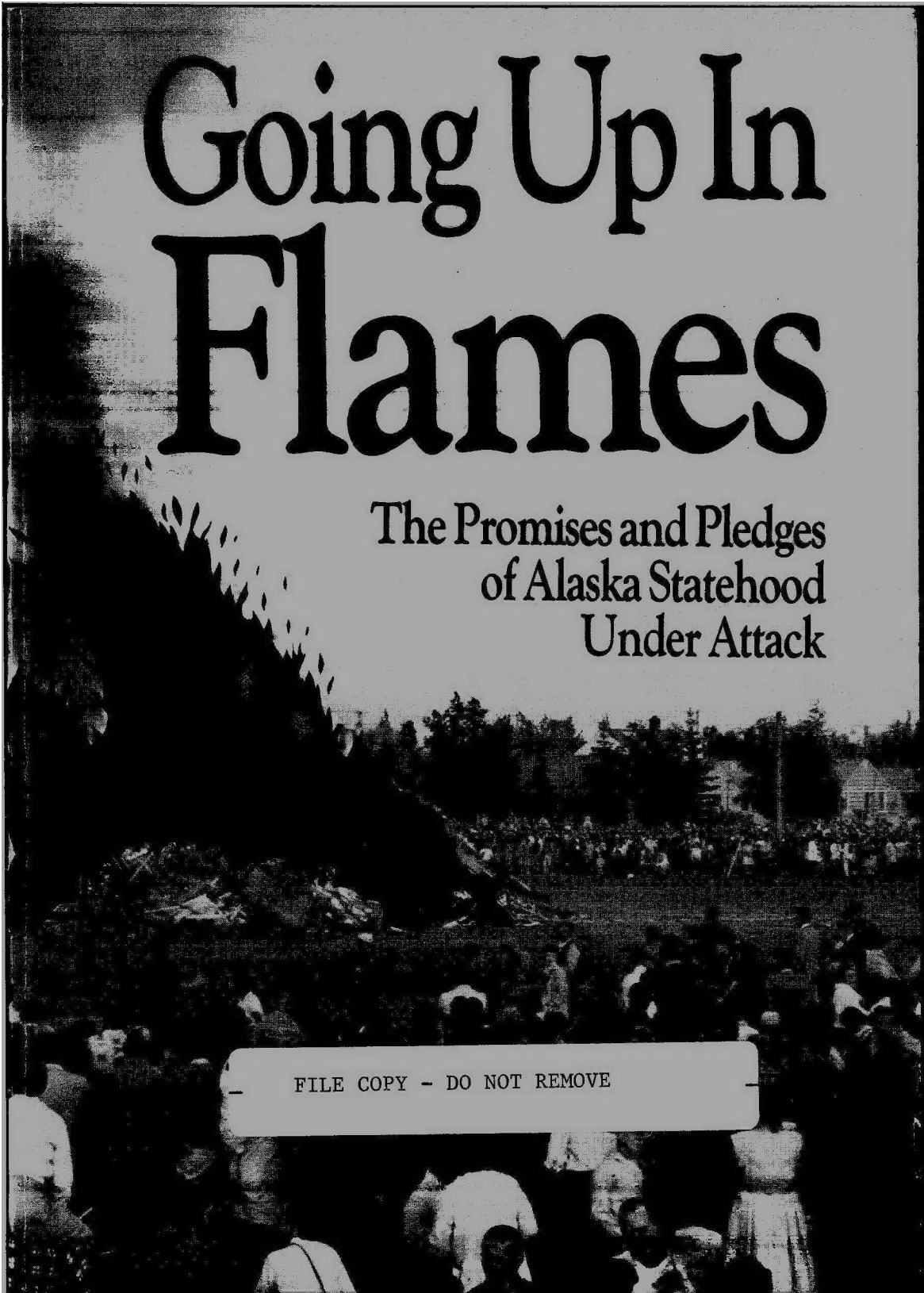
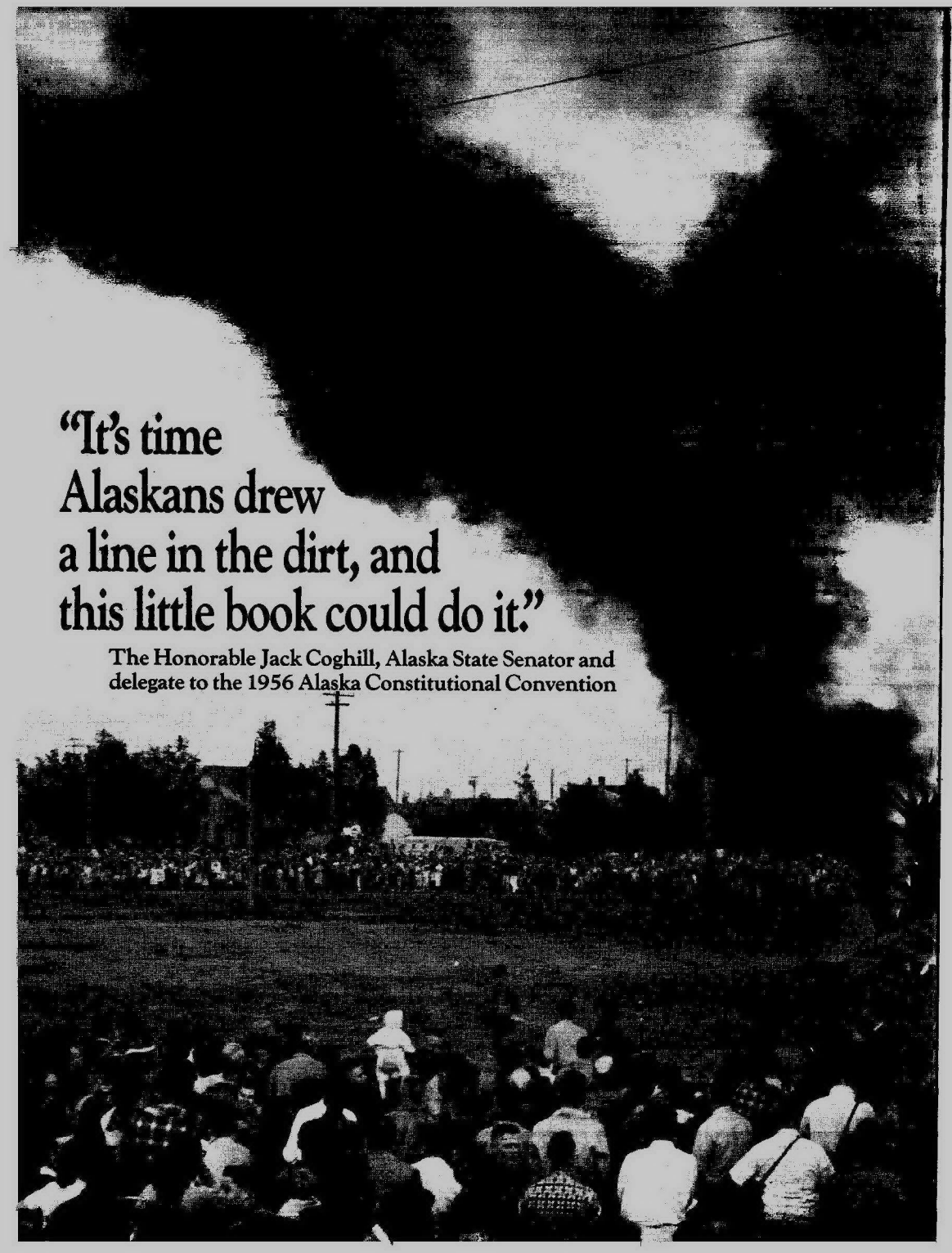
Going Up In Flames

The Promises and Pledges of Alaska Statehood Under Attack





"It's time Alaskans drew a line in the dirt, and this little book could do it."

The Honorable Jack Coghill, Alaska State Senator and delegate to the 1956 Alaska Constitutional Convention

Going Up In Flames

The Promises and Pledges of Alaska Statehood Under Attack

By the Commonwealth North
Federal-State Relations Committee

Edited by
Malcolm B. Roberts

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Commonwealth North

Founded in 1979, Commonwealth North is a non-profit corporation, organized and existing under the laws of the State of Alaska. The founding Co-Chairmen were two former Alaska governors, Walter J. Hickel and William A. Egan, who served together in that capacity until Governor Egan's death in 1984. Commonwealth North provides a forum for internationally known speakers who bring to the members national and global perspectives on issues vital to Alaska. Working committees of Commonwealth North members study critical issues facing the state and prepare reports and action papers such as this one.

Malcolm B. Roberts, Editor

Born in Hollywood, California, and educated at Princeton University, Malcolm B. Roberts worked as a journalist prior to joining the staff of U.S. Secretary of the Interior, Walter J. Hickel. In 1971, he moved to Alaska where he set up a firm in government and community relations. One of the founders of Commonwealth North, he served as its first Executive Director from 1979 to 1982 and returned to the position in 1987. As part of his responsibilities, he has staffed 18 Commonwealth North study teams and has helped write and edit their conclusions and recommendations.

Foreword

Ever since Secretary of State William Seward was ridiculed for negotiating the purchase of Alaska from the Russians in 1867, the United States of America has had a puzzling relationship with its northernmost territory. Now, 30 years after becoming a state, Alaska finds itself in a continuing struggle for true statehood. The people are caught between their view of Alaska's role in the world and increasingly restrictive statutes regarding international trade and the environment.

What the rest of America may not know is that Alaska's natural markets are with its neighbors on the Pacific Rim, and, equally misunderstood, Alaskans are not careless about their environment. Most of us would not have come to Alaska if we did not prize beyond everything else the encompassing beauty of the state. But Alaskans also value the visions they have for the state's place in the Union in the next century.

It is clear that there will be accelerated activity in the circumpolar economy on an international scale. Already some of the most aggressive and positive interactions between the US and USSR are taking place through the Soviet Far East and Alaska. Transportation patterns have benefited from the central location of Alaska on the international air routes. Great mineral deposits, both oil and coal as well as strategic minerals, are yet to be tapped.

In short, Alaska represents not the shadow of Seward's Folly but the bright light of the future for the nation that is pressing for fulfillment.

It is in that respect that a group of concerned citizens of Alaska have engaged themselves in a study that has resulted in this remarkable book. Commonwealth North is an organization of individuals representing the entire spectrum of Alaskan politics, business and education. Its meetings are designed to educate Alaskans to issues of public policy that affect the quality of life in the state. Members are, by and large, a hearty bunch, addicted to the habit of meeting at 7:00 in the morning.

The intent of this book is to alert Alaskans and others interested in the future of federal-state relationships to understand the special circumstances that led to Alaska's statehood. It is a further intention to restore to the public discussion of Alaska's future a common understanding of the special legal tradition, as old as the republic but so infrequently cited as to be out of the public mind. This tradition poses special considerations for Alaska, and its covenants need to be kept visible in future policy discussions.

Finally, Alaskans hope that scholars of government as well as politicians will avail themselves of the wealth of information in this book. The authors seek to hold high the hope and also to raise again the urgency of the need for a public policy discussion about Alaska's future. In this intelligent, well-researched and important book, all women and men of goodwill and confidence in the republic will find important and timely wisdom.

F. Thomas Trotter
President, Alaska Pacific University
January 21, 1990

Table of Contents

Introduction

On June 30, 1958, the news reached Anchorage that Congress had passed the Alaska Statehood Bill. A great bonfire was set aflame on the Park Strip in the heart of the downtown area. The mood was euphoric across the state. The federal government had put into law a series of promises and pledges which would bring Alaska into the Union on an equal footing with all other states and would help insure that the citizens of the sparsely populated territory would be able to use its vast resources to become economically self-sufficient.

Since that historic day, however, those promises and pledges have been under attack. With the exception of the great oil discovery on the North Slope and the construction of the trans-Alaska pipeline, the Alaska people and their government have been hard pressed to build a healthy economy. A series of new legislation was passed by Congress in the 1970's and 1980's which has nearly forced the Alaskan people to depend entirely on one commodity—crude oil.

Given these constraints, and as the oil flow from the giant reserve at Prudhoe Bay declines, Alaska's ability to maintain a healthy economy is at risk. Our ability to address this challenge rests on whether we, the people of the state, understand both the obstacles and the opportunities facing us. In our search for other resources and revenues, we must confront the reality that a large proportion of Alaska's land is owned and managed by the federal government, and in many cases access to state-owned land is also under federal control. For this reason, our viability as a state hinges to a large degree not so much on our own democratically

elected leadership but on congressional committees and federal agencies in Washington, D.C.

Recognizing the importance of this cumbersome relationship, the Board of Directors of Commonwealth North established a committee in December 1988 to identify specific instances where federal action or inaction blocks the realization of Alaska's legitimate goals. Secondly, the Board charged the committee to develop strategies for reducing or eliminating those obstacles.

This book is the result of more than a year of research and study by that team. It begins with an examination of the legal underpinnings of statehood and a discussion of the growth of U.S. federal powers in general. Then, a series of success stories are retold in quick succession, and the lessons learned are enumerated.

Current frictions between the state and federal governments are described in some depth, and then numerous steps and strategies are outlined which may be helpful in resolving these conflicts.

Certain broad conclusions became obvious as the research progressed:

- ***Success is not inevitable.***
  The victories Alaskans have achieved in gaining support and assistance from the federal government have been the result of years of hard work and expensive personal sacrifice by individual Alaskans.

- ***The Alaskan public must understand the issues.***
  In order to build the necessary grassroots support for a successful outcome in Congress or with the federal establishment, the Alaskan people must be informed and united.

- ***The federal government does not speak with a single voice in Alaska.***
  Federal power and responsibility in the 49th State are pervasive and dispersed, and this diversity of leadership must be understood and accommodated if Alaskan concerns are to be adequately addressed.

The authors believe that Alaska has the resources and the talent to remain economically self-sufficient for many generations. Furthermore, Alaska has much to contribute to the nation, including a wide array of energy and other natural resources, recreational and wildlife values, revenues for the federal treasury and exports to help reduce the national trade deficit. Finally, if Alaska is to succeed in these endeavors, it must learn to stand firm for its rights in such a manner that it wins the respect and support of the American people as a whole.

Chapter 1

Making Federalism Work for Alaska

As Alaskans work to diversify their economy and plan for the future, memories of territorial days live on vividly. The fear remains of outsiders who took advantage of the people and exploited the resources. Bitterness persists over federal edicts which stifled entire industries, such as President Theodore Roosevelt's 1906 decision to shut down Alaska's coal exports. Those Alaskans who fought for and achieved statehood, only 30 years ago, have trouble understanding why Alaska's new status fails to curb the extraordinary power of outside interference.

By way of background, it is vital that the Alaskan people understand two fundamental issues. First, Alaskans are not alone in their frustrations regarding federal influence over state policy. State power throughout the United States is waning in the federal constellation, and this explains why the coming of statehood did not solve many of Alaska's problems with the federal government.

Secondly, Alaska, of all the states, is particularly vulnerable to federal encroachments on state authority. Few Californians think they own Nevada. Few Ohioans believe they own New York. But virtually all Americans claim ownership of Alaska. For this reason, the U.S. Congress has taken a paternalistic view of our state and has chosen to become intimately involved in nearly every decision affecting Alaska and its resources.

To understand why statehood status has not been the panacea many anticipated, it is also necessary to trace the evolution of federalism in the United States. The changes in the relationship between the states and the federal government have been dramatic since the adoption of the U.S. Constitution.

The picture is one of periods of increasing federal power interspersed with periods of repose. The federal government has, with the aid of the federal courts, experienced a number of periods of rapid growth, e.g., the period of John Marshall's service as Chief Justice of the Supreme Court, the era just following the Civil War, the New Deal, and World War II to the present.

Since the birth of the national environmental movement in the mid-1960's, Alaska has become a symbol to a nation beset with guilt over mistakes made in the Appalachians, the Ohio Valley and other regions. This phenomenon has resulted in a plethora of rules and regulations applied only to Alaska. These statutes, some of which may be unconstitutional as discussed in later pages, were not the result of federal malice but of a desire to do good; however, they reflected an abysmal ignorance of the 49th state.

It is essential that Alaskans make federal decision makers aware of those factors which make Alaska truly unique. Bound politically to the United States, a First World industrialized country, Alaska has many attributes which make it more of a Third World nation. Except for some oil refining, fish, wood products and natural gas processing, Alaska has virtually no manufacturing. It is dependent for its survival on the development and sale of its raw natural resources. In fact, one natural resource alone—oil—accounts for most of the state's income. Unlike the typical Third World nation, however, Alaska has a severe climate and a small

population—additional burdens to the creation of a productive economy.

Alaska's unique geographical position offers both a minus and a plus. The minus is that political alliances are difficult to build with other states. But, on the plus side, its separateness, extreme climate and special environment may satisfy the U.S. Supreme Court's test of a politically isolated state privileged to litigate claims of federal encroachment in the federal courts (see Appendix III).

Alaska has a tremendous opportunity to enrich the lives of its citizens by establishing a dynamic economy which will assure a stable labor market, the development of its natural resources and its full participation in national and international markets. All this can be done and still retain the character of Alaska, with its wildness and its beauty.

