

## STATEMENT REGARDING FISH AND WILDLIFE RESOURCES

One of the first actions taken by the Constitutional Convention was to pass the following resolution: "That the Constitution should be a document of basic principles of fundamental law...". The aim throughout has been to avoid legislative matter, and leave this to the discretion of future legislatures.

Before the Convention convened, and since, individual delegates and particularly the Resources Committee have received many communications and heard much testimony regarding the management and regulation of Alaska's fish and game. Opinions varied greatly from advice to leave the matter entirely to the legislature, to adoption of the full "Missouri plan", supported by the Alaska Sportsmen's Council and others.

The Resources Committee considered the "Missouri plan" in detail, and decided that it was entirely legislative matter and therefore not proper material for inclusion in the Constitution. After further lengthy consideration, the committee on a split vote adopted the following language as section 5 of its committee proposal on resources: "Regulation and administration of the commercial fisheries and of the wildlife, including game fish, shall be delegated to a commission, or to separate commissions, under such terms as the legislature shall prescribe." This of course was a compromise between divergent points of view.

When the Resources Article was reported to the floor of the Convention, a motion to strike section 5 was passed by a vote of 34 to 21. Two days later, on a motion to reconsider, the same action was supported by a vote of 35 to 20.

One delegate, speaking on the floor, expressed what appeared to be the majority opinion in the following terms:

"To place these valuable resources in a third-rate place in our state government under a constitutionally established commission or commissariat would be to do a grave injustice to the resources themselves and to all the people of the future state.

"In the interest of seeing these resources accorded the recognition, the appropriations and the flexibility needed to develop and preserve them for the commercial fishermen, the sportsmen and all of the people of our State, I must oppose freezing them into the Constitution under a commission or commissariat clause.

"I desire to see them in nothing less than a principal department of our state government, which under our Constitution may be a multi-headed department with staggered terms

of office and all of the other safeguards to assure a non-political continuity of policy and the broadest possible authority, attention to, and preservation of Alaska's fish, fur and game resources."

Secondly, during consideration of the Finance Article, delegates decided overwhelmingly that there would be no more earmarked funds in the State of Alaska "except where state participation in Federal programs will thereby be denied." For example, this exception allows for participation in Dingell-Johnson and Pittman-Robinson funds,

Finally, the majority of delegates felt that sufficient constitutional coverage of the matter was provided in other basic sections of the Resources Article. An enrolled copy of the article is enclosed, and attention is invited to sections: 2, 3, 4, 5, 6, 7, 10, 14, 15, 17- and 18.

STATE LANDS AND NATURAL RESOURCES

1. (State's Proprietary Interest). The State of Alaska has the power to provide for the utilization, conservation and balanced development of all of the natural resources, including aesthetic features, of the land and waters belonging to the State for the maximum benefit of its people.

2. (Sustained Yield). Forests, fisheries, wildlife and other replenishable resources belonging to the State shall be administered, utilized and maintained on the sustained yield principle in terms of the highest beneficial public use.

3. (General Reservations). Game fish, wildlife, fisheries and waters, wherever occurring in natural states within the State or its jurisdiction, are reserved to the people for common use.

4. (General Authorization for Facilities and Improvements). Facilities, improvements and other necessary incidents thereof, may be provided to assure fuller utilization, development, reclamation and settlement of the State lands, and fuller utilization and development of the fisheries and waters of the State.

5. (Uniform Application). Laws and regulations made for the use of natural resources must bear equally on all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

6. (Special Acquisitions and Reservations). Sites, objects, and areas of natural beauty or of historic, cultural or scientific interest may be acquired, preserved, and administered for general public use under the laws of the State.

7. (State Public Domain). Lands and interests therein acquired by the State, including submerged and tidal lands, and not used or intended exclusively for governmental purposes or for reserved sites and areas, constitute the State public domain to be held in trust for the people of the State until disposed of in accordance with provisions of applicable acts of Congress, including the Act admitting Alaska to the Union, this Constitution and the laws of the State.

The Legislature shall provide for the selection, classification and administration of lands in the State public domain, and the several uses thereof, in such manner as will give maximum use and public benefit.

8. (Leases). The Legislature may authorize the leasing of any lands and interests therein in the State public domain, subject to the following conditions:

In granting leaseholds and in administering the State public domain and interests therein, the various potential uses of the land shall be recognized. Leases shall state use, conditions and tenure, to enable reasonable concurrent uses in the lands and

waters of the State. The Legislature shall, among such conditions, provide for payment by the party at fault for damage or injury resulting from conflicting use, for forfeiture in the event of breach of conditions and, generally, for enforcement of terms.

9. (Sales and Grants). The Legislature may authorize the sale or grant of State lands or interests therein, including specifically forests lands and the timber thereon, subject to the following conditions:

All sales or grants of State land or interests therein shall contain reservations to the State of all mineral resources, access thereto, and access to all other resources generally reserved to the people; except that the reservation of access shall not prevent the control of trespass or compensation to surface owner or lessee for damage.

Sales or leases of State lands of interests therein for purposes other than agriculture, or utilization of timber, shall contain reservations to the State of all timber thereon, subject to the right of the people to use concurrently or otherwise as provided by law.

10. (Public Notice and Other Safeguards). All disposals or leases of state lands or interests therein shall be preceded by pub-

lic notice and other appropriate safeguards of the public interest. Before delivery of conveyance to or possession of any state lands or interests therein, each such transaction shall be subject to review or audit by an independent state agency, as the legislature may direct, to determine compliance with law.

11. (Creation of Mineral Rights). Discovery and filing of application shall be prerequisite to the creation of a right in the minerals reserved to the State; except that prospecting permits giving exclusive right of exploration for specified periods and areas may be provided for in the explorations for oil, gas, coal, non-metalliferrous minerals customarily subject to exclusive exploration, and for the use of geophysical methods of prospecting. Prior discovery and filing shall in any event give prior right to such minerals and to issuance of permits, licenses, or leaseholds for exploration thereof. Continuance of such right shall depend upon beneficial use.

12. (Creation of Water Rights). All surface and sub-surface waters, reserved to the people for common use, shall be subject to appropriation for beneficial use as may be provided by law. Priority of appropriation shall give prior right.

13. (Access to Navigable Waters). Free access to the navigable waters of the State shall not be denied any person subject to the laws of the State, except that the State may by general law regulate and limit such access for other beneficial or public purposes.

14. (No Exclusive Right of Fishery). There shall be no exclusive right or special privilege of fishery created or authorized in the natural waters of the State.

15. (Preferences Among Beneficial Users). The Legislature shall provide for determination of the order of preference of the beneficial uses of the waters of the State and of the State public domain in order to realize the highest public purpose in terms of the potentialities of each ~~situation~~ <sup>locality</sup>. No person shall be involuntarily divested of his right to use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial or public use and then only by operation of law.

16. (Private Ways of Necessity). Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources.

17. (Residual Powers). The specific provisions of this Article shall not limit the powers of the State in relation to the utilization, development and conservation of natural resources except as specifically provided herein.

waters of the State. The Legislature shall, among such conditions, provide for payment by the party at fault for damage or injury resulting from conflicting use, for forfeiture in the event of breach of conditions and, generally, for enforcement of terms.

9. (Sales and Grants). The Legislature may authorize the sale or grant of State lands or interests therein, including specifically forests lands and the timber thereon, subject to the following conditions:

All sales or grants of State land or interests therein shall contain such reservations to the State of all mineral resources as are required by the Congress, access thereto, and access to all other resources generally reserved to the people; except that the reservation of access shall not prevent the control of trespass or compensation to surface owner or lessee for damage. Reservation of access shall not attach to conveyances of \_\_\_\_\_ acres or less in area.

Sales or leases of State lands or interests therein for purposes other than agriculture, recreation, watershed protection, wildlife propagation or utilization of timber, shall contain reservations to the State of all timber thereon, subject to the right of the people to use concurrently or otherwise as provided by law.

10. (Public Notice and Other Safeguards). All disposals or leases of state lands or interests therein shall be preceded by public notice and other appropriate safeguards of the public interest. Before delivery of conveyance to or possession of any state lands or interests



therein, each such transaction shall be subject to timely review or audit, as prescribed by law.

11. (Creation of Mineral Rights). Discovery and appropriation shall be prerequisite to the creation of a right in the minerals reserved to the State; except that prospecting permits giving exclusive right of exploration for specified periods and areas may be provided for in the explorations conducted for oil, gas, coal, and nonmetalliferrous minerals customarily subject to exclusive exploration, and for the use of geophysical and geochemical methods of prospecting. Prior discovery and appropriation shall in any event give prior right to such minerals and to issuance of permits, licenses, leaseholds or patents if authorized by Congress for the extraction thereof. Continuance of such right shall depend upon beneficial use. Patents for mineral rights, if generally authorized by the Congress shall be limited to those surface uses necessary to the extraction of mineral resources and until such time as the mineral deposits are exhausted. Known deposits of minerals shall be subject to lease without recognition of preferential right of discovery.

