

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 HRES 12290

1 Page 32, following line 3:

2 Insert a new subsection to read:

3 "(e) Section 24 of this Act applies to transferable tax credit certificates issued under
4 AS 43.55.023(d), as amended by sec. 23 of this Act, and to transferable tax credit certificates
5 issued under AS 43.55.023(d), in effect before January 1, 2008, for which a cash refund has
6 not been issued under AS 43.55.023(f) before January 1, 2008."

7

8 Page 33, line 2:

9 Delete "26, 27, 31, and 38"

10 Insert "24, 27, 28, 32, and 39"

11

12 Renumber internal references to bill sections in accordance with this amendment in a way that
13 makes sec. 24 effective January 1, 2008. Below are all internal bill section references in this
14 bill:

15 Page 31, lines 25, 27, 29, 30, and 31

16 Page 32, lines 1, 3, 13, 16, 19, and 31

17 Page 33, lines 2, 19 - 20, 21, and 22

AMENDMENT 31

OFFERED IN THE HOUSE

BY REPRESENTATIVE GUTTENBERG

TO: CSHB 2001(O&G)

1 Page 17, line 24, through page 18, line 22:

2 Delete all material and insert:

3 "(i) For the purposes of this section,

4 (1) a producer's or explorer's transitional investment expenditures are
5 the sum of the expenditures the producer or explorer incurred after March 31, 2001,
6 and before April 1, 2006, that would be qualified capital expenditures if they were
7 incurred after March 31, 2006, less the sum of the payments or credits the producer or
8 explorer received before April 1, 2006, for the sale or other transfer of assets,
9 including geological, geophysical, or well data or interpretations, acquired by the
10 producer or explorer as a result of expenditures the producer or explorer incurred
11 before April 1, 2006, that would be qualified capital expenditures, if they were
12 incurred after March 31, 2006;

13 (2) a producer or explorer that did not have commercial production
14 of oil or gas from a lease or property in the state before January 1, 2008, may
15 elect to take a tax credit against a tax levied by [DUE UNDER] AS 43.55.011(e) in
16 the amount of 20 percent of the producer's or explorer's transitional investment
17 expenditures, but only to the extent that the amount does not exceed 1/10 of the
18 producer's or explorer's qualified capital expenditures that were incurred after
19 March 31, 2006, and before January 1, 2008 [ARE INCURRED DURING THE
20 CALENDAR YEAR FOR WHICH THE CREDIT IS TAKEN];

21 (3) a producer or explorer may not take a tax credit for a transitional
22 investment expenditure

23 (A) for any calendar year after [THE LATER OF

1 (i)] 2013; [OR
 2 (ii) THE SIXTH CALENDAR YEAR AFTER THE
 3 CALENDAR YEAR FOR WHICH THE PRODUCER FIRST
 4 APPLIES A CREDIT UNDER THIS SUBSECTION AGAINST A
 5 TAX DUE UNDER AS 43.55.011(e), IF THE PRODUCER DID NOT
 6 HAVE COMMERCIAL PRODUCTION OF OIL OR GAS FROM A
 7 LEASE OR PROPERTY IN THE STATE BEFORE APRIL 1, 2006;]

8 (B) more than once; or

9 (C) if : credit for that expenditure was taken under
 10 AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025;

11 (4) notwithstanding (d), (e), and (g) of this section, a producer or
 12 explorer may not transfer a tax credit or obtain a transferable tax credit certificate for a
 13 transitional investment expenditure."
 14

15 Page 31, line 25:

16 Delete "Sections 24, 25, 32 - 34, and 37"

17 Insert "Sections 25, 32 - 34, and 37"

18

19 Page 31, line 27:

20 Delete "31"

21 Insert "24, 31"

22

23 Page 32, line 31:

24 Delete "secs. 24, 25, 32 - 34, and 37"

25 Insert "secs. 25, 32 - 34, and 37"

26

27 Page 33, line 2:

28 Delete "26, 27, 31, and 38"

29 Insert "24, 26, 27, 31, and 38"

30

31 Page 33, lines 19 and 20:

1 Delete "Sections 24, 25, 32 - 34, and 37"

2 Insert " Sections 25, 32 - 34, and 37"

3

4 Page 33, line 21:

5 Delete "26, 27, 31, and 38"

6 Insert "24, 26, 27, 31, and 38"

Edgmon

25-GH0014L.44
Chenoweth/Bullock
11/3/07

AMENDMENT 32

OFFERED IN THE HOUSE

TO: CSHB 2001(O&G)

1 Page 1, line 7, following "surcharges;":

2 Insert "prohibiting a producer or explorer from receiving tax credits if certain
3 judgments are not satisfied and requiring, as a condition of receiving the tax credits,
4 deposit of the amount of certain unpaid judgments and certain interest on those
5 judgments in the registry of the court during an appeal;"

6

7 Page 18, following line 25:

8 Insert a new bill section to read:

9 "** Sec. 26. AS 43.55 is amended by adding a new section to read:

10 **Sec. 43.55.028. Exceptions to tax credits.** (a) A producer or explorer may not
11 take a tax credit under AS 43.55.023, 43.55.024, or 43.55.025 if a state court or a
12 federal court that has subject matter jurisdiction has entered a judgment in an amount
13 greater than \$100,000 against the producer or explorer, the producer or explorer has
14 not satisfied the judgment, and the judgment concerns a matter having connections
15 with this state that are sufficient to satisfy constitutional jurisdictional requirements.

16 (b) Notwithstanding (a) of this section, the producer or explorer may receive a
17 tax credit described in (a) of this section if

18 (1) the judgment is appealed but the appeal has not been decided; and

19 (2) the producer or explorer deposits into the registry of the court
20 where the judgment was entered or the appeal is pending, in the form of cash, bond, or
21 other security,

22 (A) the full amount of the judgment; and

23 (B) post-judgment interest on the judgment amount described

1 in (A) of this paragraph; notwithstanding another provision of law, the post-
2 judgment interest rate on a judgment the amount of which is deposited under
3 (a) of this paragraph is equal to the rate of return on the producer's or expliorer's
4 capital as shown on the producer's or expliorer's quarterly earnings report."
5

6 Renumber the following bill sections accordingly.
7

8 Page 31, line 25:

9 Delete "32 - 34, and 37"

10 Insert "26, 33 - 35, and 38"
11

12 Page 31, line 27:

13 Delete "31, and 38"

14 Insert "32, and 39"
15

16 Page 31, line 29

17 Delete "Sections 26 and 27"

18 Insert "Sections 27 and 28"
19

20 Page 31, line 30:

21 Delete "sec. 26"

22 Insert "sec. 27"
23

24 Page 31, line 31:

25 Delete "sec. 27"

26 Insert "sec. 28"
27

28 Page 32, line 1:

29 Delete "sec. 29"

30 Insert "sec. 30"
31

1 Page 32, line 3:

2 Delete "29"

3 Insert "30"

4

5 Page 32, line 31:

6 Delete "32 - 34, and 37"

7 Insert "26, 33 - 35, and 38"

8

9 Page 33, line 2:

10 Delete "26, 27, 31, and 38"

11 Insert "27, 28, 32, and 39"

12

13 Page 33, lines 19 - 20:

14 Delete "32 - 34, and 37"

15 Insert "26, 33 - 35, and 38"

16

17 Page 33, line 21:

18 Delete "26, 27, 31, and 38"

19 Insert "27, 28, 32, and 39"

20

21 Page 33, line 22:

22 Delete "sec. 44"

23 Insert "sec. 45"

AMENDMENT 33

OFFERED IN THE HOUSE

BY REPRESENTATIVE GUTTENBERG

TO: CSHB 2001(O&G)

1 Page 25, following line 13:

2 Insert a new bill section to read:

3 **** Sec. 32.** AS 43.55.160(e) is repealed and reenacted to read:

4 (e) Any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that
5 (1) would otherwise be deductible by a producer under (a)(1)(A) of this section in
6 calculating a production tax value under (a)(1) of this section of oil and gas produced
7 from a lease or property for a calendar year but whose deduction would cause the
8 production tax value to be less than zero; (2) are the producer's costs incurred during
9 the calendar year of exploring for, developing, or producing oil or gas deposits located
10 within the producer's leases or properties in the state outside the Cook Inlet
11 sedimentary basin that do not produce oil or gas during the calendar year; or (3) are
12 the producer's costs incurred during the calendar year of exploring for oil or gas
13 deposits located within land in the state outside the Cook Inlet sedimentary basin in
14 which the producer does not own an operating right, operating interest, or working
15 interest must be allocated to, and deducted in calculating the producer's production tax
16 value of the oil and gas produced during the calendar year from, the producer's other
17 leases or properties, in accordance with the provisions of (f) and (g) of this section, to
18 the extent consistent with (b) of this section. Other than for a lease or property subject
19 to AS 43.55.011(f) and except as otherwise provided under (h) of this section, any
20 remaining adjusted lease expenditures in excess of what may be deducted consistent
21 with (b) of this section may be used to establish a carried-forward annual loss under
22 AS 43.55.023(b). "

23

1 Renumber the following bill sections accordingly.

2

3 Page 31, line 35:

4 Delete "32 - 34, and 37"

5 Insert "33 - 35, and 38"

6

7 Page 31, line 27:

8 Delete "and 38"

9 Insert "32, and 39"

10

11 Page 32, line 31:

12 Delete "32 - 34, and 37"

13 Insert "33 - 35, and 38"

14

15 Page 33, line 2:

16 Delete "and 38"

17 Insert "32, and 35"

18

19 Page 33, line 20:

20 Delete "32 - 34, and 37"

21 Insert "33 - 35, and 38"

22

23 Page 33, line 21:

24 Delete "and 38"

25 Insert "32, and 39"

26

27 Page 33, line 22:

28 Delete "sec. 44"

29 Insert "sec. 45"

AMENDMENT

34

OFFERED IN THE HOUSE

BY REPRESENTATIVE GUTTENBERG

TO: CSHB 2001(O&G)

1 Page 31, lines 6 - 20:

2 Delete all material and insert:

3 "(22) "nonunitized reservoir" means a pool that is not wholly within a
4 single unit;

5 (23) "pool" has the meaning given in AS 31.05.170;

6 (24) "producer" means an owner of an operating right, operating
7 interest, or working interest in a mineral interest in oil or gas;

8 (25) "unit" means a group of tracts of land that is

9 (A) subject to a cooperative or a unit plan of development or
10 operation that has been certified by the commissioner of natural resources
11 under AS 38.05.180(p);

12 (B) subject to a cooperative or a unit plan of development or
13 operation that has been certified by the United States Secretary of the Interior
14 under 30 U.S.C. 226(m);

15 (C) subject to an agreement of the owners of interests in the
16 tracts of land to validly integrate their interests to provide for the unitized
17 management, development, and operation of the tracts of land as a unit, within
18 the meaning of AS 31.05.110(a); or

19 (D) within the unit area of a unit created by order of the Alaska
20 Oil and Gas Conservation Commission under AS 31.05.110(b)."

AMENDMENT 35

OFFERED IN THE HOUSE

BY REPRESENTATIVE GUTTENBERG

TO: CSHB 2001(O&G)

1 Page 33, following line 10:

2 Insert a new bill section to read:

3 **** Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 TRANSITION: PENDING APPLICATIONS. (a) Notwithstanding a contrary
6 provision of law, if an application made under AS 43.55.023(d), in effect before January 1,
7 2008, has not been granted or denied by the Department of Revenue before January 1, 2008,
8 the application is subject to the time period for the Department of Revenue's decision on the
9 application provided in AS 43.55.023(d), as amended by sec. 23 of this Act.

10 (b) If an application made under AS 43.55.023(f) is received by the Department of
11 Revenue before January 1, 2008, and is still outstanding on that date, the application is
12 considered to be an application under AS 43.55.028, enacted by sec. 45 of this Act."

13

14 Renumber the following bill sections accordingly.

15

16 Page 33, line 22:

17 Delete "sec. 44"

18 Insert "sec. 45"

KAWASAKI

Revised AMENDMENT 36

OFFERED IN THE HOUSE
TO: CSHB 2001(O&G)

1 Page 1, following line 12:

2 Insert a new bill section to read:

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

5 LEGISLATIVE INTENT. It is the intent of the legislature that not less than half of the
6 amount of money received by the state as a result of the retroactivity of certain provisions
7 under sec. 45 of this Act that exceeds the amount the state would have received if those
8 provisions had not been made retroactive will be appropriated to the budget reserve fund (art.
9 IX, sec. 17, Constitution of the State of Alaska)."

10

11 Page 2, line 1:

12 Delete "Section 1"

13 Insert "Sec. 2"

14

15 Renumber the following bill sections accordingly.

16

17 Page 31, line 28:

18 Delete "2007"

19 Insert "2006"

20

21 Page 33, line 3:

22 Delete "2008"

23 Insert "2007"

1

2 Page 33, line 19, following "ACT.":

3 Insert "(a)"

4

5 Page 33, following line 20:

6 Insert a new subsection to read:

7 "(b) Sections 15 - 21, 27, 28, 32, and 39 of this Act are retroactive to January 1,
8 2007."

9

10 Page 33, line 21:

11 Delete all material.

12

13 Renumber the following bill section accordingly.

14

15 Page 33, line 22:

16 Delete "Except as provided in sec. 44 of this Act, this"

17 Insert "This"

18

19 Renumber internal references to bill sections in accordance with this amendment so that the
20 LEGISLATIVE INTENT section, added as bill section 1, is given an immediate effective
21 date. Below are all internal bill section references in this bill:

22 Page 31, lines 25, 27, 29, 30, and 31

23 Page 32, lines 1, 3, 13, 16, 19, and 31

24 Page 33, lines 2, 19 - 20, 21, and 22

AMENDMENT

37 Rep. Kawasaki

OFFERED IN THE HOUSE

TO: CSHB 2001(O&G)

1 Page 1, following line 12:

2 Insert a new bill section to read:

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

5 LEGISLATIVE INTENT. It is the intent of the legislature that half of the amount of
6 money received by the state as a result of the retroactivity of certain provisions under sec. 45
7 of this Act that exceeds the amount the state would have received if those provisions had not
8 been made retroactive will be appropriated to the budget reserve fund (art. IX, sec. 17,
9 Constitution of the State of Alaska)."

10

11 Renumber the following bill sections accordingly.

12

13 Page 2, line 1:

14 Delete "Section 1"

15 Insert "Sec. 2"

16

17 Page 31, line 28:

18 Delete "2007"

19 Insert "2006"

20

21 Page 33, line 3:

22 Delete "2008"

23 Insert "2007"

1

2 Page 33, line 19, following "ACT.":

3 Insert "(a)"

4

5 Page 33, following line 20:

6 Insert a new subsection to read:

7 "(b) Sections 15 - 20, 27, 28, 32, and 39 of this Act are retroactive to January 1,
8 2007."