But this opportunity depends on Alaska's ability to understand and work with the federal government and its many agencies operating in the state. Federalism, i.e., cooperative leadership by federal and state governments, may be an esoteric concept in other states, but in Alaska it must be understood and made to function. Otherwise, ill-considered and misguided policies at both the federal and state levels will foreclose Alaska's opportunities, leaving the state in perpetual servitude to special interests beyond its borders. Alaska cannot simply wait for events to happen. Alaska must take the initiative. She must learn from the past, carefully plan in the present and seize the future.

Chapter 2

The Legal Underpinnings of Statehood

In joining the Union, Alaska was not merely absorbed by the federal government. Even though Congress passed the Alaska Statehood Act on June 30, 1958, Alaska was not a state until the people went to the polls to decide whether or not to accept the terms fashioned by Congress and Alaska's representatives. In other words, the legal basis for Alaska's statehood is not simply an act of Congress which can be amended at whim. It is a compact (i.e., contract) between two sovereign entities agreed upon by each of the two parties and not amendable by one side without the other's consent. This theoretical principle became known as the Compact Doctrine.

Support for this legal foundation of statehood can be found in (i) the Northwest Ordinances, (ii) case law, and (iii) the congressional enactment admitting Alaska into the Union.

The Northwest Ordinances

The problem of how to add states to the Union arose even before the U.S. Constitution was framed. As a result of the Revolutionary War, an area referred to as the Northwest Territory was added to the original 13 colonies. This region was bounded generally by

the Ohio River, the Mississippi River and Canada to the north. At the urging of Thomas Jefferson, the Continental Congress adopted in 1785 and 1787 the Northwest Ordinances, comprehensive acts providing for governance of the area.

Initially, Congress was to select a governor, secretary and judiciary for the region. As population increased, a legislature was to be formed of representatives from townships that had reached a certain size.

The Congress clearly contemplated a progression in governmental status as the area became more populated. The ordinances specified the division of the region by describing boundaries which embraced what eventually became the states of Ohio, Indiana, Illinois, Michigan, Wisconsin and a portion of Minnesota. These would first become territories with non-voting delegates in Congress, then each would finally achieve statehood upon the attainment of a population of 60,000.

There are several noteworthy provisions of the ordinances:

- A new state would be admitted "on an equal footing with the original states in all respects whatever."

- The ordinances were considered "*as articles of compact,* between the original states and the people and states in the said territory, and *forever* remain *unalterable, unless by common consent.*" (emphasis added)

"The legal basis for Alaska's statehood is not simply an act of Congress which can be amended at whim."

The U.S. Constitution

Admission of new states to the Union is governed by Article IV Section 3 of the U.S. Constitution which reads in part:

> *Admission of new states; power over territory and other property.* New states may be admitted by the Congress into this Union; but no new state shall be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

There is no express language in the U.S. Constitution guaranteeing equal footing or enunciating the Compact Doctrine.

Early Case Law

An early U.S. Supreme Court case on the Compact Doctrine was *Cooper vs. Roberts*, 59 U.S. 173 (1855), a case arising in Michigan. The dispute at issue involved conflicting claims regarding mineral rights on a section of land (Section 16) which had been granted to the State of Michigan in the statehood act adopted by Congress in 1836.

In 1851, the State sold the land to Alfred Williams, a predecessor in title to the plaintiff. In 1844, the U.S. government had granted the defendant a license to explore for lead on the land. The claim of the defendant was further based on an act of Congress subsequent to admission of Michigan as a state which purportedly disposed of the same land. Upholding the plaintiff's claim, the U.S. Supreme Court said in part:

> The practice of setting apart section No. 16 of every township of public lands, for the maintenance of public schools, is traceable to the ordinance of 1785, being the first enactment for the disposal by sale of the public lands in the western territory. The appropriation of public lands for that object became a fundamental principal, by *the ordinance of 1787, which settled terms of compact between the people and States in the northwestern territory, and the original States, unalterable except by consent of both parties to the compact...* (emphasis added).

The next U.S. Supreme Court case discussing the Compact Doctrine was *Beecher v. Wetherby*, 95 U.S. 515 (1877), a case arising again over conflicting titles to land, this time in Wisconsin. One party, Beecher, sought to recover logs cut by Wetherby from a Section 16. Beecher asserted title to the land based on federal patents while the defendant based his claim on a state patent. The federal patent was issued pursuant to an act of Congress adopted in 1871. Section 16 had, however, been granted to the State of Wisconsin by the U.S. government pursuant to the act admitting Wisconsin as a state in 1846. The enabling act set forth certain conditions which had been accepted by the new state's constitutional convention. If these were accepted, then a compact would be formed, and Wisconsin would be admitted as a state. The court held on page 523:

> The convention which subsequently assembled, accepted the propositions, and ratified them by an article in the Constitution, embodying therein the provisions required by the act of Congress as a

> condition of the grants. With that Constitution the State was admitted into the Union in May, 1848. 9 Stat. 233. It was, therefore, an unalterable condition of the admission, obligatory upon the United States, that section (16) in every township of the public lands in the State, which had not been sold or otherwise disposed of, should be granted to the State for the use of schools.

The Supreme Court of Wyoming in *Merrill v. Bishop*, 287 P.2d 620, (Wyoming 1955) cites *Beecher v. Wetherby* for the principle that when a state is admitted to the Union and certain grants are made to the state upon certain conditions to be ratified by the constitution of the state, and the ratification was made, the conditions become "unalterable and obligatory" upon the United States. The *Merrill v. Bishop* court then cites more recent cases and concludes, *"But we find no modification of the principle that the compact between the United States and Wyoming is unalterable and obligatory."* (emphasis added)

Likewise, the sword cuts both ways. It has been held that the compact nature of various states' statehood acts precludes a state from taking unilateral action to revoke a provision of its statehood act which was ratified and accepted by its people. In *Opinion of Judges*, 140 N.W. 2d 34, 36, (So. Dakota 1966) the Supreme Court of South Dakota held:

> (2) We think it proper to also point out that under the Enabling Act which provided for the admission of our state into the Union, we agree that the lands belonging to citizens of the United States residing without our

> state "shall never be taxed at a higher rate than the lands belonging to residents thereof;" S4. This provision was subsequently embodied in our Compact with the United States, now Article XXII of our Constitution. *It cannot be revoked without the consent of the United States.* (emphasis added)

In other words, under the Compact Doctrine, the Statehood Act cannot be amended by a unilateral action of either party.

The Alaska Statehood Act

Finally, the Alaska Statehood Act itself uses the term "compact." Section 4 begins: "As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State." While there is no other reference to the compact, it is clear that the members of Congress knew the act was unlike other legislation which could be amended unilaterally by Congress. In the debate, Senator Hugh Butler of Nebraska, a staunch opponent of Alaska statehood, said in part:

> "A bill which grants statehood is not some minor piece of legislation, but is a major function of the national legislature. We cannot undertake to perform that function without reminding ourselves that *we are asked to make a grant which cannot be revoked.* We cannot, therefore, consider these bills as we would ordinary legislation, in the sense that ordinary legislation may be amended or changed in subsequent years as experience dictates." (emphasis added)

"Congress cannot unilaterally revise to the detriment of Alaska the provisions of the Statehood Act."

Alaska has a strong case that the Compact Doctrine prohibits the federal government from unilaterally reneging on its obligations agreed to in the Statehood Act. Although Alaskans had already voted in favor of statehood and ratified a state constitution, Congress mandated that another vote of the people had to be held to approve immediate statehood, endorse the boundaries delineated by Congress, and accept the terms of the Statehood Act. This election took place on August 15, 1958. The terms of statehood were approved by Alaska's citizens by a vote of 40,452 to 8,010.

Additionally, the Alaska Constitution contains in Article XII, Section 13, a consent "by the State and its people" to all the provisions of the act admitting Alaska to the Union.

President Dwight Eisenhower signed a presidential statehood proclamation on January 3, 1959 which admitted Alaska as a state. In both its second and fifth "Whereas" clauses, the presidential decree specifically referenced the vote of the people "adopting the propositions required to be submitted to them." It then proceeded to the "now, therefore" clause, finding that all procedural requirements imposed by Congress upon the State of Alaska have been met such that it is now entitled to admission into the Union on an "equal footing" with the other states of the Union.

The Alaska Supreme Court held in *State v. Lewis*, (1977) 559 P. 2d 630, as follows:

> Alaskans by ratification of the constitution including the provisions of Alaska Constitution, Article VIII S9 and Article XII, S13; and again, separately, by approving proposition 3 of the Alaska Statehood Act,

> S8 (b), agreed to be bound by restrictions on alienability of land imposed by the federal government. *This constituted a compact.* (emphasis added)

In summary, in light of the requirement by Congress that the people of Alaska must approve the provisions of the Statehood Act individually as a prerequisite to the State's admission into the union, Congress cannot unilaterally revise to the detriment of Alaska the provisions of the Statehood Act.

In 1969, the Alaska Attorney General wrote an opinion that (1) the federal government may not unilaterally amend the Statehood Act; (2) the state government may not unilaterally amend the Statehood Act; and, (3) the only constitutional method by which there can be enacted federal legislation which is in direct conflict with the Statehood Act is with the approval of the people of the State of Alaska.

The Equal Footing Doctrine

The Equal Footing Doctrine also has its genesis in the Northwest Ordinances, discussed earlier. The language appears in early statehood acts admitting Michigan and Arkansas.

As mentioned above, the presidential proclamation formally admitting Alaska as a state contains the words "equal footing."

Finally, it is clear that this doctrine is considered alive and well by the judiciary. In *United States v. California*, 332 U.S. 19 (1947), the equal footing argument was used on behalf of Califor-

nia in attempting to exercise jurisdiction over submerged offshore lands within the three-mile limit. California argued that since the original 13 colonies had title to those lands, the Equal Footing Doctrine mandated that California should also have title to such submerged land. The Supreme Court did not reject the doctrine but said:

> There is no substantial support in history for the view that the thirteen original colonies separately acquired ownership of the three mile belt beyond the low water mark or soil under it even if they did acquire elements of the sovereignty of the English Crown by their revolution against it.

A few years later, Texas (which was an independent country prior to statehood) also tried to assert title to submerged lands because it had title to the lands upon admission to statehood. The U.S. Supreme Court invoked the Equal Footing Doctrine to deny Texas title to the lands in question. So it is clear that the Equal Footing Doctrine is a two-edged sword. It can be used both for and against Alaska.

Chapter 3

The Expanding Powers of the Federal Government

Nearly all of the nation's founding fathers conceived the federal government as one with strictly enumerated powers with no authority to legislate beyond those powers. In the U.S. Constitution, the major sources of national power are contained in Articles I, II, and IV and in a number of the amendments. These sources can be quickly summarized.

Article I, Section 8 grants Congress the power to levy taxes and to spend to "provide for the common Defence and general Welfare," to borrow money, to regulate commerce "with foreign Nations and among the several States," to establish uniform rules for naturalization and bankruptcy, to coin and regulate the value of money, to establish post offices, to grant patents and copyrights, to constitute lower federal courts, to declare war, to raise and regulate national military forces, and to organize the militia in the states and call upon it "to execute the laws of the Union, suppress Insurrections and repel Invasions."

Article II, Section 2 empowers the president and Senate to make treaties. Article IV grants Congress the capacity to effectuate the full faith and credit principle (sec. 1), to admit new states into the Union (sec.3), to regulate the territories and property of

the United States (sec. 3), and to guarantee to every state a "republican form of government" (sec. 4).

Several of these powers have been particularly significant in increasing federal power, namely the spending power, the power to regulate commerce, and the power to regulate public lands owned by the federal government.

Spending and Commerce Powers

James Madison and Alexander Hamilton, co-authors with John Jay of the Federalist Papers and influential proponents of the ratification of the United States Constitution, disagreed on the scope of Congress's power to tax and spend for the general welfare. Madison thought that Congress could spend money only to carry out the other powers enumerated in Article 1, Section 8 (mentioned above). Hamilton disagreed. He argued that Congress could tax and spend for any purpose its members felt would serve the general welfare even if the purposes involved activities which Congress had no independent power to regulate. Hamilton's view prevailed, and today Congress makes millions of dollars available to the states, local governments and private citizens. These funds are subject to numerous conditions which the recipient must accept in order to obtain the money and which, in effect, enable Congress to regulate broad areas of state activity which would otherwise be beyond congressional Constitutional limits.

The power of the Congress over foreign and interstate commerce has grown to the point that it affects virtually every income-

"Because Alaska's political muscle is limited, many Alaskans believe they should have recourse in the courts."

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producing activity. Initially, this power to regulate commerce was viewed as limited to the transfer of goods across state lines. Later it was seen to include in-state activities that had a substantial effect on interstate commerce. In later years, the "substantial effect" requirement has been diluted to the point that virtually any economic activity is subject to federal control.

Illustrative of the current view, in 1942, the Supreme Court upheld a federal statute preventing a farmer from growing wheat on his own land for consumption by his family and farm animals (*Wickard v. Fillburn*, 317 U.S. 111). The court recognized that the wheat raised by the farmer would be consumed on his premises and not marketed and therefore would not directly involve local commerce, let alone interstate commerce.

Nevertheless, the court reasoned that if the farmer fed his own wheat to his animals, he could avoid buying wheat from someone else to feed them. The cumulative effect on commerce of hundreds of farmers making similar decisions was felt to be significant. This was enough of an effect on interstate commerce to make the farmer's activity subject to federal regulation.

The Supreme Court has also held that the power to regulate commerce includes the power to prohibit the export of an item entirely. Observing that congressional regulation virtually always benefits some group at the expense of others, it has concluded that the question of benefits and detriments from federal regulations is a political question that must be fought out in Congress and with the president and not litigated in the courts.

This view adds to Alaska's challenges. With only three Alaska members in Congress out of a combined legislative body of 565,

Alaska's political muscle is limited. Many Alaskans believe that when they face discrimination because of the political power of special interests outside the state, they should have recourse in the courts. A discussion of such recourse for one major issue, the North Slope Oil Export Ban, can be found in Appendix III.

The Public Domain

Battles over the public land and its subsurface estate between the western states and the eastern states have occurred since the ratification of the Constitution. The legal issues involved are relevant to Alaska's ability to determine its destiny.

The "Sagebrush Rebellion" in the early 1980's marked only the latest skirmish in this continuing war. This movement was the result of great frustration in states which contain large amounts of federal lands within their borders. In order to understand the claims that Nevada legislators and the other "Sagebrush rebels" made to the public domain, it is necessary to take a look at what the Constitution says about Congress's power over public lands owned by the federal government.

In Article I, Section 8, we find that Congress had exclusive legislative power over that which became the District of Columbia and, in addition, over "all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." In contrast, in Article IV, Section 3, Congress is given the power to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to

the United States; and nothing in this constitution shall be construed as to prejudice any claims of the United States, or of any state."

The "Sagebrush rebels" built three arguments on this provision. First, the so-called classic theory of the property clause which contends that Congress's legislative power extends only to property within a state acquired with the consent of its legislature. In all other cases, the federal government holds the property as a proprietor subject to state regulation. This theory was rejected in *Kleppe v. New Mexico*, 426 U.S. 529 (1976), in which the court held that Congress has plenary legislative power over the public domain that would preempt any conflicting state regulation.

The second argument was based on the Equal Footing Doctrine (discussed earlier). The "Sagebrush rebels" argued that the original states had title to the public domain within their boundaries, and therefore subsequently admitted states should also receive similar title. This argument overlooked the fact that every state admitted to the Union since Ohio has surrendered any claim to the public domain as a condition of being admitted to the Union. Alaska's Statehood Act specifically waived any claim by the state to the public domain within Alaska subject to the right of the state to select and acquire 103 million acres of its own.

The final argument of the "Sagebrush rebels" was that Congress holds title to the public domain in trust for purposes of disposal not retention and therefore is under a duty to dispose of the public domain within a reasonable time into private hands. Some of these issues have not been fully resolved by the United States Supreme Court, and utilization of Alaska's public domain remains largely under the control of federal statute or regulation.

Chapter 4

Successes in Federal-State Relations

Most policies and decisions which affect Alaska have been framed and finalized 5,000 miles away in Washington, D.C. Their outcomes have been influenced substantially by interests and lobbying efforts from outside the state. Yet, in spite of those difficulties, Alaska has achieved an extraordinary track record of success.

Remedies to Alaska's problems have been found through all three branches of the federal government—executive, judicial and legislative. The following are examples of particular note where Alaskans took the initiative and were instrumental in their success:

Executive remedies:

- *Alaska's role in national defense*
- *Designation of inland waters*

Judicial remedies:

- *Defense of the 90/10 royalty split in the development of the Kenai Moose Range*
- *Protecting state title to the beds of navigable waters*

Legislative remedies:

- *Statehood*
- *Satellite communications in Alaska*

- *The Alaska Native Claims Settlement*
- *The Trans-Alaska Pipeline*
- *The 200-mile limit*
- *The Alaska Railroad Transfer*
- *The Red Dog Mine*
- *Arctic Research Policy*

Executive Remedies

Alaska's Role in National Defense

In 1922, the U.S., Britain, Japan, Italy and France negotiated an arms limitation treaty (the Naval Armament Limitation Treaty) that put a permanent lid on defenses in Alaska. It also limited the military power of the navies of the five nations. Until 1934 when the Japanese announced their intention to allow the treaty to expire in 1936 without renewal, nothing was done about Alaska.