12. (Creation of Water Rights). All surface and sub-surface waters, reserved to the people for common use, shall be subject to appropriation for beneficial use as may be provided by law. Priority of appropriation shall give prior right.

13. (Access to Navigable Waters). Free access to the navigable waters of the State shall not be denied any person subject to the laws of the State, except that the State may by general law regulate and limit such access for other beneficial or public purposes.

STATE LANDS AND NATURAL RESOURCES

It is the policy of the State to foster and encourage settlement and development through the maximum use and availability of its resources consistent with the public interest and the avoidance of waste, and to that end it is the intent of this Article to extend to all peoples the opportunity of participation in Alaska's heritage.

1. (State's Proprietary Interest). The State of Alaska has the power to provide for the utilization, conservation and balanced development of all of the natural resources, including aesthetic features, of the land and waters belonging to the State for the maximum benefit of its people.

2. (Sustained Yield). Forests, fisheries, wildlife and other replenishable resources belonging to the State shall be administered, utilized and maintained on the sustained yield principle in order to achieve the highest beneficial public use.

3. (General Reservations). Game Fish, wildlife, fisheries and waters, wherever occurring in their natural states within the State or its jurisdiction, are reserved to the people for common use.

4. (General Authorization for Facilities, Improvements and Services). Facilities, improvements and services may be provided to assure fuller utilization, development, reclamation and settlement of the State lands, and fuller utilization and development of the fisheries and waters of the State.

5. (Uniform Application). Laws and regulations made for the use of natural resources must bear equally on all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

6. (Special Acquisitions and Purposes). Sites, objects, and areas of natural beauty or historic, cultural or scientific interest may be acquired, preserved, and administered for the use, enjoyment and welfare of the people under the laws of the State.

7. (State Public Domain). Lands and interests therein acquired by the State, including submerged and tidal lands, and not used or intended exclusively for governmental purposes or for reserved sites and areas, constitute the State public domain. Such lands and interests therein are to be held in trust for the people of the State and shall be disposed of only in accordance with provisions of applicable acts of Congress, including the Act admitting Alaska to the Union, this Constitution and the laws of the State.

The Legislature shall provide for the selection, classification and administration of lands in the State public domain, and the several uses thereof, in such manner as will give maximum use and public benefit.

8. (Leases). The Legislature may authorize the leasing of any lands and interests therein in the State public domain, subject to the following conditions:

In granting leaseholds and in administering the State public domain and interest therein,

the various potential uses of the land shall be recognized. Leases shall state use, conditions and tenure, to enable reasonable concurrent uses in the lands and waters of the State. The Legislature shall provide, among other conditions, for payment by the party at fault for damage or injury resulting from concurrent use, for forfeiture in the event of breach of conditions and, generally, for enforcement of terms.

9. (Sales and Grants). The Legislature may authorize the sale or grant of State lands or interests therein, including specifically forest lands and the timber thereon, subject to the following conditions:

All sales or grants of State land or interests therein shall contain such reservations to the State of all mineral resources as are required by the Congress, access thereto, and access to all other resources generally reserved to the people; except that the reservation of access shall not impair the owners' full beneficial use, prevent the control of trespass nor preclude compensation for damage.

10. (Public Notice and Other Safeguards). Disposals or leases of state lands or interests therein shall be preceded by such public

notice and other appropriate safeguards of the public interest as the Legislature shall determine. Each such transaction shall be subject to review or audit, as prescribed by law.

11. (Creation of Mineral Rights). Discovery and appropriation shall be the basis for establishing a right in those minerals heretofore subject to location under the Federal Mining Laws and now reserved to the State. Prior discovery and filing shall give prior right to such minerals and to issuance of permits, licenses, leaseholds, or patents if authorized by the Congress, for the extraction thereof. Prospecting permits giving exclusive right of exploration for specific periods and areas may be provided for exploration conducted for coal, oil, gas, oil shale, sodium, phosphate, potash, sulphur, and other Mineral Leasing Act minerals and for the use of geophysical, geochemical and similar methods of prospecting for all minerals. Issuance, type, and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulphur and other Mineral Leasing Act minerals shall be as provided by law. Surface uses of the land shall be limited to those necessary to the extraction of the mineral deposits and continuance of such right shall depend upon beneficial use as prescribed by law.

12. (Creation of Water Rights). All surface and sub-surface waters, reserved to the people for common use, shall be subject to appropriation for beneficial use as prescribed by law. Priority of appropriation shall give prior right. An appropriation of water, except for municipal water supply, shall be limited to stated uses

and be subject to concurrent appropriation for other beneficial uses and the general reservation of fish and wildlife to the people for common use.

13. (Access to Navigable Waters). Free access to the navigable waters of the State shall not be denied any person, residents of Alaska or of any State or Territory of the United States, except that the State may by general law regulate and limit such access for other beneficial or public purposes.

14. (No Exclusive Right of Fishery). There shall be no exclusive right or special privilege of fishery created or authorized in the natural waters of the State.

15. (Preferences Among Beneficial Uses). The Legislature shall provide for determination of the order of preference of the beneficial uses of the waters of the State and of the State public domain in order to realize the highest public purpose in terms of the potentialities of each locality. No person shall be involuntarily divested of his right to use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial or public use and then only by operation of law.

16. (Private Ways of Necessity). Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources.

17. (Residual Powers). The specific provisions of this Article shall not limit the powers of the State in relation to the utilization, development and conservation of natural resources except as specifically provided herein.

Amendment No. \_\_\_\_\_

Constitutional Convention

By Resources Committee

Date January 18, 1956

AMENDMENT TO (COMMITTEE) PROPOSAL NO. 8/a

MR. PRESIDENT:

I move that (Committee) Proposal No. 8/a be amended as follows:

Section 13, page 5, line 18, after the word "all" insert "surface and subsurface".

Section 12, page 4, line 17, strike "now" and substitute "thereafter".

Section 17, page 6, line 17, change period to a comma and add "and just compensation for such taking, as well as for the taking of or damage to inferior property rights, shall be made." (word "subordinate" substituted by R. Rivers for word "inferior"). So adopted.) *[Mr. Rivers' suggestion was not a motion -- made for style & drafting]*

Section 16, line 12 after word "only" insert the following: " with just compensation and".

Section 2, page 1, strike marginal title and substitute therefor: "General Authority".

Section 12, page 5, line 4, insert "either" before "the".

Section 12, page 5, line 14, strike "non-metallic".

Section 8, page 3, line 13, strike lines 13 and 14 and insert in lieu thereof "selection of lands granted to the State by the United States, and for the administration of the State public domain."

Section 13, page 5, line 20, after word "use", insert comma and add "except mineral and medicinal waters".

~~XXXXXXXX~~

Amendment No. \_\_\_\_\_

Constitutional Convention

By Resources Committee

Date January 18, 1956

AMENDMENT TO (COMMITTEE) PROPOSAL NO. 8/a

MR. PRESIDENT:

I move that (Committee) Proposal No. 8/a be amended  
as follows:

Page 1, line 4, place a period after the word "interest" and strike the rest of the paragraph.

Section 4.

Page 2, line 7, strike comma after "waters" and insert "as defined by the Legislature,".

Section 11.

Page 4, line 3, strike "mineral or water", and strike on lines 5 and 6, "and to all other resources reserved to the people", retaining the semi-colon.

Section 11., page 4, line 7, strike "beneficial".

Section 13, page 4, lines 16 and 17, strike the words "during the year 1955", and insert "upon the date of ratification of this Constitution by the people of Alaska".

Section 13, page 5, line 10, strike "prospecting".

Section 14, page 5, line 25, insert a period after the word "legislature" and strike the balance of the section.

Section 2, the words "belonging to the State" on line 15 be placed after the word "resources" on line 14.

Section 5.

Strike Section 5.

Section 12, page 5, line 15, insert a period after "law" and insert "Like permits and leases may also be authorized by law"; strike word "and".



Amendment No. \_\_\_\_\_

Constitutional Convention

By Resources Committee

Date January 19, 1956

AMENDMENT TO (COMMITTEE) PROPOSAL NO. 8/a

MR. PRESIDENT:

I move that (Committee) Proposal No. 8/a be amended

as follows:

Section 9, page 3, line 16, after third word "of" add the words "and the issuance of exploration permits on"; Section 12, page 5, line 11, after the word "areas" insert a comma and add "subject to reasonable concurrent exploration as to different classes of minerals,".

