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**THE LEGAL AND INSTITUTIONAL PROBLEMS
FACING GEOTHERMAL DEVELOPMENT IN
ALASKA**

October 1, 1978

Work Performed Under Contract No. ET-78-C-03-2121

JM Energy Consultants, Inc.
Los Angeles, California

U. S. DEPARTMENT OF ENERGY
Geothermal Energy

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THE LEGAL AND INSTITUTIONAL PROBLEMS
FACING GEOTHERMAL DEVELOPMENT IN ALASKA

A Report To The Pacific Region Team,
Division of Geothermal Energy, U.S. D.O.E.

October 1, 1978

Pursuant To Contract No. ET-78-C-03-2121

Jack McNamara, President

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS

1	INTRODUCTION: "THE GREAT LAND" — WILL IT BE A GREAT OPPORTUNITY FOR GEOTHERMAL?
4	SECTION ONE: THE ALASKAN NATIVES — A POTENT FORCE AND A POTENTIAL MARKET
24	SECTION TWO: THE POSTURE OF THE STATE OF ALASKA — WILL THE PIPELINE HANGOVER BE A GEOTHERMAL PROBLEM
38	SECTION THREE: THE FEDERAL LANDS — EXPLORATION OR PRESERVATION
45	APPENDIX A — LIST OF ALASKAN NATIVE VILLAGE CORPORATIONS

INTRODUCTION: "THE GREAT LAND" --

**WILL IT BE A GREAT OPPORTUNITY
FOR GEOTHERMAL?**

Centuries before any white men first set foot on the almost incomprehensible physical sprawl that is now our 49th state, the Aleut people who lived on the islands that now bear their name dubbed it Alaska — "The Great Land". Indeed it is. If Alaska were placed upon the "Lower 48", its Southeastern "Panhandle" would be in Florida, the Aleutian Islands would be in Southern California and the North Slope/Arctic Ocean Coastline would be in Minnesota. Alaska's 375 million acres exceeds the total of our next three largest states (Texas, Montana and California).

But this vast Northern empire, purchased from Russia in 1867 for \$7 million dollars (roughly two cents an acre) is still largely empty. As of 1975, it was estimated by an unofficial count that only 370,000 people inhabited its starkly beautiful, bewilderingly contrasting landscapes. That works out to a "density" of one per 1000 acres. Basically, "The Great Land" is literally that-by far the largest remaining physical prize in North America. It has been fought over in the past — by Russians, Aleuts, Indians, American whalers, gold miners, highwaymen, and rival trading companies.

More importantly, for the past thirty years, it has been the scene of a four-way tug of war among conservationists, the Alaskan Natives, the federal government and a coalition of the state and private resource developers. Only

the sheer enormity of its expanse, and the national importance of the wealth beneath it, have kept this struggle within civilized bounds. By 1979, almost all of the legal battles over land title will have been settled, but the bitterness left in their wake will compound the legal and institutional barriers confronting geothermal development in Alaska.

In this report, we will try to sketch the major players, and the major difficulties each presents. One thing is certain. Alaska is a major future market for geothermal resources.

SECTION ONE: THE ALASKAN NATIVES —
A POTENT FORCE AND A
POTENTIAL MARKET

(a) The Alaskan Natives:

The Alaskan Natives are anything but a single, unitary group. Despite their remarkable joint achievements under the banner of the now 12 year-old Alaskan Federation of Natives (AFN), they are a collection of diverse and not always compatible entities. Primarily, the Alaskan Native community is composed of four major groups.

First, there are the Aleuts, whose domain is the island chain to which they have given their name, stretching south-westward from the Alaskan Peninsula and Kodiak Island towards Asia. They also inhabit the Western part of the State, fronted by the Bering Sea.^{1/} It was the Aleuts who were unfortunate enough to bear the brunt of Russia's military and commercial might in the late 18th and early 19th centuries. A population once estimated at 20,000 was reduced to a few thousand slaves.

When the Russian-American Company (a Russian version of the British East Indies Co.) had exhausted the Otter and fur seals in both the Aleutian and Pribiloff islands (to the north), they moved eastward and after subjugating the Aleut population of Kodiak Island, ran into much stiffer opposition from the skilled, fierce Indian warriors of the Tlingit and Haida tribes in the "Pandandle" of Southeastern Alaska. Though the Russians established a capitol at Sitka and carried on their fur trading activities rather successfully

throughout the region they never conquered the Tlingit, who carved 50 man war canoes out of 100 foot-tall trees and once displayed their prowess by capturing Sitka itself.

Though not as advanced as the Tlingit and Haida, the Athabascan Indian tribes of the great central Interior were also a relatively advanced people. They roamed the plains, tundras and broad river valleys of this region between the Brooks Range and the Alaska Range, from the Yukon Territory in Canada to the delta of the Yukon River at the Bering Sea.

Finally there are the Eskimo people of the Arctic North Slope, beyond the Brooks Range. It was these Arctic Slope Eskimos and the Tlingits of the Southeast who provided the major leadership in the successful 80 year struggle to obtain satisfaction of Alaskan Native Claims from the U.S. Congress. It is a truly remarkable story of courage and determination.

(b) The Struggle For A Settlement:

When the U.S. purchased Alaska from the Russians in 1867, Article Three of the treaty between the two countries stated that the Native residents of the land being exchanged would keep possession of their holdings but be subject to the Laws of the United States. Even at that early stage, some native leaders attempted to obtain a treaty from the U.S., formally ceding their lands to them. Unfortunately for their efforts, Congress had, in 1871 moved

to ban further treaties with Indian tribes. The constantly swinging pendulum of U.S. Indian policy had just missed the Alaskan Natives, and a century long struggle had begun.

