fisheries Reserve.
29 Within the Bristol Bay Fisheries Reserve, a [NO] surface entry permit to develop an
30 oil or gas lease or an [OIL AND GAS] exploration license under AS 38.05.131 -
31 38.05.134 may not be issued on state owned or controlled land until the legislature by

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appropriate resolution specifically finds that the entry will not constitute danger to the fishery.

* Sec. 25. AS 38.05.150(f) is amended to read:

(f) A [NOTWITHSTANDING AS 38.05.177, A] lease entered into under this section gives the lessee the right to vent or remove methane and other gas held in association with the coal in the land covered by the lease to ensure safe coal mining operations.

* Sec. 26. AS 38.05.177(a) is amended to read:

(a) The provisions of this section

[(1)] apply to nonconventional gas [, WHETHER METHANE ASSOCIATED WITH AND DERIVED FROM COAL DEPOSITS OR OTHERWISE, FROM A FIELD IF A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE SURFACE; AND

(2) DO NOT APPLY TO AUTHORIZE LEASE OF

(A) LAND

(i) THAT IS SUBJECT TO AN OIL AND GAS EXPLORATION LICENSE OR LEASE ISSUED UNDER AS 38.05.131 - 38.05.134; OR

(ii) THAT IS LEASED UNDER AS 38.05.180;

(B) THE LAND (i) THAT IS PROPOSED TO BE SUBJECT TO AN OIL AND GAS EXPLORATION LICENSE OR LEASE ISSUED UNDER AS 38.05.131 - 38.05.134; OR (ii) THAT IS DESCRIBED IN AND PART OF A PROPOSED OIL AND GAS LEASING PROGRAM PREPARED UNDER AS 38.05.180(b); HOWEVER, THE COMMISSIONER MAY WAIVE THE LIMITATIONS OF THIS SUBPARAGRAPH;

(C) THE LAND THAT IS HELD UNDER A COAL LEASE ENTERED INTO UNDER AS 38.05.150, UNLESS THE APPLICANT FOR A SHALLOW NATURAL GAS LEASE IS ALSO THE LESSEE UNDER AS 38.05.150 OF THAT LAND; OR

(D) THE VALID EXISTING SELECTIONS OF THE ALASKA MENTAL HEALTH TRUST AUTHORITY MADE FOR THE

1 PURPOSE OF RECONSTITUTING THE MENTAL HEALTH TRUST
2 ESTABLISHED UNDER THE ALASKA MENTAL HEALTH ENABLING
3 ACT, P.L. 84-830, 70 STAT. 709 (1956), THAT BECOME SUBJECT TO
4 MANAGEMENT UNDER AS 38.05.801, OR OF LAND THAT HAS BEEN
5 DESIGNATED BY LAW FOR OR IS SUBJECT TO DESIGNATION FOR
6 CONVEYANCE TO THE ALASKA MENTAL HEALTH TRUST
7 AUTHORITY; HOWEVER, AFTER CONSULTATION WITH THE
8 ALASKA MENTAL HEALTH TRUST AUTHORITY, THE
9 COMMISSIONER MAY WAIVE THE LIMITATIONS OF THIS
10 SUBPARAGRAPH].

11 * Sec. 27. AS 38.05.177(*l*) is amended to read:

12 (l) A lessee holding [OBTAINING] a lease modified under
13 AS 38.05.180(n)(2) [THIS SECTION] may exercise the rights authorized by this
14 section and the lease. The rights granted by the lease must be exercised in a manner
15 that does not unreasonably interfere with eventual development of other mineral
16 deposits on the land leased. However, in a lease entered into under AS 38.05.150 for
17 land that is already subject to a lease covered [LEASED] under this section, coal may
18 not be mined or extracted by the coal lessee from the coal lease without prior
19 agreement with the lessee holding the lease covered [ISSUED] under this section.