Amendment No. \_\_\_\_\_

Constitutional Convention

By Resources Committee

Date January 25, 1956

AMENDMENT TO (COMMITTEE) PROPOSAL NO. 8/a

MR. PRESIDENT:

I move that (Committee) Proposal No. 8/a be amended

as follows:

Page 1, line 10, strike "now"; page 1, line 11, strike period and add "upon the date of ratification of this constitution by the people of Alaska."

Section 2, pages 1 and 2, strike lines 15, 16 and 17 of page 1 and strike through "state," on line 1 of page 2.

Page 2, line 6, change period to a comma and add: "subject to preferences among beneficial uses".

Page 2, line 7, strike "as defined by the Legislature" and insert the same language on page 6, line 2, following word "state".

Page 4, lines 1 and 2, strike "or interests therein".

Page 5, line 20, the insert material should follow "shall" instead of "use" and be set off by commas.

Page 5, line 24, strike "of" and substitute "among".

Constitutional Convention  
Committee Proposal/8  
December 16, 1955

ALASKA CONSTITUTIONAL CONVENTION  
REPORT OF THE COMMITTEE ON RESOURCES

Hon. William A. Egan, President  
Alaska Constitutional Convention

Dear Mr. President:

Your Committee on Resources presents for your consideration and adoption its proposed Article on Resources.

The Committee proposal, while incorporating many of the ideas contained in Convention proposals, is a Committee proposal and is unanimously endorsed by the Committee.

A section by section commentary on the subject matter has been prepared by your Committee for the use of the Delegates to the Convention.

Respectfully submitted,

W. O. Smith, Chairman

Burke Riley

John Boswell

Ada B. Wien

Leonard King

B. D. Stewart

Peter R. Reader

Barrie M. White

Truman C. Emberg

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 8

Introduced by Committee on Resources

STATE LANDS AND NATURAL RESOURCES

RESOLVED, that the following be agreed upon as part of  
the Alaska State Constitution:

ARTICLE ON STATE LANDS AND NATURAL RESOURCES

Statement	1	It is the policy of the State to
of Purpose	2	foster and encourage settlement and development
	3	through the maximum use and availability of its
	4	resources consistent with the public interest and
	5	the avoidance of waste, and to that end it is the
	6	intent of this Article to extend to all peoples the
	7	opportunity of participation in Alaska's heritage.
State's	8	Section 1. The State of Alaska has the power to
Proprietary	9	provide for the utilization, conservation and
Interest	10	balanced development of all of the natural resources,
	11	including aesthetic features, of the land and waters
	12	belonging to the State for the maximum benefit of
	13	its people.
Sustained	14	Section 2. Forests, fisheries, wildlife and
Yield	15	other replenishable resources belonging to the State

1 shall be administered, utilized and maintained on  
2 the sustained yield principle in order to achieve  
3 the highest beneficial public use.

General 4 Section 3. Game fish, wildlife, fisheries and  
Reservations 5 waters, wherever occurring in their natural states  
6 within the State or its jurisdiction, are reserved  
7 to the people for common use.

General 8 Section 4. Facilities, improvements and services  
Authorization 9 may be provided to assure greater utilization,  
for Facili- 10 development, reclamation and settlement of the State  
ties, Improve- 11 lands, and fuller utilization and development of the  
ments and 12 fisheries and waters of the State.  
Services

Uniform 13 Section 5. Laws and regulations made for the use  
Application 14 of natural resources shall bear equally on all persons  
15 similarly situated with reference to the subject  
16 matter and purpose to be served by the law or regula-  
17 tion.

Special 18 Section 6. Sites, objects, and areas of natural  
Acquisitions 19 beauty or of historic, cultural or scientific inter-  
and Purposes 20 est may be acquired, preserved, and administered for  
21 the use, enjoyment and welfare of the people, under  
22 the laws of the State.

State 23 Section 7. Lands and interests therein possessed  
Public 24 or acquired by the State, including submerged and  
Domain 25 tidal lands, and not used or intended exclusively for

1 governmental purposes or for reserved sites and  
2 areas, constitute the State public domain. Such  
3 lands and interests therein are to be held in  
4 trust for the people of the State. These lands and  
5 interests may be disposed of only in accordance with  
6 provisions of applicable acts of Congress, including  
7 the Act admitting Alaska to the Union, this Constitu-  
8 tion and the laws of the State.

9 The Legislature shall make provision  
10 for the selection, classification and administration  
11 of lands in the State public domain, and the several  
12 uses thereof, in such manner as will give maximum  
13 use and public benefit.

Leases

14 Section 8. The Legislature may authorize the  
15 leasing of any lands and interests therein in the  
16 State public domain, subject to the following  
17 conditions:

18 In granting leaseholds and in administer-  
19 ing the State public domain and interests  
20 therein, the various potential uses of the  
21 land shall be considered. Leases shall  
22 state use, conditions and tenure, to enable  
23 reasonable concurrent uses in the lands and  
24 waters of the State. The Legislature shall  
25 provide, among other conditions, for payment

1 by the party at fault for damage or injury  
2 arising from noncompliance with terms  
3 governing concurrent use, for forfeiture  
4 in the event of breach of conditions and,  
5 generally, for enforcement of terms.

Sales and  
Grants

6 Section 9. The Legislature may authorize the  
7 sale or grant of State lands or interests therein,  
8 subject to the following conditions:

9 All sales or grants of State land or  
10 interests therein shall contain such reserva-  
11 tions to the State of all mineral resources  
12 as are required by the Congress, access  
13 thereto, and access to all other resources  
14 generally reserved to the people; except  
15 that the reservation of access shall not  
16 impair the owners' full beneficial use,  
17 prevent the control of trespass nor preclude  
18 compensation for damage.

Public  
Notice and  
Other  
Safeguards

19 Section 10. Disposals or leases of state lands or  
20 interests therein shall be preceded by such public  
21 notice and other appropriate safeguards of the public  
22 interest as the Legislature shall determine. Each  
23 such transaction shall be subject to review or audit,  
24 as prescribed by law.

Creation of  
Mineral  
Rights

1 Section 11. Discovery and appropriation shall be  
2 the basis for establishing a right in those minerals  
3 heretofore subject to location under the Federal  
4 Mining Laws and now reserved to the State. Prior  
5 discovery and filing shall give prior right to such  
6 minerals and to issuance of permits, licenses, lease-  
7 holds, or patents if authorized by the Congress, for  
8 the extraction thereof. Continuance of such right  
9 shall depend upon beneficial use as prescribed by  
10 law.

11 Prospecting permits giving exclusive  
12 right of exploration for specific periods and areas  
13 may be provided for exploration conducted for coal,  
14 oil, gas, oil shale, sodium, phosphate, potash, sulfur,  
15 and other Mineral Leasing Act minerals and for the use  
16 of geophysical, geochemical and similar methods of  
17 prospecting for all minerals. Issuance, type, and  
18 terms of leases for coal, oil, gas, oil shale, sodium,  
19 phosphate, potash, sulphur and other Mineral Leasing  
20 Act minerals shall be as provided by Law.

21 Surface uses of the land shall be  
22 limited to those uses necessary to the extraction of  
23 the mineral deposits, and continuance of such right  
24 shall depend upon beneficial use as prescribed by  
25 law.



Creation of 1 Section 12. All surface and sub-surface waters,  
Water Rights 2 reserved to the people for common use, shall be  
3 subject to appropriation for beneficial use as  
4 prescribed by law. Priority of appropriation shall  
5 give prior right. An appropriation of water, except  
6 for municipal water supply, shall be limited to  
7 stated uses and be subject to concurrent appropria-  
8 tion for other beneficial uses and to the general  
9 reservation of fish and wildlife to the people for  
10 common use.

Access to 11 Section 13. Free access to the navigable waters of  
Navigable 12 the State shall not be denied any person resident of  
Waters 13 Alaska or of any State or Territory of the United  
14 States, except that the State may by general law  
15 regulate and limit such access for other beneficial  
16 or public purposes.

No Exclusive 17 Section 14. There shall be no exclusive right or  
Right of 18 special privilege of fishery created or authorized  
Fishery. 19 in the natural waters of the State.

Preferences 20 Section 15. The Legislature shall provide for  
Among Bene- 21 determination of the order of preference of the  
fical Uses 22 beneficial uses of the waters of the State and of  
23 the State public domain in order to realize the  
24 highest public purpose in terms of the potentialities  
25 of each locality. No person shall be involuntarily

1 divested of his right to use of waters, his interests  
2 in lands, or improvements affecting either, except  
3 for a superior beneficial or public use and then  
4 only by operation of law.

Private 5 Section 16. Proceedings in eminent domain may be  
Ways of 6 undertaken for private ways of necessity to permit  
Necessity 7 essential access for extraction or utilization of  
8 resources.