Functionally, there really was no government in Alaska following the purchase. The U.S. Army was ostensibly in charge, but the real power, as usual, lay within the earth. Gold was discovered near Sitka in 1872 and at Juneau in 1876. Further discoveries, including the nearby Klondike rush in Canada's Yukon Territory near the turn of the century, led to a period of lawlessness and "frontier justice". This was epitomized by the reign of "Soapy" Smith in the Panhandle town of Skagway, a major sea outlet for Yukon goldminers.

All federal troops were withdrawn in 1877, leaving a lone Customs Collector as the sole federal presence. Two years later, a single Navy sloop was stationed there.

The Alaskan Organic Act of 1884 paved the way for the final settlement (nearly 90 years later) by stating that: "the Indians or other persons [Aleuts and Eskimos] in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress."^{2/}

This language strengthened the Alaskan Native claims arguments and their position, which had been based solely on Article Three in the 1867 Purchase Treaty. The

Act also provided for a Presidentially — appointed Governor, but no troops.

The U.S. Supreme Court used this statute to extend the protection of U.S. Laws to the Natives nearly 30 years later. In Nagle v. U.S.^{3/} they found that the U.S. government was not merely allowing the Natives to maintain possession of (implicitly) the U.S. lands on which they resided, but had extended to residents of the purchased land all those rights contained in the Constitution.

(c) The Emergence of The Other Players:

The Supreme Court decision came as scant recompense to the Tlingit and Haida peoples. For they had encountered a new and, to them, more dangerous adversary — the Conservationist movement. No less than 16 million acres of their domain had been taken ("withdrawn") by President Taft in 1902 to form the Tongass National Forest for Gifford Pinchot's fledgling Forest Service. The Tlingits and Haidas began a separate legal struggle of their own which was to last until the late 60's. Another key player had been introduced onto the Alaskan stage, a player from whom much would be heard. Yet another was about to enter.

Alaska's drive for statehood had also begun, introducing an even more complicating factor into the Native claims equation. In the main, it represented the drive of White

Alaskans and the state's commercial (mostly mining and fishing) interests. These would clash often with the claims of the Alaskan Natives. In 1906, Congress allowed Alaska to send a voteless delegate to the House of Representatives. In 1912, the statehood advocates finally succeeded in obtaining Territorial status.^{4/} The first bill conferring statehood was introduced into Congress four years later. Beginning in 1917, Alaska elected its non-voting House member. Typically, the first three elections had to be settled in the courts.

The struggle of the Alaskan Natives continued, often imperceptibly, but always undaunted. The Alaskan Brotherhood was formed in 1912. In 1924, Congress conferred citizenship on all residents born outside the U.S..^{5/} This included the Alaskan Natives.

The Tlingits and Haidas finally succeeded in getting Congress to allow their damage suit to be heard in the U.S. Court of Claims in 1935.^{6/} Sentiment for a treaty solution was growing in both Washington and Alaska, but history again intervened.

The Second World War brought instead the only Japanese invasion of the U.S.. Attu and Kiska in the Aleutians were taken by Japan in 1942 but recaptured the following year. The Alaskan Highway was built from Fairbanks to Dawson, British Columbia in less than eight months to give the

American military a secure supply route to the many defense installations that were being built in Alaska to preserve our Northern Flank.

After the War, an Indian Land Claims Commission was finally set up by Congress.^{7/} Tragically, it had only a five year time limit and a meagre budget. By 1951, few of the Alaskan Natives had even heard of its existence. Those who had (mostly in the Tlingit-led Alaskan Brotherhood) wanted a treaty-type of settlement, but the Congressional Indian policy pendulum had once again moved away from that position. Yet another chance for a settlement of the Native claims had been missed.

Oil was discovered on the Kenai Peninsula (in south central Alaska south of Anchorage) in 1957. Though there had been minor oil strikes in Alaska as far back as 1853, and even some production near the turn of the century, the Kenai find ushered in the final major actor in the unfolding Alaskan drama — the international oil industry. President Eisenhower had halted the Navy's ten year exploration of the sprawling Naval Petroleum Reserve #4 on the North Slope only a few years earlier. Public records of the Navy's findings had been put on tape and sold to most of the majors. The really "big elephants" — large fields — were out there. It was only a question of time. Meanwhile the Kenai finds

were repeated and expanded, refineries were built and a supply infrastructure had sprung up. Alaska was the Nation's newest oil province. It was an event of great significance for the Alaskan Natives and their claims.

To a territory with little or no economy, heavily dependent upon the federal government, the black gold of Kenai loomed like a savior. It provided the final impetus for their half-century old drive for statehood. Congress finally conferred statehood upon Alaska in 1958.^{8/}

More importantly, the new state was given the right to "select" for their own a whopping 102 million acres out of the 375 million federally controlled public domain.^{9/} Whereas other states had not been allowed to select lands known to be valuable for their underlying minerals in making selections of federal land for schools, etc., Alaska was not similarly restricted.^{10/} The significance of the Kenai strikes and the prospect of even larger strikes on the North Slope had not been lost on the state's advocates. They impressed this upon a Congress already concerned with the economic future of the new state, a state so crucial to our national defense. In addition to the generous gift of acreage and the allowance of mineral land selections, they stipulated that Alaska would receive a whopping 90% of all federal mineral revenues (whether from bonuses, rentals or royalties)

from the remaining public lands in Alaska.^{11/} Other states get only 50%, while 37½% went into the Reclamation Fund.^{12/} Since Alaska was not a state covered by the Reclamation Act of 1902,^{13/} they argued successfully for a kickback of that share and also got an additional 2½% of the mineral revenue share usually deposited in the U.S. Treasury.