During the treaty years, Alaskans often expressed concern about the lack of defenses. They were aware of Japanese military activities in the Pacific.

In 1934, as soon as it became known that the treaty limitations would be lifted, Alaska's delegate to Congress, Anthony Dimond, introduced a bill to appropriate $10 million to build an airport in Alaska. It was the first suggestion ever made for such a federal facility in the territory and was subsequently built at Fairbanks.

People in Anchorage were so concerned about the neglect of defenses that the Anchorage City Council appointed a commission in the early 1930's to study the strategic values of this area.

The report was compiled and forgotten on a closet shelf in the city hall. The report made it appear that whatever the military built in Alaska should be at or near Anchorage.

This report was rediscovered and given much publicity in the late 1930's when tensions were building in Europe, and Japan was launching military excursions in the Pacific. Copies were made and distributed widely. Editorials, interviews with veterans and visiting military people, and resolutions passed by civic groups urged Washington to do something about Alaska.

The Army sent a board to Alaska in 1938 to study potential sites for military installations. The board made headquarters in Anchorage, and the members were quickly taken in by local families and were entertained lavishly. There were public gatherings and speaker engagements during the weeks they were here.

When the board returned to Washington, a Land Order was published withdrawing from the public domain the land that is now Elmendorf Air Force Base and Fort Richardson. The board had taken the advice of the local residents. Anchorage became headquarters for the Army and Air Force.

The first contingent of the Army arrived in June of 1940 and lived in tents on what had been a homestead in the new military reservation. There were no recreation facilities, and the townspeople welcomed the soldiers to share their civilian facilities. Fast friendships resulted, and good community relations were established that have continued through the years. Military leaders have said the community relationships here are better than anywhere else in the world.

During the war, the civilians cooperated with the military although they disliked and disapproved of the censorship, travel controls, and other rules handed down by the general.

Civilian Alaskans also played a role in the 1989 restructuring of the military command to make it a part of the Pacific Command. The first plan was conceived by generals in the Pentagon. After winning support from the Joint Chiefs of Staff, this plan went to the Secretary of Defense for approval. Alaska's senior senator, Ted Stevens, who was well versed on the bad experiences in command structures during the Aleutian warfare in World War II, put a halt to the scheme and initiated a series of meetings of top generals in order to inject the viewpoints of Alaskans into the planning process.

After two years of discussions, the Pentagon revised the plan so as to be acceptable to all concerned. Instead of being a subcommand reporting to the Air Force headquarters in Hawaii, the new Alaska Command became a joint command with its general reporting directly to the commander-in-chief of the Pacific Command at Pearl Harbor. The purpose was to eliminate the possible repetition of the sad situation in World War II where the Navy had its own strategy for defending Alaska and the Army had another.

These actions were all taken by the executive branch, often at the urging of Alaskan citizens and the congressional delegation, without the need for legislation.

Designation of Inland Waters

Prior to 1967, the Alaska Marine Highway System terminated at Prince Rupert, B.C. Travelers transferred to the British Colum-

"...demonstrating the speed at which the executive branch can operate if motivated to do so."

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bia ferry "The Queen of Prince Rupert" for the final leg of the journey to Vancouver.

That fall, British Columbia Premier William Bennett decided to discontinue the service to Vancouver. Shortly thereafter, a rockslide closed the Alcan highway, stranding a large number of travelers, both Alaskan and Canadian. As there were no means of surface transportation available between the South 48 and Alaska, the outcry became intense, and law enforcement officials feared that riots would soon break out. The executive branches of the state and federal governments reacted quickly to the crisis, demonstrating the speed at which the executive branch can operate if motivated to do so.

Alaska had no vessels on the Marine Highway System which were legally certified as "ocean going" and was therefore prohibited from providing the needed water link. Knowing that he could not get the state's ferries recertified for use on the high seas, Alaska's Governor Walter Hickel set out to change the status of the waters so that Alaska's ferries could sail them.

Premier Bennett remarked that it would take at least two years for the U.S. government to redesignate the waters between Prince Rupert and Seattle from "high seas" to "inland waters." Respected Juneau attorney Norm Banfield told Governor Hickel that Alaskans had attempted to make such a change for 40 years and that it wasn't possible.

On a Thursday, Hickel called in Rear Admiral J. R. Scullion of the Coast Guard and General C. F. Necrason of the Alaska National Guard. He announced that he had ordered one of the

Alaska ferries to sail for Prince Rupert to pick up the stranded travellers and transport them to Seattle. The ferry was scheduled to arrive by the following Monday noon so immediate action was needed. The admiral advised that the only way to change the federal regulation in such a short time was with a presidential order. Hickel agreed, and Admiral Scullion and General Necrason contacted the Pentagon while the governor took his case to the public.

At 11:30 a.m. Monday, Hickel's advisors gathered with him at the Governor's Mansion. At 11:50 a.m., the White House called. President Lyndon Johnson had officially declared the waters between Ketchikan and Seattle "inland waters." The ferry picked up the stranded people, and the designation remains today.

Judical Remedies

The 90/10 Royalty Split Upheld

The Kenai Peninsula Borough and the State of Alaska brought separate legal actions in 1980 seeking clarification of the 1964 amendments to the Wildlife Refuge Revenue Sharing Act of 1935.

At issue was the division of revenues generated by the development of oil and gas leases on the Kenai National Moose Range, a reserved federal property within Alaska. According to the Mineral Leasing Act of 1920 and the Alaska Statehood Act of 1959, 90% of such revenues were to be paid to Alaska and 10% to the United States Treasury. The 1964 legislation stipulated that 25%

had to be paid to the counties in which a wildlife refuge is located and the remaining funds paid to the Department of Interior for public purposes.

The United States District Court ruled in favor of the State as did the Court of Appeals for the Ninth Circuit and the U.S. Supreme Court. The Supreme Court's decision was rendered on April 21, 1981.

This case established a legal precedent upholding the division of revenues established in the Mineral Leasing Act. This issue has currency at the present time because of the proposals in the U.S. Congress to reduce Alaska's revenue portion if oil and gas are developed in the Arctic National Wildlife Refuge.

Protecting State Title to the Beds of Navigable Waters

State ownership of the beds of navigable waters is an inherent attribute of state sovereignty. The fact that this right is protected by the United States Constitution was upheld in a case filed by the State of Montana and decided in 1981. This means that the State owns the land under water bodies that are capable of transporting people or goods. If a river, lake, or stream is determined to be navigable, then public access and use for traveler recreation are assured. Furthermore, these submerged lands may hold valuable deposits of oil and gas, placer deposits, other minerals, and materials such as sand and gravel, all of which belong to the State and its residents.

The criteria used by the State for asserting navigability are based upon the legal principle established by the federal courts. With the

exception of float plane use, the courts have agreed with the navigability criteria presented by the State of Alaska and ruled against the limitations suggested by the federal government. On December 16, 1986, the District Court rejected the federal government's requirement of commercial transportation and its restrictive definition of commerce.

Instead of buckling under to the federal definition of navigability, the State of Alaska adjudicated the issue, and the court upheld the State's view that it is necessary to show only that a water body is physically capable of "the most basic form of commercial use: the transportation of people and goods." The court also decided that the test of navigability is not limited to watercraft customarily used at the time of statehood. That decision, *Alaska v. United States*, number A80-358 Civil, was a victory for Alaska although it is now on appeal.

Legislative Remedies

Each of Alaska's successes achieved by federal legislative action had these common factors:

- A clear identity of goal and purpose;
- The dedicated and unwavering commitment of a core group of concerned Alaskans;
- The unselfish expenditure of time and money by these Alaskans;
- An understanding from the beginning that success would not be realized rapidly but usually would require years of effort;

"Statehood was achieved because of the clear goal and unselfish commitment of many Alaskans."

- The bringing together of national and state needs and the clear demonstration of how the action would benefit both parties;
- Skillful execution of a plan of public and media education to help enlist support at both the federal and state levels.

Alaska Statehood

No one project exemplifies all of the above-listed factors better than the winning of statehood itself on January 3, 1959. This remarkable achievement of adding a 49th star to the flag, representing a non-contiguous state, was accomplished only because of the total commitment of a few individuals who directed a 43-year struggle.

In 1916, the first statehood bill was introduced in Congress by Delegate James Wickersham. While this act was perceived as merely a gesture at the time, it planted the seed. In the early 1940's Delegate Anthony Dimond and territorial Governor Ernest Gruening began aggressively to pursue the statehood cause. As time passed, other individuals became the torchbearers for statehood, including Delegate E. L. "Bob" Bartlett, newspaper publisher Robert Atwood, attorney Mildred R. Herman, Helen Fischer, who later served in the State House, and later territorial governors Frank Heintzleman and Mike Stepovich.

Statehood was achieved against tremendous odds. Alaska had been the pawn of absentee commercial interests from the time of its purchase from Russia in 1867. The powerful canned salmon and mining industries, headquartered outside Alaska, were among those determined to defeat the statehood drive.

Success can be credited to the following:

- In 1946, a statewide referendum was held in which the voters endorsed statehood.
- The Territorial Legislature, in 1949, created and funded the Alaska Statehood Committee. Prominent Alaskans agreed to serve.
- A grassroots organization called "Operation Statehood" mobilized volunteers who wrote letters, lobbied friends Outside and raised money.
- The key Congressmen in both the House and Senate were targeted. A strategy was developed to attempt to enlist each one.
- Endorsements were sought and received from the Administration and both major political parties.
- A public relations effort resulted in a positive national opinion poll.

Finally, statehood was a success as a result of the clear goal and unselfish commitment of many Alaskans. For years on end, these individuals expended their personal time and money. Because of their accomplishments, we now look to the future and identify what needs to be accomplished for Alaska as a state on an equal footing with the other 49.

Satellite Communications

In the early years of statehood, telephone communications in Alaska were carried on the military long-lines system and managed by the Department of Defense. The system utilized antiquated technology. It was unreliable and costly for the govern-

"A major obstacle to the economic growth of Alaska was eliminated by bringing together federal and state interests."

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ment to operate and for the citizenry to use. Alaska and national interests, economics, and new technology converged to offer an opportunity for better communications in the post-1964 earthquake era.

The military services made it known that they did not view telephone communications for Alaskans as part of their mission. Meanwhile, University of Alaska scientists were developing rural area ground stations and satellite communications links. Drawing on these developments, post-earthquake economic development planners proposed a solution.

Federal legislation was introduced to authorize the sale of the government-owned long-lines communication facilities in the state "by sale, exchange, lease, easement, or permit." From 1966 to 1969, the mutual efforts of Alaskans, private sector communication companies, and Department of Defense agencies coalesced. They demonstrated the economic advantage to Alaska of private ownership and development of Alaska's telecommunications network. A major policy consideration was the insistence that, as a condition of the sale, the system be extensively improved throughout all of Alaska and result in reasonably priced communications services for Alaska.

These mutual, cooperative efforts resulted in the passage by Congress in November of 1967 of the Alaska Communications Disposal Act, permitting the sale of "all long-lines communications facilities in or to Alaska under the jurisdiction of the Federal Government." Subsequently the Alaska network was purchased by a private telecommunications carrier (RCA) who was willing to agree to the unusual requirements of the sale.

The ultimate result was the reduction of prohibitive communication costs and improvements of communication services to Alaska subscribers. Thus, a major obstacle to the economic growth of Alaska was eliminated by bringing together the federal and state interests.

The Alaska Native Claims Settlement Act

The passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971 signaled that the federal government recognized and settled the land claims of Alaska Natives based on aboriginal title. Under ANCSA, 44 million acres of land were conveyed and a payment of $962.5 million was made to Alaskan Natives through 13 regional corporations and a myriad of village corporations.

The successful passage of ANCSA can be attributed to the vision of several generations of Alaska Native leaders who dedicated their lives to a settlement.

In the late 1960's and early 1970's, these individuals literally spent years in Washington, D.C., living in cheap hotels and walking the halls of Congress. They possessed remarkable staying power, resulting in on-going, effective lobbying of members of Congress and staff. Of special importance was the enlistment of the help of Senator Henry "Scoop" Jackson and Joe Fitzgerald, head of the Alaska Federal Field Committee. Familiar faces returning again and again made congressional leadership comfortable with Alaska Native issues.

The passage of ANCSA not only settled the land claims of Alaska Natives but also resulted in direct benefits to the economic

"Those who crafted the ANCSA legislation were able to incorporate something for nearly everyone."

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development of Alaska as a whole. ANCSA placed 44 million acres of the public domain in private ownership, facilitated Alaska's selection and conveyance by the federal government of state-selected land under the Alaska Statehood Act, and cleared away legal and political impediments to the trans-Alaska pipeline and to oil development.

In addition, those who crafted the legislation were able to incorporate something for nearly everyone. The federal administration and Congress were eager to resolve the land issues in order to expedite the construction of the trans-Alaska pipeline. They also wanted to solve the issues of extinguishing aboriginal land rights, clarifying Native self-determination, and establishing a new federal-Native relationship.

The state government was pleased. ANCSA meant more expedient conveyance of its 103 million acres as well as start-up of the pipeline and its subsequent oil revenues.

The conservation community obtained a provision in the bill for study of up to 80 million acres as National Interest Lands. Section 17d(2) started the chain of events which led to the Alaska National Interest Lands Conservation Act (ANILCA) in 1980.

The oil companies obtained the pipeline right-of-way and additional leases.

And, as mentioned above, Alaska Natives secured title to millions of acres of land, a cash settlement and Native corporations with ownership restricted to Alaska Natives.

The Trans-Alaska Pipeline

When Atlantic Richfield discovered the largest oil field in the history of North America at Prudhoe Bay in 1968, neither the oil industry nor the State of Alaska was ready for the engineering challenge of moving the oil to market nor the public relations problem of dealing with an awakening national environmental movement. Not forseeing these obstacles, Alaska's business community invested heavily in construction materials and equipment, anticipating Alaska's greatest boom. The federal obstacles led to delay, and many of these early investments resulted in bankruptcies, frustration and anger.

Alaska's Governor Walter J. Hickel had enthusiastically supported North Slope exploration. Within a year after the discovery, he found himself U.S. Secretary of the Interior. Eager to grant a construction permit for the pipeline, Hickel discovered, however, that the companies planning to build the pipeline were functioning as a committee (called the Trans-Alaska Pipeline System or TAPS) and had no clear leadership. Meanwhile, the nation was clamoring for adequate environmental precautions.

Having an Alaskan in this key position was opportune for the state because Hickel was able to explain to President Richard Nixon, the rest of the cabinet and to Congress the challenges and realities of construction in an Arctic environment. After considerable struggle, he succeeded in enlisting the Nixon administration's support for the project.

Hickel also helped convince the oil industry to reorganize TAPS into the Alyeska Pipeline Service Company consortium to give

the project more cohesive direction and leadership. He formed a pipeline task force which required Alyeska to drill the pipeline right-of-way every 500 feet to test for permafrost, frost heaves and differential soils which threatened the integrity of the line. He instructed the U.S. Geological Survey to write construction and environmental stipulations including above-ground construction where soils were subject to frost heaving.

But in November 1970, Hickel left the cabinet, and no pipeline permit had yet been issued.

The National Environmental Protection Act (NEPA), which was passed in December 1969, ushered in a new world of regulations and procedures. Additionally, once the permafrost and other engineering issues were resolved, opponents to development of any kind filed a lawsuit to try to stop the entire project.

Some Alaska business groups lobbied Congress but had little effect. Finally in 1973, three critical events took place. The Arabs embargoed oil destined for the U.S. market. This created a national groundswell in support of domestic oil production and the trans-Alaska pipeline. Secondly, Hickel, then a private citizen, convinced AFL-CIO President George Meany and his 36 international presidents to throw their considerable weight behind the passage of an act to expedite the construction of an Alaska pipeline. And finally, Senator Mike Gravel of Alaska introduced a bold amendment to the bill which stated that the environmental impact statement met NEPA's requirements and placed a short time frame on pipeline litigation. This controversial amendment was adopted, and the pipeline bill passed the Senate by the narrowest of margins with Vice President Spiro Agnew casting the deciding vote, breaking a tie.

The keys to this successful endeavor include the following:

1. Alaska's state government, led by governors Walter J. Hickel and William A. Egan, enthusiastically championed the project.
2. Having an Alaskan in a key federal governmental position during the debate in Washington, D.C. proved extremely helpful.
3. The Arab embargo transformed an Alaska issue into a national one.
4. The enlistment of other constituents, such as organized labor, helped Alaska to be successful in Congress.
5. Bold action by Alaska's congressional delegation broke a legal log jam.