9

10 Page 33, line 21:

11 Delete "2008"

12 Insert "2007"

13

14 Renumber internal references to bill sections in accordance with this amendment. Below are
15 all internal bill section references in this bill:

16 Page 31, lines 25, 27, 29, 30, and 31

17 Page 32, lines 1, 3, 13, 16, 19, and 31

18 Page 33, lines 2, 19 - 20, 21, and 22

AMENDMENT

38 Rep. Guttenberg

OFFERED IN THE HOUSE

TO: CSHB 2001(O&G)

1 Page 1, following line 12:

2 Insert a new bill section to read:

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

5 LEGISLATIVE INTENT. It is the intent of the legislature that provisions of this Act

6 (1) ensure a fair and equitable means of assessing and taxing Alaska's oil and
7 gas resources;

8 (2) encourage the availability to Alaska's citizens of affordable gas produced,
9 transported, and consumed within the state; and

10 (3) confirm by clarification the longstanding interpretation of AS 43.05.260 by
11 the Department of Revenue through enactment of AS 43.55.075(b) in sec. 30 of this Act,
12 relating to limitation of assessments for the production tax on oil and gas and conservation
13 surcharges on oil."

14

15 Page 2, line 1:

16 Delete "Section 1"

17 Insert "Sec. 2"

18

19 Renumber the following bill sections accordingly.

20

21 Page 14, following line 2:

22 Insert a new subsection to read:

23

1 "(q) Notwithstanding other provisions of this section, for a calendar year
2 before 2022, the tax levied under this section for each 1,000 cubic feet of gas for gas
3 produced from a lease or property outside the Cook Inlet sedimentary basin and used
4 in the state may not exceed the amount of tax for each 1,000 cubic feet of gas that is
5 determined under (j)(2) of this section."
6

7 Page 23, line 24, following "AS 43.55.170;":

8 Insert "**this subparagraph does not apply to gas taxable under AS 43.55.011(q);**"
9

10 Page 24, line 1, following "AS 43.55.170;":

11 Insert "**this subparagraph does not apply to gas taxable under AS 43.55.011(q);**"
12

13 Page 24, following line 13:

14 Insert a new subparagraph to read:

15 **"(E) gas produced during a calendar year from a lease or**
16 **property outside the Cook Inlet sedimentary basin and used in the state is**
17 **the gross value at the point of production of that gas taxable under**
18 **AS 43.55.011(e) and produced by the producer from that lease or**
19 **property, less the producer's lease expenditures under AS 43.55.165 for**
20 **the calendar year applicable to that gas produced by the producer from**
21 **that lease or property, as adjusted under AS 43.55.170;**"
22

23 Page 24, line 22, following "AS 43.55.170;":

24 Insert "**this subparagraph does not apply to gas subject to additional tax under**
25 **AS 43.55.011(o);**"
26

27 Page 24, line 30, following "AS 43.55.170;":

28 Insert "**this subparagraph does not apply to gas subject to additional tax under**
29 **AS 43.55.011(o);**"
30

31 Page 25, line 13, following "AS 43.55.170":

1 Delete "Sections 26 and 27"
2 Insert "Sections 27 and 28"
3
4 Page 31, line 30:
5 Delete "sec. 26"
6 Insert "sec. 27"
7
8 Page 31, line 31:
9 Delete "sec. 27"
10 Insert "sec. 28"
11
12 Page 32, line 1:
13 Delete "sec. 29"
14 Insert "sec. 30"
15
16 Page 32, line 3:
17 Delete "secs. 13 and 29"
18 Insert "secs. 14 and 30"
19
20 Page 32, line 13:
21 Delete "sec. 9"
22 Insert "sec. 10"
23
24 Page 32, line 16:
25 Delete "sec. 9"
26 Insert "sec. 10"
27
28 Page 32, line 19:
29 Delete "sec. 9"
30 Insert "sec. 10"
31

1 Page 32, line 31:

2 Delete "secs. 24, 25, 32 - 34, and 37"

3 Insert "secs. 25, 26, 33, 34, 36, and 39"

4

5 Page 33, line 2:

6 Delete "secs. 14 - 20, 26, 27, 31, and 38"

7 Insert "secs. 15 - 21, 27, 28, 32, 35, and 40"

8

9 Page 33, lines 19 - 20:

10 Delete "Sections 24, 25, 32 - 34, and 37"

11 Insert "Sections 25, 26, 33, 34, 36, and 38"

12

13 Page 33, line 21:

14 Delete "Sections 14 - 20, 26, 27, 31, and 38"

15 Insert "Sections 15 - 21, 27, 28, 32, 35, and 40"

16

17 Page 33, line 22:

18 Delete "sec. 44"

19 Insert "sec. 46"

1
AMENDMENT To Amendment #38

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: AMENDMENT NO. 38 TO CSHB 2001(O&G), Draft Version "L"

1 Page 1, line 21:

2 Insert "Page 13, line 23, through page 14, line 2:

3 Delete all material"

4

5 Page 2, line 7:

6 Insert "For purposes of this section, "used in the state" means delivered for
7 consumption as fuel in the state, including as fuel consumed to generate electricity."

AMENDMENT #2 to Amendment #38

OFFERED IN HOUSE

BY REPRESENTATIVE SEATON

TC: AMENDMENT NO. 38 CSHB 2001(O&G), Draft Version "L"

- 1 Page 2, line 2:
- 2 Delete, "under"
- 3 Insert, "by (e) and (o) of"

AMENDMENT 39

OFFERED IN THE HOUSE

BY REPRESENTATIVE GUTTENBERG

TO: CSHB 2001(O&G)

1 Page 10, line 26, through page 15, line 30:

2 Delete all material and insert:

3 **** Sec. 14.** AS 43.55.011(g) is repealed and reenacted to read:

4 (g) The tax rate applied to the production tax value of oil and gas under (e) of
5 this section is 25 percent plus 0.20 percent times the price index for the calendar year
6 determined under (h) of this section. However, the tax rate calculated under this
7 subsection may not be more than 50 percent.

8 *** Sec. 15.** AS 43.55.011(h) is amended to read:

9 (h) For purposes of (g) of this section, the price index for a calendar year
10 [MONTH] is calculated by subtracting 30 [40] from the number that is equal to [THE
11 QUOTIENT OF] the total [MONTHLY] production tax value of the taxable oil and
12 gas produced by the producer from all leases or properties in the state during that
13 calendar year [DURING THAT MONTH], as calculated under AS 43.55.160,
14 divided by the total amount of that [THE TAXABLE] oil and gas [PRODUCED BY
15 THE PRODUCER DURING THAT MONTH], in BTU equivalent barrels. However,
16 a price index calculated under this subsection may not be less than zero.

17 *** Sec. 16.** AS 43.55.011(j) is amended to read:

18 (j) For a calendar year before 2022, the [TOTAL] tax levied by (e) [AND (g)]
19 of this section for [ON] gas produced from a lease or property in the Cook Inlet
20 sedimentary basin may not exceed

21 (1) for a lease or property that first commenced commercial production
22 of gas before April 1, 2006, the product obtained by multiplying (A) the amount of
23 taxable gas produced during the calendar year from the lease or property, times (B) the

1 average rate of tax that was imposed under this chapter for [ON] taxable gas produced
2 from the lease or property for the 12-month period ending on March 31, 2006, times
3 (C) the quotient obtained by dividing the total gross value at the point of production of
4 the taxable gas produced from the lease or property during the 12-month period ending
5 on March 31, 2006, by the total amount of that gas;

6 (2) for a lease or property that first commences commercial production
7 of gas after March 31, 2006, the product obtained by multiplying (A) the amount of
8 taxable gas produced during the calendar year from the lease or property, times (B) the
9 average rate of tax that was imposed under this chapter for [ON] taxable gas produced
10 from all leases or properties in the Cook Inlet sedimentary basin for the 12-month
11 period ending on March 31, 2006, times (C) the average prevailing value for gas
12 delivered in the Cook Inlet area for the 12-month period ending March 31, 2006, as
13 determined by the department under AS 43.55.020(f).

14 * **Sec. 17.** AS 43.55.011(k) is amended to read:

15 (k) For a calendar year before 2022, the [TOTAL] tax levied by (e) [AND (g)]
16 of this section for [ON] oil produced from a lease or property in the Cook Inlet
17 sedimentary basin may not exceed

18 (1) for a lease or property that first commenced commercial production
19 of oil before April 1, 2006, the product obtained by multiplying (A) the amount of
20 taxable oil produced during the calendar year from the lease or property, times (B) the
21 average rate of tax that was imposed under this chapter for [ON] taxable oil produced
22 from the lease or property for the 12-month period ending on March 31, 2006, times
23 (C) the quotient obtained by dividing the total gross value at the point of production of
24 the taxable oil produced from the lease or property during the 12-month period ending
25 on March 31, 2006, by the total amount of that oil;

26 (2) for a lease or property that first commences commercial production
27 of oil after March 31, 2006, the product obtained by multiplying (A) the amount of
28 taxable oil produced during the calendar year from the lease or property, times (B) the
29 average rate of tax that was imposed under this chapter for [ON] taxable oil produced
30 from all leases or properties in the Cook Inlet sedimentary basin for the 12-month
31 period ending on March 31, 2006, times (C) the average prevailing value for oil

1 produced and delivered in the Cook Inlet area for the 12-month period ending on
2 March 31, 2006, as determined by the department under AS 43.55.020(f).

3 * **Sec. 18.** AS 43.55.011(m) is amended to read:

4 (m) Notwithstanding any contrary provision of AS 38.05.180(i),
5 AS 41.09.010, AS 43.20.043, AS 43.55.024, or 43.55.025, tax credits under
6 AS 38.05.180(i), AS 41.09.010, AS 43.20.043, AS 43.55.024, and 43.55.025 that are
7 allocated to gas produced from leases or properties in the Cook Inlet sedimentary
8 basin and that are available to be applied against a tax levied by (e) of this section **for**
9 [ON] gas produced from leases or properties in the Cook Inlet sedimentary basin
10 during a calendar year may be applied only against the tax levied by (e) of this section
11 **for** [ON] that gas. The amount by which the amount of tax credits that are allocated to
12 gas produced from leases or properties in the Cook Inlet sedimentary basin and that
13 the producer would otherwise be allowed to use for a later calendar year or transfer to
14 another person exceeds the amount of tax credits whose application would reduce the
15 tax levied by (e) of this section **for** [ON] that gas to zero, if any, is considered the
16 amount of excess tax credits, and the excess tax credits are subject to the following:

17 (1) for each lease or property for which a limitation under (j) or (k) of
18 this section on the tax levied by (e) [AND (g)] of this section has the effect of reducing
19 the producer's tax below the amount of tax that would be levied in the absence of that
20 limitation, the producer shall calculate the amount of that reduction;

21 (2) the producer shall calculate the total of the reductions calculated
22 under (1) of this subsection for all affected leases or properties; **however, for a**
23 **calendar year for which the producer has Cook Inlet excess adjusted lease**
24 **expenditures under AS 43.55.160(h), the amount calculated under this paragraph**
25 **is deemed to be**

26 **(A) zero, if the amount calculated under AS 43.55.160(i)(2)**
27 **is greater than or equal to the amount calculated under**
28 **AS 43.55.160(i)(4);**

29 **(B) the remainder calculated by subtracting the amount**
30 **calculated under AS 43.55.160(i)(2) from the amount calculated under**
31 **AS 43.55.160(i)(4), if the amount calculated under AS 43.55.160(i)(2) is**

less than the amount calculated under AS 43.55.160(i)(4);

(3) the producer shall reduce the amount of excess tax credits by the total calculated under (2) of this subsection, but not to less than zero;

(4) any amount of excess tax credits remaining after reduction under (3) of this subsection may be used for a later calendar year, transferred to another person, or applied against a tax levied **for** [ON] oil or gas produced from a lease or property located anywhere in the state to the extent otherwise allowed under applicable law governing the tax credits.

* Sec. 19. AS 43.55.020(a) is repealed and reenacted to read:

(a) For a calendar year, a producer subject to tax under AS 43.55.011(e) or (i) shall pay the tax as follows:

(1) an installment payment of the estimated tax levied by AS 43.55.011(e), net of any tax credits applied as allowed by law, is due for each month of the calendar year on the last day of the following month; except as otherwise provided under (2) of this subsection, the amount of the installment payment is the sum of the following amounts, less 1/12 of the tax credits that are allowed by law to be applied against the tax levied by AS 43.55.011(e) for the calendar year, but the amount of the installment payment may not be less than zero:

(A) for oil and gas produced from leases or properties in the state outside the Cook Inlet sedimentary basin other than leases or properties subject to AS 43.55.011(f), the greater of

(i) zero; or

(ii) 25 percent of the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for the leases or properties under AS 43.55.160 from the gross value at the point of production of the oil and gas produced from the leases or properties during the month for which the installment payment is calculated;

(B) for oil and gas produced from leases or properties subject to AS 43.55.011(f), the total for all units or nonunitized reservoirs of the

1 amount for each unit or nonunitized reservoir that is the greatest of

2 (i) zero;

3 (ii) 10 percent of the gross value at the point of
4 production of the oil and gas produced from all leases or properties in
5 the unit or nonunitized reservoir; or

6 (iii) 25 percent of the remainder obtained by subtracting
7 1/12 of the producer's adjusted lease expenditures for the calendar year
8 of production under AS 43.55.165 and 43.55.170 that are deductible for
9 those leases or properties under AS 43.55.160 from the gross value at
10 the point of production of the oil and gas produced from those leases or
11 properties during the month for which the installment payment is
12 calculated;

13 (C) for oil and gas produced from each lease or property in the
14 Cook Inlet sedimentary basin, the greater of

15 (i) zero; or

16 (ii) 25 percent of the remainder obtained by subtracting
17 1/12 of the producer's adjusted lease expenditures for the calendar year
18 of production under AS 43.55.165 and 43.55.170 that are deductible
19 under AS 43.55.160 for oil or gas, respectively, produced from the
20 lease or property from the gross value at the point of production of the
21 oil or gas, respectively, produced from the lease or property during the
22 month for which the installment payment is calculated;

23 (2) an amount calculated under (1)(C) of this subsection for oil or gas
24 produced from a lease or property in the Cook Inlet sedimentary basin may not exceed
25 the product obtained by carrying out the calculation set out in AS 43.55.011(j)(1) or
26 (2), as applicable, for gas or set out in AS 43.55.011(k)(1) or (2), as applicable, for oil,
27 but substituting in AS 43.55.011(j)(1)(A) or (2)(A), as applicable, the amount of
28 taxable gas produced during the month for the amount of taxable gas produced during
29 the calendar year and substituting in AS 43.55.011(k)(1)(A) or (2)(A), as applicable,
30 the amount of taxable oil produced during the month for the amount of taxable oil
31 produced during the calendar year;

1 (3) an installment payment of the estimated tax levied by
2 AS 43.55.011(i) for each lease or property is due for each month of the calendar year
3 on the last day of the following month; the amount of the installment payment is the
4 sum of

5 (A) the applicable tax rate for oil provided under
6 AS 43.55.011(i), multiplied by the gross value at the point of production of the
7 oil taxable under AS 43.55.011(i) and produced from the lease or property
8 during the month; and

9 (B) the applicable tax rate for gas provided under
10 AS 43.55.011(i), multiplied by the gross value at the point of production of the
11 gas taxable under AS 43.55.011(i) and produced from the lease or property
12 during the month;

13 (4) any amount of tax levied by AS 43.55.011(e) and (i), net of any
14 credits applied as allowed by law, that exceeds the total of the amounts due as
15 installment payments of estimated tax is due on March 31 of the year following the
16 calendar year of production.