(d) State Claims vs. Native Claims - The "Freeze":

Under pressure from Alaskan Native representatives, Congress was careful to at least include a disclaimer in the Statehood Act. Section 4 of that legislation stated that no selection by the State would prejudice any "aboriginal land title claims".^{14/}

During the next decade, the Alaskan Natives, stung by the generosity of Congress towards the state while their claims remained unsettled, underwent what can only be described as a social revolution. Grass roots leaders emerged everywhere. Newspapers and other intra-Native communications sprang up overnight. Natives everywhere were urged to file land claims with the federal Bureau of Land Management.

Thus, even as the state rushed to select lands with mineral potential in order to lease them to private oil firms, the Native Claims confronted them at every turn. The federal Bureau of Indian Affairs (BIA) assisted the Natives in their efforts, much to the distress of BLM, which

often had both state and Native claims to the same land.

Other federal agencies, including the U.S. Fish and Wildlife Service, Park Service and Forest Service, also pressured BLM, as did private conservationists, attempting to protect "sensitive" areas from both the State and the Alaskan Natives. They feared that either group would immediately lease their claims to the oil or mining companies whose presence was increasing daily.

A beleaguered BLM stalled on state claims and told the Natives flatly that they had no jurisdiction over their claims. The Natives were undaunted. They formed the Alaskan Federation of Natives (AFN) in October, 1966, and stepped up their pressure on BLM.

One month later, Interior Secretary Udall put an administrative "freeze" on the transfer of any federal land to the State until the claims of the Alaskan Natives could be settled. He also directed his Solicitor to draft a settlement bill for introduction in Congress. By May, 1967 the bill was ready. It proposed no cash settlement but a 50,000 acre grant per village. The late Senator Ernest Gruening, a long-time advocate of statehood but not noted as a backer of Native Claims, introduced it in June.

Then-Governor Walter Hickel responded by forming a State Land Claims Task Force in October, 1967. Five months

later, at a Senate Interior Committee hearing held in Anchorage, the Task Force unveiled its Plan: 40 million acres, \$20 million and an unspecified percentage of future royalties from oil and gas production on the federal Outer Continental Shelf off Alaska. Since Alaska's coastline exceeds that of the "Lower 48", and since much of it is expected to be productive, this share could exceed the State's 90% cut of federal mineral revenues onshore.

In June 1968, ARCO announced the discovery of the Prudhoe Bay oil field on the North Slope. Estimated at 10 billion barrels, it was five times greater than the largest prior U.S. discovery — the East Texas field. The clash of Native and state claims was coming to a head. The acreage in question had already been granted to the State by BLM as part of their 10 year mineral land selections. Governor Hickel announced plans for a competitive lease sale of those now state lands in the Fall of 1969, with up-front bonuses expected to reach \$1 billion!

The Arctic Slope Native Association, which also claimed some 57 million acres of North Slope land, was incensed. In all, Alaskan Natives had filed claims covering 337 million acres with BLM! In an attempt at preventing a minor civil war in Alaska, Stewart Udall, by then a lame duck Interior Secretary, put a two-year freeze on further transfer of federal

lands to the State.

Now it was the State's turn to scream, but their September, 1969 North Slope lease sale brought in \$900 million, and helped to soothe their anger. By that time, Walter Hickel had resigned as Governor to become Interior Secretary under newly-elected President Richard M. Nixon. His stormy confirmation hearings before Senate Interior focused on his intentions regarding Udall's "freeze" on patenting state selections of federal land. When it became clear that Senator Jackson and others were making its continuation a condition of his confirmation, Hickel gave in. He would not only continue the freeze for two years but until Alaskan Native Claims had been settled. The die was cast.

(e) The Final Settlement:

Hickel's was a crucial move. While it angered many White Alaskans, it put the settlement of Native claims in the path of both state land selections and the construction of a pipeline from Prudhoe Bay, a national energy priority. The Alaskan Natives thus got some powerful allies: the oil companies, labor unions and the White House. The AFN made its proposal in the Summer of 1969: 40 million acres; \$500 million dollars; the formation of 12 regional corporations to distribute both; and a 2% share of both federal and state mineral revenues. Their slogan was simple -- "Take our land,

take our life".

It was only a matter of time. Introduced in the 92nd Congress in the Winter of 1970, the Alaska Native Claims Settlement Act was finally passed, after a lengthy and^{15/} rancorous House-Senate Conference, on December 18, 1971.^{16/} The Alaskan Natives were granted 40 million acres^{17/} and \$462.5 million dollars,^{18/} to be distributed by twelve regional and nearly 200 village corporations that the Natives were directed to set up. The Natives also received 2% of all future onshore State and Federal mineral revenues, including the September, 1969 North Slope state lease sale bonuses,^{19/} until a total of \$500 million dollars had been received. The rich OCS oil and gas revenues were specifically excluded,^{20/} however.

The Secretary of Interior was to prepare, with the assistance of the Regional and Village corporations, a roll^{21/} of Alaskan Natives eligible to share in the settlement.

In exchange, the Natives gave up all their claims to public land, onshore or off,^{22/} including those involving "any aboriginal hunting or fishing rights",^{23/} or "claims . . . pending before any Federal or state court or the Indian Land Claims Commission",^{24/} or to any federal lands (including, presumably, the North Slope) already patented or "tentatively" approved for transfer to the state under the Alaska State-

hood Act.^{25/}

The Tlingits and Haidas had finally won their case in the U.S. Court of Claims in 1968.^{26/} Congress had already appropriated^{27/} and distributed^{28/} funds for their payment. As a result, they were given no additional land.

The 40 million acres to be selected by the Village and Regional Corporations was to come from areas immediately surrounding those villages.^{29/} This was to placate the state and avoid Native selection of valuable mineral land. The 2%-up-to-\$500 million-revenue payments, in turn, were meant to give the Natives some immediate share in those revenues.