State 9 Section 17. The State of Alaska shall consist of  
Boundaries 10 all the territory, together with the territorial  
11 waters appurtenant thereto, now included in the  
12 Territory of Alaska.

Residual 13 Section 18. The specific provisions of this Art-  
Powers 14 icle shall not limit the powers of the State in re-  
15 lation to the utilization, development and conserva-  
16 tion of natural resources except as specifically  
17 provided herein.

ALASKA CONSTITUTIONAL CONVENTION  
Commentary on Article on State Lands and  
Natural Resources

(Sec. 1 States' Proprietary Interest)

This section is a general grant of authority to the State for the utilization and development of all resources over which the State has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the State through grants from the United States or by other means. Authority over private lands and resource interests is not provided in this Article except as that authority is generally reserved in Section 18.

(Sec. 2 Sustained Yield)

Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory organisms destructive of more beneficial plant and animal life. The reference of this section is to the State of Alaska, and not to any particular parcel of land or any particular body of water.

(Sec. 3 General Reservations)

Game fish, wildlife, fisheries and water are recognized as belonging to the State so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition withing the law. This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture or the fish in private ponds. The ownership of water is generally recognized as vesting in the state. Private rights can be acquired only to the use of water.

(Sec. 4 General Authorization for Facilities, Improvements and Services)

This general authorization is made to facilitate the development of the State's natural resources. In localities where lands are susceptible to general agricultural development, the State would have authority to undertake improvements in providing roads or improvements on the land in preparation for settlement of the land. Where improvements or facilities may be essential to the development of fisheries and water resources, the state would have the authority to undertake those developments. Such developments could require the services of technical specialists and advisors who can assist citizens of the State on technical problems involving the

improvement of production and resource utilization in much the same way that the farm agent has worked on problems of agricultural production and the Forest Service has rendered aid to private owners of standing timber.

(Sec. 5 Uniform Application)

This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to the disposition of the State.

(Sec. 6 Special Acquisition and Reservations)

General authority is granted the State to acquire special sites, objects or areas of scenic, historic, cultural or scientific interest, to reserve similiar sites, objects or areas in the state public lands and to administer these special sites, objects, and areas for general public use. These sites, objects or areas might ultimately become state monuments or parks.

(Sec. 7 State Public Domain)

This section defines the State public domain to include all lands and interests therein that are acquired by the State except for (1) lands used or intended to be used exclusively for governmental operations and (2) those sites and areas that have been acquired or reserved for special scenic, historic, cultural or scientific interests. The lands, and interests therein, in the State Public Domain are to be held in trust for the people of the state until disposed of in accordance with provisions of federal

law, the State Constitution and State Law. Should terms of enabling legislation covering grants of lands to the State be modified before passage, the language of this section would avoid necessity of amending the Constitution.

General authority is granted to the Legislature to provide for the selection, classification and administration of the State Public Domain. The Enabling Bill provides for State selection of granted lands. Classification, or examination by whatever means, will be the process whereby the State determines what lands it will wish to select. The Legislature is given general authority to provide for the general administration of the State public domain in order to assure maximum use and public benefit in the several uses of those lands.

(Sec. 8 Leases)

The Legislature is authorized to lease State lands or interests therein. In granting leases, the potential uses of the land are to be considered so that maximum benefit can be derived. Each lease shall state the particular use or uses to be made of the lands as well as the conditions of the use and the term or tenure of the lease in order to facilitate reasonable concurrent use by others if occasion arises. "Reasonableness" of concurrent uses implies that possibilities of conflict in use should be kept to a minimum. Provisions of liability, forfeiture and other means of enforcement of the lease are to be provided in the instrument.

(Sec. 9 Sales and Grants)

Sales and grants of State lands and interests **therein** are generally authorized with provision for reservation of mineral rights and for reservations of access. The reservation of mineral rights is prompted by provisions of the Enabling Bill. Mineral deposits in such lands shall be subject to lease by the State as the Legislature may direct.

The reservation of mineral rights in the proposal is in conformity with the proposed enabling bill, H.R. 2535, of the 84th Congress.

Reservation of access is required on all grants or sales of state land so as to assure access to reserved mineral rights and to those resources generally reserved to the people by Section 3 of the proposal. While reserving access, the section explicitly provides that these rights of access shall not impair the owner's full beneficial use, shall permit the control of trespass and allow for compensation for damages done to the owner of the land.

(Sec. 10 Public Notices and Safeguards)

Certain safeguards of the public interest are essential in public land transactions. Such transactions may vary in importance from routine matters to those of substantial value. If general constitutional provisions impose too rigid requirements, the land administration can become hopelessly ensnarled in red tape. As a result this section of the Constitution provides for the Legislature to establish public notice, review or audit and other safeguards to

protect the public interest. As requirements change and many transactions become routine, appropriate modifications can be made in procedures if rigid requirements are not specified in the Constitution itself.

(Sec. 11 Creation of Mineral Rights)

With the restrictions on the sale, grant or patent of mineral lands as provided in the proposed Enabling Bill and in Section 9 of the proposal, this section recognizes the established pattern of mining rights as applied to a system of leaseholds or limited patents. This established system of mining law recognizes the preferential right of a prospector to a mineral deposit on the basis of discovery and appropriation. Appropriation involves both location and filing. All mining law requires continued beneficial use (assessment work) to maintain a mining claim.

These elements of mining law were described by Costigan in his standard works on American Mining Law when he stated, "They (mining laws) all recognize discovery followed by appropriation, as the foundation to the possessor's title and development by working as the condition of its retention." This conception underlies the statement of mineral rights contained in Section 11.

Exceptions to these general rules applicable to mineral rights have become recognized through the Mineral Leasing Act of 1920 as amended. The fuel minerals of oil, gas, oil-shale and coal and phosphates, potash and other non-metallic minerals have been developed under a lease system which involves exclusive right



to prospect certain areas over a given period of time subject to payment of certain royalties if commercial development is undertaken. This is the reason for making exceptions of these non-metallic minerals and for the newer forms of geophysical and geochemical prospecting. Otherwise the right of an ordinary prospector to search for mineral deposits is fully recognized and he is recognized as having a preferential right to the appropriate permit, license or lease, for the extraction of these mineral deposits. The prospector's preferential right would presumably be transferable in the same manner that a claim can be conveyed today.

Section 11 is so phrased as to permit patenting of claims on state land should Congress remove the anticipated restrictions and the Legislature so provide. However in adapting the ideas behind the Act of July 23, 1955 to Alaskan conditions, restrictions are placed upon claims and patents so that the surface uses of the land shall be limited to those uses necessary to the extraction of the mineral deposits and so long as beneficial use is maintained. The land will be available for construction of mining works, the disposition of mining wastes and for the timber necessary in mine construction. However, forests on these lands would not be generally available to the mineral claimant. The further requirement of beneficial use is to assure that the lands patented for mineral purposes will revert to public control when for example, mining has ceased, the mineral deposits have been exhausted or the property abandoned, which situations would depend on legislative definition of "beneficial use".

(Sec. 12 Creation of Water Right)

This section provides for the prior-appropriation system of water rights generally used in the western states and in Alaska. The prior appropriation system recognizes the principle of "first come; first served", or "first in time; first in right" which is also the basic principle of mining law. Here again the concept of appropriation involves filing an application for stated quantities of water for stated uses at specific locations. The preservation of a prior appropriation right to water requires continued beneficial use. Concurrent use is recognized to assure maximum utilization. Water used for the generation of hydro-electric power for example is also subject to appropriation for domestic consumption or other uses that do not conflict with those for which prior appropriations have been made. Appropriations are subject to the general reservation of fish and wildlife provided in Section 3 so that reservoirs shall not exclude fish and wildlife remaining in natural states from coming under the provision of their general reservation to the people.

(Sec. 13 Access to Navigable Waters)

This section assures free access to the navigable waters of the state for "any person resident of Alaska or any state or territory of the United States." However such access may be limited by other beneficial purposes such as the construction of dam or other water-works. Since the control of navigable waters

is a Federal question within the province of Congressional authority, any actions taken by the Federal government would supersede this constitutional provision.

(Sec. 14 No Exclusive Right of Fishery)

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State.

(Sec. 15 Preferences Among Beneficial Uses)

This is a basic provision found in the resource codes and constitutions of several of the Western States. Orders of preference are usually made for water uses such as domestic or industrial consumption, irrigation, fisheries, hydro-electric power production, etc. With Alaska's diversity of conditions, provision was made to vary the determination of priorities of use according to the potentialities of any particular locality, area or region. Again this provision is limited in bearing on the waters of the State and on the State Public Domain where the state maintains its proprietary interest, and not upon private or federal land holdings.