17 * Sec. 20. AS 43.55.020(d) is amended to read:

18 (d) In making settlement with the royalty owner for oil and gas that is taxable
19 under AS 43.55.011, the producer may deduct the amount of the tax paid on taxable
20 royalty oil and gas, or may deduct taxable royalty oil or gas equivalent in value at the
21 time the tax becomes due to the amount of the tax paid. If the total deductions of
22 installment payments of estimated tax for a calendar year exceed the actual tax for that
23 calendar year, the producer shall, before April 1 of the following year, refund the
24 excess to the royalty owner. Unless otherwise agreed between the producer and the
25 royalty owner, the amount of the tax paid under AS 43.55.011(e) [AS 43.55.011(e) -
26 (g)] on taxable royalty oil and gas for a calendar year, other than oil and gas the
27 ownership or right to which constitutes a landowner's royalty interest, is considered to
28 be the gross value at the point of production of the taxable royalty oil and gas
29 produced during the calendar year multiplied by a figure that is a quotient, in which

30 (1) the numerator is the producer's total tax liability under
31 AS 43.55.011(e) [AS 43.55.011(e) - (g)] for the calendar year of production; and

1 (2) the denominator is the total gross value at the point of production
2 of the oil and gas taxable under AS 43.55.011(e) [AS 43.55.011(e) - (g)] produced by
3 the producer from all leases and properties in the state during the calendar year."
4

5 Renumber the following bill sections accordingly.
6

7 Page 31, line 22:

8 Delete all material and insert:

9 "* Sec. 38. AS 43.55.011(f) and 43.55.160(c) are repealed."
10

11 Renumber internal references to bill sections in accordance with this amendment in a way that
12 makes secs. 14 - 20 effective January 1, 2008. Insert references to secs. 14 - 20 in the
13 applicability subsection that pertains to oil and gas produced after December 31, 2007, and in
14 the retroactivity of regulations section under the subparagraph that will make those sections
15 apply retroactively to January 1, 2008. Below are all internal bill section references in this
16 bill:

17 Page 31, lines 25, 27, 29, 30, and 31

18 Page 32, lines 1, 3, 13, 16, 19, and 31

19 Page 33, lines 2, 19 - 20, 21, and 22

AMENDMENT

40 Rep. Guttenberg

OFFERED IN THE HOUSE

TO: CSHB 2001(O&G)

1 Page 17, line 5:

2 Delete "Except as provided by (i) of this section, a"

3 Insert "A [EXCEPT AS PROVIDED BY (i) OF THIS SECTION, A]"

4

5 Page 17, line 23, through page 18, line 22:

6 Delete all material.

7

8 Renumber the following bill sections accordingly.

9

10 Page 31, following line 20:

11 Insert a new bill section to read:

12 "* Sec. 36. AS 43.55.023(i) is repealed."

13

14 Renumber the following bill sections accordingly.

15

16 Page 31, line 25:

17 Delete "25, 32 - 34"

18 Insert "31 - 33"

19

20 Page 31, line 27:

21 Delete "31"

22 Insert "30"

23

1 Page 31, line 29:

2 Delete "Sections 26 and 27"

3 Insert "Sections 25 and 26"

4

5 Page 31, line 30:

6 Delete "sec. 26"

7 Insert "sec. 25"

8

9 Page 31, line 31:

10 Delete "sec. 27"

11 Insert "sec. 26"

12

13 Page 32, line 1:

14 Delete "sec. 29"

15 Insert "sec. 28"

16

17 Page 32, line 3:

18 Delete "29"

19 Insert "28"

20

21 Page 32, line 31:

22 Delete "25, 32 - 34"

23 Insert "31 - 33"

24

25 Page 33, lines 19 - 20:

26 Delete "25, 32 - 34"

27 Insert "31 - 33"

28

29 Page 33, line 21:

30 Delete "26, 27, 31"

31 Insert "25, 26, 30"

AMENDMENT H1

OFFERED IN THE HOUSE

BY REPRESENTATIVE GUTTENBERG

TO: CSHB 2001(O&G)

1 Page 17, following line 3:

2 Insert a new bill section to read:

3 **"* Sec. 23.** AS 43.55.023(b) is amended to read:

4 (b) A producer or explorer may elect to take a tax credit in the amount of 25
5 [20] percent of a carried-forward annual loss. A credit under this subsection may be
6 applied against a tax levied by [DUE UNDER] AS 43.55.011(e). For purposes of this
7 subsection, except as limited by AS 43.55.160(h), a carried-forward annual loss is the
8 amount of a producer's or explorer's adjusted lease expenditures under AS 43.55.165
9 and 43.55.170 for a previous calendar year that was not deductible in calculating
10 production tax values for that calendar year under AS 43.55.160. However, a
11 carried-forward annual loss may not include an adjusted lease expenditure to
12 explore for, develop, or produce oil or gas deposits located within a unit or
13 nonunitized reservoir subject to AS 43.55.011(f) [AS 43.55.160(b) AND (e)]."
14

15 Renumber the following bill sections accordingly.

16

17 Page 25, following line 13:

18 Insert new bill sections to read:

19 **"* Sec. 33.** AS 43.55.160(e) is repealed and reenacted to read:

20 (c) Any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that
21 (1) would otherwise be deductible by a producer under (a)(1)(A) of this section in
22 calculating a production tax value under (a)(1) of this section of oil and gas produced
23 from a lease or property for a calendar year but whose deduction would cause the

1 production tax value to be less than zero; (2) are the producer's costs incurred during
2 the calendar year of exploring for, developing, or producing oil or gas deposits located
3 within the producer's leases or properties in the state outside the Cook Inlet
4 sedimentary basin that do not produce oil or gas during the calendar year; or (3) are
5 the producer's costs incurred during the calendar year of exploring for oil or gas
6 deposits located within land in the state outside the Cook Inlet sedimentary basin in
7 which the producer does not own an operating right, operating interest, or working
8 interest must be allocated to, and deducted in calculating the producer's production tax
9 value of the oil and gas produced during the calendar year from, the producer's other
10 leases or properties, in accordance with the provisions of (f) and (g) of this section, to
11 the extent consistent with (b) of this section. Other than for a lease or property subject
12 to AS 43.55.011(f) and except as otherwise provided under (h) of this section, any
13 remaining adjusted lease expenditures in excess of what may be deducted consistent
14 with (b) of this section may be used to establish a carried-forward annual loss under
15 AS 43.55.023(b).

16 * **Sec. 34.** AS 43.55.160 is amended by adding new subsections to read:

17 (f) This subsection applies to adjusted lease expenditures required to be
18 allocated under (e) of this section that are the producer's costs of exploring for,
19 developing, or producing oil or gas deposits located within the producer's leases or
20 properties that include land north of 68 degrees North latitude or are the producer's
21 costs of exploring for oil or gas deposits located within land in the state north of 68
22 degrees North latitude in which the producer does not own an operating right,
23 operating interest, or working interest. To the extent consistent with (b) of this section,
24 adjusted lease expenditures under this subsection that are

25 (1) not costs of exploring for, developing, or producing oil or gas
26 deposits located within a lease or property subject to AS 43.55.011(f) must be
27 allocated to one or more leases or properties from which the producer produces oil or
28 gas during the calendar year that include land north of 68 degrees North latitude;

29 (2) costs of exploring for, developing, or producing oil or gas deposits
30 located within a lease or property subject to AS 43.55.011(f) must be allocated to one
31 or more other leases or properties from which the producer produces oil or gas during

1 the calendar year that are within the same unit or overlie the same nonunitized
2 reservoir.

3 (g) This subsection applies to adjusted lease expenditures required to be
4 allocated under (e) of this section that are the producer's costs of exploring for,
5 developing, or producing oil or gas deposits located within the producer's leases or
6 properties outside the Cook Inlet sedimentary basin and no part of which is north of 68
7 degrees North latitude or are the producer's costs of exploring for oil or gas deposits
8 located within land in the state outside the Cook Inlet sedimentary basin and not north
9 of 68 degrees North latitude in which the producer does not own an operating right,
10 operating interest, or working interest. To the extent consistent with (b) of this section,
11 adjusted lease expenditures under this subsection must be allocated to one or more
12 leases or properties that are outside the Cook Inlet sedimentary basin and no part of
13 which is north of 68 degrees North latitude from which the producer produces oil or
14 gas during the calendar year.

15 (h) For purposes of this section, Cook Inlet excess adjusted lease expenditures
16 for a calendar year are determined by adding (1) the adjusted lease expenditures that
17 would otherwise be deductible by a producer in calculating production tax values
18 under (a)(2) or (3) of this section for the calendar year but whose deduction would
19 cause a production tax value to be less than zero; (2) the adjusted lease expenditures
20 that are the producer's costs incurred during the calendar year of exploring for,
21 developing, or producing oil or gas deposits located within the producer's leases or
22 properties in the Cook Inlet sedimentary basin from which no oil or gas is produced
23 during the calendar year; and (3) the adjusted lease expenditures that are the
24 producer's costs incurred during the calendar year of exploring for oil or gas deposits
25 located within land in the Cook Inlet sedimentary basin in which the producer does not
26 own an operating right, operating interest, or working interest. For a calendar year for
27 which a limitation under AS 43.55.011(j) or (k) on the tax levied by AS 43.55.011(e)
28 would have the effect of reducing the producer's tax for oil or gas produced from one
29 or more leases or properties in the Cook Inlet sedimentary basin below the amount of
30 the tax that would be levied in the absence of that limitation, the producer shall
31 perform the calculations set out in (i) of this section. The amount, if any, calculated

1 under (i)(6) of this section is the only amount of Cook Inlet excess adjusted lease
 2 expenditures that may be used to establish a carried-forward annual loss under
 3 AS 43.55.023(b).

4 (i) A producer subject to (h) of this section shall perform the following
 5 calculations:

6 (1) calculate the total amount of Cook Inlet excess adjusted lease
 7 expenditures;

8 (2) multiply that total amount by 25 percent;

9 (3) calculate for each lease or property the amount by which a
 10 limitation under AS 43.55.011(j) or (k) would reduce the amount of the producer's tax
 11 levied by AS 43.55.011(e);

12 (4) calculate the total of the reductions calculated under (3) of this
 13 subsection for all affected leases or properties;

14 (5) if the amount calculated under (2) of this subsection is greater than
 15 the amount calculated under (4) of this subsection, subtract the latter from the former;
 16 and

17 (6) multiply the amount, if any, calculated under (5) of this subsection
 18 by four."

19
 20 Renumber the following bill sections accordingly.

21
 22 Renumber internal references to bill sections in accordance with this amendment in a way that
 23 makes secs. 23, 33, and 34 effective January 1, 2008. Insert references to secs. 33 and 34 in
 24 (b) of the applicability section. Insert references to secs. 23, 33, and 34 in (1)(B) of the
 25 retroactivity of regulations section (sec. 41). Below are all internal bill section references in
 26 this bill:

27 Page 31, lines 25, 27, 29, 30, and 31

28 Page 32, lines 1, 3, 13, 16, 19, and 31

29 Page 33, lines 2, 19 - 20, 21, and 22

AMENDMENT 42

OFFERED IN THE HOUSE

BY REPRESENTATIVE GUTTENBERG

TO: CSHB 2001(O&G)

1 Page 18, following line 25:

2 Insert new bill sections to read:

3 ** Sec. 26. AS 43.55.025(a) is amended to read:

4 (a) Subject to the terms and conditions of this section, a credit against the
5 production tax levied by [DUE UNDER] AS 43.55.011(e) [OR (f)] is allowed for
6 exploration expenditures that qualify under (b) of this section in an amount equal to
7 one of the following:

8 (1) 20 percent of the total exploration expenditures that qualify only
9 under (b) and (c) of this section;

10 (2) 20 percent of the total exploration expenditures [FOR WORK
11 PERFORMED BEFORE JULY 1, 2007, AND] that qualify only under (b) and (d) of
12 this section;

13 (3) 40 percent of the total exploration expenditures that qualify under
14 (b), (c), and (d) of this section; or

15 (4) 40 percent of the total exploration expenditures that qualify only
16 under (b) and (c) of this section.

17 * Sec. 27. AS 43.55.025(b) is amended to read:

18 (b) To qualify for the production tax credit under (a) of this section, an
19 exploration expenditure must be incurred for work performed [ON OR] after
20 December 31, 2007 [JULY 1, 2003], and before July 1, 2016, [EXCEPT THAT AN
21 EXPLORATION EXPENDITURE FOR A COOK INLET PROSPECT MUST BE
22 INCURRED FOR WORK PERFORMED ON OR AFTER JULY 1, 2005,] and

23 (1) may be for seismic or other geophysical exploration costs not

1 connected with a specific well;

2 (2) if for an exploration well,

3 (A) must be incurred by an explorer that holds an interest in the
4 exploration well for which the production tax credit is claimed;

5 (B) may be for either a [AN OIL OR GAS DISCOVERY] well
6 that encounters an oil or gas deposit or a dry hole; [AND]

7 (C) must be for a well that has been completed or
8 abandoned at the time the explorer claims the tax credit under (f) of this
9 section; and

10 (D) must be for goods, services, or rentals of personal property
11 reasonably required for the surface preparation, drilling, casing, cementing,
12 and logging of an exploration well, and, in the case of a dry hole, for the
13 expenses required for abandonment if the well is abandoned within 18 months
14 after the date the well was spudded;

15 (3) may not be for testing, stimulation, or completion costs;
16 administration, supervision, engineering, or lease operating costs; geological or
17 management costs; community relations or environmental costs; bonuses, taxes, or
18 other payments to governments related to the well; costs arising from gross
19 negligence or violation of health, safety, or environmental statutes or regulations;
20 or other costs that are generally recognized as indirect costs or financing costs; and

21 (4) may not be incurred for an exploration well or seismic exploration
22 that is included in a plan of exploration or a plan of development for any unit on
23 May 13, 2003.

24 * Sec. 28. AS 43.55.025(c) is repealed and reenacted to read:

25 (c) To be eligible for the 20 percent production tax credit authorized by (a)(1)
26 of this section or the 40 percent production tax credit authorized by (a)(3) of this
27 section, exploration expenditures must

28 (1) qualify under (b) of this section; and

29 (2) be for an exploration well, subject to the following:

30 (A) before spudding the well, (i) the explorer shall submit to
31 the commissioner of natural resources the information necessary to determine

1 whether the geological objective of the well is a potential oil or gas trap that is
 2 distinctly separate from any trap that has been tested by a preexisting well; and
 3 (ii) the commissioner of natural resources must make an affirmative
 4 determination on that question; the commissioner of natural resources shall
 5 decide whether to make that determination within 60 days after receiving all
 6 the necessary information from the explorer and based on the information
 7 received and on other information the commissioner of natural resources may
 8 consider relevant;

9 (B) for an exploration well other than a well to explore a Cook
 10 Inlet prospect, the well must be located and drilled in such a manner that the
 11 bottom hole is located not less than three miles away from the bottom hole of a
 12 preexisting well drilled for oil or gas, irrespective of whether the preexisting
 13 well has been completed, suspended, or abandoned;

14 (C) after completion or abandonment of the exploration well,
 15 the commissioner of natural resources must determine that the well adequately
 16 achieved the explorer's stated geological objective.