As another sop to the state, all lands already patented to them, or tentatively approved by BLM, or even "identified for selection by the State prior to January 17, 1969;"^{30/} (the date Hickel pledged a freeze on future federal transfers to the State until Native claims were settled) were exempted from possible selection by the Natives.

But the bitterness that had boiled to the surface during the long, parallel struggles for statehood and native claims settlement would not go away after December 18, 1971. Particularly when there were other forces — the oil companies and the conservationists — whose goals had still not been achieved. They would soon come into conflict with both the Natives and the State. For the Claims Settlement legisla-

tion left a few "loose ends" still to be settled. The two largest were the future route of the Trans-Alaskan Pipeline and the fulfillment of a conservationist dream addressed all too vaguely in §17 (d) (1) of the 1971 legislation^{31/} - an expanded wildlife refuge, park, forest and wilderness preservation system in Alaska - the Last Frontier.

(f) The Alaskan Natives and Geothermal's
Future In Alaska:

Notwithstanding these complications (which will be discussed below in Sections Two and Three, respectively), the Alaskan Natives did, in fact, form twelve Regional Corporations based on existing associations. These include:

- (1) Ahtna Incorporated (Copper River Basin);
- (2) Aleut Corporation (Aleutian Islands);
- (3) Arctic Slope Regional Corporation
(Arctic Alaska);
- (4) Bering Straits Native Corporation
(Seward Peninsula);
- (5) Bristol Bay Native Corporation (Bristol Bay);
- (6) Calista Corporation (Yukon Delta);
- (7) Chugach Natives, Inc. (Prince William Sound);
- (8) Cook Inlet Region, Inc. (Cook Inlet);
- (9) Doyon Ltd. (Interior);

- (10) Koniag, Inc. (Kodiak);
- (11) NANA Regional Corporation, Inc. (Kobuk Region);
- (12) Sealaska Corporation (Southeastern Panhandle).

In addition, fully 194 separate villages have formed corporations under the Act.^{32/} Simply put, these entities are the main geothermal "target of opportunity" in this enormous state — the equivalent of the REA's, municipal utilities and industrial user further south. The Pacific Region Team must immediately open up contacts with, at the very least, the Alaskan Federation of Natives and the twelve Regional Corporations, possibly through its consultants — the United Indian Planners Association (UIPA). It will largely involve a matter of mutual education. While the Alaskan Natives were not allowed to select valuable mineral (i.e., oil, gas and coal) lands by Congress, little was known of this vast state's geothermal potential. Given the highly volcanic nature of the Alaskan lands^{33/} the resource is likely to be there. Given the independence and far-sightedness of the Alaskan Natives and their needs, they would undoubtedly like to take advantage of either electric or direct use geothermal resources.

The agenda for PRT action is clear: active contacts with the Alaskan Natives should be established, and an extensive resource assessment program should be set up at once. The latter would focus initially on those areas

identified by the USGS (and hopefully expanded by O.I.T.)
as likely prospects.

Alaska's Natives should be a high priority item for
the Pacific Region Team.

Footnotes

- 1/ Named after a Dane, Vitus Bering, who is credited with "discovering" Alaska in 1741.
- 2/ Act of May 17, 1884, C. 53, 23 Stat. 24. The Treaty Act approving the purchase was found in the Act of July 27, 1868, c. 273, 15 Stat. 240 (codified in Revised Statutes §§1954 et. seq.).
- 3/ Nagle v. U.S., 191 F 141 (1911) also cited by the Court was the Act of Feb. 8, 1887, c. 119, §6, 24 Stat. 390, conferring citizenship on Indians who had left their tribes.
- 4/ Act of August 24, 1912, c. 387, §§1,3, 48 USC §§21,23.
- 5/ Act of June 2, 1924, c. 233, 43 Stat. 253. See also Act of May 7, 1934, c. 221, §1,2,48, 48 Stat. 667.
- 6/ In 1946, Congress stopped passing individual acts conferring jurisdiction in such cases and gave the Court of Claims blanket jurisdiction. See 28 USC §1505.
- 7/ Act of Aug. 13, 1946, c. 959, §1, 60 Stat. 1049, 25 USC §70 et. seq..
- 8/ Alaska Statehood Act, P.L. 85-508, 72 Stat. 341, note prec. 48 USC §21.
- 9/ *ibid*, §6(b).
- 10/ *ibid*, §6(i).
- 11/ *ibid*, §23.
- 12/ 30 USC §191.
- 13/ Act of June 17, 1902, 32 Stat. 388, 43 USC §371, et. al.

14/

P.L. 85-508, §4.

15/

P.L. 92-203, 85 Stat. 688, 43 USC §1601 et. seq..

16/

43 USC §1611.

17/

43 USC §1605.

18/

43 USC §1606(a) through (q).

19/

43 USC §1608.

20/

43 USC §1608(i), 43 USC §1605(a) (3).

21/

43 USC §1604.

22/

43 USC §1603.

23/

43 USC §1603(b).

24/

43 USC §1603(c).

25/

43 USC §1603(a).

26/

The Tlingit and Haida Indians of Alaska, et. al. v.
U.S. (Ct. of Claims #47,900).

27/

Act of July 9, 1968 (82 Stat. 307), known as the "Second Supplemental Appropriation Act of 1968" and never codified.

28/

Act of July 13, 1970 (84 Stat. 431) P.L. 81-335, 25 U.S.C. §1244.

29/

43 U.S.C. §1610.

30/
43 USC §1602(e).

31/
43 USC §1616(d) (1).

32/
A list of these villages is attached as Appendix A.

33/
The 1964 Good Friday earthquake and the 1912 eruption of Mt. Katmai on the Alaskan Peninsula (creating the "Valley of the Ten Thousand Smokes") are two of the greatest eruptions in history.

