



Select History of State of Alaska leasing on borders of the Arctic Refuge

1987-1988 – First State of Alaska lease sales offshore of the Arctic Refuge.

Alaska Supreme Court later found that Alaska had violated Alaska Coastal Management Program and Alaska Title 38 “best interest” finding requirements related to this leasing. Over time, State changed laws and continued leasing in Beaufort. Some leases still exist in state waters off of the Refuge, held by speculators. See maps.

March 1998: Senate ENR hearing

Sen. Frank Murkowski questions Interior Secretary Babbitt about allowing 3-D seismic in Refuge to better refine oil estimates. Babbitt responds that “the transparent objective of people arguing for more information is to break open that wildlife refuge... you know where we [] stand on that.” And in response to a question regarding Interior’s response if Congress passes legislation to allow exploration on the Refuge, Secretary Babbitt states that “I will unequivocally ask the President to veto the legislation.” Babbitt also states that “we can manage this issue at the highest fiduciary standard, and in due course, I will be prepared to tell you how I am going to do that.”ⁱⁱ (Hearing transcript excerpt attached, along with related media)

July 1999: Oil and Gas Journal -- Drainage and the Arctic Refuge

Article presents hypothetical development scenario on State lands adjacent to the Refuge, and states that “[a]nticipation of such drainage might in turn trigger Congressional authorization for limited surface development of transboundary fields.”ⁱⁱⁱ (attached)

January 2001: Letter from Secretary Babbitt to Representative Markey; Solicitors Opinion

Secretary Babbitt providing official Interior Solicitor’s Opinion that current law does not allow pre-leasing oil and gas exploration activities on the Refuge.ⁱⁱⁱ (attached)

2009: State Beaufort Sea Areawide Lease Sale “Best Interest” Finding

State proposes to offer lease tracts along border of the Arctic Refuge the title to which is unclear. State proposes to resolve the title issue if bids are received on such tracts. USFWS objects to this approach, pointing to complex issues that have arisen in similar situations in the past, and proposes that the State work with USFWS to resolve title issues before offering such tracts for lease. (attached). Unclear if State offered such tracts in October 2010 lease sale.^{iv}

2011: S. 351 Directional Drilling

Sen. Murkowski (R. Ak) introduces bill to permit exploration on Arctic Refuge Coastal Plain under guise that development could occur through directional drilling.

February 2011: Beaufort Areawide litigation

In case brought by conservation and Alaska Native groups the Alaska superior court finds that the State of Alaska’s “best interest finding” for oil and gas lease sales in the Beaufort Sea violated the Alaska Constitution because it failed to consider many of the potential impacts of oil and gas activities.

Article VIII of the Alaska Constitution firmly establishes the policy that balance be achieved between economic development and environmental protection:

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use *consistent with the public interest*.

Art. VIII, Sec. 1 (emphasis added). The emphasized language is where environmental protections reside; other sections in Article VIII impose similar requirements. See Art. VIII Secs. 3, 8, 10. Article VIII's provisions are founded in the public trust doctrine, which originated in Roman law, and has been applied all over the world to land and oceans; this doctrine essentially states that certain resources are reserved for public use and must always be protected to ensure that use.

In the oil and gas context, the Article VIII, section 1 "public interest" balance is made more specific in Alaska Statutes AS 38.05.035(e) and (g), which lays out the requirement for the State of Alaska Department of Natural Resources ("DNR") to undertake an analysis and make a "best interest finding" before it disposes of any lands or interests in land. A disposal of state land includes an oil and gas lease, so a "best interest finding" must be done prior to offering oil and gas leases.

After a series of successful conservation, Alaska Native and fishing interest challenges to oil and gas lease sales in the '90s, this statutory provision was amended to allow so-called "areawide" leasing, and to limit the required analysis in the "best interest finding" of the potential direct, indirect and cumulative environmental effects of oil and gas leasing. As a result of the statutory amendments, only one "best interest finding" is prepared every ten years for each area of Alaska where oil and gas leasing is proposed (including the 2 million acre Beaufort Sea area), and this finding supports annual lease sales in that area. Further, the law provides that the analysis for disposals of land in the oil and gas context need only look at the impacts from the disposal "phase," (*i.e.*, the lease phase) and not any of the activity that flow from that disposal phase or the associated impacts (*i.e.*, the impacts from exploration, development or production). The on-the-ground impacts actually occur at these later phases while the lease sale is essentially a paper transaction.

The Alaska superior court decision requires additional best interest findings at the subsequent phases of oil and gas activity in the Beaufort Sea, though the Alaska Supreme Court will have the final word. The case is now before Alaska Supreme Court, with briefing this summer/fall, likely decision in 2012.

July 1, 2011

Alaska Coastal Management Program ends after Governor Parnell, opposing role of science and local knowledge in a part of the ACMP, threatens veto of any bill seeking to keep it alive. Local control over development, and federal money conduit to local communities, thus end. (relevant media attached)

June 2011: Alaska Governor Sean Parnell announces October lease sales

Says lease sales in water and on shore will include tracts adjacent to borders of the Arctic Refuge and NPRA. DNR Commissioner Sullivan states that some tracts may lie above oil reservoirs that also underlie Refuge or NPRA lands. (relevant media attached)

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ⁱ Senate Energy and natural Resources Hearing, transcript at 128-130 (March 5, 1998); see also Whitney, Babbitt addresses Alaska issues, Anchorage Daily News (March 6, 1998).

ⁱⁱ Tussing, Haley, Drainage Pierces ANWR in Alaska study scenario, Oil and Gas Journal (July 5, 1999).

ⁱⁱⁱ Interior Secretary Bruce Babbitt to Representative Edward Markey (January 18, 2001), quoting Interior Department Solicitor Opinion

^{iv} See Preliminary Sale Results Map, Beaufort Sea Areawide Lease Sale, October 28, 2010 (showing lease tracts in potential disputed area as "deferred," "available" and some as "leased."); available at http://www.dog.dnr.alaska.gov/products/publications/beaufortsea/bsaw2010a/BSAW2010_Map%20%20of%202.pdf