17 * Sec. 29. AS 43.55.025(f) is amended to read:

18 (f) For a production tax credit under this section,

19 (1) an explorer shall, in a form prescribed by the department and,
 20 **except for a credit under (f) of this section,** within six months of the completion of
 21 the exploration activity, claim the credit and submit information sufficient to
 22 demonstrate to the department's satisfaction that the claimed exploration expenditures
 23 qualify under this section;

24 (2) an explorer shall agree, in writing,

25 (A) to notify the Department of Natural Resources, within 30
 26 days after completion of seismic or geophysical data processing, completion of
 27 [A] well **drilling**, or filing of a claim for credit, whichever is the latest, for
 28 which exploration costs are claimed, of the date of completion and submit a
 29 report to that department describing the processing sequence and providing a
 30 list of data sets available; [IF, UNDER (c)(2)(B) OF THIS SECTION, AN
 31 EXPLORER SUBMITS A CLAIM FOR A CREDIT FOR EXPENDITURES

1 FOR AN EXPLORATION WELL THAT IS LOCATED WITHIN THREE
2 MILES OF A WELL ALREADY DRILLED FOR OIL AND GAS, IN
3 ADDITION TO THE SUBMISSIONS REQUIRED UNDER (1) OF THIS
4 SUBSECTION, THE EXPLORER SHALL SUBMIT THE INFORMATION
5 NECESSARY FOR THE COMMISSIONER OF NATURAL RESOURCES
6 TO EVALUATE THE VALIDITY OF THE EXPLORER'S CLAIM THAT
7 THE WELL IS DIRECTED AT A DISTINCTLY SEPARATE
8 EXPLORATION TARGET, AND THE COMMISSIONER OF NATURAL
9 RESOURCES SHALL, UPON RECEIPT OF ALL EVIDENCE SUFFICIENT
10 FOR THE COMMISSIONER TO EVALUATE THE EXPLORER'S CLAIM,
11 MAKE THAT DETERMINATION WITHIN 60 DAYS:]

12 (B) to provide to the Department of Natural Resources, within
13 30 days after the date of a request, unless a longer period is provided by the
14 Department of Natural Resources, specific data sets, ancillary data, and
15 reports identified in (A) of this paragraph; in this subparagraph,

16 (i) a seismic or geophysical data set includes the data
17 for an entire seismic survey, irrespective of whether the survey
18 area covers nonstate land in addition to state land or land in a unit
19 in addition to land outside a unit;

20 (ii) well data include all derivative products, results,
21 and copies of data collected and data analyses for the well; well
22 logs; sample analyses; geophysical and velocity data including
23 vertical seismic profiles and check shot surveys; and tangible
24 material including, for each whole core collected, a lengthwise cut
25 slab that is at least 1/3 of the whole core volume, and representative
26 samples, as specified by the Department of Natural Resources, of
27 other gaseous, liquid, or solid material collected from drilling or
28 testing the well;

29 (C) that, notwithstanding any provision of AS 38, information
30 provided under this paragraph will be held confidential by the Department of
31 Natural Resources

1 (i) in the case of well data, until the expiration of the
 2 24-month period of confidentiality described in AS 31.05.035(c),
 3 without extension, after which the Department of Natural
 4 Resources [FOR 10 YEARS FOLLOWING THE COMPLETION
 5 DATE, AT WHICH TIME THAT DEPARTMENT] will release the
 6 information after 30 days' public notice;

7 (ii) in the case of seismic or other geophysical data,
 8 other than seismic data acquired by seismic exploration subject to
 9 (l) of this section, for 10 years following the completion date, at
 10 which time the Department of Natural Resources will release the
 11 information after 30 days' public notice;

12 (iii) in the case of seismic data obtained by seismic
 13 exploration subject to (l) of this section, only until the expiration of
 14 30 days' public notice issued on or after the date the production tax
 15 credit certificates are issued under (5) of this subsection; and

16 (D) that, in the case of well data, the explorer will not make
 17 a request under AS 31.05.035(c) that the commissioner of natural
 18 resources keep the data confidential for longer than the 24-month period
 19 of confidentiality described in AS 31.05.035(c);

20 (3) if more than one explorer holds an interest in a well or seismic
 21 exploration,

22 (A) each explorer may claim an amount of credit that is
 23 proportional to the explorer's cost incurred;

24 (B) in the case of a well, each explorer holding an interest in
 25 the well shall agree, in writing, that the explorer will not make the request
 26 described in (2)(D) of this subsection;

27 (4) the department may exercise the full extent of its powers as though
 28 the explorer were a taxpayer under this title, in order to verify that the claimed
 29 expenditures are qualified exploration expenditures under this section; and

30 (5) if the department is satisfied that the explorer's claimed
 31 expenditures are qualified under this section and that all data required to be

1 submitted under this section have been submitted, the department shall issue to the
 2 explorer two [A] production tax credit certificates, each [CERTIFICATE] for half of
 3 the amount of the credit to be allowed against production taxes levied by
 4 AS 43.55.011(e); the credit shown on one of the two certificates is available for
 5 immediate use; the credit shown on the second of the two certificates may not be
 6 applied against a tax for a calendar year earlier than the calendar year following
 7 the calendar year in which the certificate is issued, and the certificate must
 8 contain a conspicuous statement to that effect; notwithstanding any contrary
 9 provision of AS 38, AS 40.25.100, or AS 43.05.230, the following information is
 10 not confidential:

11 (A) the explorer's name;

12 (B) the date of the application;

13 (C) the location of the well or seismic exploration;

14 (D) the date of the department's issuance of the certificate;

15 and

16 (E) the date on which the information required to be
 17 submitted under this section will be released [DUE UNDER
 18 AS 43.55.011(e) OR (f)].

19 * Sec. 30. AS 43.55.025(g) is amended to read:

20 (g) An explorer, other than an entity that is exempt from taxation under
 21 this chapter, may transfer, convey, or sell its production tax credit certificate to any
 22 person, and any person who receives a production tax credit certificate may also
 23 transfer, convey, or sell the certificate.

24 * Sec. 31. AS 43.55.025(h) is amended to read:

25 (h) A producer that purchases a production tax credit certificate may apply the
 26 credits against its production tax liability under AS 43.55.011(e) [OR (f)]. Regardless
 27 of the price the producer paid for the certificate, the producer may receive a credit
 28 against its production tax liability for the full amount of the credit, but for not more
 29 than the amount for which the certificate is issued. A production tax credit allowed
 30 under this section may not be applied more than once.

31 * Sec. 32. AS 43.55.025(i) is repealed and reenacted to read:

1 (i) For a production tax credit under this section,

2 (1) a credit may not be applied to reduce a taxpayer's tax liability under
3 AS 43.55.011(e) below zero for a calendar year; and

4 (2) an amount of the production tax credit in excess of the amount that
5 may be applied for a calendar year under this subsection may be carried forward and
6 applied against the taxpayer's tax liability under AS 43.55.011(e) in one or more later
7 calendar years.

8 * Sec. 33. AS 43.55.025(k) is amended by adding a new paragraph to read:

9 (4) "preexisting well" means a well that was spudded more than 540
10 days but less than 35 years before the date on which the exploration well to which it is
11 compared is spudded.

12 * Sec. 34. AS 43.55.025 is amended by adding a new subsection to read:

13 (f) Subject to the terms and conditions of this section, if a claim is filed under
14 (f)(1) of this section before January 1, 2016, a credit against the production tax levied
15 by AS 43.55.011(e) is allowed in an amount equal to five percent of an eligible
16 expenditure under this subsection incurred for seismic exploration performed before
17 July 1, 2003. To be eligible under this subsection, an expenditure must

18 (1) have been for seismic exploration that

19 (A) obtained data that the commissioner of natural resources
20 considers to be in the best interest of the state to acquire for public distribution;
21 and

22 (B) was conducted outside the boundaries of a production unit;
23 however, the amount of the expenditure that is otherwise eligible under this
24 section is reduced proportionately by the portion of the seismic exploration
25 activity that crossed into a production unit; and

26 (2) qualify under (b)(3) of this section."
27

28 Renumber the following bill sections accordingly.
29

30 Page 31, line 25:

31 Delete "32 - 34, and 37"

1 Insert "41 - 43, and 46"

2

3 Page 31, line 27:

4 Delete "31, and 38"

5 Insert "31, 32, 34, 40, and 47"

6

7 Page 31, line 29:

8 Delete "Sections 26 and 27"

9 Insert "Sections 35 and 36"

10

11 Page 31, line 30:

12 Delete "sec. 26"

13 Insert "sec. 35"

14

15 Page 31, line 31:

16 Delete "sec. 27"

17 Insert "sec. 36"

18

19 Page 31, following line 31:

20 Insert a new subsection to read:

21 "(d) Sections 26 - 29 and 33 of this Act apply to exploration expenditures incurred for
22 work performed after December 31, 2007, that are the basis of tax credits that may be claimed
23 against taxes levied for oil and gas produced after December 31, 2007."

24

25 Reletter the following subsection accordingly.

26

27 Page 32, line 1:

28 Delete "sec. 29"

29 Insert "sec. 38"

30

31 Page 32, line 3:

1 Delete "29"

2 Insert "38"

3

4 Page 32, line 31:

5 Delete "32 - 34, and 37"

6 Insert "41 - 43, and 46"

7

8 Page 33, line 2:

9 Delete "26, 27, 31, and 38"

10 Insert "26 - 29, 31 - 34, 35, 36, 40, and 47"

11

12 Page 33, line 19, following ".":

13 Insert "(a) Section 30 of this Act is retroactive to July 1, 2003.

14 (b)"

15

16 Page 33, line 20:

17 Delete "32 - 34, and 37"

18 Insert "41 - 43, and 46"

19

20 Page 33, line 21:

21 Delete "26, 27, 31, and 38"

22 Insert "26 - 29, 31 - 34, 35, 36, 40, and 47"

23

24 Page 33, line 22:

25 Delete "sec. 44"

26 Insert "sec. 53"

AMENDMENT 43 Rep. Edgmon

OFFERED IN THE HOUSE

TO: CSHB 2001(O&G)

1 Page 26, lines 17 - 19:

2 Delete

3 "(8) costs of arbitration, litigation, or other dispute resolution activities
4 that involve the state or concern the rights or obligations among owners of interests in,
5 or rights to production from, one or more leases or properties or a unit;"

6 Insert

7 "(8) costs of arbitration, litigation, [OR OTHER] dispute resolution,
8 lobbying, public relations, advertising, or policy advocacy [ACTIVITIES THAT
9 INVOLVE THE STATE OR CONCERN THE RIGHTS OR OBLIGATIONS
10 AMONG OWNERS OF INTERESTS IN, OR RIGHTS TO PRODUCTION FROM,
11 ONE OR MORE LEASES OR PROPERTIES OR A UNIT];"

12
13 Page 29, line 12, following "processed":

14 Insert ";

15 (21) costs relating to office buildings, fixtures and equipment, and
16 real property that is not located on an oil or gas exploration, production, or
17 development lease or property in the state; and

18 (22) overhead, office, or administrative expenses and all other
19 indirect costs of oil or gas exploration, development, or production"

44

Rep. Gatto

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 2001(O&G)

1 Page 10, following line 25:

2 Insert a new bill section to read:

3 **** Sec. 14.** AS 43.55.011(e) is amended to read:

4 (e) There is levied on the producer of oil or gas a tax for all oil and gas
5 produced each month from each lease or property in the state, less any oil and gas the
6 ownership or right to which is exempt from taxation or constitutes a landowner's
7 royalty interest. Except as otherwise provided under (j) and (k) of this section, the tax
8 is equal to the greater of 25 [22.5] percent of the production tax value of the taxable
9 oil and gas as calculated under AS 43.55.160, or the minimum tax determined under
10 (f) of this section."
11

12 Renumber the following bill sections accordingly.

13

14 Page 14, line 21:

15 Delete "22.5"

16 Insert "25 [22.5]"

17

18 Renumber internal references to bill sections in accordance with this amendment in a way that
19 makes sec. 14 effective January 1, 2008, and adds sec. 14 to (b) of the APPLICABILITY
20 section and to (1)(B) of the TRANSITION: RETROACTIVITY OF REGULATIONS section.

21 Below are all internal bill section reference in this bill:

22 Page 31, lines 25, 27, 29, 30, and 31

23 Page 32, lines 1, 3, 13, 16, 19, and 31

1 Page 33, lines 2, 19 - 20, 21, and 22

11/4/07

Amendment 1
to
AMENDMENT *44*

OFFERED IN THE HOUSE

BY REPRESENTATIVE *Gatto*

TO: AMENDMENT NO. 44 TO CSHB 2001(O&G), Draft Version "L"

- 1 Page 1, line 5, following "produced each":
- 2 Delete "month"
- 3 Insert "calendar year"
- 4
- 5 Page 1, line 8, following "percent of the"
- 6 Insert "annual"

AMENDMENT

45

Seaton

OFFERED IN THE HOUSE

TO: CSHB 2001(O&G)

- 1 Page 26, line 13:
- 2 Delete "arising from"
- 3 Insert "incurred as a result of [ARISING FROM]"

AMENDMENT *46*

OFFERED IN THE HOUSE

BY REPRESENTATIVE GUTTENBERG

TO: CSHB 2001(O&G)

1 Page 23, following line 14:

2 Insert a new subsection to read:

3 "(h) Subject to legislative appropriation for the purpose, the department may
4 compensate a person who provides to the department information about
5 noncompliance with the provisions of this chapter by an explorer or a producer of oil
6 or gas if that information leads to the collection of taxes, penalties, or interest from a
7 producer. The amount of compensation under this subsection may not exceed 10
8 percent of the tax, penalty, or interest collected as a result of the information. A state
9 employee is not eligible for compensation under this subsection."

HB

2000 1

(1 1/5/07)

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

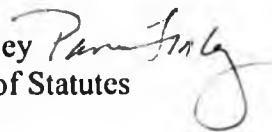
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

November 6, 2007

SUBJECT: CSHB 2001(RES): Version V
(Work Order No. 25-GH0014\V)

TO: Representative Carl Gatto
Co-chair of the House Resources Committee
Attn: Bonnie

FROM: Pam Finley 
Revisor of Statutes

Enclosed is a final of the referenced CS. The differences between this version and the O version are as follows:

1. In sec. 50, in AS 43.55.160(a)(2)(E), "1/2" was changed to "1/12".
2. In AS 43.55.028(e)(7), the words "or by" were added.
3. AS 43.55.850 was deleted and a general statement of its contents was added as intent language in sec. 1(c). Cross-references to AS 43.55.850 in the back pages were deleted.
4. In sec. 1(b), "the public education fund" was substituted for a general reference to education funding.
5. To correct errors in the back pages, the following changes were made. AS 43.55.023(l) was added to sec. 61(a). Section 26 was deleted from sec. 61(b). Section 52 was added to sec. 66(b). In sec. 66(b), AS 43.55.023 was substituted for AS 43.55.030. Section 44 was deleted from sec. 66(c).

Please let us know if any of the changes above were inappropriate.