SECTION TWO: THE POSTURE OF THE STATE OF
ALASKA — WILL THE PIPELINE
HANGOVER BE A GEOTHERMAL PROBLEM?

Though there was doubtless a good deal of White guilt and honest concern for the plight of the Alaskan Natives, there is no question that the chief impetus behind the claim settlement legislation was the desire — of Congress, the White House, the State of Alaska and the oil industry — for a final solution to a "problem which clouded title" to all their Alaskan land plays. Though the "findings and declarations" section recited the expected "immediate need for a fair and just settlement"^{1/} for all aboriginal land claims language, the section establishing a one year time limit on court actions was more to the point: "The purpose of this limitation on suits is to assure that, after the expiration of a reasonable period of time, the right, title and interest of the United States, the Natives, and the State of Alaska will vest with certainty and finality and may be relied upon by all other persons in their relations with the State, Natives and the United States."^{2/} The Prudhoe Bay and Kenai discoveries had made both the State and the industry anxious to get on with the business of marketing those discoveries.

The Prudhoe Bay find was about as remote as it could be and still be in the U.S.. Due to the ice curtain of the Arctic Ocean, tanker transport was out. That left a pipeline, and two possible routes: straight south some 800 miles over several large mountain ranges (Brooks and Alaska) and hundreds of miles of permafrosted tundra to Valdez, on Prince

William Sound, and then into tankers for the West Coast; or south to Fairbanks, then southeast along the Alaskan Highway, through the Yukon Territory and British Columbia to the existing pipeline networks in Alberta. Both routes promised enormous expenditures (\$8-10 billion) engineering challenges and environmental problems. Also complicating the choice were: a projected oil glut on the West Coast; the seismic instability of the South Alaskan area (Valdez had been destroyed in the tidal wave aftermath 1964 quake); the difficulties of navigating Prince William Sound; and the lack of West Coast refining facilities for the three largest Prudhoe Bay developers. Only ARCO (with its Cherry Point, Washington plant) had a ready outlet for the enormous daily production that would eventually flow from the North Slope. There was also a national need to get the Alaskan crude to Midwest and Northeast refineries.

Under intense pressure from the oil industry and environmental groups, Congress was unable to make a decision. Then the October 1973 Arab oil embargo and simultaneous price boosts by all foreign producers drove aside the environmental opposition. At the height of the Embargo, and against the spectre of pre-dawn gas lines, Congress opted for the industry's choice — to Valdez and then into tankers.

The Trans-Alaska Pipeline Authorization Act of 1973^{3/}

leaned heavily upon one key oil company and maritime union argument. Namely. that TAPS, as it came to be called, would not "traverse a foreign country".^{4/} The fact that the industry apparently wanted to market the oil in Japan, and the impact of that on "the national interest because of growing domestic shortages"^{5/} was not discussed. NEPA was formally by-passed^{6/} and even judicial review of Interior Department right-of-way permits was severely restricted.^{7/} Though later events (including the construction of a gas pipeline from Prudhoe along the ALCAN route and a severe West Coast oil glut) would lead one to question the wisdom of the decision, we will restrict our inquiry to the aftermath of that decision upon Alaska and the significance of that impact upon future geothermal development in the State.

For our purposes, it would appear that the construction and operation of the pipeline has created an anti-oil, anti-energy industry feeling among many Alaskans; led in 1974 to the election of a Governor whose environmental and land use sensitivities are in marked contrast to the pro-development biases of his predecessors; and taught Alaskan government (at both the state and local levels) the art of natural resource taxation at a very high level. We shall discuss each of these impacts in turn.

(a) First There Was A "BOOM":

The construction of the Trans-Alaska Pipeline brought a flood of money, men and materials into Alaska. To many, including those merchants who became suppliers of goods and services to the Alyeska Pipeline Co.^{8/} or its contractors, it was a bonanza. To others, including many of the states citizens (both White and Native), it was a nightmare.

The Los Angeles Times and several of its reporters^{9/} earned Pulitzer Prizes for their articles on the widespread corruption and socio-economic chaos brought about by the sudden influx of money and manpower into a previously peaceful state. Governor Jay Hammond charged that the head Teamster official involved - Jesse L. Carr "has grown so powerful that nobody is going to challenge him",^{10/} and the state's attorney-general said: "It's a war just to stay afloat."^{11/} The factual basis for such statements is clear.

In Fairbanks, where all materials meant for the pipeline were shipped, theft of equipment from the huge central warehouse became so rampant that many law enforcement officials resigned in protest, including the chief of security for Alyeska.^{12/} He stated that the warehouse was "infested with some of Alaska's toughest hoodlums."^{13/}

In Fairbanks itself, "assaults on police . . . jumped 500%, sex offenses and rapes 130%, robberies 160%, drug offenses

171%, fencing stolen goods 100% and drunkenness 42%." ^{14/}
Population growth was astounding. Fairbanks estimated size
doubled in two years. ^{15/}

The Chief of Police in Valdez told the L.A. Times'
reporters that, if he tried to clean up the gambling joints
that had sprung up, "we'd be butchered. There's only three
of us . . ." ^{16/} Governor Hammond, victor in 1974 over
Republican incumbant William A. Egan by a scant 287 votes,
said the situation was even worse in Anchorage, where the
"police are Teamsters first and police second." ^{17/}

Violence between the elite pipeline welders union (from
Tulsa, Oklahoma) and the Teamsters resulted in the destruc-
tion of several work camps. Once the welders actually tried
to attack pipeline headquarters near Fairbanks. "An army
combat unit carrying automatic weapons was mobilized to hold
back the welders after they had beaten two military policemen
and two security guards". ^{18/}

When the workers were not rioting, they were busy draw-
ing sizeable paychecks, inflating the labor rates throughout
the state. As Alaska economist Robert G. Bottge stated:
"This is making an impact on the state in a way that I'm not
sure we'll ever recover from. If you want to do business
here, wages will kill you." ^{19/}

Even more ominously, Jesse Carr-controlled pension
funds were swollen by the high wages. Some \$100 million, a

large chunk in a state like this, is invested by just one of five union trust funds. "Many state officials believe that amount of money handled through local banks [all Teamster funds are invested within the state] gives the Teamsters too much influence over Alaska's lending institutions."^{20/}

Currently, the Teamsters are working to oust Hammond, whom Carr refers to routinely, and publicly, as "that son of a bitch."^{21/} "If I'd been counting the votes, he wouldn't have won",^{22/} Carr has stated. The June Primary election is now in the Courts due to charges of vote fraud.