The 200-Mile Limit

Alaskans played a role in the effort to establish the 200-mile limit fishery conservation and management zone. In the mid-1930's, Japanese fishermen repeatedly invaded Alaskan waters in the Bristol Bay red salmon fishery, and Alaska demanded federal action to stop the Japanese encroachment. A decade later, President Harry Truman on September 28, 1945, issued a "Presidential Proclamation With Respect to Coastal Fisheries in Certain Areas of the High Seas" which served as a declaration of U.S. policy. It was not, however, implemented into law. Alaska's congressional delegation and other prominent Alaskans continued to call for more forceful federal action. The effort finally succeeded when other coastal states were convinced that a 200-mile conservation and management zone would be of direct benefit to all coastal states.

"The Arab oil embargo transformed an Alaska issue into a national one."

The broad-based support was clearly reflected by the fact that the bill which passed Congress (HR 200) was introduced by Representative Gerry Studds (D., Mass.) with 24 co-sponsors. The Fishery Conservation and Management Act of 1976 has proven to be of great importance to the Alaska fishery and helps to assure its future productivity.

The Alaska Railroad Transfer

Throughout the 1970's, the Federal Railroad Administration (FRA) expressed its interest in divesting itself of the ownership of the Alaska Railroad. The issue came into sharp focus soon after President Ronald Reagan took office in January 1981. The railroad had been built as a result of a 1914 statute designed to create a rail infrastructure to open up the territory of Alaska for economic development. The FRA, an agency whose overall mission is regulatory, considered the Alaska Railroad to be a management headache.

When Alaska's congressional delegation became aware of this interest, Senator Ted Stevens submitted transfer legislation on a "no cost" basis as the railroad carried with it a number of major liabilities, including deferred maintenance, the operation of a subsidized passenger service, unresolved Native claims to railroad lands, guaranteed rights and benefits to the employees, legal claims and liabilities, and the responsibility for scores of OSHA violations accrued under federal ownership.

Senator Stevens' legislation ran into bitter opposition, especially from Senator Howard Metzenbaum of Ohio, fueled by the

decision of the Alaska legislature to distribute $1,000 Permanent Fund dividends to all its citizens.

Eventually, on December 22, 1983, the Alaska Railroad Transfer Act was passed, only a few minutes prior to adjournment of the 97th Congress. It mandated that the railroad be offered for sale to the State.

In Alaska, opinions were mixed on whether or not the State should accept the railroad, cost or no cost. Senator Stevens warned that unless the State moved promptly, the FRA would dismantle the railroad, putting it and its real estate on the auction block.

Several Alaskan citizen groups, led by Commonwealth North and the Anchorage Chamber of Commerce, formed study teams to review the situation and make recommendations. These groups helped mobilize public opinion to support the saving of the railroad.

When Governor William Sheffield was elected in 1982, he personally led the activities of the State's transfer team and placed a full-time representative in Washington D.C. who worked exclusively on the railroad issue. With the support of the governor's staff, negotiations with the FRA were successfully concluded, and the legislature passed statutes to accept the railroad and establish a public corporation to operate it. The final result was a reasonable sales price, the railroad employee claims were resolved, and an excellent corporate structure was created allowing the railroad to operate as a private entity while serving the public good.

"The governor and his staff acted forcefully and skillfully."

In summary, the lessons from this success were as follows:

1. The federal government wanted the transfer to happen.
2. Alaska's congressional delegation moved quickly and strongly.
3. When the public mood within the state was confused, citizen groups took the leadership.
4. The governor and his staff acted forcefully and skillfully.
5. The Alaska legislature, responding to public pressure and leadership from the governor, prepared excellent legislation.

The Red Dog Mine

The Red Dog Mine, located 90 miles from Kotzebue, began production in January 1990. A joint venture between Cominco-Alaska and the NANA Native Regional Corporation, Red Dog will eventually become the largest operating lead and zinc mine in the western world. It is anticipated that 750,000 tons of ore will be extracted annually.

This major development project will provide various economic advantages to a rural part of Alaska where opportunities have historically been limited. It is estimated that the mine will employ 300 people full time for the life of the 50-year project.

Red Dog is a clear example of a successful project brought about in a timely manner. Its success was a result of a partnership between one of the largest mining companies in the world,

Cominco, and an Alaska Native regional corporation, NANA, combined with the strong advocacy of Alaska's executive branch, led by Governor William Sheffield.

The value of the relatively few people who shepherded the project to its successful conclusion cannot be overstated. NANA leaders such as Senator Willie Hensley and John Schaeffer were pivotal in gaining the project's approval and financing. These individuals had gained valuable experience in the congressional halls in earlier efforts to win passage of legislation dealing with the Alaska Native Land Claims in the 60's and 70's. They were also familiar with the Alaska legislative process and able to generate support from state government.

One of the most difficult tasks was to obtain approval from the federal government to build a road across the Cape Krusenstern National Monument. This infrastructure project was vital to the transportation of the raw material from the mine site to a port 57 miles to the west where ocean-going barges would pick up the ore for smelting.

Rather than be foiled by interminable delays within the normal channels of governmental review by countless agencies as written in the so-called "fast track" access provision (Title XI) of the Alaska National Interest Lands Conservation Act (ANILCA), NANA's leadership successfully sought and obtained an Act of Congress to obtain the necessary approvals.

Governor Sheffield mobilized Alaska public and legislative support for the project while NANA and Cominco systematically pursued more than 90 permits required by state and federal

agencies. As a result, the legislature approved an Alaska Industrial Development Authority bond sale which financed the $175 million transportation system.

A National Arctic Research Policy

The twentieth century ushered in an era of increased scientific exploration and inquiry into the phenomena and environments of the polar regions—the Arctic and the Antarctic. World interest was captivated by the early exploits of then familar American names—Peary, Cook, Stefansson, Leffingwell, Byrd and Balchen—as well as by Europeans such as Nansen, Amundsen, and Scott. They built a foundation of research on the polar regions that became the focus of the 1957 International Geophysical Year. But in this scientific endeavor, the emphasis of the United States concentrated, for international political reasons, more on the Antarctic than the Arctic. A major national commitment to Antarctic research resulted in an aggressive partnership between the Navy and the National Science Foundation. Scientific inquiries in the Arctic received only minimal attention—and then only with military rationale.

With the achievement of statehood, Alaska Senator E. L. "Bob" Bartlett expressed his dismay over this neglect and kept asking the question, "Why does the nation neglect the Arctic? Remember, there are people in the Arctic." By 1965, he was able to attract growing attention to Arctic scientific program deficiencies. Between 1965 and 1968, with the aid of the chairman and staff of the Federal Field Committee for Development Planning in Alaska, a cohesive policy framework for the national and state interests in the Arctic was developed with the input and cooperation of all

federal agencies. A final policy document was presented to President Lyndon Johnson for signature in the latter days of his office. Unfortunately, the president's illness prevented his signature of this initiative.

For the next 16 years, a few Alaskans kept the Arctic science initative alive. Then Secretary of the Interior, Walter Hickel, convened an important Arctic symposium in 1969. Other Alaskans offered proposals through the National Academy of Sciences and in Congress with respect to policies and programs connected with Naval Petroleum Reserve Number 4 and the Naval Arctic Research Laboratory at Point Barrow.

Finally, in 1981, several Alaskan scientists published a "white paper" entitled *United States Arctic Science Policy* under the auspices of the Alaska Division of the American Association for the Advancement of Science. This document attracted national attention in scientific and government circles and was republished as part of congressional hearings on the Alaska National Interest Lands Conservation Act. The Alaskan authors of *United States Arctic Science Policy*, with the help of attorneys representing the Alaska Inupiat and the Arctic Slope Regional Corporation, drafted federal legislation concerned with both national and state objectives in the Arctic region. They also followed the example of the Alaska Statehood Committee and mounted a massive letter writing lobbying effort to attract national attention.

Alaska Senator Frank Murkowski introduced this legislation, co-sponsored by Senator Ted Stevens and Senator Henry Jackson (Washington) in 1982. The legislation achieved final passage as *The Arctic Research and Policy Act of 1984*. The Act is resulting

in serious, dedicated scientific attention given to the Arctic region and, as Bob Bartlett wanted, to the needs of Arctic peoples.

The lessons learned so well in Alaska's drive for statehood were repeated:

1. National and state needs and objectives were brought together.
2. The worthiness of the ends sought were demonstrated.
3. Lobbying and communications were handled well.
4. The aid of well-known and rational supporters was enlisted.

Chapter 5

Current Frictions

The North Slope Oil Export Ban

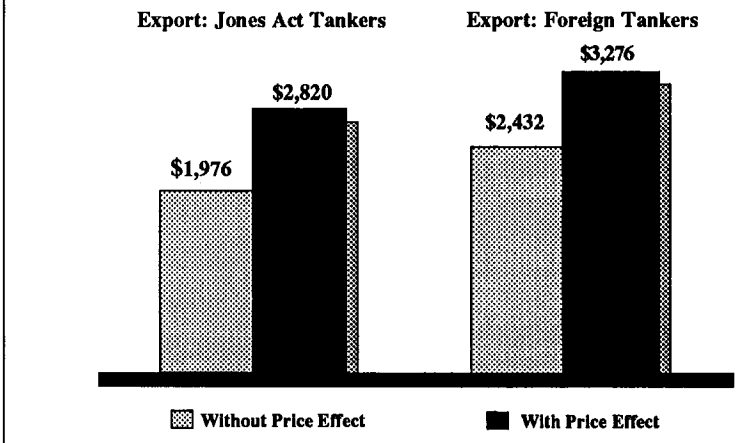
Federal law forbids Alaska from exporting North Slope crude oil to its natural and nearby markets—Japan and the other growing economies on the Pacific Rim.

This export ban has cost the federal and State of Alaska treasuries billions of dollars (see graph on the following page). The loss to the state alone since 1977 has averaged between $171 and $283 million per year, depending on whether the so-called price effect is calculated. Please see graph for explanation. The Alaska Statehood Commission in 1983 estimated that the ban costs the federal treasury between $1.2 and $1.8 billion per year.

Congressional arguments in defense of the ban claim that it strengthens national security and energy independence. Furthermore, many Congressmen feel obliged to protect the aging U.S. merchant marine fleet which, because of the Jones Act (see page 63), must transport Alaska oil when bound for U.S. ports.

The ban forces approximately one million barrels of oil per day to be tankered an additional 4,350 miles through Panama (by either canal or pipeline) to the U.S. Gulf Coast. By mandating this route, Congress subsidized General Manuel Noriega's regime

Effect of Export Ban on State Revenue
1977-1988
($millions)



Price Effect: Because of lower shipping costs to Japan, Alaska North Slope (ANS) oil will generate more revenue if sold to the Japanese. In order to compete for the purchase of ANS oil, West Coast crude prices would increase. This is the Price Effect. Any such increase translates into an increase in state and federal revenues.

NOTES: Graph based on assumption that 100% of state royalty oil and 50% of producers' oil is exported to foreign markets; Jones Act tanker rate is 190% of adjusted "worldscale" tanker rate.

with millions of dollars of Panama Canal and pipeline tariffs which otherwise would have reverted to U.S. and state treasuries.

If the ban were lifted, swaps with other oil producing states would be arranged. Gulf Coast refineries would be supplied by producers just across the Gulf, such as Mexico and Venezuela, boosting the hard pressed economies of these nations and perhaps in some cases providing a means for them to repay their debts to U.S. banks. The situation today is ridiculous because Mexican

"The American people mistakenly believe that the ban will save America from a severe oil shock if there is an international crisis."

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tankers heading to Japan through the Panama Canal pass Alaska tankers heading in the opposite direction to the Gulf Coast.

The American people and the media imagine that the ban will save America from a severe oil shock if there is an international crisis. They are mistaken. As the U.S. imports nine million barrels of oil per day, the key to ameliorating a crisis will not be Alaska oil. Firm agreements with suppliers worldwide, as well as utilization of the Strategic Petroleum Reserve, are the keys to avoiding a dramatic upward price "spike" in a time of crisis.

Furthermore, the ban is not a means of conservation (as it is characterized) but rather squanders energy by requiring the lengthy extra transport. It is not a means of environmental protection but multiplies the risks of oil spills and pollution by extra on-and-off loadings, using the "rust bucket fleet" of old U.S. tankers which ply the Gulf.

It is time that Congress stopped subsidizing a very inefficient transportation system and ended the export of dollars to Panama. The cost to Americans — and Alaskans — goes beyond dollars and cents. The ban decreases the nation's energy supply. Inefficient and high cost transportation has already prevented marginal Alaska oilfields from development. Milne Point, a North Slope field with producing capacity of 32,000 barrels per day, was shut down for three years. The reasons for the shut-in included the transportation cost structures relating to the export ban.

In Alaska, potential Pacific Rim buyers of other Alaska natural resources openly express fears that Congress may extend the North Slope oil ban to other commodities such as timber, coal or

hard rock minerals. Before they make major infrastructure investments, they have begun to ask for assurances that such capricious action by Congress will not take place — assurances Alaskans cannot give.

Because of the congressional and public misunderstanding of the real winners and losers created by the ban, Alaska must take the lead. Our state must champion the effort to lift the ban for our own benefit and for the benefit of the nation as a whole. Alaska has a moral case, an economic case, and possibly a legal case to challenge these federal fiats. However, attempts in Congress to change the statutes have been ineffectual since the export ban was first instituted as an amendment to the trans-Alaska pipeline legislation of 1974.

Legally and constitutionally, the laws are subject to challenge on several grounds: the legislative veto and executive discretion, the Tenth Amendment, and abrogation of the Statehood Compact (see Appendix III).

Alaska must act because Congress, through the ban, has broken the promise of statehood, an encroachment which may be perpetuated in other ways unless it is remedied. Some Alaskans have grown weary of fighting for their rights, but the pledges made at the time of statehood will be fulfilled only if the federal government is forced to keep its word.

The Arctic National Wildlife Refuge— the 90/10 Royalty Split

Another issue related to the Statehood Compact (see Chapter 2) currently before Congress is the division of hoped-for oil reve-

nues from development of federal lands in the Arctic National Wildlife Refuge (ANWR). The Alaska Statehood Act amended the Mineral Leasing Act of 1920 (MLA). It was the MLA which provided for division of mineral revenues between state and federal interests.

Ordinarily, under the MLA, a state received 37 1/2% with another 52 1/2% dedicated to the Federal Reclamation Fund for further and later uses within 17 western states. Since the State of Alaska was excluded from access to the Reclamation Fund, the MLA was amended to allow the 49th State to receive the other 52 1/2% directly. This became part of the Statehood Act, thereby providing a 90/10 split of revenues from oil development on federal lands within Alaska—90% to the state and 10% to the federal treasury.

The ANWR legislation currently before Congress attempts unilaterally to reduce that share to a 50/50 split. Despite the federal-state compact implicit in the statehood agreement, President Ronald Reagan's final budget document, for FY 89, proposed that the federal treasury receive 100% of those revenues with the unsubstantiated rationale that "the people of the U.S. paid for ANWR," an apparent reference to the purchase of Alaska from Czar Nicholas of Russia in 1867. This represents a complete misunderstanding in the federal establishment today of the terms and conditions of Alaska's statehood.

The usurpation of Alaska's rightful revenues granted under its Statehood Compact would be a blatant overstepping of federal powers.

For an in-depth review of this issue, please see the Commonwealth North study entitled, *An Alaskan View of ANWR*, published in April 1989.

Boundaries and Jurisdictions

There are three currently significant boundary or jurisdictional issues of interest to Alaska. They involve United States-Canadian boundary accords and United States federal interests with respect to all seacoast states. These are as follows:

The Dixon Entrance

The unresolved southern boundary between the U.S. (Alaska) and Canada through the Dixon Entrance between Cape Muzon and the entrance to Tongass Passage is detrimental to fisheries management and regulation. Constant disputes, historically, between the U.S./Alaska and Canada have adversely affected the economic condition and well-being of citizens of both nations. Moreover, non-resolution has resulted in unnecessary inefficiencies and costs for both U.S./Alaska and Canada regulatory agencies (e.g., fisheries, customs, Coast Guard).

The Arctic Ocean

At the other end of the state, the unresolved boundary between the U.S. (Alaska) and Canada seaward (north) of the continental terminus of the 141st Meridian at Demarcation Point has been described as extending as far as the "Frozen Ocean." The parties, however, made it abundantly clear that the subject matter of

agreement was land only, not land and sea. Currently, oil and gas exploration interest on the Beaufort Sea Continental Shelf is hindered by non-resolution of an Arctic Ocean (Beaufort Sea) extension of the U.S./Alaska-Canada boundary seaward. Transportation, search and rescue, and other regulatory regime jurisdictions are questionable. Indeed leases have been issued in disputed territory and funds received placed in escrow pending boundary resolution. The funds now held in escrow would be useful to the governments concerned.

The boundary problem also is pertinent to the resolution of Canadian and U.S. aboriginal rights since the Inuvialuit Final Agreement signed by Canada with the Committee for Original Peoples' Entitlement uses the 141st Meridian of longitude to indicate the western boundary of the settlement region both on land and seaward to the 80th parallel of north latitude. Thus, Canadian Natives, by claim of Canada, may exercise certain preferential rights to harvest fish and marine mammals such as polar bears. This situation may result in future jurisdictional conflicts.