The provision for divestment of right allows eminent domain proceedings to be used in permitting a higher use only. As among users of the same order of priority, the power of condemnation cannot be used. Under this type of provision the state may have granted a mining lease for placer mining in a river bed. If the

stream had important hydro-electric potentialities a power company might desire to use a site, which would cause the flooding of the mine. If the hydro-electric development was determined to be a higher beneficial use, the mining properties might be acquired by appropriate legal action with just compensation for the interests and improvements of the conflicting mining use.

The last sentence, protecting any person from involuntary divestment of property rights and interests, is generally applicable to any established right and might be relied upon to protect persons who claim possessory rights to tidelands in coastal areas where substantial improvements have been made in docks, wharves or other waterfront facilities and homes.

(Sec. 16 Private Ways of Necessity)

This provision was borrowed from the Wyoming Constitution and modified to meet Alaskan conditions. The Wyoming provision states, "Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, domestic or sanitary purposes, nor in any case without due compensation." In that arid state this provision was developed to assure access to water supply even though it might be necessary for a private person to secure easement across adjoining private lands. Since the adoption of the Wyoming Constitution, a number of western states have

included a similiar provision in their constitutions. Since the problem of essential access in Alaska is not limited to water supply as in Wyoming this article makes only a general provision for the use of eminent domain proceedings to provide essential access for extraction and utilization of natural resources.

(Sec. 17 State Boundaries)

This is the same boundary statement set forth in H.R. 2535.

(Sec. 18 Residual Powers)

The Article on State Lands and Natural Resources is primarily concerned with the State's proprietary interests in the State public lands, waters, wildlife and fisheries. This section explicitly states that the other provisions in the Article on State Lands and Natural Resources shall not limit the exercise of the general police powers of the State to provide for the utilization, development and conservation of natural resources in general, including those in private ownership.

Regulation of stream pollution, the prohibition of fish-traps and fire control in timber areas are illustrations of action taken under general public police powers to provide for public health, safety or the general welfare which may affect resource development, utilization or conservation on both public and private lands.

Constitutional Convention  
Committee Proposal 8/a  
Date: January 16, 1956

ALASKA CONSTITUTIONAL CONVENTION  
REPORT OF THE COMMITTEE ON RESOURCES

Hon. William A. Egan, President  
Alaska Constitutional Convention

Your Committee on Natural Resources submits for consideration of the Convention the attached proposed Article No. 8, as a Committee Substitute for tentative committee Proposal No. 8 earlier submitted. Accompanying said Proposal is a revised Commentary.

The Committee has considered the following Delegate Proposals and reports on them as follows:

Sections 1 & 2 of Proposal 5 have been incorporated in part in the Committee Proposal.

Section 3 was not incorporated in the Committee Proposal and, in the Committee's opinion, might properly be considered by the Committee on Resolutions.

Section 13, Proposal No. 6 is believed to be more properly the concern of Finance, Ordinances and Transitional Matters.

In the Committee proposal matters proposed in delegate Proposal No. 7 are touched upon in part and the way left clear for such future Legislative action as may be desired.

The Committee recommends for reference to the Resolutions

Committee and to the next Territorial Legislature the proposition that the Territorial Legislature put in motion, through its Legislative Council or otherwise, a comprehensive study of necessary legislation in the resources field to implement this proposed Article. It is recognized that in most respects Legislation based on such study will be the province of the State Legislature, yet the Committee feels that the undertaking will be of such scope and magnitude that early attention should be given it.

Sections 5 & 6 of Proposal No. 9 are in part incorporated in Section 6 of the Committee Proposal.

Sections 6 & 7 of Proposal 17 are in substance incorporated in this Proposal.

Proposal 18 is in part incorporated in Section 10 of this Proposal.

Proposal 26 was considered beyond the province of the Committee and without the scope of the Constitution. However, the Committee recommends that the Convention adopt a suitable resolution addressed to appropriate Federal agencies now in position to remedy the situation which Proposal 26 seeks to reach.

Sections 1, 3, 4, and 5 of Proposal 30 are covered generally in this Proposal, while Sections 2 and 6 are not.

Proposal 32 is merged in this proposal.

Both before and since the submission of Proposal 33, the abolition of fishtraps received the Committee's searching attention. While the Committee Proposal does not mention traps, the Committee urges an expression in this respect by the Convention, and recommends that the Convention adopt an appropriate Resolution or Ordinance as a means of hastening the abolition of traps.

Respectfully submitted,

W. O. Smith, Chairman

Burke Riley

John C. Boswell

and B. Wien

Leonard King

B. D. Stewart

Peter L. Reader

Barrie M. White, Jr.

Truman C. Emberg



Referred to Committee  
on Resources  
November 17, 1955

Constitutional Convention of Alaska

Proposal No. 5

Introduced by H. H. Robertson

DEFINITION OF NATURAL RESOURCES, AND THEIR CONTROL

RESOLVED, that the following be agreed upon  
as part of the Alaska State Constitution

- 1 1. Natural resources are the land and the sea and all things  
2 animate, inanimate, solid, liquid and gaseous, naturally in,  
3 on or of them, either upon or under the surface, and the atmo-  
4 sphere and all things in or on it, and all waters that stand or  
5 fall upon or that flow across, through or under the land or that  
6 flow, empty into or fall upon the sea or any other body of water,  
7 and all wild animals, fowl, and fish. Things, waters, animals,  
8 fowl and fish which have been reduced to private ownership are  
9 not natural resources.
- 10 2. Natural resources shall be controlled, managed, conserved,  
11 restored, and utilized for the best interests of the State, and  
12 shall be subject to disposal by sale and lease upon such terms  
13 and conditions as the Legislature may ordain. Such natural re-  
14 sources as are required for the State's own use or which are  
15 required for use in common by the public shall not be disposed  
16 of by sale or lease, except they may be temporarily leased. Sale  
17 of natural resources shall be so conditioned that use or nonuse  
18 thereof shall not injure or destroy any other natural resources  
19 or private possession.

1 3. Control, management, restoration, conservation, utiliza-  
2 tion, and regulation of natural resources may be in such  
3 commissions as the Legislature may ordain, but joint control  
4 of wildlife resources shall not be combined with commercial  
5 utilization and development of natural resources.

Referred to Committee on  
Direct Legislation  
November 17, 1955

CONSTITUTIONAL CONVENTION OF ALASKA

PROPOSAL NO. 6

Introduced by: Maurice T. Johnson  
and John B. Coghill

EDUCATION

RESOLVED, that the following be agreed upon as part of the  
Alaska State Constitution.

1     Sec. 1. Every person has a right to education to the fullest  
2     extent of the capabilities of each person and to the extent  
3     permitted by the facilities of the state.

4     Sec. 2. The State's responsibility for the education of its  
5     people is here declared to be clear, positive and final. The  
6     Legislature may delegate by statute its responsibility, pow-  
7     er and authority to local communities or political subdivi-  
8     sions of the State, but such authority when delegated may be  
9     extended, withheld or withdrawn at any time the Legislature  
10    deems it necessary or expedient. It is the intent and pur-  
11    pose of this article that Education shall be free from the  
12    domination and control of any branch, department, or official  
13    of the state government, or from any professional group or  
14    person, and reserving all final control, power and authority  
15    to the people of the State, through their chosen representa-  
16    tives, the Legislature.

17    Sec. 3. The Legislature shall provide for the establishment,  
18    maintenance and support of a uniform system of free public  
19    schools, and such other educational institutions for special-  
20    ized training and for the education of the physically and

1 mentally handicapped as may be deemed desirable. Such insti-  
2 tutions shall be non-sectarian, non-political, and open and  
3 available to all without regard to race, color, creed or age.

4 Sec. 4. The Legislature shall provide for the compulsory  
5 attendance at some public school, unless other state approved  
6 means of education are provided, of all the children in the  
7 state who are sound in mind and body between the ages of  
8 eight and sixteen, provided, however, the Legislature in its  
9 discretion shall have power to require a greater range of com-  
10 pulsory attendance, but in no case shall the range herein  
11 given be reduced.

12 Sec. 5. The English language shall be the official language  
13 of the School System and shall be taught in all schools of the  
14 state whether Public, private, denominational or parochial.

15 Sec. 6. The Legislature may provide for the establishment of  
16 private schools by individuals, groups, institutions or corp-  
17 orations under charter from the State. The State shall estab-  
18 lish minimum educational standards for such schools, but such  
19 schools shall be secure in the right to teach such principles  
20 as the governing body shall decide over and above the State  
21 requirements, provided such teachings are not otherwise con-  
22 trary to the statutes or the constitution of the State.