PF:med
07-410.med

Enclosure

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSB2001(RES)
 () Publish Date: _____

Identifier (file name): CSHB2001(RES)-DOR-TAX-11-5-07 Dept. Affected: Revenue 04
 Title An Act relating to the production tax on oil and gas.. RDU Taxation and Treasury
 Component Tax Division
 Sponsor Governor
 Requester House Finance Component Number 2476

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
OPERATING EXPENDITURES							
Personal Services	1,215.7	1,215.7	1,215.7	1,215.7	1,215.7	1,215.7	1,215.7
Travel							
Contractual	1,018.4	1,018.4	1,018.4	511.8	5.2	5.2	5.2
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	2,234.1	2,234.1	2,234.1	1,727.5	1,220.9	1,220.9	1,220.9

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()		727,000.0	513,000.0	566,000.0	835,000.0	813,000.0	596,000.0
-------------------------------	--	------------------	------------------	------------------	------------------	------------------	------------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	2,234.1	2,234.1	2,234.1	1,727.5	1,220.9	1,220.9	645.9
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	2,234.1	2,234.1	2,234.1	1,727.5	1,220.9	1,220.9	645.9

Estimate of any current year (FY2008) cost: 3,409.2

POSITIONS

Full-time	1	1	1	1	1	1	1
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)
 This bill makes economic and several administrative changes to the state's current petroleum profits tax. The bill retains the current tax system's structure, which taxes the net value of petroleum resources. The bill makes the following changes to the current system: It institutes a rate of 25% on net income. It calculates the progressivity surcharge as the difference between the per barrel net revenue and \$30 at 0.2%, 0.3% between \$40 and \$50, 0.4% between \$50 and \$60, and 0.5% over \$60. It eliminates the period by which past investments are recognized in the transition investment expenditure credits (AS 43.55.023(i)) from April 1, 2001 to April 1, 2003. Pipeline tariffs are based on reasonable rates. EIC credits are increased from 20% to 30%. The effective date of the bill is January 1, 2007.

Prepared by: Johanna Bales, Roger Marks, Cherie Nienhuis
 Division Tax Division
 Approved by: Jerry Burnett
 Department of Revenue

Phone 269-6628
 Date/Time 11/5/07 11:00 AM
 Date 11/5/2007

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 2001 (RES)
 () Publish Date: _____

Identifier (file name): CSHB 2001 (RES) DOA-DAS-11-5-07
 Title: An Act relating to the production tax on oil and gas...
 Dept. Affected: Administration
 RDU: Centralized Admin. Services
 Component: Office of the Commissioner
 Sponsor: Rules
 Requester: Governor
 Component Number: 45

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This legislation has no fiscal impact on the Department of Administration.

Prepared by: Eric Swanson
 Division: Administrative Services
 Approved by: Annette Kreitzer
Commissioner

Phone 465-5655
 Date/Time 11/5/07 2:50 PM
 Date 11/5/2007

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. CSHB2001(RES)

ANALYSIS CONTINUATION

Administrative changes to the current tax system include the following: those expenses related to criminal negligence; excludes dismantlement, removal & restoration (DR&R) costs from allowable expenditures; requires taxpayers to provide cost projections to allow the state to better forecast state revenues and pursue changes in reported costs; authorizes public reporting of some cost data; authorizes a short-term audit program; and designates an exempt class of oil and gas auditors.

Certain lease expenditure allowance provisions are retroactive to April 1, 2006; the other provisions of the tax proposal become effective January 1, 2007.

Personal Services: The department will reclassify the existing 5 vacant auditor positions, and create 4 to 5 senior level auditor positions with extensive industry oil and gas auditing experience. These positions will be classified as the Department's most senior level auditor positions and will have salaries that are consistent with market comparables and will be beyond the current salary levels allowed under the existing Oil and Gas Revenue Auditor (OGRA) pay classification system. In addition, the department expects that it will need one additional Programmer Analyst V position to maintain and manage the new oil and gas production tax database system at a cost of \$115,700 annually. The existing oil and gas specialist, oil and gas revenue auditors, and their immediate supervisor will be offered the opportunity to opt into an exempt status with individual salaries established commensurate with experience and skill level, and consistent with market comparables.

The need for exempt status is based upon the difficulties the department has recruiting experienced auditors to administer the tax. The current pay range for an Oil and Gas Revenue Auditor is on the low range of the pay range for roughly similar jobs. The department estimates the new exempt positions and the potential salary increases associated with the change of existing staff to exempt status, will cost the state approximately \$1,100,000 annually.

Contractual: Contractual expenditures include \$1,013,200 annually to contract for audit assistance. This estimate is based on 3 auditors, working 40 hours per week each, for 4 years starting in January 2008 at an average rate of \$100 per hour, plus estimated transportation and lodging costs, and additional costs for training auditors. The need for such assistance is based upon the department's substantial difficulty in recruiting enough auditors to administer the oil and gas production tax. The department only anticipates the need for contract audit assistance for 4 years while the department recruits and trains auditors for positions that are currently vacant. The contract auditors would work in conjunction with department auditors during this time to maximize department resources and help train department auditors. The department will also need an additional \$5,200 each year in contractual costs associated with the n Analyst Programmer V position.

Current FY2008 costs: The department expects it will incur costs beginning January 2008 to immediately implement the new production tax structure. Those costs include: **Contractual** - \$2,620,800 capital funding to fund the scoping and development of an oil and gas production tax database system (including associated hardware) and \$506,600 to contract for audit assistance (as described above). The new database system will permit accurate and efficient management of information submitted by taxpayers to facilitate auditing and forecasting of revenues, and timely and accurate reports for internal and public uses. The proposed system will accommodate the migration of ELF-based data and continue to collect supplemental data from producers on volumes, wells and production. The system will include income-based data, including tracking credits, required under PPT and upon which the ACES tax structure is based. The system will also integrate into the division's accounting systems. **Personal Services** - \$218,000 from the period January 1, 2008 through June 30, 2008 due to creating an exempt class of oil and gas revenue auditors and increasing pay to more closely reflect what the market in Alaska pays for roughly similar positions. In addition, we will recruit for the Analyst Programmer V and bring that person on board to participate in the database scoping meetings. We estimate FY 2008 costs for this position to be approximately \$57,800. **Supplies** - \$6,000 for a computer and software for the new analyst programmer V position.

See page 3 for projected revenue estimates.

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

BILL NO. CSHB2001(RES)

ANALYSIS CONTINUATION

**Estimated Production Tax Revenues, PPT and ACES, at
Various Prices (in \$millions nominal)**

Fall 2007 DOR Official Forecast Prices

Fiscal Year	ANS WC \$ per barrel (in REAL dollars)	ANS WC \$ per barrel (in NOMINAL dollars)	Status Quo - PPT	CSHB2001 (Res)	Increase or (Decrease) from PPT
2008	71.65	71.65	1,915	2,970	1,055
2009	64.55	66.30	1,693	2,420	727
2010	60.05	63.40	1,531	2,044	513
2011	59.70	64.75	1,670	2,236	566
2012	59.55	66.35	1,746	2,581	835
2013	58.90	67.45	1,647	2,460	813
2014	58.25	68.55	1,642	2,238	596

DOR Forecast nominal prices rounded to the nearest \$0.05

\$60 per barrel in REAL dollars

Fiscal Year	ANS WC \$ per barrel (in REAL dollars)	ANS WC \$ per barrel (in NOMINAL dollars)	Status Quo - PPT	CSHB2001 (Res)	Increase or (Decrease) from PPT
2008	60.00	60.00	1,051	1,688	637
2009	60.00	61.65	1,435	2,038	603
2010	60.00	63.35	1,562	2,081	519
2011	60.00	65.09	1,695	2,271	576
2012	60.00	66.88	1,783	2,632	849
2013	60.00	68.72	1,733	2,587	854
2014	60.00	70.61	1,776	2,437	661

\$80 per barrel in REAL dollars

Fiscal Year	ANS WC \$ per barrel (in REAL dollars)	ANS WC \$ per barrel (in NOMINAL dollars)	Status Quo - PPT	CSHB2001 (Res)	Increase or (Decrease) from PPT
2008	80.00	80.00	2,650	4,146	1,496
2009	80.00	82.20	3,031	4,489	1,458
2010	80.00	84.46	3,266	4,700	1,434
2011	80.00	86.78	3,481	5,071	1,590
2012	80.00	89.17	3,668	5,667	1,999
2013	80.00	91.62	3,619	5,669	2,050
2014	80.00	94.14	3,690	5,585	1,895

Additional revenues for the second half of FY 2007 would be \$244 million.

State of Alaska
Department of Revenue
Commissioner's Office



SARAH PALIN, GOVERNOR
333 Willoughby Avenue, 11th Floor
P.O. Box 110400
Juneau, Alaska 99811-0405
Phone: (907) 465-2300
Fax: (907) 465-2394

November 5, 2007

The Honorable Ralph Samuels
Chair, Legislative Budget & Audit Committee
State Capitol, Room 204
Juneau, AK 99801-3100

The Honorable Carl Gatto
Co-Chair, House Resources Committee
State Capitol, Room 108
Juneau, AK 99801-3100

The Honorable Craig Johnson
Co-Chair, House Resources Committee
State Capitol, Room 126
Juneau, AK 99801-3100

Cc: All Members, House Resources Committee

Re: Information Requested by Legislative Budget & Audit Committee dated 11-2-07

Dear Representatives Samuels, Gatto and Johnson:

I am writing in response to the above titled memorandum referring to the highlighted items that were outstanding questions from the Legislative Budget & Audit Committee relating to CS HB 2001(O&C).

Page 3, top of page- Requests information relating to the .025 Exploration Credit program.

- 1) How many .025 Exploration Credit applications have been received since inception?
Department of Revenue has received 12 applications for wells and 13 for seismic projects for a total of 25.
- 2) How many wells exploratory wells were drilled in the state over this same time period?
Out of a total of 83 exploration wells statewide, 12 exploratory wells were drilled in connection with the .025 Exploration Credit program, and 69 wells were drilled outside of the .025 Exploration Credit program.
- 3) How much seismic was shot during the same time period:
 - a. Offshore state land-
 - b. Offshore federal land-
 - c. Onshore state land
 - d. NPRA
 - e. Inside Unit boundaries
 - f. Outside Unit boundaries

Historical information on seismic activities in the state for which DNR has a record is being aggregated and will be supplied when available.

Page 3- Questions 17-23 relating to September 4, 2007 Presentation materials.

These questions request details relating to preliminary modeling that was done as of September 4. Since September 4, this modeling was superseded by substantially refined and expanded models. It is this latter class of models that were used to provide the economic analyses during the weeks leading up to the start of the Special Session and during the Special Session. If the Committee would like more information about the models used prior to Special Session, we will be happy to provide it after our current economic work in support of the Special Session is completed. We are also available to respond to questions about the models that have been made available and are being used to support the economic analyses during this special session.

Page 4, Question 26 relating to Exploration Incentives

Please provide a history of all requests for exploration credits and which were denied and which were granted for the following two exploration incentive programs:

AS 38.05.180(i)

AS 41.09.010 (1994-2007)

AS 38.05.180(i)

Exploration incentive credits are only awarded for qualifying wells or G & G activity on state land. From 1983 through 1994, 22 wells have received EIC's. 17 of the wells received EIC's in the amount of \$51,813,093.45. See link to EIC's awarded by well and lessee at <http://www.dog.dnr.state.ak.us/oil/programs/incentives/incentives.htm>

Three other wells received about \$9 million in EIC's, but the state made audit recoveries of about \$4.4 of the EIC's (relating to Colville Delta wells #2, #25 1, and 3). Of the remaining two wells, one was a Colville Delta #1 sidetrack well. There have been no applications for G & G EIC's. The 22 wells are mostly North Slope and Foothills wells. Most of the EIC's for the wells have been audited. The entities receiving the EIC's include major oil producers, including Exxon (about \$13 million in EIC's), BP/Sohio (\$12 million), and ARCO (\$14.6 million). EIC's were denied to three wells under AS 38.05.180(i), all ARCO wells, including Alpine #1, Fiord #3 and Kuukpik #3. No EIC's have been awarded since 1994 under AS 38.05.180(i).

AS 41.09.010 (1994-2007)

EIC's are available under this statute on all land in Alaska (i.e., it does not have to be state land). Only one application has been received, and it was denied, relating to a well in Cook Inlet at Corea Creek (the denial was on September 29, 1995). In addition, Teck Cominco wanted AS 41.09 EIC on a gas well on NANA land, but was not eligible for EIC because it did not seek pre-approval for the EIC as required under the statute.

Page 4 Question 27- Tradeable Credits

Please provide specific information on the rate at which credits are being traded.

The Department of Revenue does not formally receive any reports of the price at which transferable credits are being sold or purchased. The price at which a credit is sold by a taxpayer is known only by the taxpayer and the purchaser of the tax credit. Taxpayers have voluntarily and informally advised the department of the price at which they ultimately were able to sell their

tax credits. That range is from \$.90 to full price. If the legislature desires to know more about the rate at which these credits are being sold, we would encourage them to speak directly with the taxpayers that are incurring capital credits but have no current production or tax liability against which these credits can be used.

Page 4, Question 28- Total Petroleum Revenues; What are the fall 2007 statistics for the following:

- a. Corporate Petroleum Tax
- b. Petroleum Property Tax
- c. Oil and Gas Royalties
- d. Bonuses, Rents, and Interest
- e. Deposits to the CBRF

The following are the statistics requested:

Unrestricted Oil Revenue (in millions)

Petroleum Property Taxes (State Share)	\$ 65.6
Corporate Income Taxes (Petroleum)	\$ 594.4
Production Taxes (Including Hazardous Release Surcharge)	\$ 2,292.3
Royalties (Including Bonuses and Interest)	
Oil and Gas Royalties	\$ 1,583.8
Bonuses and Interest	\$ 29.2
Subtotal Royalties (Including Bonuses and Interest)	\$ 1,613.0

Total Unrestricted Oil Revenue **\$ 4,565.3**

Restricted Oil Revenue

Royalties to Permanent Fund & School Fund (Including Bonuses and Interest)	\$ 545.7
Settlements to CBRF	\$ 113.6
NPRA Royalties, Rents & Bonuses	\$ 12.8

Total Restricted Oil Revenue **\$ 672.1**

Total Restricted & Unrestricted Oil Revenue **\$ 5,237.4**

Note

Data are preliminary and may not match final data published in the Fall 2007 Revenue Sources Book.

Includes both restricted and unrestricted revenue

Letter to Representatives Gatto and Johnson
November 5, 2007
Page 4 of 4

Data Request dated 10-21-07- Request for the Fall 2007 Revenue Sources Book.
The Fall 2007 Revenue Sources Book will be available in December 2007.

Data Request dated 10-23-07- Profile of forecasted credits taken over years in revenue forecast model, for .024 credits (middle earth \$6 million, and small producer \$12 million) and the 40% .025 credits (Exploration Incentive Credits). This information was previously requested and supplied to LB&A's economic consultant, Mr. Barry Pulliam EconOne.

Sincerely,



Marcia Davis, Deputy Commissioner
Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB2001(RES)
 () Publish Date: _____

Identifier (file name): HB2001CSRES-DNR-O&G-11-06-07 Dept. Affected: Natural Resources
 Title Oil and Gas Tax Amendments RDU Resource Development
 Component Oil and Gas Development
 Sponsor Rules Committee
 Requester House Finance Component Number 439

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	303.5		303.5	303.5	303.5	303.5	303.5	303.5
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	303.5		303.5	303.5	303.5	303.5	303.5	303.5

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUE\$ ()	**Indeterminate Positive						
--------------------------------	---------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	303.5		303.5	303.5	303.5	303.5	303.5	303.5
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	303.5	0.0	303.5	303.5	303.5	303.5	303.5	303.5

Estimate of any current year (FY2008) cost: 177.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill would amend the oil and gas production tax under AS 43.55 to increase the base tax rate from 22.5% to 25% of net income. The bill has the progressivity surcharge increasing at 0.2% per dollar between the per barrel net revenue and \$30; 0.3% between \$30 and \$40; 0.4% between \$50 to \$60; and 0.5% as it goes over \$60. The bill also eliminates the period by which past investments are recognized in the transition investment expenditure credits (AS 43.55.023(i)) from April 1, 2001 to April 1, 2003. In calculating transportation deductions, pipeline tariffs are based on actual and reasonable rates. Some EICs credits are increased from 20% to 30%.