20 * Sec. 28. AS 38.05.180(a) is amended to read:

21 (a) The legislature finds that

22 (1) the people of Alaska have an interest in the development of the
23 state's oil and gas resources to

24 (A) maximize the economic and physical recovery of the
25 resources;

26 (B) maximize competition among parties seeking to explore
27 and develop the resources;

28 (C) maximize use of Alaska's human resources in the
29 development of the resources;

30 (2) it is in the best interests of the state

31 (A) to encourage an assessment of its oil and gas resources and

1 to allow the maximum flexibility in the methods of issuing leases to

2 (i) recognize the many varied geographical regions of
3 the state and the different costs of exploring for oil and gas in these
4 regions;

5 (ii) minimize the adverse impact of exploration,
6 development, production, and transportation activity; and

7 (B) to offer acreage for oil and gas leases or for gas only
8 leases, specifically including

9 (i) state acreage that has been the subject of a best
10 interest finding at annual areawide lease sales; and

11 (ii) land in areas that, under (d) of this section, may be
12 leased without having been included in the leasing program prepared
13 and submitted under (b) of this section.

14 * Sec. 29. AS 38.05.180(b) is amended to read:

15 (b) The commissioner shall biennially prepare and, between the first and the
16 15th day of the first regular session of each legislature, notify the legislature of the
17 availability of, a five-year proposed oil and gas leasing program consisting of a
18 schedule of proposed lease sales and specifying as precisely as practicable the location
19 of tracts proposed to be offered for oil and gas leasing or for leasing of gas only
20 during the calendar year in which the proposed program is made available to the
21 legislature and the following four calendar years.

22 * Sec. 30. AS 38.05.180(c) is amended to read:

23 (c) Except as provided in (d) and (w) of this section, an oil and gas lease sale
24 or gas only lease sale may not be held unless it was included in the proposed leasing
25 programs submitted to the legislature during the two calendar years preceding the year
26 in which the sale is held. A lease sale, whether for oil and gas or for gas only, may
27 not be held before the date it is scheduled in the proposed oil and gas leasing program.

28 * Sec. 31. AS 38.05.180(d) is amended to read:

29 (d) The commissioner

30 (1) may annually offer leases for oil and gas or leases for gas only
31 [LEASES] of the acreage described in AS 38.05.035(e)(6)(F);

1 (2) may issue [OIL AND GAS] leases in an area that has not been
2 included in a leasing program prepared, in accordance with (b) of this section, if the
3 land to be leased

4 (A) was previously subject to a valid state oil and gas lease, a
5 valid state gas lease, or a valid federal oil and gas lease;

6 (B) is contiguous to land already under state, federal, or private
7 lease and the commissioner makes a written finding, after hearing, that leasing
8 of the land would result in a substantial probability of early evaluation and
9 development of the land to be leased;

10 (C) is adjacent to land owned or controlled by another party on
11 which a discovery of commercial quantities of oil or gas has been made, and
12 the commissioner finds, after hearing, that there is a reasonable probability that
13 the land to be leased contains oil or gas in communication with the oil or gas
14 discovered on the land of the other party;

15 (D) is adjacent to land included in the federal five-year Outer
16 Continental Shelf leasing program under 43 U.S.C. 1344, and the
17 commissioner makes a written finding, after hearing, that coordinated or
18 simultaneous leasing with the federal government is in the public interest; or

19 (E) is the subject of an [OIL AND GAS] exploration license
20 issued under AS 38.05.131 - 38.05.134; however, if the license issued was
21 for exploration for and recovery of gas only, then the lease issued under
22 this subsection shall be limited to exploration for and recovery of gas only.

23 * Sec. 32. AS 38.05.180(f) is amended to read:

24 (f) Except as provided by AS 38.05.131 - 38.05.134 [AND 38.05.177], the
25 commissioner may issue oil and gas leases or leases for gas only on state land to the
26 highest responsible qualified bidder as follows:

27 (1) the commissioner shall issue an oil and gas lease or a gas only
28 lease, as appropriate, to the successful bidder determined by competitive bidding
29 under regulations adopted by the commissioner; bidding may be by sealed bid or
30 according to any other bidding procedure the commissioner determines is in the best
31 interests of the state;

1 (2) whenever, under any of the leasing methods listed in this
2 subsection, a royalty share is reserved to the state, it shall be delivered in pipeline
3 quality and free of all lease or unit expenses, including but not limited to separation,
4 cleaning, dehydration, gathering, salt water disposal, and preparation for transportation
5 off the lease or unit area;

6 (3) following a pre-sale analysis, the commissioner may choose at least
7 one of the following leasing methods:

8 (A) a cash bonus bid with a fixed royalty share reserved to the
9 state of not less than 12.5 percent in amount or value of the production
10 removed or sold from the lease;