(b) Then There Was The Reaction:

In a word, even with the completion of TAPS construction last year, there is a "energy hangover" haunting Alaska. It can be found in previously tranquil Gulf of Alaska towns like Yakutat, whose unique natural harbor and proximity to offshore oil will increase its population from 450 to 4,600 in ten years.^{22/}

It can also be found in the North Slope, where five small Eskimo villages banded together to form the North Slope Borough in 1972. Alaska's local government structure is unique in the U.S.. It's Constitutional draftsman wanted to avoid the pitfalls of county government (namely no money) and create locally-based but state-type institutions that could bring self-government and services to the vast, sparsely

populated expanses of their state. So they created the borough system, "To provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units."^{23/} The entire state was to be divided into boroughs and cities only,^{24/} in order to avoid the "patchwork of special service districts generally overlap[ping] counties and cities, filling service gaps . . . and creating a multiplicity of taxing jurisdictions."^{25/} Subsequent legislation fleshed out the procedures for borough creation.^{26/}

As of 1976, there were nine (9) boroughs in Alaska. In many instances their boundaries coincide to a great degree with those of the 12 regional corporations organized by Alaskan Natives under the terms of the 1971 federal legislation. In particular, the North Slope Borough represents the Arctic Slope Native Association and its regional corporation. For our purposes, it is noteworthy that the Arctic Slope Natives possessed such a high degree of organizational ability and independence that they were able to successfully pursue the creation of the North Slope Borough despite constant, high-powered oil company resistance. Immediate and persistent legal challenges were met and rebuffed by the Natives.^{27/} In addition, the will and ability of the new Borough to heavily

tax (on an advalorem basis) oil company property on state leases within their jurisdiction is of importance to the future of geothermal resources in Alaska.

But if the borough tax situation is interesting, it pales by comparison with the numerous levies enacted by the State of Alaska. First of all, there is a severance tax of 12.25% of gross value for oil,^{28/} 10% on gas.^{29/} There is also a "Mining License Tax" of from 3% to 7% of gross value and a \$200 per 20 acre or fraction thereof tax on mining claims.^{30/} There is a state ad valorem tax of 2.5% on all exploration, production and pipeline properties.^{31/} This latter tax is presently assessed against the oil industry only and for 1978 amounted to \$136 million. An additional \$26 million was paid to local (borough and city) governmental units.^{32/} The political vulnerability of resource developers is demonstrated by the severance tax increase from 8.3% to 12.25% only last year. Defeated, for the moment was an increase to 14.5%. Also of note is the two-year-only (1976 and 1977) tax on the oil reserves of Prudhoe Bay, with a credit against later severance taxes.^{32/}

If the state tax picture looks bleak, and it is, it becomes bleaker when framed in terms of the present Governor and his aggressive landuse planning/conservationist policies. Jay Hammond is an intelligent liberal Republican who is not

afraid to tangle with pro-development forces. "Alaska is already overpopulated,"^{34/} states Hammond, who is "pursuing a go-slow policy on major [energy] issues . . . [like] lease sales to open up other oil fields."^{35/} "I want development in which the benefits outweigh the costs, or it simply isn't a good business deal",^{36/} says the 52 year old Hammond. He appointed his Lieutenant Governor (Lowell Thomas, Jr.), a noted conservationist, to head an "Alaska Growth Policy Council."^{37/} Even though Hammond may not serve a second term, it is clear that the next state administration will be at least cautious towards new energy-related developments.

Despite this somewhat negative portrait of the projected future atmosphere for geothermal development, geothermal resources may be able to flourish in Alaska. The smaller scale of geothermal operations should be a welcome contrast after the TAPS and ALCAN pipeline projects and offshore lease sales. It is also ideally suited to the numerous villages scattered about the State. Since most of these are Native villages, there is also a built-in market opportunity in the 12 regional and 200 village corporations set up by Alaskan Natives. A substantive liaison with the Alaska Federation of Natives (AFN) is a necessity for the PRT.

Alaska is already concerned about becoming an "oil and gas ghost town" when the last barrel is finally pumped. Like

Iran and the Arab oil producers, it is eager to diversify its energy diet. Geothermal, for both electric and direct uses, is a logical candidate, given the perfect match of scales. But resource assessment is inadequate. Its immediate upgrading must be the primary PRT goal for Alaska.

Perhaps adequate assessment information will arrive on the same day that a key legal institutional barrier to geothermal's future is removed. As in California and Oregon, the federal lands are a potentially large deterrent.

Footnotes

1/ 43 U.S.C. §1601(a).

2/ 43 U.S.C. §1609(a) (emphasis added).

3/ 43 U.S.C. §1651 et. seq., P.L. 93-153,
Nov. 16, 1973, 87 Stat. 584.

4/ 43 U.S.C. §1651(d).

5/ 43 U.S.C. §1651(a). Presidential approval was required
for such a sale. President Carter has refused to acquiesce
thus far.

6/ 43 U.S.C. §1652(d).