The Territorial Sea

Under terms of the Alaska Statehood Act and the Submerged Lands Act, the State of Alaska exercises jurisdiction (legislative, proprietary, and judicial) over marine waters between mean high tide and three miles seaward. It also has paramount rights to the submerged land beneath that water column. Fisheries within the three-mile limit are administered by the State. Certain other marine natural resources are subject to federal jurisdiction (e.g., migratory birds and marine mammals). The State's primary inter-

ests in coastal waters jurisdictions are transportation, fisheries management, and offshore oil exploration and leasing.

In the fall of 1988, President Ronald Reagan by proclamation extended the United States territorial seas from three miles to 12 miles but specifically retained exclusive federal jurisdiction over submerged lands and super-adjacent waters for the extended nine-mile region. Clearly the president chose to retain jurisdiction over the extended territorial sea area for economic reasons favoring the national government rather than the several states involved.

It is indisputable that the extended territorial sea is an area of rich economic return. Indeed, much of the current offshore Alaska fisheries harvest occurs in this zone, and this is also a primary area of further continental shelf oil and gas and other mineral exploration and development. The State of Alaska can argue, as can other states, that this economic benefit should accrue to the state rather than to the federal government. But there are other valid reasons for seeking state jurisdiction over the full 12-mile territorial sea.

In addition to historic uses, the following should be considered: current marine technology has extended the resource and public use of coastal citizens; public safety is a province of the state (even if shared with federal authority); and land-based coastal fisheries are being impinged upon by federally allowed harvests from residents of other states as well as those of foreign nations. Perhaps an ultimate argument is that individual states can exercise more efficient and responsive jurisdiction over these waters than can the federal government.

"The Jones Act is remarkably similar to the British Orders and Council ...which led to the Boston Tea Party."

The Jones Act

The so-called Jones Act, more properly the *Merchant Marine Act of 1920,* is thought to be the most discriminatory federal statute adversely affecting Alaska's economy and peoples. This statute bars the use of foreign built, owned, or operated ships in marine commerce between Alaska ports and those of the "lower 48" states, Hawaii, and U.S. territories. It is remarkably similar to the British Orders and Council which required the shipment of tea on British ships and led to the Boston Tea Party.

Originally, the Act was conceived as a support mechanism by the U.S. ship building industry to force the construction and operation of domestic ships in the coastal trade of the 48 states. In effect, it subsidizes their industry at the expense of many other economic sectors. Over the years, domestic shipping interests, both management and labor, have successfully fought off efforts to change this law.

This act has been particularly onerous for the people of Alaska. Both goods brought to Alaska from domestic U.S. markets and exports from Alaska to these places are more costly than they would be if shipped in foreign vessels due to the higher capital and operational costs of U.S. vessels.

In essence, the people of Alaska pay a "hidden tax" unfairly supporting the U.S. shipping industry with every marine shipment of goods brought to Alaska. Conversely, the resources shipped from Alaska to other states (most notably North Slope oil) are made more costly by these higher shipping costs resulting in less profit for Alaskan exporters, marketing difficulties for Alaska

products, and even the deprivation of some markets. The net results are economic inefficiencies throughout the U.S. domestic economy where Alaska products are concerned.

In a time of U.S. economic trauma over the national debt and trade imbalance, the U.S. should take every step possible to achieve an improved economy. The entrenched political interests of the shipping industry, however, continue to control key committees of the U.S. Congress wherein action would have to take place to change the Jones Act.

Today the Act is an anachronism harmful to all regions of America. U.S. shipbuilding is virtually non-existent, and world shipping is integrated in service to diverse places and markets. Without U.S. participation in integrated marine transport throughout the oceans of the world, all aspects of the U.S. economy suffer. Even the shipping industry itself would benefit from efforts to be more competitive.

Perhaps most serious, the Jones Act keeps afloat a "rust bucket" U.S. fleet, inefficient and aging — a veritable environmental time bomb.

Resource Management and Development

As an "owner state," Alaska is unique among the 50. The state government here owns over 100 million acres of land and the subsurface resources. If the state sells the land, the subsurface estate reverts to the federal government, thereby discouraging any sale. This role of owner includes a mandate in the State Constitution that "The natural resources of Alaska should be developed" in order to create an economy to sustain its people.

"As an 'owner state,' Alaska is unique among the 50."

And yet, when Alaskans attempt to develop the state's resources, they face a wide array of conflicts. These conflicts include an expensive, time-consuming planning and public participation process. They involve many state laws and regulations which postpone and discourage development. And they include serious difficulties in dealing with federal land management agencies. For the purposes of this study, we will focus exclusively on federal restraints to resource development.

Federal agencies and their managers operate under a set of assumptions and values quite different from those of most Alaskans. The essence of these differences stems from the demands of the original eastern states for the return of income from the "western" lands to the national treasury and for the reservation of public lands of outstanding scenic, wilderness, wildlife and recreational characteristics for the enjoyment of "all the people."

Economically, Alaska's potential is generally based on the harvest, limited manufacture and export of natural resources. No other state in the Union has within its borders the rich array of resources nor the number and magnitude of federally owned and managed land areas. The lack of a basic transportation infrastructure in vast areas of this enormous state further complicates resource development. If built, these roads, rails and pipelines would often need to cross federal areas in order to move resources to manufacturing and export centers. Such infrastructure promises to be hugely expensive, as demonstrated by the construction of the $9 billion trans-Alaska pipeline, and inordinately complicated unless state and federal leaders and agencies are able to work in a spirit of constructive cooperation.

Alaskans, and those in the federal arena who care about the state and its potential, must explore fair, reasonable and timely federal-state mechanisms that can facilitate the fulfillment of Alaska's economic potential. Obstacles must be identified and strategies designed to overcome them.

One of the most basic of challenges can be found in Alaska's land ownership quilt. The nation's largest state resembles a checkerboard covered with parcels of federal, state, local government, Native regional corporation, Native village corporation and private lands. Alaska's various land managers operate under different legal mandates, policies, regulations and management philosophies. What's more, most of them represent and are responsible to differing constituencies. Unless new strategies are designed and implemented, most private investors will continue to consider this maze of ownerships and governments so intimidating that becoming involved in Alaska is not worth the risk.

The many governors of Alaska

A "governor" is someone who is either elected or appointed to govern. Although Alaska, as a sovereign state, has an elected governor, his administrative and legal authority does not, in many areas of law, cross the boundaries of federally governed land units. In fact, each federal land unit has its own "governor" (park, reserve or refuge superintendent) who is responsible to a government, through regional offices, over 5,000 miles away.

A federal unit governor functions in quite a different way than does the Governor of Alaska with respect to those he governs. The

federal governor is not subject to the same representative, participatory electoral processes. Any person or business that lives, works or owns rights to property within federal land withdrawals is subject to the governance of this appointed federal governor when it comes to the right to use property, develop resources or conduct commercial recreational activities. In practice, even though statutory and regulatory regimes ultimately control matters, the single most important aspect of how these citizens are treated is the personality and fairness of the individual manager. If that manager is arbitrary or capricious, the citizen is in effect structurally disenfranchised.

Not considering the dozens of military land units in Alaska or Native lands in the federal land bank, there are over 54 federal land management units and 243 million acres and thousands of citizens and businesses under direct federal management. The elected governor of the State of Alaska truly governs but a small land area of his state.

Most federal land management areas are managed under a concept of proprietary jurisdiction. Unlike other areas of the nation where federal agencies have exclusive jurisdiction, the laws of the State of Alaska are supposed to reach across federal boundaries. However, the federal governor, given a conflict between state and federal law governing land and resource management, has the upper hand. Federal law prevails.

Almost every one of these 54 federal land areas has its own unique management plan that incorporates federal laws and regulations along with national policies. These guidelines are then converted into formal rules or regulations that are the "ordinances" of daily life within the federal area.

Activities within the federal estate

Examples of abuses caused by federal regulations or governors may often occur. If you trap for fur in a national wildlife refuge, you may not be allowed visitors unless approved by the governor of that refuge. If you own a gold mine in a unit absorbed by the National Park Service, you may not be allowed to continue developing that mine even if its operation complies with environmental rules. If you own property within a federal unit, you may be able to use or visit that property only in accordance with schedules and activities approved by the unit governor. And you may return to your cabin only to find it seized by the federal governor. When you protest, you may be told to go to court and negotiate how much the federal agency will pay you for it. If you wish to develop resources within or across almost any federal area, it effectively requires an Act of Congress.

In summary, it takes an unusual combination of leaders to allow, if not facilitate, the economic development of natural resources within the federal estate in Alaska or on state/private lands whose resources must cross federal areas to get to market. That combination must include a courageous state governor with solid support in the Alaska legislature, a united congressional delegation and a sympathetic majority in Congress along with a supportive Secretary of Interior, Agriculture and Director of the Environmental Protection Agency — and, yes, a President of the United States who understands that Alaska has many values and can contribute in many ways to the nation as a whole.

"It takes an unusual combination of leaders to facilitate the economic development of natural resources within the federal estate in Alaska."

The Land Use Council

With the passage in 1980 of the Alaska National Interest Lands Conservation Act (ANILCA), a mechanism was crafted to bring federal unit governors together with representatives of the state and Native community. The Alaska Land Use Council was established. The Council, which is advisory to the Governor of Alaska and to the president, has a state co-chairman and a federal co-chairman. The state co-chairman is the governor; the federal co-chairman is appointed by the president to ensure top level policy deliberation.

Many observers were pleased with the creation of the Land Use Council. Finally, an institution existed in law that brought together the state governor and the top federal governors. A group of experts and users advised those who would advise the president and the governor.

But despite good intentions, cooperative endeavors by the participants must generally be viewed as a failure. As a result of political manipulations on both sides, the Governor of Alaska left the table and appointed his Director of Government Coordination as his representative. State and federal positions on issues became polarized. Recommendations to the president and the governor were reduced to split opinions, the federal representatives on one side and the state on the other. Little consensus was developed, and almost no action was taken.

The future of the Land Use Council is in doubt, and so the many federal governors of Alaska continue to govern their respective lands with little input from the Alaska people or their representatives.

Are federal areas for people?

The public debate over the purpose of many federal and state conservation units has clearly shifted from the "Parks for the People" campaign of the sixties. That national effort focused on managing our nation's recreation estate for the purpose of human enjoyment in balance with resource conservation. Now a new philosophy prevails. Often articulated in the enabling legislation of new conservation units, it proclaims that people are alien to nature and a threat to the ecology of parks and preserves.

Nowhere is this change in the philosophy of resource management in federal areas more evident than in Alaska. For decades, Alaska's vast resources were managed with an understanding that people were a part of the equation and could be either a positive or negative element. In fact, much of what we admired in our state was the result of the positive efforts of people to conserve, enhance and restore—while using a resource. Sportsmen have long paid special fees and taxes to support enhancement programs. Hunting and fishing have for decades been accepted resource management tools.

Alaskans are generally unaware of national efforts to stop all hunting in national wildlife refuges and in some units managed by the National Park Service. In fact, there are national groups advocating the elimination of all "consumptive uses," such as sportfishing, in federal areas. At a meeting in Anchorage in 1984 to discuss park management, one of the park naturalists became upset during discussions about fishing lodges, fly-in fishing trips and sportfishing in general. The park naturalist stated, with passion, that she found it difficult to do her job, interpreting the

wonder of the park's resources, when "all those men were down on the river killing those beautiful, brown-eyed trout." The discussion on whether or not sportfishing was an appropriate use of park resources continued for over an hour, and it took those who supported such uses considerable effort to prevail.

Recently, the U.S. Fish and Wildlife Service began a national review of refuge management. Part of this review looks at the questions of consumptive uses and their appropriateness in areas created by Congress for the principal purpose of fish, wildlife and habitat conservation. The question of sport hunting as an appropriate activity leaped forward quickly as a point of national debate. Authors of 10,000 out of 11,000 responses indicated that, in their opinion, sport hunting is an appropriate use. Alaskan sportsmen contributed a significant number of these responses. But now, due to the political clout of national groups, this issue has been reopened, and a major effort is underway to restrict fishing and hunting in national wildlife refuges.

Eighty-five percent of all the land in national wildlife refuges in our nation is located in Alaska. Sport hunting in refuge areas is a key component of the state's tourism economy. An entire industry depends on the legal right to hunt in refuges, some of which are larger than entire states on the east coast. Guides, outfitters, lodges, air taxis, hotels and sporting good outlets all participate in this economy. Seventy percent of the total acreage of the U.S. National Park System is in Alaska, and most of it is closed to sport hunting.

Alaskans must investigate whether these decisions on use are based on sound biology and wildlife science management. Proven

resource management tools may be ignored in the drive for fundraising and magazine sales for national conservation organizations that have a narrow viewpoint. People are being reduced to observers rather than active players in their environment. This is not just a national phenomenon; it is a political movement alive and well in Alaska.

Alaskans are often reminded that federal areas belong to all the people of the nation, and yet it appears that, more and more, they are being restricted to true believers who subscribe to this new management philosophy. The visitor and sporting industries that provide most of the access and supervision of use in many of the remote areas face increasing regulation. The result is greatly increased costs which, when passed on to the visitor, exclude nearly all but the truly wealthy.

Access — an Alaskan nightmare

Title XI in ANILCA specifies a series of steps to allow access across federal conservation lands in Alaska. During the debate in Congress over ANILCA, many Alaskans testified that the mechanism would prove unworkable. Recently, a task force of the Alaska Land Use Council and a host of state and federal officials agreed. They labored long and hard over whether Title XI could be implemented only to conclude that access across any federal area in Alaska will require an Act of Congress, a laborious and costly process.

There is, however, one other tool for access in Alaska based on an Act of Congress in 1866. This act simply stated that, "The

right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted," (Section 8 of the Act of July 26, 1866; RS 2477, 43 U.S.C. 932; repealed October 31, 1976, 90 Stat. 2793). When this act was repealed in 1976, Congress affirmed that the rights established prior to that repeal would continue in effect unless abandoned by the state involved. These became known as the RS 2477 rights-of-way. The State of Alaska formally accepted them in 1974 with its State of Alaska Roads and Trails Inventory although federal agencies claimed that this assertion was not sufficient to secure the grant.

The extent of the RS 2477 rights-of-way across Alaska is significant. During the management planning of all National Park units and U.S. Fish and Wildlife units, for example, an appendix was inserted into each plan identifying the suspected RS 2477's that may meet the criteria established to record them. This action was formally approved by the Secretary of the Interior.

Over the past five years, the RS 2477 issue has been a contentious state-federal battle. Following the leadership of State Senator Jack Coghill, the Governor of Alaska's office in Washington, D.C., with the assistance of Alaska's congressional delegation, drew up an agreement between state and federal agencies which was signed by Interior Secretary Don Hodel in 1988. This agreement resolved most of the disagreements between the State of Alaska and federal positions and will be an important legacy for future Alaskans.

Commercial fishing and federal conservation units

Since the passage of ANILCA and the creation of 16 huge National Wildlife Refuges in Alaska, state agencies wishing to facilitate the growth and vitality of the commercial fishing industry have clashed with federal governors who believe commercial fishing and its onshore use of support facilities are contrary to the purpose for which the refuges were created.

Additionally, the efforts of Alaska to enhance the nutrient base and escapement of salmon, lake fertilization and the potential for mariculture threaten federal governors, at least those who hold the philosophy that the best way to "manage" natural resources is to restrict people's use and leave the resources alone.

For decades, the commercial fishing industry has established and used onshore facilities to support its activities. In some areas, this means a small cabin or outbuilding while elsewhere it represents a number of larger buildings. The commercial fishermen maintain that without these onshore facilities, they cannot operate safely or economically. Federal governors say that such use is inconsistent with the purpose of the federal area.

This issue, like so many others, was brought before the Alaska Land Use Council with no resolution. The federal governors have yet to render a finding as to the biological incompatibility of onshore facilities. This finding is required by federal regulations and policies. The question of pre-existing rights to those facilities built prior to the creation of the federal conservation unit and based on long patterns of use has in part been resolved by not allowing any "new" structures. But that policy, like so many other

"Federal governors believe that onshore support facilities for the commercial fishing industry are inconsistent with the purpose for which the refuges were created."

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federal discretionary decisions, does not recognize the natural growth of the fishing industry which is an important component of Alaska's economy.

The Tongass National Forest

The United States House of Representatives recently passed a bill (HR 987) revising timber management operations in the Tongass National Forest in Southeast Alaska. This bill was proposed by the Southeast Alaska Conservation Council and the Wilderness Society in order to "restructure the timber industry in Southeast Alaska."

Governor Steve Cowper and Alaska's congressional delegation oppose the legislation because it would greatly reduce timber availability, creating the loss of as many as 6,000 jobs in the timber industry. The timing of this move is ironic as it happens concurrently with a remarkable increase in market demand from the Pacific Rim nations, and it is difficult to make an honest claim that the Tongass is being overharvested. Of the ten-million-acre National Forest, only 76,000 acres have been logged between 1978 and 1987. That's less than one percent.