11 (B) a cash bonus bid with a fixed royalty share reserved to the
12 state of not less than 12.5 percent in amount or value of the production
13 removed or sold from the lease and a fixed share of the net profit derived from
14 the lease of not less than 30 percent reserved to the state;

15 (C) a fixed cash bonus with a royalty share reserved to the state
16 as the bid variable but no less than 12.5 percent in amount or value of the
17 production removed or sold from the lease;

18 (D) a fixed cash bonus with the share of the net profit derived
19 from the lease reserved to the state as the bid variable;

20 (E) a fixed cash bonus with a fixed royalty share reserved to the
21 state of not less than 12.5 percent in amount or value of the production
22 removed or sold from the lease with the share of the net profit derived from the
23 lease reserved to the state as the bid variable;

24 (F) a cash bonus bid with a fixed royalty share reserved to the
25 state based on a sliding scale according to the volume of production or other
26 factor but in no event less than 12.5 percent in amount or value of the
27 production removed or sold from the lease;

28 (G) a fixed cash bonus with a royalty share reserved to the state
29 based on a sliding scale according to the volume of production or other factor
30 as the bid variable but not less than 12.5 percent in amount or value of the
31 production removed or sold from the lease;

1 (H) for nonconventional gas that will not be produced in
2 direct competition with gas on which a royalty at a rate of at least 12.5
3 percent is payable, a royalty share reserved to the state of at least 6.25
4 percent in amount or value of the production removed or sold from the
5 lease;

6 (4) notwithstanding a requirement in the leasing method chosen of a
7 minimum fixed royalty share, on and after March 3, 1997, the lessee under a lease
8 issued in the Cook Inlet sedimentary basin who is the first to file with the
9 commissioner a nonconfidential sworn statement claiming to be the first to have
10 drilled a well discovering oil or gas in a previously undiscovered oil or gas pool and
11 who is certified by the commissioner within one year of completion of that discovery
12 well to have drilled a well in that pool that is capable of producing in paying quantities
13 shall pay a royalty of five percent on all production of oil or gas from that pool
14 attributable to that lease for a period of 10 years following the date of discovery of that
15 pool, and thereafter the royalty payable on all production of oil or gas from the pool
16 attributable to that lease shall be determined and payable as specified in the lease; for
17 purposes of this paragraph, the reduced royalty authorized by this paragraph is subject
18 to the following:

19 (A) only one reduction of royalty authorized by this paragraph
20 may be allowed on each lease that qualifies for reduction of royalty under this
21 paragraph;

22 (B) if, under this paragraph, application is made for a royalty
23 reduction for a lease that was entered into before March 3, 1997, the
24 commissioner may approve the application only if, on that date, the lease was a
25 nonproducing lease that was not committed to a unit approved by the
26 commissioner under (m) of this section, that is not part of a unit under (p) or
27 (q) of this section, and that has not been made part of a unit under AS 31.05;

28 (C) if application for a royalty reduction is made under this
29 paragraph for a lease on which a discovery royalty was claimed or may be
30 claimed under the discovery royalty provisions of former AS 38.05.180(a) in
31 effect before May 6, 1969, the commissioner shall disallow the application

1 under this paragraph unless the applicant waives the right to claim the right to
2 a reduced royalty under the discovery royalty provisions of former
3 AS 38.05.180(a) in effect before May 6, 1969; and

4 (D) the commissioner shall adopt regulations setting out the
5 standards, criteria, and definitions of terms that apply to implement the filing
6 of applications for, and the review and certification of, discovery [OIL AND
7 GAS ROYALTY] certifications under this paragraph;

8 (5) notwithstanding and in lieu of a requirement in the leasing method
9 chosen of a minimum fixed royalty share, or the royalty provision of a lease, for leases
10 unitized as described in (p) of this section, leases subject to an agreement described in
11 (s) or (t) of this section, or interests unitized under AS 31.05, the lessee of all or part of
12 an oil or gas field identified in this section that has been granted approval of a written
13 plan submitted to the Alaska Oil and Gas Conservation Commission under
14 AS 31.05.030(i) shall, subject to (dd) of this section, pay a royalty of five percent on
15 the first 25,000,000 barrels of oil and the first 35,000,000,000 cubic feet of gas
16 produced for sale from that field that occurs in the 10 years following the date on
17 which the production for sale commences; the fields eligible for royalty reduction
18 under this paragraph, all of which are located within the Cook Inlet sedimentary basin,
19 were discovered before January 1, 1988, and have been undeveloped or shut in from at
20 least January 1, 1988, through December 31, 1997, are