7/ id.

8/ A consortium of the largest oil developers.

9/ Mike Goodman and William Endicott.

10/ "Alaska Today — Runaway Crime and Union Violence",
M. Goodman and W. Endicott, L.A. Times, 11/18/75, pt. 1,
pg. 1, cl. 1,2, hereinafter cited as Goodman and Endicott.

11/ id.

12/ id.

13/ id.

14/ id.

15/
id.

16/
id.

17/

18/
id.

19/
id.

20/
id.

21/
id.

22/
Larry Pryor, "Alaska Coast Village Girds For Oil Rush",
L.A. Times, 7/22/75, pt. 2, pg. 1, cls. 2,3,4.

23/
Alaska Constitution, Article X, at §1.

24/
ibid., at §2.

25/
David H. Getches, "The North Slope Borough, Oil, and
The Future of Local Government In Alaska", 3 UCLA-Alaska
L. Rev. 55 (1973), at p. 57, hereinafter cited as Getches.

26/
Borough Act of 1961, Alaska Stat. 29 (Sess. Laws of Alaska,
ch. 146 (1961)); Mandatory Borough Act of 1963 (Sess.
Laws of Alaska, Ch. 52 (1963)).

27/
See Mobil Oil Corp. v. Local Boundary Commission, Civ.
No. 72-834 (Alaska Superior Ct., filed 3/28/72) and
Gulf Oil Corp. v. North Slope Borough, Civ. Nos. 73-794,
et. al., (Alaska Superior Ct. 1973).

28/

Alaska Stat. §43.55.011 et. seq. (1977 Alaska Sess. Laws, Ch. 136).

29/

Alaska Stat. §43.55.016 et. seq. (1977 Alaska Sess. Laws, Ch. 136).

30/

Alaska Stat. §43.65.010 and 29.53.030, respectively.

31/

Alaska Stat. §43.56.010 et. seq..

32/

Minerals and Materials (Aug. 1978, DOI) at p. 42.

33/

Alaska Stat. §43.58.010 et. seq..

34/

Daryl Lembke, "Governor of Alaska Questions Growth", L.A. Times, 6/21/75, pt. 1, pg. 12, cls. 1-6.

35/

id.

36/

id.

37/

id.

SECTION THREE: THE FEDERAL LANDS —
EXPLORATION OR PRESERVATION?

Ever since President Roosevelt created the Tongass National Forest in 1902 and the Tlingits and Haidas began their legal battle with the U.S., the Conservationist/Preservationist Movement has been a significant actor in the Alaskan drama. While its role remained secondary for most of this century, it again stepped to the forefront under the guise of §17(d) (2) of the Alaska Native Claims Settlement Act of 1971.^{1/}

Faced with the 102 million acre Statehood selection and the 40 million acre grant to the Alaskan Natives, the Alaska Coalition^{2/} saw the once vast, 375 million acre public domain slipping away from them. While Alaska already contained 18 million acres of national forests,^{3/} 7,535,524 acres of national parks and monuments,^{4/} as well as the 22 million plus acre Arctic Wildlife Refuge, this totalled only 13% of the total land area of the state, and left several hundred million acres at the disposal of the Bureau of Land Management.^{5/} To the Coalition, this meant leaving them open to mining and mineral leasing activities. Though it may come as a strong surprise to the geothermal industry, BLM (and USGS) is perceived as a tool of energy and mining company interests by conservation and environmental groups. They therefore lobbied, successfully, for the inclusion of a large Alaskan land withdrawal by the Secretary of Interior.

§17(d) (2) was the result.

Specifically, the section in question revoked Public Land Order 4582^{6/} and withdrew "all unreserved public lands in Alaska . . . for a period of ninety days."^{7/} Following that hiatus, during which the Secretary of Interior was directed to "review the public lands in Alaska and determine [which lands] . . . should be withdrawn under . . . existing law to insure that the public interest in these lands is properly protected."^{8/} Once that was done, the Secretary of Interior was "directed to withdraw from all forms of appropriation under the public land laws [including mineral leasing, Alaskan Statehood selections, and Native selections] . . . up to, but not to exceed eighty million acres of unreserved public lands in the State of Alaska . . . which . . . are suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge and Wild and Scenic Rivers Systems . . ."^{9/} Such withdrawals were to be made within nine months of enactment^{10/} and, once finally made, would remain withdrawn until Congress acted or for five years.^{11/}

On September 13, 1972, then-Interior Secretary Morton withdrew 78 million acres, as directed by §17(d) (1). Fifteen months and five days later, on the second anniversary of the Act, he recommended to Congress that 63.8 million acres be added to national parks, wildlife refuges and forests and

withdrew same from appropriation. Given the five year time limit of the 1971 legislation, Dec. 18, 1978 is a key date in the future of geothermal resources in Alaska.

Rep. Morris Udall introduced his Alaska Lands Act^{12/} bill in 1977. On May 19, 1978, it passed the House by a resounding 277 to 31 vote. In addition to being the priority environmental item for the Carter Administration during this Congress, it has been hailed as "the most comprehensive land and wildlife conservation act in our history".^{13/} What does it do?

H.R. 39 adds 99 million new acres to the existing park, refuge and scenic river systems in Alaska, and creates a new 23 million acre North Slope Wildlife Refuge on Pet. 4. Some 65 million acres of such new (22 million) and existing (48 million) "conservation units" are also designated as wilderness, and all 99 million acres are withdrawn from resource (including) exploration "until Congress should decide to open them."^{14/}

In the Senate, the bill, though likely to pass, has run into a threatened filibuster by both Alaskan Senators.^{15/} The State fears that rich mineral resource areas will be cut off from development, as well as from state "selection" under the Statehood Act.