The problem is that in ANILCA, Congress created an entirely different approach towards a National Forest in the case of the Tongass by designating the vast majority of the forest lands as Wilderness. In so doing, the non-Wilderness lands could not support the then-existing level of timber harvest on a sustained-yield basis.

To try to resolve the Wilderness-versus-job-protection problem, ANILCA provided that intensive management monies would be used to increase the yield from the non-Wilderness lands open to timber harvest. This would provide a sustained-yield harvest capable of producing 4.5 billion board feet per decade.

From 1981 to 1986, there was a major drop in international and domestic markets for wood products. The industry harvested far below the authorized timber volume level, and stumpage receipts to the federal treasury were greatly reduced. Meanwhile, the U.S. Forest Service followed the program outlined in the law of counter-cyclical spending to construct a transportation infrastructure during bad markets.

Currently, with markets excellent, the federal government is making a profit on stumpage fees paid on the Tongass, and three new sawmills have opened, creating several hundred jobs. Using data from the previous market slump, however, those opposed to timber harvesting have recommended that the industry be frozen at the low end of the market cycle (HR 987).

Unless the U.S. Senate dramatically changes this bill, Congress will once again be stampeded by those who see only wilderness values as important in Alaska regardless of what happens to the people, their livelihood and a sustained-yield approach to natural resource use.

Chapter 6

Strategies

In order to find solutions to the conflicts described in the previous chapter, Alaskans should examine the winning formulas from past accomplishments (see Chapter 4) and then fashion strategies tailored to specific issues.

Although individuals can help, only the federal government is empowered to resolve these conflicts through one of its three branches. The most efficient problem solving branch of government is usually the executive branch. The second is the judiciary. The legislative process is the most time consuming and least rational route, prone as it is to pressure from well-financed and well-connected interests, be they industrial or so-called "public interest" in nature. The following recommendations on key issues emphasize those actions which can bring about the most expeditious results.

It should be emphasized that Alaska must be wise as it picks its battles. "Timing is everything," they say in politics. But Alaskans must ask themselves, *"Whose* timing?" The answer lies in the timing that benefits the people of Alaska as a whole rather than any given special interest.

Step One: Find a Catalyst

The strategies set forth in this section require a catalyst. That catalyst can come from many different quarters — the private sector, public policy groups such as Commonwealth North, the legislature, Alaska's congressional delegation, or special interest groups.

The most effective catalyst is the governor of the state. The individual who holds this position is able to use a remarkable combination of powers to lead Alaska to resolve complex issues. First, the governor has immediate and ongoing access to the media. This vehicle is vitally important in the task of arousing public interest and mobilizing statewide and national support.

Second, Alaska's constitution calls for a strong executive, allowing the governor to name nearly all of the cabinet and granting to the governor a line item veto of budget appropriations.

Third, the state's chief elected official wields considerable influence over the executive branch of the federal government where, in many cases, the governor's views will prevail if presented forcefully, credibly and in a national context.

And fourth, through Alaska's Department of Law, the governor can mobilize the state's legal muscle to adjudicate issues which cannot be resolved through less confrontational means.

The next most important catalyst is the state's congressional delegation in Washington, D.C. It is their task to keep their fingers on the pulse of federal policymaking and appropriations and to

alert Alaska when assistance is needed to initiate or prevent unfavorable executive or legislative action.

Step Two: Build a Unified Alaska Position

For Alaska to prevail, a unified position of Alaska interests must be established in support of a common goal. A skillful campaign must be conducted to gain support for this position by labor, business, the Native community, the media and the public sector as well as the fishing industry, oil companies, consumers, loggers, miners, recreational users and environmentalists. Alaskans cannot expect to influence those outside the state without internal unity.

Success does not depend, however, on total consensus. It is not realistic to expect all Alaskans, who pride themselves on their independence, to agree on any one issue. But a tide of public support must be built within the state.

Step Three: Identify Allies Within the Federal Establishment and National Media

To resolve the conflicts that are before us, today's generation of Alaskans must identify and foster champions and allies in the federal establishment who can assist Alaska in making its case.

At the same time, national public opinion must be shaped by briefing influential national media leaders and by conducting national public relations or advertising campaigns when warranted.

Step Four: Establish Alaska's Uniqueness

When representatives of the federal government look at Alaska, they often assume that this state is just another one of the 50. As recent events have illustrated, from whales trapped in Arctic ice to oil spilled in pristine Prince William Sound, such comparisons are not valid. Neither the economy, the ecology nor the needs of people in an Arctic or sub-Arctic environment can be appropriately compared with those in the temperate climates enjoyed by the rest of the nation. Alaska must be approached from a basis of knowledge, experience and fact. Federal decisions made by Congress or the courts should not hinge on precedents established in Kansas, Oklahoma or Hawaii.

Alaskans and their institutions must do a better job of educating themselves and others on their uniqueness. This can be achieved through school system curricula, media attention, and coordinated public information campaigns and legislative initiatives.

Step Five: Adjudicate Landmark Cases

The governor should establish a special arm of the attorney general's office to litigate federal infringements of statehood rights. These attorneys should be charged to expand and strengthen the research already conducted on the 90/10 royalty issue currently before Congress, the Jones Act, the export ban and other state-federal issues. This new division is worthy of funding by the legislature because of its great revenue-generating potential. For example, if the oil export ban is lifted, the benefits to the state would be at least $180 million per year.

"Federal decisions made by Congress or the courts should not hinge on precedents established in Kansas, Oklahoma or Hawaii."

Commonwealth North or the Alaska Bar Association should establish a standing advisory committee to this federal-state division of the attorney general's office. This group could volunteer to help identify critical issues to be researched and litigated as well as serve as a sounding board regarding the legal merit of tackling specific issues.

Step Six: Build Interstate Coalitions on Common Problems

Despite Alaska's inherent uniqueness, similarities exist with other states, principally in areas of conflict with federal authority. These similarities provide a common denominator upon which to build coalitions.

Coalitions are by definition temporary and ad hoc, in most cases. They are formed for the specific purpose of addressing a particular issue of a timely nature and are then disbanded. The benefits of coalition building lie in the strength of the whole being more powerful than the sum of its parts. Coalitions succeed when the issue is clearly defined, each member has a stake in the outcome and there exists credible leadership. To achieve these conditions, a network of key organizations and people must be identified and developed within states sharing Alaska's conflicts with the federal government.

The concept of "states' rights" in the economic arena had new awareness and attention under the Reagan administration. "New federalism" was the subject of study by such groups as the Heritage Foundation and the National Governors Association. These studies were precipitated by an Executive Order issued by President Ronald Reagan on October 26, 1987, which said in part:

> "...in order to restore the division of governmental responsibilities between the national government and the states that was intended by the framers of the Constitution and to ensure that the principles of federalism established by the framers guide the executive department agencies in the formulation and implementation of policies."

The Executive Order was an attempt to revive the largely ignored Tenth Amendment, ratified in 1791. This amendment was designed to breathe more life into states' rights. It reads as follows:

> "Power reserved to states or people. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

Unfortunately, the doctrine has been in disrepute for decades because it was most often used to defend racist and otherwise backward policies in the various states. The time is opportune to rekindle this spirit of economic federalism through building networks within and between the various states. Once established, these allies may be brought to bear to reinforce Alaska's position on critical issues of common concern such as:

1. The Jones Act, which also adversely impacts Hawaii;
2. Extension of state jurisdiction to twelve miles, which impacts the other coastal states;
3. Solving the trade deficit which impacts the nation as a whole;

"Alaskans must inform and educate the nation as a whole on the unique responsibilities of ownership placed upon the State of Alaska."

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4. The general reestablishment or reaffirmation of states' rights in the economic arena which impacts all states.

Step Seven: Make No Apology for Alaska's Ownership Responsibilities

Alaska's actions on behalf of her people have been criticized in Congress and used as an excuse to treat Alaska unfairly. The existence of the Permanent Fund, a public trust derived from a depleting resource, evokes hostility. People in other states begrudge Alaska its "savings account," while enjoying the benefits of private ownership and accumulated wealth in their own states.

Alaska's leadership should not be intimidated by such criticism. Alaskans must inform and educate the nation on the unique responsibilities of ownership placed upon the State of Alaska. Unlike other states, Alaska was created as an "owner state" with extraordinary fiduciary responsibilities that go beyond the normal role played by other state governments. As a condition of statehood, Congress mandated that Alaska retain ownership of its mineral rights or they revert to the federal government.

In contrast, when public land was conveyed to residents in other states, the rights to the subsurface mineral deposits were conveyed as well. Thus, mineral rights became private property. Among the rights conveyed were the rights to lease property for exploration, to collect royalties on any minerals removed, to bequeath or sell all or a portion thereof, and to enjoy the proceeds derived from these activities.

States such as Kansas do not own their oil. When exploration companies want to find oil, they pay private owners for the right to look for it. If oil is discovered, they purchase it by paying the owners of the mineral rights a portion, typically 1/8 (12.5%) of the value of the oil removed.

In Oklahoma and Pennsylvania, income from mineral wealth is paid directly to private owners and deposited in privately owned and managed accounts, i.e., private "permanent funds." On occasion the income has made some owners millionaires, as depicted in the television comedy *Beverly Hillbillies* featuring the Clampets, a fictional family who struck oil and moved to Hollywood. Over the decades, income from the ownership of what lies below the surface has saved and enhanced many a farm and ranch. It continues to stimulate the economy and provide a private source of capital for improvements for the states in which the mineral wealth is located.

In Alaska, a method was devised whereby all residents benefit, not just those who buy or inherit mineral rights or acquire them along with land ownership. A portion of the income derived from mineral wealth is deposited into the Permanent Fund, a trust established for the benefit of all the citizens of the state (i.e., the owners). When a portion of the yearly income from the Permanent Fund is distributed in the form of dividends, it helps the economy of Alaska just as income to individuals from mineral rights helps the economies of other states.

Owners receiving monies from the removal of mineral deposits in Texas and Louisiana call them royalties. Owners in Alaska call them dividends. Owners in other states report income from

royalties on Form 1040, Line 18. Owners in Alaska report dividends on Form 1040, Line 22. Alaskans should make no apology for the Permanent Fund.

Step Eight: Tenacity

Very few of Alaska's victories to date have been won without a tenacious commitment on the part of Alaska's leaders and people. It is not often that Alaska issues rise to the top of the national agenda. Once this happens, it is no simple task for Alaska's three-person congressional delegation to sway the entire U.S. Congress. With a prevailing attitude nationwide in support of preserving Alaska as a pristine reserve, untouched and virtually unpeopled, it is no easy assignment to convince the nation that wise and responsible development of Alaska's natural resources is in the national interest.

And yet, few of Alaska's central struggles have been lost on the basis of merit. The blatantly discriminatory ban on North Slope oil export, for example, has remained intact, not because of the rationale supporting the ban but because of the sheer lobbying power and the monetary political contributions to Capitol Hill from the maritime unions.

The truth inherent in these issues will eventually emerge if Alaskans refuse to give up. New strategies may be needed as suggested in the following pages. But most of all, Alaskans must "stay the course" for the good of the people of our state and for the good of the United States of America.

Strategies to Lift the Export Ban on North Slope Oil

Lifting the ban on export of North Slope crude oil should be the Alaska issue of the 1990's. It symbolizes both Alaska's freedom to trade and our sovereign rights as a state under the U.S. Constitution. This issue will probably move forward on the Congressional agenda in 1990 because the Export Administration Act is scheduled to come up for congressional review and because Senators Mark Hatfield and Donald Riegle have introduced a bill to extend the ban indefinitely.

1. Alaska's congressional delegation should urge President George Bush to veto the expected 1990 renewal of the Export Administration Act. President Ronald Reagan took the strongest steps to date by threatening to veto the Trade Bill of 1988 based on his belief that further expansion of the oil export ban was unconstitutional. Reagan also approved the export of Cook Inlet oil and the export of North Slope gas. Now President George Bush should take a stand against the export ban because of the harm it does to all Americans.

2. The governor and the legislature should continue to support a lobbying effort in Washington, D.C. to remove the ban and stop the Hatfield-Riegle bill. Billions of dollars are at stake.

3. In order to focus national attention on the export ban of North Slope oil and its deleterious impact on the

nation as a whole, a bold move is needed. The governor should take a portion of Alaska's royalty oil in kind and negotiate a contract to sell it to a buyer on the Pacific Rim in exchange for an equal amount of oil currently being shipped to the U.S. by Mexico or Venezuela. Once the agreement is in place, the governor should charter a tanker, fill it with the agreed-upon oil shipment and send it to market. This move would bring the export issue to the attention of the American people.

4. If the federal government were to take the state to court over the above action, Alaska would have a chance to make its case to the nation. For a discussion of the legal arguments see Appendix III.

Strategy to Amend the Jones Act

The governor should instruct the state to file suit over the Jones Act, also known as the Merchant Marine Act of 1920. This law requires that cargo shipped between two U.S. ports must be carried in U.S. built or owned ships. It clearly discriminates against the states of Alaska and Hawaii. (See Chapter 5).

Strategies Regarding ANWR

1. The State should launch a positive educational campaign about ANWR nationwide while the impact of the Prince William Sound oil spill is still being assessed.

2. When Congress takes up the ANWR issue again, Alaska's delegation should argue forcefully against any change in the 90/10 division of revenues. The governor should challenge in court any ANWR bill enacted in which the 90/10 division of revenues promised in the Statehood Compact is altered unilaterally by Congress. See *An Alaskan View of ANWR* by Commonwealth North for a combined litigation and referendum strategy.

3. It is likely that Congress will indeed attempt to change the 90/10 revenue split. Many members of Congress will vote for the opening of ANWR only to help reduce the national deficit with hoped-for ANWR revenues flowing into the federal treasury. If Congress insists on taking this course, a provision should be included in the ANWR bill which puts the division of revenue question to a vote of approval by the people of Alaska. This amendment would indicate that the bill opening ANWR would not be effective until the division of revenues in the bill was addressed in a statewide election. The long-term significance of this step would be that Congress would have recognized the Statehood Compact, a valuable foundation for all future state-federal relations. This principle may appeal to people from other states who cherish the States' Rights Doctrine in the economic arena. At the same time, the Alaska people, who agreed to the terms of statehood, would vote on the proposed change thereby avoiding the legal fight recommended in point 2.

"The issue of the division of revenue from ANWR should be put to a vote of the Alaskan people."

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4. Included in the 1988 House Committee ANWR legislation was a provision to change the status of the National Petroleum Reserve Alaska to a wildlife refuge. This innocuous looking amendment must be deleted. The 23-million-acre NPRA is home of a vast storehouse of mineral resources and should remain under the leadership of the Bureau of Land Management. See *An Alaskan View of ANWR*, Chapter 6.

Strategies to Resolve Conflicts Over Resource Management

1. *Create an appeals board*

The Alaska Land Use Council will soon sunset in its current form. Strong impetus exists to create some type of forum to replace it. To resolve disputes, the Secretary of the Interior should establish an Alaska Resource Appeals Board, not unlike the Native Claims Appeals Board established after ANCSA. Plaintiffs would be able to come before knowledgeable hearing officers to explain their problems. This quasi-judicial board would have the power to make decisions. Further appeals would then be taken to federal court. However, a factual record would be established and administrative expertise applied. When individuals and interests are fully heard by knowledgeable experts charged to make fair and equitable judgments, the courts will usually uphold those decisions as such expertise frequently is not

present in the court system. Some observers feel that the Interior Board of Land Appeals adequately handles the needs in this area. The IBLA, however, has a reputation for being a sluggish bureaucratic agency, normally taking over a year to review a case.

2. *Hands-on Role of the Governor*

The Governor of Alaska should sit down personally with the Secretary of the Interior on a regular basis to resolve resource and land management issues in Alaska. Leaving these issues to lower-level federal and state employees simply has not worked and will not work.

3. *Sustained-yield Allocation of Fish and Game*

The Secretary of the Interior should charge all of the unit governors in Alaska to be responsible habitat managers and to work with Alaska's boards of Fish and Game so that fish and game resources are allocated within Alaska on the basis of sustained-yield biology. State of Alaska officials must be directed to set, in addition to the traditional season and bag limits, stricter limits when it is scientifically determined that a given species is under too much stress.

"Model forestry practices should be utilized in the Tongass National Forest."

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4. *Redefine Wilderness in Alaska*

The Secretary of the Interior should reconsider the legal definition of Wilderness as it applies to 57 million acres in Alaska and carry his conclusions to Congress. The national definition does not fit the unique Alaska situation, i.e., the following should be allowed:

- Some motorized access
- Some prospecting for vital minerals
- Some careful development and transportation of those minerals
- Some commercial fishing
- Some subsistence use

This reconsideration should be completed before the millions of acres of additional "Wilderness" in Alaska currently recommended by the National Park Service and the U.S. Fish and Wildlife Service are taken to Congress for approval.

5. *Accommodate Commercial Fishing*

The Secretary of the Interior should instruct the U.S. Fish and Wildlife Service and the National Park Service to work out reasonable ways to accommodate the needs of the commercial fishing industry for shore-based facilities on lands governed by these agencies.