23 Sec. 7. No public funds from whatever source, local or state,  
24 shall be used directly or indirectly for the support, opera-  
25 tion or maintenance, including transportation and other auxil-

1 iary services, for any schools or children therein except  
2 those Public Schools under the exclusive supervision and  
3 direction of the State.

4 Sec. 8. All local and state school property, except income  
5 property, shall be exempt from any form of state or local  
6 taxation.

7 Sec. 9. The Legislature shall provide for the recall for  
8 cause of any elected or appointed person or official connec-  
9 ted with the Public School System.

10 Sec. 10. The general appropriations bill shall include ap-  
11 propriations for the support and maintenance of Public educa-  
12 tion. All funds so appropriated for schools shall have first  
13 priority on state funds after funds appropriated for the sal-  
14 aries of state officials.

15 Sec. 11. The Teachers' Retirement System shall be deemed a  
16 contract between the individual members and the State, and  
17 the Legislature shall make no laws or any other provisions  
18 which shall diminish or impair this obligation. The Legis-  
19 lature shall provide the manner of selecting the securities  
20 for the investment of any Retirement Funds, prescribe the  
21 rules and regulations and conditions upon which such funds  
22 shall be invested, and do all things necessary for the  
23 safety of the fund, and the State shall reimburse said Re-  
24 tirement fund for all losses thereof which may in any manner  
25 occur.

1       Sec. 12. The State shall incur no public school debt with-  
2       out first obtaining sanction of the people of the State in  
3       a state-wide referendum, and no local school unit shall in-  
4       cur any debt for any school purpose without first obtaining  
5       the approval of the people of the local unit.

6       Sec. 13. (a) The State hereby accepts all grants of land  
7       and donations of money made by the United States under the  
8       provisions of the Enabling Act, any other Acts of Congress,  
9       for the uses and purposes and upon the conditions, and  
10      under the limitations for which the same are granted or  
11      donated; and the faith of the State is hereby pledged to  
12      preserve such lands and monays derived from the sale of any  
13      said lands as a sacred trust, and to keep the same for the  
14      uses and purposes for which they were granted or donated.

15      (b) All proceeds of the sale of public lands that have here-  
16      tofore been or may be hereafter given by the United States  
17      for the use and benefit of the Public Schools of the State,  
18      all such per centum as may be granted by the United States  
19      on the sales of public lands, timber, mineral or petroleum  
20      products, the proceeds of all property that shall fall to  
21      the State by escheat, the proceeds of all defunct school pro-  
22      perty, the proceeds of all gifts or donations to the State  
23      for Public Schools not otherwise appropriated by the terms  
24      of the gift, and such other appropriations, gifts or dona-  
25      tions as shall be made by the Legislature, the United States,

1 any corporation, any person or institution for the benefit  
2 of the Public Schools, shall constitute the permanent school  
3 fund, the income from which shall be used for the maintenance  
4 of the Public Schools of the State. The principal shall be  
5 deemed a trust fund held by the State, and shall forever re-  
6 main inviolate. It may be increased, but shall never be  
7 diminished. The State shall reimburse said permanent school  
8 fund for all losses thereof which may in any manner occur,  
9 and no portion of said fund shall be diverted for any other  
10 use or purpose.

11 (c) The interest and income of the permanent school fund,  
12 the net income from the leasing of public lands which have  
13 been or may be granted by the United States to the State  
14 for the use and benefit of the Public Schools, together with  
15 any revenues derived from taxes authorized to be levied for  
16 such purpose, any other sums which may be added thereto by  
17 law, shall be used and applied each year for the benefit of  
18 the Public Schools of the State, and no part of the fund  
19 shall ever be diverted from this purpose, or used for any  
20 other purpose than the support and maintenance of Public  
21 Schools for the equal benefit of all the people of the State.

22 (d) All public lands set apart to the State by Congress for  
23 charitable, penal, educational and public buildings purposes,  
24 and all lands taken in lieu thereof, may be sold by the State.  
25 under such rules and regulations as the Legislature may pre-

1       scribe, in conformity with the regulations of the Enabling  
2       Act.

3       (e) The Legislature shall provide for the investment of the  
4       permanent school funds and other educational funds, but in no  
5       case shall such funds be loaned to the State or any political  
6       subdivision of the State. The Legislature shall provide the  
7       manner of selecting the securities for such funds, prescribe  
8       the rules and regulations, restrictions and conditions upon  
9       which such funds shall be loaned or invested, and do all  
10      things necessary for the safety of the funds and permanency  
11      of the investment. The State shall reimburse said permanent  
12      school fund and other educational funds for all losses there-  
13      of which may in any manner occur, and no portion of said  
14      funds shall be diverted for any other use or purpose.

15      Sec. 14. The enumeration in this article of specific func-  
16      tions shall not be construed as limitations upon the powers  
17      of the State government. The State government shall have  
18      full power to act for the government and good order of the  
19      State, and for the health, safety and welfare of its citizens,  
20      by all necessary and convenient means, subject only to the  
21      limitations prescribed in this constitution and in the Consti-  
22      tution of the United States.



Referred to  
Committee on Resources  
November 18, 1955

Constitutional Convention of Alaska

PROPOSAL No. 7

Introduced by Maurice T. Johnson

Dealing with Wildlife Conservation

RESOLVED, that the following be agreed upon as  
part of the Alaska State Constitution.

1 Sec. 1. The control, management, restoration, conservation  
2 and regulation of the bird, game fish, game, fur, and all wild-  
3 life resources of the State, including hatcheries, sanctuaries,  
4 refuges, reservations and all other property owned, acquired, or  
5 used for such purposes and the acquisition and establishment  
6 thereof, and the administration or all laws pertaining thereto  
7 shall be vested in a wildlife commission consisting of four  
8 members appointed by the governor, not more than two of whom  
9 shall be of the same political party. The Legislature shall  
10 fix the qualifications, terms and compensation of the members  
11 of the commission.

12 Sec. 2. The commission may acquire by purchase, gift, eminent  
13 domain, or otherwise, all property necessary, useful or con-  
14 venient for its purposes.

15 Sec. 3. The commission shall appoint a director of conserva-  
16 tion who, with its approval, shall appoint the assistants and  
17 other employees deemed necessary by the commission. The commiss-  
18 ion shall fix the qualifications and salaries of the director

1 and all appointees and employees, and none of its members shall  
2 be an appointee or employee.

3 Sec. 4. The fees, moneys or funds arising from the operation  
4 and transactions of the commission and from the application  
5 and the administration of the laws and regulations pertaining  
6 to the bird, game fish, game, and wildlife resources of the  
7 State and from the sale of property used for said purposes,  
8 shall be expended and used by the commission for the control,  
9 management, restoration, conservation and regulation of the  
10 bird, game fish, game, fur, and wildlife resources of the State,  
11 including the purchase or other acquisition of property for said  
12 purposes, and for the administration of the laws pertaining  
13 thereto, and for no other purpose.

14 Sec. 5. The rules and regulations of the commission not relating  
15 to its organization and internal management shall become eff-  
16 ective not less than ten days after being filed with the Secret-  
17 ary of State, and such final rules and regulations shall be  
18 subject to judicial review.

/s/ Maurice T. Johnson

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 8/A

Introduced by Committee on Resources

STATE LANDS AND NATURAL RESOURCES

RESOLVED, that the following be agreed upon as part of  
the Alaska State Constitution:

ARTICLE ON STATE LANDS AND NATURAL RESOURCES

Statement  
of Purpose

1                   It is the policy of the State to foster  
2 and encourage settlement and development through the  
3 maximum use and availability of its natural resources  
4 consistent with the public interest and the avoidance  
5 of waste. To that end it is the intent of this Article  
6 to extend to all peoples the opportunity of participa-  
7 tion in Alaska's heritage.

State  
Boundaries

8                   Section 1. The State of Alaska shall consist  
9 of all the territory, together with the territorial  
10 waters appurtenant thereto, now included in the  
11 territory of Alaska.

State's  
Proprietary  
Interest

12                   Section 2. The State of Alaska shall provide  
13 for the utilization, conservation and development of  
14 all of the natural resources, including land and waters  
15 belonging to the State, in accordance with provisions  
16 of applicable acts of Congress, including the act  
17 admitting Alaska to the Union, this Constitution, and

1 the laws of the State, for the maximum benefit of its  
2 people.

Sustained Yield 3 Section 3. Forests, fish, wildlife, grasslands  
4 and other replenishable resources belonging to the  
5 State shall be administered, utilized and maintained  
6 on the sustained yield principle.

General Reservations 7 Section 4. Fish, wildlife, and waters, wherever  
8 occurring in their natural states, are reserved to the  
9 people for common use.

Fish and Game Management 10 Section 5. Regulation and administration  
11 of the commercial fisheries and of the wildlife, in-  
12 cluding game fish, shall be delegated to a commission,  
13 or to separate commissions, under such terms as the  
14 legislature shall prescribe.