Nonetheless, S.1500, introduced by the late Sen. Lee

Metcalf of Montana and now sponsored by eleven other Senators, is an even tighter conservation bill than H.R. 39. It would add 8 million more acres to the 99 million withdrawn there.^{16/} It would increase the wilderness portion to 83 million from 65 million, including the controversial Misty Fjords area of the Tongass National Forest.^{17/} If these additions are unpalatable, remember that H.R. 39 originally proposed 114 million new conservation unit acres and 146 million wilderness acres in both new and existing conservation units.^{18/}

The Senate Interior Committee is expected to complete its mark up by October 1st. A filibuster by Alaska's Senators will ensue on the floor, and, even though cloture will probably be invoked, Congress may defer final action until Nov. 15th, when it reconvenes after a month long election recess.

It is crucial, particularly in light of the meagre geothermal resource assessment data on hand at present,^{19/} that exploration be allowed in all conservation unit areas, including wilderness areas, for a certain time period of at least ten years. The PRT should, through DOE congressional liaisons, see that such an amendment is introduced. They must also remember that geothermal leasing is statutorily banned in national parks, monuments and wildlife refuges.^{20/} Given the prevailing politics, however, exploration is the best that can be hoped for.

Footnotes

1/ 43 U.S.C. §1616(d) (1).

2/ A joint front of conservationist and environmental groups which did not actually receive its official name until 1978.

3/ Tongass (16 million acres), the Nation's largest and Chugach (2 million acres) around Valdez.

4/ Glacier Bay National Monument (2,803,840 acres) is the nation's largest; Katmai National Monument (2,792,137 acres) is second. Mt. McKinley National Park (a paltry 1,939,493 acres) and Sitka National Historical Park (54 measly acres) are also included.

5/ 295,674,093.4 acres, as of 1976. BLM, Public Land Statistics 1976. This total included both the State and Native selections.

6/ 34 F.R. 1025.

7/ 43 U.S.C. §1616(d) (1).

8/ id.

9/ 43 U.S.C. §1616(d) (2) (A) (emphasis added).

10/ i.e., after Dec. 18, 1971.

11/ 43 U.S.C. §1616(d) (2). (D).

12/ H.R. 39. It is now called the "Alaska National Interest Conservation Act of 1978."

13/ Alaska Coalition, "The Last Great First Chance" (July 1978) at p. 1.

14/
id.

15/
Mike Gravel (D) and Ted Stevens (R).

16/
Alaska Coalition, op. cit., at p. 3.

17/
id.

18/
id.

19/
U.S.G.S. Circ. 726 lists but 24 potential sites, all of less than 150 C.

20/
30 U.S.C. §1014(c).

Appendix A

Ahtna Incorporated

Cantwell
Chistochina
Copper Center
Gakona
Gulkana
Mentasta Lake
Tasfina

Aleut Corporation

Akutan
Atka
Belkofski
False Pass
King Cove
Nelson Lagoon
Nikolski
Saint George
Saint Paul
Sand Point
Unalaska

Arctic Slope Regional Corporation

Anaktuvuk Pass
Barrow
Kaktovik
Point Hope
Wainwright

Bering Straits Native Corporation

Brevig Mission
Golovin
Iglooduk
Koyuk
Marys Igloo
Nome
Saint Michael
Shaktolik
Shishmaref
Stebbins
Teller
Unalakleet
Wales
White Mountain

Bristol Bay Native Corporation

Aleknagik
Chignik
Chignik Lagoon
Chignik Lake
Clarks Point
Dillingham
Egegik
Eku
Ekwok
Igiugig
Iliamna
Ivanof Bay
Kohanok
Koliganek
Levelock
Manokotak
Naknek
Newhalen
New Stuyahok
Nondalton
Pedro Bay
Perryville
Pilot Point
Portage Creek
Port Heiden
South Naknek
Togiak
Twin Hills
Ugashik

Calista Corporation

Akiachak
Akiak
Alakanuk
Andreafsky
Aniak
Atnautluak
Bethel
Bill Moores
Cheforak
Chevak
Crooked Creek
Eek
Emmonak
Georgetown
Goodnews
Hamilton
Hooper Bay
Kalskag
Kasigluk
Kipnuk
Kongiganak
Kotlik
Kwethluk
Kwigillingok
Lime Village
Lower Kalskag
Marshall
Mekoryuk
Mountain Village
Napaimute
Napakiak
Napaskiak
Newtok
Nightmute
Nunapitchuk
Ohogamiut
Oscarville
Pilot Station
Pitkas Point
Platinum
Quinhagak
Red Devil
Russian Mission
Saint Marys
Scammon Bay
Sheldon Point
Sleetmute
Stony River
Tanunak
Toksook Bay
Tuluksak
Tuntutuliak
Umkumiut

Chugach Natives, Inc.

Port Graham
Tatitlek

Cook Inlet Region, Inc.

Eklutna
English Bay
Ninilchik
Seldovia
Tyonek

Doyon Limited

Alatna
Allakaket
Anvik
Beaver
Birch Creek
Chalkyitsik
Circle
Dot Lake
Eagle
Fort Yukon
Galena
Grayling

Holy Cross

Hughes
Huslia
Kaltag
Koyukuk
McGrath
Minto
Nenana
Nikolai
Northway
Nulato
Rampart

Ruby

Shageluk
Stevens Village
Takotna
Tanacross
Tanana
Telida

Koniag, Inc.

Akhiok
Karluk
Larsen Bay
Old Harbor
Ouzinkie
Port Lions
Uyak

Nana Regional Corporation, Inc.

Ambler
Buckland
Deering
Kiana
Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
Selawik
Shungnak

Alaska Corporation

Angoon
Craig
Hoonah
Hydaburg
Kake
Kasaan
Klawock
Saxman
Yakutat