6. *Utilize New Access Guidelines*

   Using the recent RS 2477 access guidelines released by the Secretary of the Interior, the Governor of Alaska should review access needed for diversifying the Alaska economy and initiate the assertion process, the mechanism required to utilize these rights-of-way. (See Chapter 5).

7. *Make Tongass a Model of Enlightened Forest Practices*

   Rather than engage in politicized battle over whether forests and streams or jobs and industry should be destroyed, Congress should choose a more enlightened strategy through which model forestry practices are utilized in the Tongass National Forest. With this global approach, the result will be protection of the beauty of the area while encouraging sophisticated harvesting and forest management techniques.

Strategies for Boundary Disputes and the Territorial Seas

1. Alaska's congressional delegation should sponsor legislation to establish that the same rights of states now held within the three-mile territorial sea are extended to the 12-mile region nationwide. The governor should be encouraged to continue the State's aggressive posture on this issue both in

terms of state jurisdiction and ownership. This is an area where other coastal states have a stake. Their support should be enlisted.

2. Alaskans should urge the president to direct the Department of State to resume boundary discussions over the Dixon Entrance and Arctic Ocean boundary disputes with Canada. (See Chapter 5).

An Alternative Strategy: The Omnibus Legislative Approach

An alternative to the executive and judicial remedies recommended above is to attempt to resolve the package of states' rights problems in the economic arena through a single legislative action in Congress. Such an act might be called *the Alaska National Economic Contributions Omnibus Act*. The purpose would be to address specific Alaska issues which, if modified by Congress, could substantially help the nation in terms of its severe economic stress due to the national deficit and trade imbalance with other nations.

A proposed partial draft of such legislation has been written and is included as Appendix IV.

A Challenge to the Other 49 States

The other 49 states should be invited to join in a concerted effort to reduce the federal trade deficit. Alaska should challenge all other states to examine the way they do business and submit their

own proposals to increase exports, reduce imports and keep jobs on American shores. Specifically Alaska's challenge to her sister states should be as follows:

1. To examine and find ways to remove trade restrictions from their industries to make them more profitable and competitive abroad.
2. To discover ways to make optimal use of their products, services and resources.
3. To submit a proposal for their own contributions to the reduction of the trade deficit.
4. To commit to mutual inspiration, cooperation and support.

Alaska's contribution alone, as described in the suggested Omnibus Act, will be to reduce the trade deficit by approximately one billion dollars a year by removing the ban on the export of Alaska North Slope oil.

Through this strategy, the number of dollars leaving the U.S. will be reduced without changing the amount of Alaska oil produced and without affecting the price American consumers pay for oil. These positive results will take place by utilizing more direct and efficient distribution networks.

Chapter 7

Potential Conflicts on the Horizon

In addition to the conflicts between the State of Alaska and the federal government mentioned in Chapter 5, there are several large issues looming on the horizon. These questions are of such complexity and delicacy that they deserve separate studies of their own and are beyond the reach and capacity of this Commonwealth North Committee. The public, however, should be aware of their significance.

Native Sovereignty

Many Alaskans at the time of the passage of the Alaska Native Claims Settlement Act (1971) assumed that this legislation resolved the central issues of the relationship between Alaska's Native people and the federal government. During the recent debate over the so-called "1991 Amendments" to ANCSA, however, the issue of Native sovereignty arose. The state's congressional delegation maintained that ANCSA and its amendments are neutral on the issue of Alaska Native sovereignty, i.e., neither embracing it nor extinguishing it.

The Native sovereignty issue arises from an entire body of "Indian Law" which has developed throughout the history of the United States. These statutes and court rulings are an outgrowth

of the treaties signed by the American colonies and various Indian nations prior to and after the founding of the United States and the writing of the U.S. Constitution. In many cases, the courts have upheld these treaties and have determined that the Indian nations involved enjoy a measure of limited sovereignty within the United States. In so-called "Indian country," the Native peoples have the right to exclude non-Indians and create and enforce their own laws regarding child adoption, the use of alcohol, taxation and misdemeanor criminal offenses. Unlike the implications of the word "sovereignty," they do not have the right to negotiate directly with foreign nations, to hold court over serious felony crimes, nor to disregard state laws which care for and control fish and game.

In recent years, various Native village governments in Alaska have begun to explore their rights under Native sovereignty arguments. To date, any claims of sovereignty have been denied by both the state and federal governments.

However, in *Native Village of Noatak v. Hoffman,* 872 Fed 1384 (9th Cir. March 30, 1989), the Ninth Federal Circuit Court of Appeals ruled that certain Alaska Indian villages are tribes in the definition of American Indian law. This ruling could have a wide and pervasive impact on rural Alaska with regard to resource development, conservation, and fish and game management.

On the reverse side, if Alaska villages opt for sovereignty, a backlash will surely be created among the remaining people in the state. The argument will be raised that these villages cannot have it both ways. If they choose the benefits of being sovereign, perhaps they should be excluded from state entitlements such as welfare, Permanent Fund dividends, state trooper protection and the like.

"Once again, Alaska's uniqueness within the Union makes it vulnerable to blanket national legislation."

As mentioned above, this issue is complex and beyond the scope of this report. The Committee, however, believes that it is an important matter and should be examined by future Commonwealth North study teams.

Piracy in the High Seas Fishery

This issue rests not so much on conflicts between state and federal policies or philosophies but rather on the ability to motivate the federal government to action. Multinational agreements exist which maintain that anadromous fish such as salmon belong to the country of origin. These agreements are being violated by foreign fishermen on the high seas. This piracy has not been adequately protested by the U.S. government. At stake are Alaska resources of great magnitude, both in terms of annual dollar value as well as in terms of the long-term health and viability of the fishing stocks themselves.

The "No Net Loss" Wetlands Policy

In the South 48 states, there has been an alarming loss of wetlands on which waterfowl and other wildlife depend. Each year an estimated 274,000 acres are drained, filled and used for agriculture and other purposes. An effort is needed to reverse this trend, and President George Bush has supported a policy of "no net loss"—those who fill in wetland areas must compensate by preserving or rehabilitating other wetlands.

The U.S. Corps of Engineers and the Environmental Protection Agency have prepared regulations which would implement this policy. Unfortunately, if these regulations include Alaska without

some site-specific adjustments, they would bring Alaska's economy to a halt. Seventy-four percent of Alaska's non-mountainous land area contains permafrost, ice lenses, and a water table close to the surface, thereby making it wetlands by federal definition.

Staff members close to President Bush candidly admit that they were not even considering Alaska when this policy was recommended. Once again, Alaska's uniqueness within the Union makes it vulnerable to blanket national legislation and regulations which do not apply to an Arctic and sub-Arctic environment.

Senator Ted Stevens has warned that the "no net loss" policy could dramatically damage the ability of Alaska to build a sound economic foundation, both on state and Native lands. Furthermore, he points out that over 70% of all the acreage dedicated to national conservation units are located in Alaska. Therefore, the vast majority of Alaska's wetlands are already protected.

This issue presents another challenge for Alaskans to explain and interpret a special situation to the rest of the country, especially to Congress and the leaders of federal agencies which manage and protect the nation's natural resources.

Chapter 8

Conclusion

The information and recommendations in this book have been researched, written and published so that this generation and future generations of Alaskans will better understand Alaska's relationship with the federal government. It is hoped that Alaskans, through this work, will appreciate the promises and pledges made at the time of statehood. Once armed with this understanding and appreciation, the people can and must insure that their political leaders hold firm to the Statehood Compact and not permit it to be violated because of intimidation or expedience.

Appendix I

The Export Ban on Alaska North Slope Oil: A Chronology

1973 The Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) prohibits Alaska North Slope oil export without a presidential finding, subject to congressional disapproval in 60 days.

1974 The Sinai Peace Agreement requires U.S. to supply oil to Israel in a supply crisis.

The International Energy Agency Agreement requires U.S. to export oil to members of the Agency, including Japan, in the case of an emergency.

1975 The Energy Policy and Conservation Act (42 U.S.C. 6212) directs the president to disapprove oil exports but allows exchanges.

1976 The Panama Pipeline Group (PTP) is founded. About the same time, permitting for Northern Tier and PACTEX pipelines gets underway to solve "west-east" oil imbalance forseen with TAPS.

President Gerald Ford's administration takes a negative position on Alaska North Slope (ANS) exports. President Jimmy Carter is elected to office.

1977 TAPS pipeline begins operating.

1978 Alaska Department of Natural Resources Commissioner Robert LeResche attempts but fails to negotiate an oil swap with Mexico.

1979 The Export Administration Act passes with stringent restrictions on Alaska North Slope crude export, requiring affirmative approval of Congress.

1980 The Alaska lands bill (ANILCA) passes.

1981 President Ronald Reagan and Senator Frank Murkowski take office. The Panama Pipeline is financed in less than one week. Northern Tier and PACTEX projects die a slow death because of Washington State and California opposition.

1983 Alaska Lumber and Pulp, a Japanese firm, begins multi-million dollar lobbying effort to remove ban. Senator Murkowski agrees to spearhead legislation. The Reagan administration, seeking to deregulate energy trade, forms U.S.-Japan Energy Working Group to expand U.S.-Japan oil, coal and gas trade. Despite agreement with Japan, Cabinet Council declines to support oil export legislation. National Security Council staff attempts compromise with maritime unions which are opposed to the ban. Compromise would allow oil export in exchange for U.S. crews being used to work on Japanese automobile carriers.

U.S. Supreme Court, in *Chadha* decision, strikes down a legislative veto by a single chamber.

1984 Reagan Administration Cabinet Group again declines active political support for removing the ban

except "in principle." Senator Murkowski loses 70-20 in attempt to change Export Administration Act, but he gains congressional approval for a study of the issue by the Department of Commerce.

1985 Reagan Administration supports export of Cook Inlet oil. Taiwan bids premium price and takes supply from bidders in Japan and Korea.

Skirmish over revision of the International Trade Administration regulations that would allow export of slightly refined crude sets stage for trade bill battle.

Conoco becomes first North Slope producer to support export. Milne Point production begins.

1986 Commerce Department study defers active recommendations. Administration decides against challenge of veto provision in Export Administration Act as per *Chadha* decision.

1987 Milne Point closes due to low wellhead price because of high transportation costs.

Proposed Valdez refinery that would export refined Alaska North Slope crude is attacked in trade bill, putting financing on hold.

1988 Presidential finding allows North Slope natural gas exports. President Reagan vetoes trade bill based on Valdez refinery's problem.

1990 Export Administration Act comes up for renewal.

Appendix II

The Export Ban on Alaska North Slope Oil: Current Legislative and Regulatory Status

Introduction

Congress has placed a number of statutory restrictions on the export of U.S. crude oil.

- Section 7 of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2406)
- Section 103 of the Energy Policy and Conservation Act (42 U.S.C. 6212)
- Section 28(u) of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Trans-Alaska Pipeline Authorization Act of 1973 (43 U.S.C. 1652)
- Section 201 of the Naval Petroleum Reserves Production Act of 1976 (10 U.S.C. 7430)
- Section 28 of the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1343).

The main reason for this legislation was congressional concern about the adequacy of oil supplies for the U.S. domestic market and the maintenance of low oil prices under the then prevalent price controls. It was widely held that any exports of price-controlled crude would have to be replaced by higher priced imports which would raise consumer prices and add to inflationary pressures. Congress was also concerned about growing U.S. dependence on foreign oil supplies and wanted to ensure that U.S. crude oil reserves were utilized to reduce import dependence.

The Export Administration Act of 1979 (EAA)

The Export Administration Act (EAA) of 1979, as amended, is the principal statute that restricts the export of Alaska North Slope (ANS) crude oil. It applies the most stringent conditions of any legislation that restricts crude oil exports. Specifically, Section 7(d) of the EAA effectively prohibits the export of ANS crude oil unless it is pursuant to a bilateral international oil supply agreement entered into by the United States before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency. Section 7(d) does allow for ANS crude exports if the president makes certain findings and recommends to the Congress that exports be allowed and thereafter obtains express congressional approval within 60 days of the recommendation.

The president must find that exports of crude oil

- will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

- will, within three months of the initiation of the exports, result in lower acquisition costs for the domestic refiners if they must purchase imported crude oil to replace such exports, and of that savings, not less than 75% will be passed on to the consumers through wholesale and retail mechanisms;

- will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrrupted, threatened, or diminished;

- are clearly necessary to protect the national interest; and

- are in accordance with the provisions of the EAA.

The consumers' savings test significantly impedes the president's discretionary authority to allow crude oil exports. Congress must adopt a joint resolution agreeing with the president within 60 days.

Section 7(d)(2) does allow for crude exports based upon exchanges with adjacent foreign countries to achieve increased efficiency of transportation. Crude exchanges, however, remain subject to the five conditions set forth above.

In spite of substantial improvement during the 1980's in the world energy outlook in general and in the U.S. forecast in particular, Congress recently passed the Export Administration Amendments Act of 1985 (EAAA). The EAAA continued and strengthened the restrictions on the export of ANS crude oil. In fact, while the EAAA runs for three years, the ban on ANS crude oil exports, Section 7(d), was extended for 5 years.

Energy Policy and Conservation Act (EPCA)

Section 103 of the Energy Policy and Conservation Act generally requires the president to prohibit the export of domestically produced crude oil, subject to certain possible exceptions. Should

the president determine that the export of crude oil is in the national interest and consistent with the purpose of EPCA, a national interest finding may be made by the president, and such oil can be exported. Authority to make such findings has been delegated to the Secretary of Commerce.

Under this legislation, a national interest finding on crude oil must take into account the need to leave uninterrupted or unimpaired exchange agreements with persons or governments of a foreign state; temporary exports for convenience or increased efficiency of transportation across parts of an adjacent foreign state; and "the historical trading relations of the United States with Canada and Mexico."

The Mineral Leasing Act (MLA)

Domestic crude oil that is transported by pipeline over rights-of-way granted under Section 28(u) of the Mineral Leasing Act (MLA) of 1920 is subject to all the limitations and licensing requirements of the EAA. Should the president desire to export such crude oil, he must make and publish an express finding that the export will not diminish the quantity or quality of petroleum available to the United States, is in the national interest, and is in accordance with the EAA. Exempt from these restrictions is crude oil that is exchanged with adjacent foreign states or temporarily exported across adjacent foreign states for convenience or increased efficiency.

If the president makes the necessary findings to authorize an export, he must submit a report to Congress. After receipt of the report, Section 28(u) provides that Congress has 60 days to pass

a concurrent resolution of disapproval. As mentioned earlier, such a provision now is recognized as unconstitutional under the Supreme Court's decision in *Immigration and Naturalization Service v. Chadha,* 462 U.S. 919 (1983).

The Naval Petroleum Reserves Production Act of 1976 (NPRPA)

The Naval Petroleum Reserves Production Act of 1976 requires any petroleum produced from the Naval Petroleum Reserves to be subject to all of the limitations and licensing requirements of the Export Administration Act. Before any petroleum from the Naval Petroleum Reserves may be exported, the president must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States, are in the national interest, and are in accord with the EAA. Two limited exceptions are available: exchange agreements with adjacent foreign states and temporary export for convenience or increased efficiency of transportation across parts of an adjacent foreign state.

The Outer Continental Shelf Lands Act (OCSLA)

Section 28 of the Outer Continental Shelf Lands Act states that the export of any oil or gas produced from the Outer Continental Shelf shall be subject to the requirements and provisions of the EAA.

Should the president want to export crude oil subject to the OCSLA, he must make and publish a finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the EAA.

If the president makes the findings necessary to authorize exports, he must submit a report to Congress which then has 60 days to pass a concurrent resolution of disapproval. Again, this provision would be unconstitutional under the decision in *Chadha* cited earlier.

Exempt from these restrictions are

- oil that is exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state;

- oil that is temporarily exported for convenience or increased efficiency across parts of an adjacent foreign state and re-enters the United States; and

- oil that is exchanged or exported pursuant to an existing international agreement.

The Short Supply Regulations

The Short Supply Regulations contained in the Export Administration Regulations (15 CFR 377) implement the statutory restrictions set forth above. These regulations prohibit the export of crude oil except for the following special situations:

- temporary exports of crude oil being exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and re-entering the United States in the same form;

- equivalent importation of crude oil that will result directly in the importation to the United States of an equal or greater quantity of that same commodity;

- crude oil exported to Canada with a validated license. In 1985, the president determined that crude oil exports to Canada are in the national interest and made the necessary findings under the EPCA, the MLA, and the OCSLA. The exporter must certify that the oil is for use or consumption in Canada, that the oil was not and will not be transported by pipeline over a federal right-of-way granted under the Trans-Alaska Pipeline Authorization Act, and that the oil was not derived from the Naval Petroleum Reserves; and

- crude oil exported from Cook Inlet with a validated license. In 1985, the Secretary of Commerce, with the concurrence of the Secretaries of State, Energy, and Treasury, determined that permitting the export of crude oil derived from Alaska's Cook Inlet is in the national interest and consistent with the purposes of the EPCCA. Regulations were published in the *Federal Register* on June 4, 1986, which allow the issuance of validated export licenses for crude oil produced in state waters of Alaska's Cook Inlet and not subject to the restrictions contained in the EAA, the NPRPA, the OCSLA, or the MLA.