General Authorization for Facilities, Improvements and Services 15 Section 6. Facilities, improvements and  
16 services may be provided to assure greater utilization,  
17 development, reclamation and settlement of lands, and  
18 fuller utilization and development of the fisheries,  
19 wildlife and waters.

Uniform Application 20 Section 7. Laws and regulations governing  
21 the use or disposal of natural resources shall apply  
22 equally to all persons similarly situated with reference  
23 to the subject matter and purpose to be served by the  
24 law or regulation.

Special  
Acquisitions  
and Purposes

1                   Section 8. Sites, objects, and areas of  
2 natural beauty or of historic, cultural, recreational  
3 or scientific interest may be acquired, preserved, and  
4 administered for the use, enjoyment and welfare of the  
5 people, under the laws of the State, and may be re-  
6 served from the State public domain.

State  
Public  
Domain

7                   Section 9. Lands and interests therein, in-  
8 cluding submerged and tidal lands, possessed or  
9 acquired by the State, and not used or intended  
10 exclusively for governmental purposes, constitute  
11 the State public domain.

12                   The Legislature shall make provision for the  
13 selection and administration of lands in the State  
14 public domain.

Leases

15                   Section 10. The Legislature may provide for  
16 the leasing of any part of the public domain, or  
17 interests therein, subject to reasonable concurrent uses.

18                   Leases shall provide, among other conditions,  
19 for payment by the party at fault for damage or injury  
20 arising from noncompliance with terms governing con-  
21 current use, for forfeiture in the event of breach of  
22 conditions and, generally, for enforcement of terms.

Sales and  
Grants

23                   Section 11. The Legislature may provide for  
24 the sale or grant of State lands or interests therein,  
25 and establish sales procedures subject to the following  
26 conditions;

1 All sales or grants of State land or interests  
2 therein shall contain such reservations to the State  
3 of all mineral or water resources as are required by  
4 the Congress, or the State, and shall provide for  
5 access thereto, and to all other resources reserved  
6 to the people; except that the reservation of access  
7 shall not impair the owners' beneficial use, prevent  
8 the control of trespass, nor preclude compensation for  
9 damage.

Public  
Notice and  
Other  
Safeguards

10 Section 12. Disposals or leases of state  
11 lands or interests therein shall be preceded by such  
12 public notice and other appropriate safeguards of the  
13 public interest as the Legislature shall prescribe.

Mineral  
Rights

14 Section 13. Discovery and appropriation shall  
15 be the basis for establishing a right in those minerals  
16 subject to location under the Federal mining laws in  
17 the year 1955 and now reserved to the State, as well as  
18 to all other metallic minerals reserved to the State.  
19 Prior discovery, location and filing shall, as pres-  
20 cribed by law, give prior right to such minerals and  
21 to issuance of permits, licenses, leaseholds, deeds, or  
22 patents if authorized by the Congress, and by the State,  
23 for the extraction thereof. Except as title to mineral  
24 lands shall have been conveyed by the State, continuance  
25 of such right shall depend upon performance of annual

1 labor, on payment of fees, rents, or royalties, or such  
2 other requirements as may be prescribed by the Legislature.

3 Surface use of such lands, by the mineral  
4 claimant, shall be limited to those necessary to the  
5 extraction and basic processing of mineral deposits.

6 The Legislature shall provide for the issuance,  
7 type, and terms of leases for coal, oil, gas, oil shale,  
8 sodium, phosphate, potash, sulphur, pumice, and other  
9 minerals as may be prescribed by law.

10 Leases and prospecting permits giving exclusive  
11 right of exploration for specific periods and areas may  
12 be authorized for exploration conducted for coal, oil,  
13 gas, oil shale, sodium, phosphate, potash, sulfur,  
14 pumice, and other non-metallic minerals as may be  
15 prescribed by law; and for the use of geophysical,  
16 geochemical and similar methods of prospecting for all  
17 minerals.

Water  
Rights

18 Section 14. All waters reserved to the  
19 people for common use shall be subject to appropriation.  
20 Priority of appropriation shall give prior right. An  
21 appropriation of water, except for public water supply,  
22 shall be limited to stated purposes and subject to  
23 preferences of beneficial uses, concurrent or otherwise,  
24 as prescribed by the Legislature, and to the general  
25 reservation of fish and wild life.  
26

Access to Navigable Waters 1 Section 15. Free access to the navigable or  
2 public waters of the State shall not be denied any  
3 resident of Alaska or citizen of the United States,  
4 except that the State may by general law regulate and  
5 limit such access for other beneficial or public purposes.

No Exclusive Right of Fishery 6 Section 16. There shall be no exclusive right  
7 or special privilege of fishery created or authorized  
8 in the natural waters of the State.

Divestment of Rights 9 Section 17. No person shall be involuntarily  
10 divested of his right to use of waters, his interests in  
11 lands, or improvements affecting either, except for a  
12 superior beneficial or public use and then only by  
13 operation of law.

Private Ways of Necessity 14 Section 18. Proceedings in eminent domain  
15 may be undertaken for private ways of necessity to  
16 permit essential access for extraction or utilization  
17 of resources.

Residual Powers 18 Section 19. The enumeration of specified  
19 powers shall not be construed as limitations on other  
20 implied powers of the State in relation to the utiliza-  
21 tion, development and conservation of natural resources,  
22 except as specifically provided herein.



Constitutional Convention  
X/Resources/8/A  
January 16, 1956

ALASKA CONSTITUTIONAL CONVENTION

Commentary on Article on State Lands and  
Natural Resources

(Sec. 1 State Boundaries)

This is the same boundary statement set forth in H.R. 2535.

(Sec. 2 States' Proprietary Interest)

This section is a general grant of authority to the State for the utilization and development of all resources over which the State has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the State through grants from the United States or by other means. Authority over private lands and resource interests is not provided in this Article except as that authority is generally reserved in Section 18.

(Sec. 3 Sustained Yield)

Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory organisms destructive of more beneficial plant and animal life. The

reference of this section is to the State of Alaska, and not to any particular parcel of land or any particular body of water.

(Sec. 4 General Reservations)

Game fish, wildlife, fisheries, and water are recognized as belonging to the State so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition within the law. This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, or to registered trap lines if authorized by law. The ownership of water is generally recognized as vesting in the state. Private rights can be acquired only to the use of water.

(Sec. 5 Fish and Game Management)

Management of fish and game resources, and the regulation thereof, are by this section to be the responsibility of a commission, or commissions. Composition and tenure of commissions is not mentioned, because the Committee did not wish to fix membership rigidly in the Constitution, and because the "staggered term" concept is firmly established in Alaska's Board system.

(Sec. 6 General Authorization for Facilities, Improvements and Services)

This general authorization is made to facilitate the development of the State's natural resources. In localities where lands

are susceptible to general agricultural development, the State would have authority to undertake improvements by providing roads or improvements on the land in preparation for settlement. Where improvements or facilities may be essential to the development of fisheries and water resources, the state would have the authority to undertake those developments. Such developments could require the services of technical specialists and advisors who can assist citizens of the State on technical problems involving the improvement of production and resource utilization in much the same way that the farm agent has worked on problems of agricultural production and the Forest Service has rendered aid to private owners of standing timber. The section is not, however, intended as an authorization for the State's entering business in competition with private industry.

(Sec. 7 Uniform Application)

This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to **disposition by the State.**

(Sec. 8 Special Acquisition and Reservations)

General authority is granted the State to acquire special sites, objects or areas of scenic, historic, cultural or scientific or recreational interest, to reserve similar sites, objects or areas in the state public lands and to administer these special sites, objects, and areas for general public use. These sites, objects or areas might ultimately become state monuments or parks.

(Sec. 9 State Public Domain)

The State public domain is defined to include all lands and interests therein that are acquired by the State except for (1) lands used or intended to be used exclusively for governmental operations, and (2) those sites and areas that have been acquired or reserved for special scenic, historic, cultural, recreational, or scientific interest. The lands, and interests therein, in the State Public Domain may be disposed of in accordance with provisions of federal law, the State Constitution and State Law. Should terms of enabling legislation covering grants of lands to the State be modified before passage, the language of this section would avoid necessity of amending the Constitution.

General authority is granted to the Legislature to provide for the selection and administration of the State Public Domain. The Enabling Bill provides for State selection of granted lands. The Legislature is given general authority to provide for the general administration of the State public domain in order to assure maximum use and public benefit in the several uses of those lands.