21 (A) Falls Creek;

22 (B) Nicolai Creek;

23 (C) North Fork;

24 (D) Point Starichkof;

25 (E) Redoubt Shoal; and

26 (F) West Foreland;

27 (6) notwithstanding and in lieu of a requirement in the leasing method
28 chosen of a minimum fixed royalty share, or the royalty provision of a lease, for leases
29 unitized as described in (p) of this section, leases subject to an agreement described in
30 (s) or (t) of this section, or interests unitized under AS 31.05, the lessee of all or part of
31 an oil field located offshore in Cook Inlet on which an oil production platform

1 specified in (A), (C), or (E) of this paragraph operates, or the lessee of all or part of the
2 field located offshore in Cook Inlet and described in (G) of this paragraph,

3 (A) shall pay a royalty of five percent on oil produced from the
4 platform if oil production that equaled or exceeded a volume of 1,200 barrels a
5 day declines to less than that amount for a period of at least one calendar
6 quarter, as certified by the Alaska Oil and Gas Conservation Commission, for
7 as long as the volume of oil produced from the platform remains less than
8 1,200 barrels a day; the provisions of this subparagraph apply to

- 9 (i) Dolly;
10 (ii) Grayling;
11 (iii) King Salmon;
12 (iv) Steelhead; and
13 (v) Monopod;

14 (B) shall pay a royalty calculated under this subparagraph if the
15 volume of oil produced from the platform that was certified by the Alaska Oil
16 and Gas Conservation Commission under (A) of this paragraph later increases
17 to 1,200 or more barrels a day and remains at 1,200 or more barrels a day for a
18 period of at least one calendar quarter; until the royalty rate determined under
19 this subparagraph applies, the royalty continues to be calculated under (A) of
20 this paragraph; on and after the first day of the month following the month the
21 increased production exceeds the period specified in this subparagraph, the
22 royalty payable under this subparagraph is

- 23 (i) for production of at least 1,200 barrels a day but not
24 more than 1,300 barrels a day - seven percent;
25 (ii) for production of more than 1,300 barrels a day but
26 not more than 1,400 barrels a day - 8.5 percent;
27 (iii) for production of more than 1,400 barrels a day but
28 not more than 1,500 barrels a day - 10 percent; and
29 (iv) for production of more than 1,500 barrels a day -
30 12.5 percent;

31 (C) shall pay a royalty of five percent on oil produced from the

1 platform if oil production that equaled or exceeded a volume of 975 barrels a
2 day declines to less than that amount for a period of at least one calendar
3 quarter, as certified by the Alaska Oil and Gas Conservation Commission, for
4 as long as the volume of oil produced from the platform remains less than 975
5 barrels a day; the provisions of this subparagraph apply to

6 (i) Baker;

7 (ii) Dillon;

8 (iii) XTO.A; and

9 (iv) XTO.C;

10 (D) shall pay a royalty calculated under this subparagraph if the
11 volume of oil produced from the platform that was certified by the Alaska Oil
12 and Gas Conservation Commission under (C) of this paragraph later increases
13 to 975 or more barrels a day and remains at 975 or more barrels a day for a
14 period of at least one calendar quarter; until the royalty rate determined under
15 this subparagraph applies, the royalty continues to be calculated under (C) of
16 this paragraph; on and after the first day of the month following the month the
17 increased production exceeds the period specified in this subparagraph, the
18 royalty payable under this subparagraph is

19 (i) for production of at least 975 barrels a day but not
20 more than 1,100 barrels a day - seven percent;

21 (ii) for production of more than 1,100 barrels a day but
22 not more than 1,200 barrels a day - 8.5 percent;

23 (iii) for production of more than 1,200 barrels a day but
24 not more than 1,350 barrels a day - 10 percent; and

25 (iv) for production of more than 1,350 barrels a day -
26 12.5 percent;

27 (E) shall pay a royalty of five percent on oil produced from the
28 platform if oil production that equaled or exceeded a volume of 750 barrels a
29 day declines to less than that amount for a period of at least one calendar
30 quarter, as certified by the Alaska Oil and Gas Conservation Commission, for
31 as long as the volume of oil produced from the platform remains less than 750