Appendix III

The Export Ban on Alaska North Slope Oil: Legal Arguments for its Repeal

The Legislative Veto and Executive Discretion

Under the Export Administration Act, Congress must approve any Alaska North Slope (ANS) exports recommended by the president. Within 60 days of receipt of a presidential recommendation on exports, Congress must agree to a joint resolution approving the exports on the basis of findings presented by the president under the law. The congressional resolution must also be enacted into law.

The constitutionality of legislative vetoes has been suspect since the 1983 decision of the Supreme Court in *INS v. Chadha.* In *Chadha*, the Court struck down a single-chamber legislative veto provision concerning deportation decisions of the Immigration and Naturalization Service. The Court reasoned that when Congress acts in a legislative capacity, the Constitution requires bi-cameral enactments with presentment of the legislation to the executive branch. Legislative vetoes avoid this procedure and are therefore unconstitutional.

When a legislative veto is found unconstitutional, the Court may invalidate related provisions to the statute on which the veto

depends. *Chadha's* importance, then, is that objectionable legislation containing a legislative veto provision is subject to collateral attack through its legislative veto provision. However, the Supreme Court has refused to invalidate legislation where the defective veto provision is considered severable. Two standards have been identified for determining severability of legislative vetoes. First, the balance of the statute must be capable of functioning independently, and second, the balance of the statute must function in a manner consistent with congressional intent. If either of these standards is met, then the veto provision is severable.

The Export Administration Act does not contain a legislative veto provision, yet the statute requires congressional ratification of any executive authorization of ANS crude oil exports. Absent such ratification, the Act may be interpreted to disallow executive export approvals. Otherwise, the provision requiring congressional consent is ineffectual to overrule executive action. Thus the Act's consent requirement works as either a legislative veto, or it implements executive recommendations into enactments of Congress.

A declaratory judgment action could be brought seeking a judicial interpretation of the Export Administration Act's consent of Congress requirement. If technical objections of standing and ripeness were not pending or approved by the president, a reviewing court could refuse to hear the constitutional question. The viability of such defenses has not been reviewed.

If a court were to find that the Export Administration Act contains an unconstitutional veto provision, the severability

question remains. Assuming that the Act's provisions on export controls for ANS crude oil would function independently of any legislative veto, an interesting prospect arises: an administration sympathetic to export of Alaska crude oil could make the required findings, and Congress could not veto the decision absent new enactments. Also, the president's findings could not be attacked because the Export Administration Act, in pertinent part, does not authorize judicial review of action on exports.

Tenth Amendment/Commerce Power Challenge

Perhaps the most fascinating, as well as controversial, question presented concerning the constitutionality of the ANS oil export ban is the conflict between the Tenth Amendment and the commerce power. Article One, Section Eight, Clause Three of the Constitution authorizes Congress to "regulate commerce with foreign nations, and among the several states." The Tenth Amendment reserves to the states those powers not expressly delegated by the Constitution to the United States and not prohibited by it to the states.

Congress's authority under the "commerce clause" has been judicially interpreted to be plenary in character. That is, Congress can regulate the minutiae of our modern existence if some impact on interstate commerce can be established, e.g., usage of the United States mails. While the scope of the commerce power is potentially enormous, the Supreme Court has consistently ruled that its purposes include the fostering of free trade among the states.

For the last 50 years, approximately, the Supreme Court has been loath to overrule any act of Congress as violative of the

commerce power. Yet in 1976, the Court struck down legislation which applied the Fair Labor Standards Act to state and local government employees. In *Usery v. National League of Cities*, the Court reasoned that the commerce power had impermissibly invaded notions of sovereignty reserved to the states under the Tenth Amendment. Also, principles of federalism inherent in the Constitution were found to restrain the commerce power when applied to "traditional governmental functions" of the states. The *Usery* decision was close, with the majority prevailing by a 5-4 vote.

The *Usery* decision was short-lived and was expressly overruled by the Court's 1985 decision, *Garcia v. San Antonio Metropolitan Transit Authority*. The overruling was also close, sustained by a 5-4 vote. The Court had decided that its "traditional governmental functions" standard proved to be unworkable and would therefore be abandoned as a check on the commerce power. More importantly, the Court also decided that the nature of Tenth Amendment protection conferred on the states is "structural" rather than "substantive." That is, the states must find their protection from congressional regulation through the national political process rather than through substantive judicial review.

The assumption for the Court's "structural" view of the Tenth Amendment is that the states are treated fairly in the national political arena. Accordingly, the states have unfettered access to obtain legislatively defined exemptions from regulation. However, in its most current opinion, the Court acknowledges that extraordinary defects in the national political process might render suspect its structural model of federalism. The Court

suggests that *a state must show that it was singled out in a way that left it politically isolated and powerless in Congress* in order to raise a Tenth Amendment challenge. (emphasis added)

Alaska may be in a unique position to challenge successfully the Export Administration Act restrictions on ANS crude oil exports on Tenth Amendment principles. The legislative history of crude oil export controls reflects a particular zeal on the part of Congress to prohibit ANS oil from leaving the United States. Such an intent obviously impacts Alaska and adversely affects her economy while the consumer interests of the several sister states control the "national political process" championed by the Supreme Court in *Garcia.*

The Export Administration Act restrictions on ANS crude oil exports also reflects the brokering of particular political interests in Congress and not necessarily the national political interest. The principal interests benefiting from the export restrictions are the domestic maritime industry and its workforce.

Yet it remains to be seen whether subsidizing the domestic maritime industry is so strongly in the national interest that competing policies should be subordinated. These competing policies include free trade, reducing the balance of trade deficit, stimulation of the domestic energy economy, and energy security for Pacific Rim nations. Moreover, if the ANS crude oil restrictions are intended to protect domestic tanker fleets, this could be poor and improper policy because the Jones Act is intended to protect domestic maritime trade only and not foreign trade. If the restriction is ultimately intended to benefit national security through maintenance of militarily useful tankers, then the legisla-

tion unreasonably burdens the Alaska economy to achieve national goals.

It also remains to be seen whether lifting the ANS crude oil export ban will result in adverse price impacts for domestic petroleum products. Of two principal policy studies done concerning the ANS oil export ban, each suggests possible increases in West Coast petroleum product prices only. (See University of Alaska, ISER, *Report on Alaska Benefits & Costs of Exporting Alaska North Slope Crude Oil* 9-10 1987; U.S. Dept. of Commerce, *Report to Congress on Alaskan Oil* IV-25 to -26—1986.) Additionally, both studies suggest that the product price increases may not last. Significantly, however, there is no evidence that consumers in other regions of the country would be adversely affected in terms of petroleum product prices.

Alaska's claim of invidious treatment under the Export Administration Act may be insubstantial if other laws regulating export of domestically produced crude oil are brought into play. Thus all domestically produced crude oil, regardless of source or method of transportation to tidewater, is subject to various export controls. However, the effect of such legislation works a singular disadvantage upon Alaska and, to a lesser extent, California crude production. Only these sources have a potential export market which would result in substantial revenue gains if foreign flag traffic were employed.

A separate defense to Alaska's challenge under the Tenth Amendment is that the implied limitations on the commerce power refer to sovereign, as distinguished from commercial, functions of state governments. There is historical precedent for

a governmental proprietary distinction in commerce power cases, and this may not bode well for Alaska's challenge under the current "structural" view of federalism. However, in a separate line of authority, the Supreme Court has noted a "market participant" exception for public enterprise activity of the states when Congress has not enacted affirmative legislation on the subject. Reconciling and synthesizing these different strands of authority are the tasks of lawyers.

Finally, the advantage of pursuing a Tenth Amendment challenge under current law is precisely its uncertainty as well as controversy. The federalism issue has been the grist of much commentary among constitutional law scholars. Some of the commentators are venturing an opinion that the current "structural" view will be shortlived just as the "traditional governmental functions" in *Usery* was. Following the current approach, the Court arguably has committed itself to review the efficiency and fairness of the national political process. What may be at stake is the Court's obligation, and not its discretion, to interpret substantively the Constitution under the rule of *Marbury v. Madison.*

Abrogation of the Statehood Compact

A third ground for challenging federal export controls on ANS crude oil production is Alaska's Statehood Act. The admission of the state to the Union resulted in a solemn compact. Such compacts are enforceable as a matter of contract and subject to interpretation according to contract principles. According to the Compact Doctrine, if Congress passes legislation which violates or otherwise conflicts with the Statehood Act, then such legislation must be struck down in its application to Statehood Act matters.

Legislative history to the Alaska Statehood Act plainly establishes that Congress was concerned about creating a viable economic base for the small territorial population. Congress had its doubts about whether Alaska could make it as a state. Many Congressmen feared that Alaska would become dependent upon the U.S. Treasury. Congress therefore provided an unprecedented and extraordinary grant of public lands to Alaska in terms of both acreage and resources endowment so that the state economy might develop.

Included in the public land granted to the state were "mineral deposits" and "mineral lands." Section 6(i) of the Statehood Act stated that Alaska could select as part of its 104-million-acre entitlement lands that were mineral in character. However, with regard to such lands, Congress prohibited the state from disposing of these and required that their title remain with the state. Congress's purpose in restricting disposition of Alaska's mineral lands was to conserve a source of wealth and revenue for the state treasury and its people. This interpretation of the Statehood Act has been recognized in the Alaska Supreme Court, the U.S. District Court for Alaska, and the Ninth Circuit Court of Appeals.

With the imposition of export controls upon ANS crude oil, Congress has legislated in direct conflict with its avowed purposes for conveying mineral lands to Alaska under Section 6(i) of the Statehood Act. The export restrictions applicable to crude oil shipped through the trans-Alaska pipeline plainly refer to North Slope oilfields. At the time of enactment of the export restrictions through today, all North Slope oil production comes from state mineral leases.

The effect, therefore, of Section 7(d) of the Export Administration Act is practically to prohibit export of the state's royalty share of North Slope production as well as to capture increased wellhead value from export of the lessees' interest in production. Over the remaining life of the Prudhoe Bay and Kuparuk reservoirs, these revenue losses to the state are estimated in the billions of dollars. Application of the Compact Doctrine to the ANS oil export ban would be as follows: the Export Administration Act is an abrogation of Congressional intent under the Alaska Statehood Act to stimulate the territorial economy and capture the economic rent from the region's mineral endowment. The basis for this breach does not lie in the express terms of the Statehood Act. However, the purposes served by the Section 6 public lands grant, and Section 6 (i) mineral grant in particular, would be frustrated and substantially impaired by conflicting federal legislation. In this regard, principles of contract interpretation would plainly allow the legislative history to be examined in order to establish the parties' expectations to the compact.

Unfortunately, the compact approach to statehood enactments does not necessarily guarantee consistency in subsequent federal legislation affecting a state. The Supreme Court has allowed conflicting federal legislation to stand in spite of Utah's Admission Act because the legislation in question was interpreted as a satisfactory remedy for federal breaches of the state's public lands entitlement. In *Utah v. Andrus*, the Court ruled that Utah could not make indemnity selections upon valuable oil shale lands on the public domain because these were not comparable in worth to designated yet previously conveyed school lands.

A separate difficulty with applying the Compact Doctrine to Alaska's Statehood Act is that Congress may have already abro-

gated the state's land settlement upon passage of the Alaska Native Claims Settlement Act (ANCSA). Congress's breach, if there was one, consisted of granting Native land claims priority against Alaska's public lands entitlement under the Statehood Act. However, the ANCSA conveyances may be interpreted consistent with Congress's compact obligations under the Statehood Act if the Native claims were deemed to have priority of right due to their aboriginal status. Also, the remedial nature of the ANCSA legislation may be considered to have removed any clouds upon the title of Statehood Act lands with which Congress would otherwise have been confronted.

The compact theory for relief against the ANS crude oil export controls is intriguing and may be ripe for litigation. An appealing aspect to the compact claim is that it provides a complimentary and yet independent theory to that presented in the Tenth Amendment challenge. Both approaches refer to the states and the states' rights upon entering the Union.

Appendix IV

The Alaska National Economic Contributions Omnibus Act

A PROPOSED ACT

To provide for national and Alaska economic resurgence by amending existing statutes which pose barriers to national deficit reduction, the achievement of trade balances with other nations, the efficient execution of federal and state responsibilities with regard to opportunities for the enhancement of commerce and trade, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Sec. 1. *This Act may be cited as the "Alaska National Economic Contributions Omnibus Act ."*

Sec. 2. *The Congress finds and declares that*

(1) throughout the history of the republic, there have been enacted laws of the United States which, while worthy during particular times, now adversely affect the financial and economic needs and purposes of the nation, the several states, and regions of the country;

(2) the nation faces severe economic stress due to the national deficit and trade imbalance with other nations;

(3) many regions of the nation are experiencing adverse economic conditions due, in part, to three factors: the national deficit and trade imbalance; particular statutory barriers to economic recovery, growth and stability; and the unequal impingement of state responsibilities with respect to federal-state relationships and missions of governance among the several states;

(4) the individual and several states of the nation share with the federal government the responsibility for meeting both national and regional financial and economic needs by proposing means to meet those needs; and Congress concurs with the perceptions of those needs addressed in this Act through the repeal of existing statutory barriers and the enactment of new law with particular reference to the State of Alaska and regions of the North Pacific Ocean, Arctic Ocean, and pertinent seas and waters which cumulatively provide particular economic opportunities and contributions to national purposes of enhanced trade and commerce by contributions to national monetary debt reduction, an improvement in the United States-international trade balance, and the effecting of efficiencies in national commerce to the enhancement of domestic economies.

Sec 3. *Authorizing the export of Alaska oil and gas.*

In order to exert positive effects upon the national deficit and trade imbalances, the Export Administration Act of 1979, the Mineral Leasing Act of 1920, and the Trans-Alaska Pipeline Authorization Act of 1973 are hereby amended to authorize the export of crude oil, gas, and other petroleum products from the State of Alaska without further presidential findings of need or worth or further actions of the Congress.

Sec. 4. *Authorizing the integrated use of maritime carriers engaged in shipping between Alaska, other United States and foreign ports.*

a. In order to promote efficiencies in maritime commerce to and from Alaska ports, reduce the domestic U.S. costs of Alaska products and resources, permit the integrated dispatch of shipping products and resources from Alaska to ports both domestic and foreign and to enhance the international competitive marketing position of Alaska resources and products for export, the Merchant Marine Act of 1920, as amended, is further amended by repealing the provision of that Act and any other Acts by reference which in any way restrict the marine transport of merchandise, products, natural resources or persons to or from or between points in the United States, including districts, territories and possessions, and the State of Alaska only on vessels built in and documented under the laws of the United States and owned by persons who are citizens of the United States.

b. The effect of this section shall be to foster the involvement of foreign-owned and/or -operated vessels in the marine transport of Alaska merchandise, products and resources to points both domestic and foreign. The Secretary of Commerce shall report to the Congress two years after the enactment of this Act, and bienially thereafter, on the effectiveness of this section in achieving national debt reduction, fostering trade balance attainment among other nations and in reducing the cost of Alaska merchandise, products and resources to domestic U.S. markets.

Sec. 5. *Resolving United States - Canada boundaries.*

a. The intent of this section is to resolve long-standing unsettled boundaries between the United States and Canada which adversely affect the economic conditions of both governments and their citizens, result in the inefficiency and costly application of government services and regulations, and inhibit trade and commerce between the two countries and other nations.

b. The Secretary of State is directed to convene a meeting of appropriate parties for the purpose of re-examining and settling long-standing and unresolved boundaries between the United States and Canada which currently form barriers to economic trade, Arctic oil and gas development, fisheries management, maritime transportation and customs regulation, and which, in these and other significant ways, contribute to the national deficit, U.S. international trade imbalance and the achievement of the economic objectives of the United States, the State of Alaska, and Canada.

c. Specifically, the parties convened will re-examine and settle the unresolved boundaries between the United States and Canada (1) through Dixon Entrance between Cape Muzon and the entrance to Tongass Passage and (2) seaward and north of the continental terminus of the 141st meridian of west longitude at Demarcation Point in order that sovereignty to the seabed and waters of the Beaufort Sea may be established at least as far as the 80th parallel of north latitude or beyond in the Arctic Ocean, should the parties desire.

d. The Secretary of State shall report on the status of the resolution of these boundary questions to the Congress within two years after the passage of this Act.

Sec. 6. *Extending the United States Territorial Sea*

a. The intent of this section is to extend, by law, the width of the United States territorial seas to a width of 12 miles and to grant to the several coastal states certain jurisdictional rights to the submerged lands and super-adjacent waters.

b. The Congress approves by this Act the Presidential Proclamation of extending the claim and jurisdiction of the United States from a width of three miles to a width of 12 miles, including the submerged lands and super-adjacent waters so appertaining.

c. The Congress grants to the several coastal states of the United States the same rights and sovereignty previously granted to such states within the three-mile territorial sea and now within the 12-mile territorial sea as set forth by existing law relative to submerged lands and super-adjacent waters.

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Index