Administrative changes to the current tax system include changes in the administration of EICs under AS 43.55.025 relating to the kind of information that EIC applicants must provide to the state and the time that this information may be kept confidential.

Prepared by: Kevin Banks, Acting Director Phone 269-8800
 Division Oil and Gas Date/Time 11/6/2007
 Approved by: Tom Irwin, Commissioner Date 11/6/2007
Natural Resources

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. CSHB2001(RES)

ANALYSIS CONTINUATION

****Indeterminate Positive:** The royalty revenue impact to the State of ACES is indeterminate, but most likely positive. ACES improves the economics for new entrants or small Alaska producers, but decreases the attractiveness of investments in legacy fields.

As an offset and incentive, the bill would have a fund created that would buy back the credits from small producers (less than 50,000 barrels a day) but payouts are capped at \$25,000,000. Because of this cap, the value of the production tax transferable credits (the Qualified Capital Expenditure credits (AS 43.55.023(a)), the loss carry-forward credit (AS 43.55.023(c)), and EICs (AS 43.55.025) will remain the same as under existing law.

Taken together and comparing the House Resources committee bill with the existing AS 43.55 means that a North Slope oil development project's value (the net present value at a 15% discount rate) to the new entrant will be less. At \$40 per barrel (ANS West Coast), the NPV goes down about 10% for these new entrant's projects. Existing producers will see a bigger decrease in the NPV of their new capital investments at \$40 per barrel because the TIE credit is eliminated. At higher prices (between \$50 and \$85), the higher tax rate will lower project net present values by as much as 35% but the remaining project NPVs at these higher prices will be high enough to still attract investment. These new investments will lead to more production and royalty revenue.

This bill also excludes certain types of costs from being deductible lease expenditures when determining net income. Expenses relating to criminal negligence and dismantlement, removal & restoration (DR&R) costs would no longer be deductible lease expenditure. The impact of these exclusions are unknown and not estimated here.

Personal Services: This bill would reclassify the current oil and gas auditors to exempt status employees. DO&G currently has seven oil and gas auditor positions. The total salary/benefit costs for these seven employees currently equals approximately \$849,147. An increase to exempt status is estimated to cost up to an additional \$303,500 in FY09. The FY08 amount of \$177,000 covers an estimated 7 months at the higher rate.



RECORDS CERTIFICATION



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

John Hubbard

Signature of Camera Operator

6/18/2009

Date

HJR

4

April 7, 2007

Rep. Craig Johnson
State Capitol, Room 126
Juneau, AK 99801

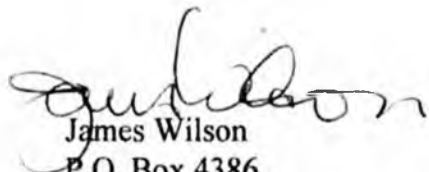
Dear Representative Johnson,

I am writing in support of Representative Kurt Olson's House Joint Resolution 4. It is inconceivable that the Federal Subsistence Board would designate Ninilchik a rural community with subsistence fishing rights on the Kenai River. I urge you to vote for this bill as many of us here on the Kenai Peninsula work to reverse the Board's decision.

I have attached a copy of my March 19 letter to Denby Lloyd, Commissioner, ADF&G, which more fully explains my attitude toward this issue.

Please support HJR 4 and thank you for your other good works in Juneau.

Sincerely,


James Wilson
P.O. Box 4386
Soldotna, AK 99669

March 19, 2007

Denby S. Lloyd
Commissioner
Alaska Department of Fish & Game
P.O. Box 115526
Juneau, AK 99811

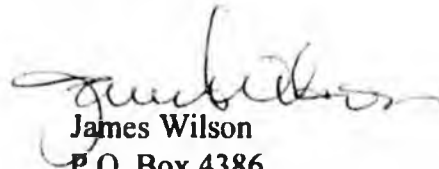
Dear Commissioner Lloyd,

I am writing to express my opposition to the Federal Subsistence Board's designation of Ninilchik as a rural community with subsistence fishing rights on the Kenai River.

This community rests squarely on the Sterling Highway, with easy access to major shopping centers in Homer, Soldotna and Kenai. Further, it has access to a modern airport in Kenai, capable of accommodating jet traffic, and to secondary airports at Homer and Soldotna. The Ninilchik community is also served by two hospitals, Central Peninsula Hospital in Soldotna and South Peninsula Hospital in Homer, with Central Peninsula Hospital currently undergoing a major expansion of its facilities and services. In fact, Ninilchik is often referred to as "Alaska's third largest city" as tourists, sportfishermen, clam diggers and outdoor enthusiasts gather there each year over the Memorial Day week-end. Why this community would be designated "rural" with subsistence fishing rights on two sections of the Kenai River is inexplicable, particularly since these sections are as much as 80 miles distant and have never been traditionally fished by residents of Ninilchik.

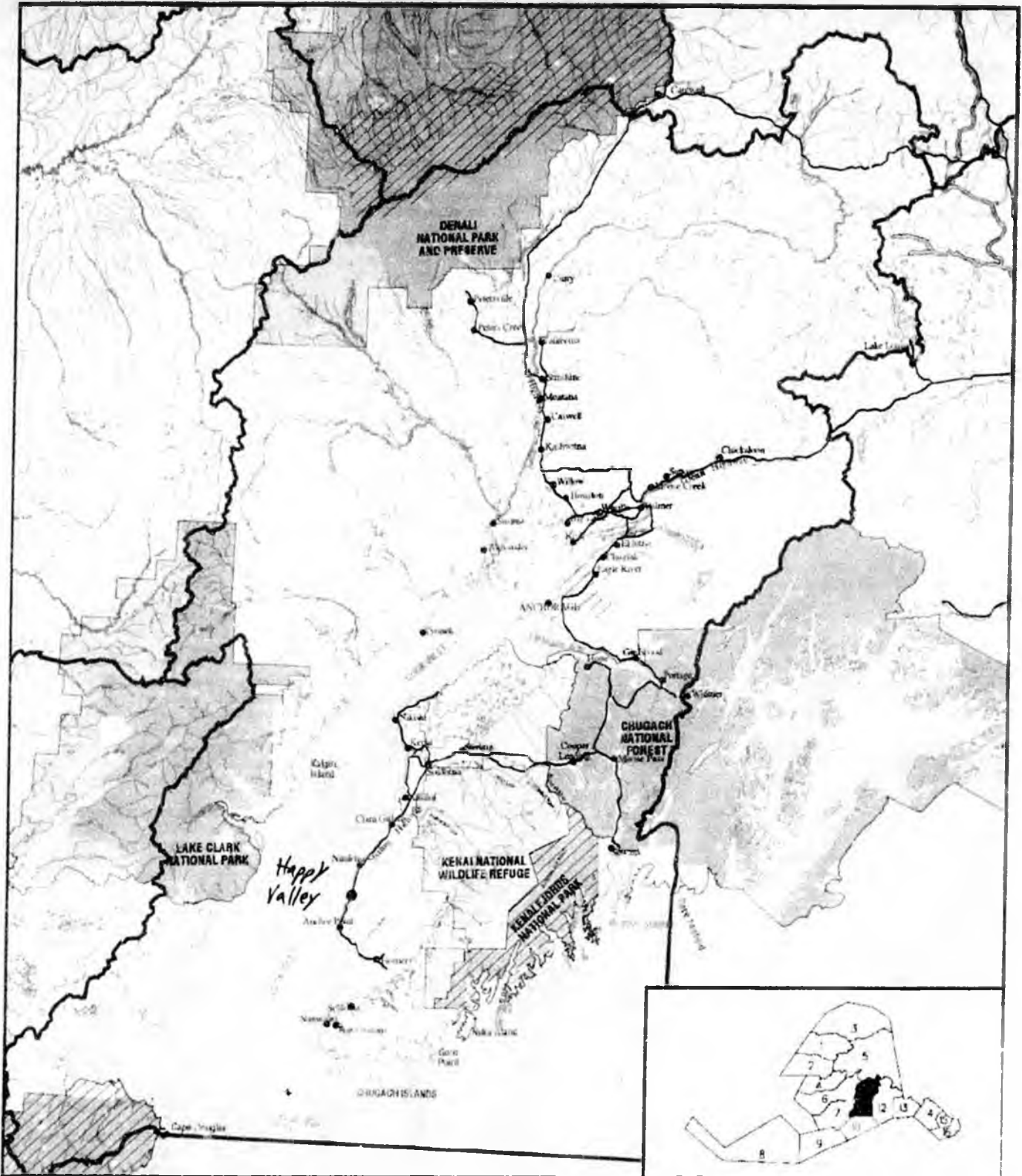
Accordingly, I urge the Department of Fish & Game to file suit in U. S. District Court to overturn the Federal Subsistence Board's designation of Ninilchik as a "rural" community.

Sincerely,



James Wilson
P.O. Box 4386
Soldotna, AK 99669

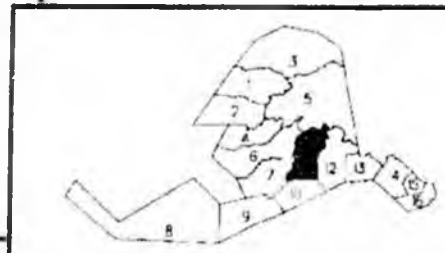
cc: Sarah Palin, Governor
Michael Fleagle, Chair, FSB



Map 11 Cook Inlet Area



- FWS Administered Land
- NPS Administered Parks
- NPS Administered Preserves
- BLM Administered Land
- BLM Non-navigable Waters Only
- USFS Administered Land
- Closed to Subsistence
- Roads
- Area Boundary
- Federal Boundary



ATTACHMENT 2

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHJR 4(FSH)
 (H) Publish Date: 3/5/2007

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Kenai/Kasilof Subsistence Priority RDU _____
 Sponsor Rep. Olson Component _____
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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 ()						
-------------------------------	--	--	--	--	--	--

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 (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: House Fisheries Committee Staff Phone 465-3923
 Division _____ Date/Time _____
 Approved by: Rep. Seaton, Chairman Date 3/2/2007
 Agency Legislature

ALASKA STATE LEGISLATURE

REPRESENTATIVE KURT OLSON

- Chair, Labor and Commerce
- Vice-Chair, Oil and Gas
- Member, Community and Regional Affairs

Session: January - May
State Capitol
Juneau, AK 99801-1182
Phone: 907-465-2693
Fax: 907-465-3835



Interim: May - December
145 Main Street Loop, Ste 221
Kenai, AK 99611
Phone: 907-283-2690
Fax: 907-283-2763

Official Business

CSHJR 4(FSH) – Bill Packet Information
House Resources Committee
March 6, 2007

=====

Enclosed Documents:

- Sponsor Statement
- CSHJR 4(FSH) (version 25-LS0201\K)
- ADF&G Documents
 - Aug 3, 2006 Letter to Gary Edwards from Commissioner Campbell
 - Request for Reconsideration with attachments (maps) relating to Community of Ninilchik and the Upper Kenai River
 - Request for Reconsideration relating to Community of Ninilchik and the Kasilof River
 - Request for Reconsideration relating to Communities of Hope and Cooper Landing and the Upper Kenai River
- Letter of Support
 - Kenai Peninsula Fishermen's Association

ALASKA STATE LEGISLATURE

REPRESENTATIVE KURT OLSON

- Chair, Labor and Commerce
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145 Main Street Loop, Ste 221
Kenai, AK 99611
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Fax: 907-283-2763

Official Business

SPONSOR STATEMENT

CSHIR 4(FSH) – Federal Subsistence Board Reconsideration

This resolution requests the Federal Subsistence Board (Board) reconsider its November 2006 decision regarding subsistence fishery priority given to Ninilchik residents.

There are a number of issues worthy of consideration when debating the merits of this resolution; below is a brief list.

- The evidence presented to the Board did not demonstrate that the salmon, rainbow trout, char and other fish stocks in described area, are the same fish stocks as those present in areas much closer to and historically and much more frequently used by Ninilchik residents, such as Ninilchik River and Deep Creek.
- The Board made its customary and traditional use determination without substantial supporting evidence and without a reasonable examination of the eight regulatory factors for making customary and traditional use determinations with regards to the various fish stocks and areas covered by the determination.
- The Board improperly and unreasonably denied the Alaska Department of Fish & Game Board Liaison the ability to provide and discuss relevant information during the critical point of Board deliberations and in doing so, violated its own regulatory and Secretarial direction.

In short, the Board seems to have based its ruling on anecdotal evidence rather than facts available for review. Many facts are readily available and a review of State's Request for Reconsideration will serve to enlighten even further.

While in the House Special Committee on Fisheries, the Resolution was amended to add the communities of Hope and Cooper Landing and to add the electronic transmission as another means of distribution.

It is the hope of the sponsor, that passage of this resolution and the intervention of Alaska's congressional delegation will help to sway the Board in its reluctance to reconsider its decision.

STATE OF ALASKA

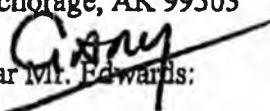
FRANK H. MURKOWSKI
GOVERNOR

DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

P.O. BOX 115526
JUNEAU, AK 99811-5526
PHONE: (907) 465-4100
FAX: (907) 465-2332

August 3, 2006

Mr. Gary Edwards
Deputy Director
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503


Dear Mr. Edwards:

You recently requested that Alaska Department of Fish and Game (ADF&G) staff participate in a meeting on Thursday, August 10 at 1:00 pm, between U.S. Fish and Wildlife Service (USFWS) staff, Kenai National Wildlife Refuge staff, the Ninilchik Tribal Council (NTC), and possibly Office of Subsistence Management staff. The purpose of this meeting, as I understand it, is to develop proposals for the Federal Subsistence Board's (FSB) consideration and likely approval that would create new subsistence fisheries on the Kenai Peninsula.

As you are aware, the State of Alaska has grave concerns regarding recent FSB decisions establishing customary and traditional use determinations on the Kenai and Kasilof Rivers. On January 11, 2006, at the FSB meeting, I testified that the data before the FSB did not support its actions. Subsequently, the State of Alaska filed three Request for Reconsideration petitions (RFR) on these findings. We have not received a response to those RFRs.


Because this is such an important issue for us, when I received your request, I asked Denby Lloyd, Director of the Division of Commercial Fisheries; Sarah Gilbertson, Subsistence and Federal Issues Coordinator; and an attorney from the Department of Law to attend this meeting on ADF&G's behalf. I was disappointed today to learn that this level of state participation is not welcome – especially in light of the fact that NTC is expected to have their attorneys present at this meeting.

I also question why this meeting is closed to the public. Any action taken by the FSB to establish subsistence fisheries on the Kenai Peninsula has the potential to impact all other Cook Inlet fisheries. Because of this, I encourage you to open this meeting to the public and to invite all parties and user groups that are potentially impacted by the FSB's actions related to this issue.

In closing, because this is a matter of extreme importance, I want to reiterate that the State of Alaska is willing to attend public meetings addressing the issue of subsistence fisheries on the Kenai Peninsula. Given the complex social, economic, and legal issues involved, however, it is not appropriate for ADF&G field staff to attend such a meeting without policy level staff who have background in this issue. Given the diverse user groups that are potentially impacted by the

creation of a subsistence fishery on the Kenai and Kasilof Rivers, it is also not appropriate for ADF&G to participate in a meeting where only one interest group will be invited and other affected interest groups will not be allowed to attend or participate.

Sincerely,



McKie Campbell
Commissioner

cc: Pete Probasco, Acting Assistant Regional Director, Office of Subsistence Management
Drue Pearce, Assistant to the Secretary, Alaska Affairs, U.S. Dept. of the Interior
Hans Neidig, Special Assistant to the Secretary for Alaska, U.S. Dept. of the Interior
Keith Goltz, Legal Counsel to the Board, Office of the Solicitor
Ron McCoy, Acting Chair, Federal Subsistence Board
Niles Cesar, Area Director, Bureau of Indian Affairs
Judy Gottlieb, Associate Regional Director, National Park Service
Denny Bschor, Regional Forester, USDA Forest Service
George Oviatt, Deputy State Director, Bureau of Land Management
John Katz, Director of State and Federal Relations, State of Alaska
David Marquez, Attorney General, State of Alaska

STATE OF ALASKA

SARAH PALIN
GOVERNOR

DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

P.O. BOX 115526
JUNEAU, AK 99811-5526
PHONE: (907) 465-4100
FAX: (907) 465-2332

January 16, 2007

Mr. Mike Fleagle, Chairman
Federal Subsistence Board
Office of Subsistence Management
U. S. Department of the Interior
3601 C Street, Suite 1030
Anchorage, AK 99503

*Ninilchik
to
upper Kenai*

Dear Mr. Fleagle:

As provided for in Subpart B, 36 CFR §242.20 and 50 CFR §100.20, of the Subsistence Management Regulations for Public Lands in Alaska, the Alaska Department of Fish and Game (ADF&G) hereby requests that the Federal Subsistence Board reconsider and rescind its decision of November 17, 2006 upon Proposal FRFR 06-02/03/08, providing "to the community of Ninilchik a customary and traditional use determination for all fish in the waters north of and including the Kenai River drainage, within the Kenai National Wildlife Refuge and Chugach National Forest within the Kenai Peninsula district." This decision is purportedly effective November 17, 2007, but the decision was not published in the Federal Register.

The enclosed Request for Reconsideration of FRFR 06-02/03/08 details the reasons for our opposition to the Federal Board action to establish this customary and traditional use determination.

I urge the Federal Subsistence Board to carefully consider this request and to act expeditiously.

Sincerely,



Denby S. Lloyd
Acting Commissioner

Enclosure

cc: David Bedford, Deputy Commissioner, ADF&G
Sarah Gilbertson, Subsistence & Federal Issues Coordinator, ADF&G
Tina Cunning, Special Assistant, State/Federal Issues, ADF&G

REQUEST FOR RECONSIDERATION OF FEDERAL SUBSISTENCE BOARD DETERMINATIONS ON PROPOSAL FRFR 06-02/03/08, including the Board's Determination that the Community of Ninilchik Has Customarily and Traditionally Harvested for Subsistence Purposes All Fish Located Within the Boundaries of the Kenai National Wildlife Refuge And Chugach National Forest, including the Upper Kenai River, Russian River, Swanson River, and their Lakes and Drainages

By State of Alaska

I. Introduction

The State of Alaska, through the Alaska Department of Fish and Game (ADF&G), respectfully requests that the Federal Subsistence Board (Board) reconsider and rescind its decision of November 17, 2006 upon Proposal FRFR 06-02/03/08, providing "to the community of Ninilchik a customary and traditional use determination for all fish in the waters north of and including the Kenai River drainage, within the Kenai National Wildlife Refuge and Chugach National Forest within the Kenai Peninsula district." See Transcript of Federal Subsistence Board November 16-17, 2006 Work Session (hereinafter "11/16-17/06 Tr."), at p. 169.¹

Reconsideration is required because, in adopting that final rule, "the Board's interpretation of information, applicable law, or regulation [was] in error or contrary to existing law." 36 CFR §242.20(d); 50 CFR §100.20(d). In addition, reconsideration is required because, in making its determination, the Board assumed incorrect information, including unsupported speculation regarding fish stocks, resulting in a determination based on speculation. The Board must instead consider real, factual information not previously considered by the Board, of the type on which this request is partly based. *Id.*

The Board's aforementioned finding that the residents of Ninilchik have customarily and traditionally used the numerous fish stocks in the area affected, and thus may have a preferential right to harvest those fish by preferential means, is inconsistent with applicable law including the Board's regulations in 36 CFR §242.16 and 50 CFR §100.16, will create a preference for uses that are not within the definition of "subsistence uses" in Section 803 of the Alaska National Interest Lands Conservation Act (ANILCA), does not properly balance or further the competing purposes of ANILCA recognized by the Court in *Ninilchik Traditional Council v. United States*, 227 F.3d 1186, 1193 (9th Cir. 2000), and will cause unnecessary restriction of non-subsistence uses in violation of

¹ As set out later in this Request for Reconsideration, the State also requests that the Board reconsider its failure to definitively decide ADF&G's previous requests for reconsideration dated May 5, 2006, of the Board's prior customary and traditional use determinations for Ninilchik as to the Kasilof River drainage fishery and for Cooper Landing and Hope as to the "Kenai River Area" drainage fisheries.

Section 815 of ANILCA. More detailed reasons for this Request for Reconsideration (RFR) include the following:

- The Board made its customary and traditional use determination without substantial supporting evidence and without a reasonable examination of the eight regulatory factors for making customary and traditional use determinations with regard to the various fish stocks and areas covered by the determination.
- The Board incorrectly determined that fishing for all fish in the affected, widespread area far removed from the community of Ninilchik is a customary and traditional subsistence use of that community without adequate supporting information for that determination on the record, thus rendering the determination arbitrary and capricious.
- The evidence presented to the Board did not demonstrate a long-term consistent, recurring pattern of subsistence use by the community of Ninilchik of the affected fish in the distant, expansive location of the determination.
- The evidence presented to the Board did not demonstrate that the salmon, rainbow trout, char, and other fish stocks in that distant, widespread area are the same fish stocks as those present in areas much closer to and historically and much more frequently used by Ninilchik, such as the Ninilchik River and Deep Creek.
- The Board unreasonably declined to defer consideration of the proposal which it determined pending compliance with directions from the Secretary of the Interior requiring the Board to develop written procedures and policies for rendering customary and traditional use determinations.
- The Board violated its own regulatory procedures and Secretarial direction by improperly and unreasonably denying the Alaska Department of Fish and Game Board Liaison the ability to provide and discuss relevant information during the critical point of Board deliberations resulting in the challenged determination.
- The Board lacked necessary jurisdiction to make the traditional and customary use determination because the Federal Government has not legally and properly established reserved water rights in the waters covered by its determination, as required by law.

This RFR is being submitted at this time because the State has been informed by the Regulation Specialist for the federal Office of Subsistence Management (OSM) that in his opinion the action which is the subject of this RFR went into effect immediately.²

² Personal communication between Sarah Gilbertson and Bili Knauer on November 28, 2006.

Although nothing to that effect, nor the regulatory action itself, has been published in the Federal Register or elsewhere to the State's knowledge, and although the Board did not provide for immediate effectiveness of its action on the record, nevertheless the State is submitting this RFR at this time, in an abundance of caution. The State does not agree that the Board actions which are the subject of this RFR can be effective immediately without proper process and notice by publication. The State reserves the right to supplement this RFR.

Neither does the State, by requesting reconsideration at this time, waive any of its rights to pursue other legal remedies available to it under applicable law, including court action. It is also the State's position that, under the circumstances presented, it does not have to make this request for reconsideration in order to exhaust administrative remedies. However, this RFR provides the Board with a reasonable opportunity, within a reasonable time frame well before the upcoming fishing season, to address the State's grievances, and thereby possibly resolve the issues and eliminate need of the State's pursuit of relief in another forum.

Because the Board did not properly consider the proposals at issue in accordance with the requirements of ANILCA and the Board's own regulations, and because the Board based its decisions on factual errors and failed to allow or otherwise consider important, necessary information, the Board's determinations upon which reconsideration is hereby being requested are unsubstantiated, arbitrary and capricious.

As provided by 36 CFR §242.20(d)(4) and 50 CFR §100.20(d)(4), a more detailed statement follows.

II. Regulations Challenged and Information Presented, and Not Presented, to the Board

At its meeting on November 17, 2006, the Board adopted a proposal which it, the Staff of the OSM, and the federal Interagency Staff Committee (ISC) curiously identified as FRFR 06-02/03/08, "reconsidering" the Board's prior action in January 2006 on Fisheries Proposal FP06-09 and amending the sections of 36 CFR §242.24 and 50 CFR §100.24 dealing with Cook Inlet customary and traditional use determinations.³ The Board's November 17, 2006 action added a positive customary and traditional (C&T) use determination to those regulations for all residents of the community of Ninilchik for all fish in all waters within the Board's Kenai Peninsula District north of and including the

³ In fact, as is clarified in the discussion which follows, FRFR06-02 and FRFR06-03 were two requests brought by ADF&G in May 2006 concerning different matters, which the State contends the Board never directly or adequately addressed, whereas FRFR06-08 was the request for a new C&T determination for Ninilchik brought separately by the Ninilchik Traditional Council (NTC), which the Board did address.

Kenai River, Russian River, and Swanson River drainages lying within (and also possibly adjacent to) the Kenai National Wildlife Refuge and the Chugach National Forest.⁴ The Board's action added a significant regulation and constituted a new action.

The vast area encompassed by that new C&T determination is depicted by the two shaded areas and boundary lines of FRFR06-02/03/06 Map 1 Upper Kenai Peninsula, attached hereto as Attachment 1 and contained at page 4 of the October 31, 2006 Staff Analysis referenced at footnote 4 below. That area is also shown within Map 11 Cook Inlet Area from page 50 of the 2006-2007 Federal Subsistence Fisheries Regulations, attached as Attachment 2. As shown by those maps, the Board's action translates into a determination that the community of Ninilchik, which is located many miles away on the lower Kenai Peninsula, has customarily and traditionally used all fisheries located within (and/or adjacent to) the exterior boundaries of the Kenai National Wildlife Refuge and Chugach National Forest, including the aforementioned rivers and their lakes and drainages and extending up through the northern, uppermost reaches of the Kenai Peninsula District including Resurrection Creek near Hope and the Lower and Upper Summit Lakes.⁵

The Board's action of November 17, 2006 added the residents of the community of Ninilchik to the communities of Cooper Landing and Hope, to which the Board had previously granted a C&T priority use determination as to all fish in the same "Kenai River Area" waters during its meetings held in January 2006.⁶ At those meetings in January 2006, the Board, in further response to FP06-09, granted a C&T determination to the residents of the community of Ninilchik to all fish in all waters within the Kasilof River drainage within the Kenai National Wildlife Refuge, but deferred any decision upon a C&T determination for Ninilchik as to the above-described "Kenai River Area" waters.⁷

The State of Alaska (State) formally requested reconsideration of the Board's determinations for Ninilchik of C&T use of the Kasilof River drainage and for Cooper Landing and Hope of C&T use of the aforesaid "Kenai River Area".⁸ The Ninilchik

⁴ 11/16-17/06 Tr. pp. 78, 159-169; OSM Staff Analysis FRFR06-02/03/08 dated Oct. 31, 2006, at pp. 1-4 (hereinafter "Staff Analysis"); ISC Recommendation upon FRFR06-02/03/08 (two pages).

⁵ *Id.*

⁶ *Id.* See also Transcript of Federal Subsistence Board's January 10-13, 2006 Public Regulatory Meetings (hereinafter "1/10-13/06 Tr.", at Tr. pp. 499-500, 525-526.

⁷ *Id.*

⁸ See ADF&G's Request for Reconsideration dated May 5, 2006 of that portion of the Board's decision upon FP06-09 establishing a C&T determination for Ninilchik in the Kasilof River drainage, denoted FRFR06-02 by the Board, and ADF&G's Request for Reconsideration dated May 5, 2006 of that portion of the Board's decision upon FP06-09

Traditional Council (NTC) separately requested reconsideration of the Board's "denial" of a C&T determination for Ninilchik use of all fish within the "Kenai River Area".⁹

Later, at NTC's request, the Board chose not to revisit the issue of a C&T determination for Ninilchik of the "Kenai River Area" as a normal regulatory proposal during its next regular cycle of Public Regulatory Meetings¹⁰ in the manner consistent with the Board's established procedure and previous treatment of the subject in January 2006. Instead, the Board accepted NTC's May 30, 2006, Request for Reconsideration on August 31, 2006, in a closed Executive Session not open to the public. The Board then decided NTC's reconsideration proposal (granting the C&T determination) in a specially scheduled Board Work Session on November 17, 2006.¹¹

At the same time, and in the same manner, that the Board took action on NTC's Request for Reconsideration outside of the public eye, the Board took action as to the State's Requests for Reconsideration of the Board's previous C&T determinations for Ninilchik as to the Kasilof River drainage and for Cooper Landing and Hope, although what action the Board took upon those State requests is unclear.¹² The Board stated that in response to the State's two requests it was accepting reconsideration of additional State analysis of information gathered from ADF&G's study, *Cook Inlet Customary and Traditional Subsistence Fisheries Assessment* (Fall et al, 2004), because, in the words of the Board, it "contributes to a more thorough understanding of the customary and traditional use of the Federal waters of the Kenai Peninsula."¹³ The State reasonably understood that the Board, by accepting reconsideration in connection with FRFR 06-02 and FRFR 06-03, was accepting reconsideration of the correctness of the Board's January 2006 C&T determinations for Ninilchik as to the Kasilof River drainage and Cooper Landing and Hope as to the Kenai River drainage, as that was the obvious purpose of

establishing a C&T determination for Hope and Cooper Landing in the Kenai River drainage and waters north of that drainage, denoted FRFR06-03 by the Board.

⁹ See NTC's Request for Reconsideration dated May 30, 2006 of that portion of the Board's decision upon FP06-09 "effectively denying" a C&T determination for Ninilchik in the Kenai River drainage and waters north of that drainage, denoted FRFR06-08 by the Board.

¹⁰ That precise proposal, Proposal FP 07-27A, was already scheduled for regular consideration by the Board in 2007 before the summer fishing season.

¹¹ See, e.g., Board's Sept. 14, 2006 correspondence to NTC legal counsel on Board-designated FRFR 06-08 & references previously cited at footnote 4.

¹² See, e.g., Board's Sept. 14, 2006 correspondence to ADF&G Commissioner Campbell identified as "FWS/FSB/OSM/FRFR06-0203" and regarding federally-denoted FRFR 06-02 and FRFR 06-03, described in footnote 8 above, & the references cited at footnote 4 previously.

¹³ See Board's Sept. 14, 2006 Correspondence to ADF&G described in footnote 12 immediately above, at pp. 1-2, 5.

those two Requests addressing "the Kenai Peninsula".¹⁴ However, federal OSM staff took the position, *after* the Board's September 14, 2006 correspondence, that reconsideration of this additional State analysis and information had been accepted by the Board only in relation to consideration of NTC's request for reconsideration.¹⁵ The Board did not at all address FRFR 06-02 or FRFR 06-03, including those unresolved differences of opinion between the State and OSM staff, at its November 16-17, 2006 proceedings, despite the State's continuing objections in that regard.¹⁶ As part of this RFR, the State requests that the Board finally address FRFRs 06-02 and 06-03 on the merits.

The State of Alaska also objected throughout those proceedings on several other procedural and substantive grounds.¹⁷ Among other points, ADF&G objected for the reasons specified in former Commissioner Campbell's October 26, 2006 correspondence to Board Chairman Fleagle, including its two attachments; namely, Attachment 1, ADF&G Page-by-Page Detailed Comments on [OSM] Draft Staff Analysis FRFR06-02/03/08 dated October 20, 2006, and Attachment 2, ADF&G Specific Comments on Dr. Wolfe's Papers. Both of those attachments and Commissioner Campbell's letter were

¹⁴ See, e.g., the State's May 5, 2006 Requests for Reconsideration & Correspondence dated October 26, 2006, including two attachments, from former ADF&G Commissioner Campbell to Board Chairman Fleagle, continuing to specify how those prior C&T determinations are not supported by substantial evidence and should be reconsidered.

¹⁵ See, e.g., OSM Staff Analysis FRFR 02/03/08 dated October 20, 2006 (and again on October 31, 2006), opining that the prior Board determinations on which the State sought reconsideration should not be reconsidered, & Commissioner Campbell's Oct. 26, 2006 Correspondence to Chairman Fleagle, including two attachments, responding to that OSM analysis and expressing the State's view that OSM Staff had misconstrued the State's information and the basis of FRFR 06-02 and FRFR 06-03. See also OSM's response dated November 13, 2006 to "State of Alaska Comments - October 26, 2006 Regarding FRFR06-02/03/08 Analysis Office of Subsistence Management", opining at p. 2: "Therefore, there is no information for the Board to consider and no changes to the C&T for the Kasilof River drainage made in January 2006" and "The Board never said it would reconsider Hope and Cooper Landing C&T in their earlier letter responding to the RFR or in the threshold analysis. There is no new information provided that would warrant revisiting Hope and Cooper Landing's C&T determinations." Yet OSM Staff continued to address the substance of the State's two RFRs at the Board's proceedings of November 16-17, thus revealing OSM's own uncertainty in the matter. See, e.g., 11/16-17/06 Tr. pp. 80-82.

¹⁶ See, e.g., 11/16-17/06 Tr. pp. 121-122, 125; ADF&G Commissioner Campbell's October 26, 2006 Correspondence to Board Chairman Fleagle, at pp. 1-3 & including Attachments 1 and 2 to that correspondence.

¹⁷ See, e.g., 11/16-17/06 Tr. pp. 121-127, 161-162.

incorporated into the record of the Board's November 16-17, 2006, proceedings through the comments of the State of Alaska representative.¹⁸

In that October 26, 2006, correspondence and also at the Board proceedings, the State expressed its deep concern "that the Federal Subsistence Board is circumventing its normal public process in an effort to hastily grant the community of Ninilchik customary and traditional use of the Kenai River drainage based upon a faulty interpretation of Department [ADF&G] data" and Dr. Wolfe's unpublished papers regarding Ninilchik household and tribal use surveys. The State explained its concerns, including OSM staff's inaccuracies, mischaracterizations, and misanalysis of data being relied on by the Board and the lack of public notice and meaningful opportunity for the State and public to be timely heard.¹⁹

In addition, the State objected to the Board making determinations without the benefit of developed written procedures and policies for making C&T use determinations, as directed by the Secretary of the Interior on October 27, 2005, and the State stated its reasons for those objections.²⁰

It was also shown that the evidence is insufficient -- in terms of frequency of use, area of use, community use, lifetime use, or otherwise -- to support a determination that there has been a long-term consistent, recurring pattern of customary and traditional use for subsistence by Ninilchik of the fisheries located within the Kenai National Wildlife Refuge or Chugach National Forest, as is required by ANILCA and the regulations governing such determinations.²¹ Among other reasons, it was pointed out that OSM's analysis misinterpreted and misused ADF&G survey findings; that the eight factors for determining C&T use under the Board's regulations were not met; that at most only 7% of Ninilchik households claimed annual use of the upper Kenai area fisheries at issue in even recent years, that only 13% (including the 7%) claimed frequent use (meaning almost every year) of that area for any of their fishing, that only 4% more claimed intermittent use, that only a total 28% of Ninilchik residents claimed any such use ever during their lifetimes, and that only 2-3% identified taking trout or any species of fish other than salmon from that area (and only 4% salmon); that Ninilchik residents had their highest use of the fisheries closest to Ninilchik (such as Ninilchik River and Deep Creek), used the lower Kenai River some, and used the upper Kenai River drainage areas "farther

¹⁸ 11/16-17/06 Tr. pp. 121-127, 161-162. The State also submitted written comments into the record entitled "ADF&G Page-by-Page Detailed Comments on [OSM] Staff Analysis FRFR06-02/03/08 dated October 31, 2006" after that subsequent OSM Analysis was issued. *Id.* At 121-122.

¹⁹ Campbell 10/26/06 Correspondence at 1-2; 11/16-17/06 Tr. at 122, 126.

²⁰ *See, e.g.*, Campbell 10/26/06 Correspondence at 2; 11/16-17/06 Tr. at 126-127.

²¹ *See, e.g.*, Campbell 10/26/06 Correspondence at 3-4 & attachments thereto; 11/16-17/06 Tr. pp. 122-134, 161-162.

from the community" least; that Ninilchik and the NTC had not harvested all the fish they could under generous state-issued educational fishery permits already existing on the Kenai Peninsula closer to their homes; that no harvest *amounts* for fish taken by residents of Ninilchik in the upper Kenai areas covered by the Board's new C&T determination had been shown; that the sparse participation levels for Ninilchik residents of the upper Kenai River drainages demonstrated more of a *sportfishing* use (rather than traditional subsistence use), which was made easy by highway access, not unlike the use of that same area to harvest fish by residents of Anchorage and other urban areas; that there was little to no evidence of Ninilchik's use of that distant Kenai area prior to construction of the highway linking Ninilchik (and much of the rest of Alaska) to that area; that heretofore subsistence fishing by traditional subsistence means such as netting had not been allowed within that area under federal or state law; and that subsistence is not even listed as one of the purposes of the Kenai National Wildlife Refuge (explicitly created instead to provide opportunities for fish and wildlife recreation, etc.).²² Even OSM's cultural anthropologist, H. Armstrong, who characterized Dr. Fall's surveys of Ninilchik households for ADF&G as "thorough", scientific, and "of the entire community", also acknowledged: "I mean there's no -- nobody here is saying that the Ninilchik people used the Kenai River to a great extent. I mean that's a fact that it's not a really heavily used area [by Ninilchik], they're harvesting most of their resources close to the community."²³

Furthermore, ADF&G was arbitrarily and capriciously denied the opportunity to be fully heard on those matters by being cut off during Board deliberations on the subject, upon the request of a Board member and upon incorrect advice of the Solicitor's Office to the Board Chair, in violation of the Board's own procedures and Secretarial direction.²⁴

Very soon after making that erroneous ruling prohibiting the State from participation, the Board then introduced speculation into its deliberations and improperly relied upon that speculation as an important part of making its positive C&T determination. It speculated that the salmon, trout, and other fish stocks in the distant, widespread drainages of the Kenai National Wildlife Refuge and Chugach National Forest under consideration, including the Kenai River, Russian River, Swanson River, Summit Lake, and Resurrection Creek drainages, are the "same stock" as the fish in the

²² *Id.*

²³ 11/16-17/06 Tr. at 87.

²⁴ See 11/16-17/06 Tr. 161-163 (improperly prohibiting the State of Alaska representative from participating during deliberations); Correspondence in 2004 from Secretary Norton directing otherwise, attached hereto as Attachment 3; Transcript of December 11-12, 2006, Board Meetings (acknowledgement by Board Chair of erroneous ruling on November 17, 2006 improperly preventing State from participation contrary to Secretarial intent).

areas much closer to and much more commonly used by Ninilchik, such as the Ninilchik River and Deep Creek.²⁵

However, *no* evidence, substantial or otherwise, had been presented that could support that speculation.²⁶ To the contrary, that topic did not arise until very late in the Board's deliberations, after all information had been submitted to the Board, none of which included factual information about specific fish stocks. The topic arose only in response to Board concerns that a C&T use for fishing by Ninilchik in the faraway Kenai River Area under consideration had not been shown. At that juncture, the Board's Solicitor countered: "We're trying to determine if there were customary and traditional uses of a *stock or population, that's all*. * * * And we're not – as far as I can tell, we're not tied to a location. It [where the use occurred or is created] could be on the Kenai River, it could be off, we're talking about the population and stock. There's a long, long stretch of fishable water where that stock or population could be harvested." 11/16-17/06 Tr. at 166 (emphasis added). Board Chairman Fleagle then immediately responded: "I'm glad you made that point. * * * And obviously this is going to be another one of those decisions where my vote is either going to allow this thing to pass or not [In my opinion] we are not looking at whether there is just a defined pattern of use for that portion of the river system that happens to be Federal, for the community of Ninilchik and Cooper Landing and Hope on the Kenai River To me it's pretty clear that *if you take that entire river system and even that entire area, if you include other river systems, other than the Kenai, you got the Kasilof, you got the Ninilchik, you got Deep Creek, you got several different systems that could be defined as the same fish stock*, I think it's overwhelmingly evident that you do have customary and traditional use, and that's where I have to fall." *Id.* at 166-167 (emphasis added). Immediately thereafter, the vote of the Board was taken and the motion to grant Ninilchik a C&T determination for the broad scope of the "Kenai River area" passed 5 to 1, with the last voter, Board member Oviatt, commenting: "I'm going to vote aye. And I was swayed by our Chairman" *Id.* at 168-169.

Indeed, it could be shown that the Board's speculation on that topic, which was decisive, is incorrect, but as noted the opportunity to do so was not given. If given the opportunity to address that topic the State could show that the salmon and other fish stocks, including trout and char, of the distant Kenai River drainages, streams and other water bodies affected by the Board's C&T determination, are not the same fish stocks as exist for the Ninilchik River, Deep Creek, Kasilof River or other streams and rivers within the Kenai Peninsula District. They are not one homogenous fish stock.²⁷ The

²⁵ 11/16-17/06 Tr. pp. 166-169.

²⁶ *Id.*, Tr. pp. 78-169.

²⁷ For example, the National Marine Fisheries Service Northeast Fisheries Science Center (http://www.nefsc.noaa.gov/techniques/tech_terms.html#sa2) gives the following definition: "Stock: A part of a fish population usually with a particular migration

State requests Board reconsideration in order to be given the opportunity to show that. Otherwise, the Board's determination will remain founded on unsupported speculation contrary to law.

In addition, the State challenged the Board's claim to jurisdiction to make that C&T use determination and other determinations at issue here and in the additional RFRs being filed by the State this month and previously, because the Federal Government has not legally and properly established water rights in the waters covered by those determinations, as set out and pending in *Katie John, Gerald Nicolia, et al., Plaintiffs, v. The United States of America, et al., Defendants*, United States District Court for the District of Alaska Case No. A05-0006-CV (HRH) (Consolidated), incorporated herein by reference.

The effect of the Board's regulatory C&T determination is to provide a federal preference to residents of Ninilchik for harvest of all fish, including all types of salmon, Dolly Varden, rainbow trout, char, lake trout, grayling, and burbot, in all waters of the Kenai Peninsula District north of and including the Kenai River, Russian River, Swanson River, and their lakes and drainages within and adjacent to the boundaries of the Kenai National Wildlife Refuge and Chugach National Forest, as more fully described above. Nonlisted rural residents, along with other state users, of these highly popular and heavily used water bodies will not be eligible to participate in these federal fisheries and will be limited to participation in state fisheries. This federal customary and traditional use determination can be expected to lead to an increased harvest of fish, such as salmon, eligible for limited harvest within the area under state regulations, and to the harvest of other fish, such as rainbow trout, not generally eligible for harvest under state regulations within the area.

pattern, specific spawning grounds, and subject to a distinct fishery." The Washington Department of Fisheries has defined fish stock as "The fish spawning in a particular lake or stream(s) at a particular season, which fish to a substantial degree do not interbreed with any group spawning in a different place, or in the same place at a different season." WDF 1993, "1992 Washington State Salmon and Steelhead Stock Inventory". Similarly, as early as 1939 in the American Association for the Advancement of Science, Publ. 8, p. 106, it was stated: "The salmon of a given species may in locality, e.g., a river, constitute a more or less distinct entity, for which the name 'stock' is to be preferred." In other words, the term "fish stock" denotes a fish of a particular species which may be found in a specific stream during a particular season, or at most, the fish of a particular species which may be found within a specific drainage during a particular season. Further information on the subject, particularly as it relates to the different fish stocks indiscriminately grouped together in the Board's determinations, can be provided to the Board by ADF&G senior biologists, including John Hilsinger and Jeff Regnert.

In times of shortage, those users who qualify under this federal C&T determination may receive preferential treatment under federal law detrimental to the fish stocks through special actions or through failure to mirror State emergency orders. The new C&T determination may also lead to new restrictions on the great majority of users, who are nonrural. Liberalization of methods and means and increased harvest of fish on federal lands under this C&T determination may require adjustment of seasons and harvest restrictions under state law in order to ensure compliance with the sustained yield mandate of the Alaska Constitution.²⁸ Too little is known about fish species other than salmon in the waters covered by this broad C&T determination, and even the salmon runs in these waters have been unpredictable in recent years. State of Alaska recreational fishing regulations for these species, especially the trout and other resident species, are very conservative. Little or no stock assessment information exists for those species. Any conservation problems created by the new fishery harvests authorized under this new C&T determination would be difficult, if not impossible, to detect in a timely manner.

III. Further Discussion

A. **The actions taken by the Board are inconsistent with the regulatory definition of customary and traditional use and with application of the regulatory criteria for finding customary and traditional use.**

Reconsideration is required because, in adopting the customary and traditional use determination for Ninilchik in the Kenai River area,²⁹ the Board failed to follow the regulatory definition of customary and traditional use and the regulatory criteria for finding customary and traditional use. As a result, the Board made an unnecessary, incorrect, and overly broad customary and traditional use determination based on incorrect or improper considerations and insufficient evidence (including no evidence at

²⁸ Even nonconsumptive catch and release fisheries may have to be closed in order to reduce pressure on highly vulnerable stocks if consumptive subsistence fisheries are authorized.

²⁹ As previously noted, the State also seeks reconsideration of the Board's apparent failure to act on the State's two previous Requests for Reconsideration dated May 5, 2006 and designated FRFR 06-02 and FRFR 06-03. In support of that part of this RFR, the State relies on the content of those two previous RFRs, Commissioner Campbell's aforementioned correspondence to the Board dated October 26, 2006 including attachments, the State's comments on those subjects at the Board's November 16-17, 2006 Work Session, and the other sources and analyses regarding those subjects already addressed in this RFR. The rest of this document addresses the Board's more recent C&T determination for Ninilchik as to the Kenai River area covered by that determination. However, much that was stated in support of those prior RFRs also applies to the more recent determination, just as much of what is stated hereafter as to that determination also applies to those prior C&T determinations.