(Sec. 10 Leases)

The Legislature is authorized to lease State lands or interests therein. In granting leases, the potential uses of the land are to be considered so that maximum benefit can be derived. Each lease shall state the particular use or uses to be made of the lands as well as the conditions of the use and the term or tenure of the lease in order to facilitate reasonable concurrent use by others if occasion arises. "Reasonableness" of concurrent uses

implies that possibilities of conflict in use should be kept to a minimum. Provisions of liability, forfeiture and other means of enforcement of the lease are to be provided in the instrument.

(Sec. 11 Sales and Grants)

Sales and grants of State lands and interests therein are generally authorized with provision for reservation of mineral rights and for reservations of access. The reservation of mineral rights is prompted by provisions of H.R. 2535, the current Enabling Bill.

Reservation of access is required on all grants or sales of state land so as to assure access to reserved mineral rights and to those resources generally reserved to the people by Section 3 of the proposal. While reserving access, the section explicitly provides that these rights of access shall not impair the owner's beneficial use, shall permit the control of trespass and allow for compensation for damages done to the owner of the land.

(Sec. 12 Public Notices and Safeguards of the Public Interest)

Certain safeguards of the public interest are essential in public land transactions. Such transactions may vary in importance from routine matters to those of substantial value. If general constitutional provisions impose too rigid requirements, the land administration can become hopelessly ensnarled in red tape. As a result this section of the Constitution provides for the Legislature to establish public notice, and other safeguards to protect the public interest. As requirements change and many transactions become routine, appropriate modifications can be made in procedures if rigid requirements are not specified in the Constitution itself.

(Sec. 13 Mineral Rights)

With the restrictions on the sale, grant or patent of mineral lands as provided in the proposed Enabling Bill and in Section 9 of the proposal, this section recognizes the established pattern of mining rights whether applied to a system of leaseholds or patents. This established system of mining law recognizes the preferential right of a prospector to a mineral deposit on the basis of discovery and appropriation. Appropriation involves both location and filing. All mining law requires continued beneficial use (assessment work) to maintain a mining claim.

These elements of mining law were described by Costigan in his standard works on ~~A~~merican Mining Law when he stated, "They (mining laws) all recognize discovery followed by appropriation, as the foundation to the possessor's title and development by working as the condition of its retention". This conception underlies the statement of mineral rights contained in Section 13.

Exceptions to these general rules applicable to mineral rights have become recognized through the Federal Mineral Leasing Act of 1920, as amended, and other special legislation for Alaska. The fuel minerals of oil, gas, oil-shale, and coal and phosphates, potash and other non-metallic minerals have been developed under a lease system which involves exclusive right to prospect certain areas over a given period of time subject to payment of certain royalties if commercial development is undertaken. This is the reason for making exceptions of these non-metallic minerals and for the newer forms of geophysical and geochemical prospecting. Otherwise the

right of an ordinary prospector to search for mineral deposits is fully recognized and he is recognized as having a preferential right to the appropriate permit, license, lease or patent if possible, for the extraction of these mineral deposits. The prospector's preferential right would presumably be transferable in the same manner that a claim can be conveyed today.

Section 13 is so phrased as to permit patenting of claims on state land should Congress remove the anticipated restrictions and the Legislature so provide. However in adapting the ideas behind the Act of July 23, 1955 to Alaskan conditions, restrictions are placed upon claims and patents so that the surface uses of the land shall be limited to those uses necessary to the extraction and basic processing of mineral deposits. The land will be available for construction of mining works, the disposition of mining wastes and for the timber necessary in mine construction. However, forests on these lands would not be generally available to the mineral claimant. The further requirement of assessment work, operation, or payments is to assure that the lands claimed for mineral purposes will revert to public control when for example, mining has ceased, the mineral deposits have been exhausted or the property abandoned.

(Sec. 14 Water Rights)

This section provides for the prior-appropriation system of water rights generally used in the western states and in Alaska. The prior appropriation system recognizes the principle of "first come; first served", or "first in time; first in right" which is also

the basic principle of mining law. Here again the concept of appropriation involves filing an application for stated quantities of water for stated uses at specific locations. The preservation of a prior appropriation right to water requires continued beneficial use. Concurrent use is recognized to assure maximum utilization. Water used for the generation of hydro-electric power, for example, is also subject to appropriation for domestic consumption or other uses that do not conflict with those for which prior appropriations have been made. Appropriations are subject to the general reservation of fish and wildlife provided in Section 3 so that reservoirs shall not exclude fish and wildlife remaining in natural states from coming under the provision of their general reservation to the people.

Preference among beneficial uses is a basic provision found in the resource codes and constitutions of several of the Western States. Orders of preference are usually made for water uses such as domestic or industrial consumption, irrigation, fisheries, mining, hydro-electric power production, etc.

The provision for divestment of right allows eminent domain proceedings to be used in permitting a higher use only. As among users of the same order of priority, the power of condemnation cannot be used. Under this type of provision the state may have granted a mining lease for placer mining in a river bed. If the stream had important hydro-electric potentialities a power company might desire to use a site, which would cause the flooding of the mine. If the hydro-electric development was determined to be a higher beneficial



use, the mining properties might be acquired by appropriate legal action with just compensation for the interests and improvements of the conflicting mining use.

(Sec. 15 Access to Navigable Waters)

This section assures free access to the navigable waters of the state for "any person resident of Alaska or citizen of the United States." However, such access may be limited by other beneficial purposes such as the construction of dam or other water-works. Since the control of navigable waters is a Federal question within the province of Congressional authority, any actions taken by the Federal government would supersede this constitutional provision.

(Sec. 16 No Exclusive Right of Fishery)

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State.

(Sec. 17 Divestment of Rights)

This section, protecting any person from involuntary divestment of property rights and interests, is generally applicable to any established right and might be relied upon to protect persons who claim possessory rights to tidelands in coastal areas where substantial improvements have been made in docks, wharves or other waterfront facilities and homes.

(Sec. 18 Private Ways of Necessity)

This provision was borrowed from the Wyoming Constitution and modified to meet Alaskan conditions. The Wyoming provision states, "Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, domestic or sanitary purposes, nor in any case without due compensation." In that arid state this provision was developed to assure access to water supply even though it might be necessary for a private person to secure easement across adjoining private lands. Since the adoption of the Wyoming Constitution, a number of western states have included a similar provision in their constitutions. Since the problem of essential access in Alaska is not limited to water supply as in Wyoming, this article makes only a general provision for the use of eminent domain proceedings to provide essential access for extraction and utilization of natural resources.

(Sec. 19 Residual Powers)

The Article on State Lands and Natural Resources is primarily concerned with the State's proprietary interests in the State public lands, waters, wildlife and fisheries. This section explicitly states that the other provisions in the Article on State Lands and Natural Resources shall not limit the exercise of the general police powers of the State to provide for the utilization, development and conservation of natural resources in general, including those in private ownership.

Regulation of stream pollution, the prohibition of fish-traps and fire control in timber areas are illustrations of action taken under general public police powers to provide for public health, safety or the general welfare which may affect resource development, utilization or conservation on both public and private lands.

Constitutional Convention of Alaska

PROPOSAL NO. 9

Introduced by Victor Fischer

AN ARTICLE ON EDUCATION, HEALTH  
AND WELFARE

RESOLVED, that the following be agreed upon  
as part of the Alaska State Constitution.

- 1 1. Public Education. The State shall provide for a system  
2 of public schools which shall be open to all children of the  
3 State and may provide for other public educational institu-  
4 tions. They shall be free from sectarian control.
- 5 2. Public Health. The State shall provide for the protection  
6 and promotion of the public health.
- 7 3. Public Welfare. The State may provide assistance for  
8 persons unable to maintain a standard of living compatible  
9 with decency and health.
- 10 4. Slum Clearance. The State may provide for and assist in  
11 slum clearance, development and rehabilitation of substandard  
12 areas, and housing for persons of low income.
- 13 5. Public Sightliness and Good Order. The State may con-  
14 serve and develop the natural beauty, objects and places  
15 of historic or cultural interest, sightliness and physical  
16 good order of the State, and for that purpose private pro-  
17 perty shall be subject to regulation.

Referred to Committee on  
Preamble & Bill of Rights  
November 22, 1955

CONSTITUTIONAL CONVENTION OF ALASKA

PROPOSAL NO. 17

INTRODUCED BY WARREN A. TAYLOR

PUBLIC WELFARE

1 Section 1. Public Education.

2 The Legislature of the State of Alaska shall provide for  
3 the maintenance, operation and support of a system of free com-  
4 mon schools, wherein all children of the State may be educated,  
5 and of such other educational institutions, including institu-  
6 tions of higher learning as may be deemed desirable.

7 Section 2. Public Health.

8 The protection and promotion of the health of the inhabit-  
9 ants of the State are matters of public concern and provision  
10 shall be made by the state and by such of its civil departments  
11 and in such manner and by such means as the legislature shall  
12 from time to time determine.

13 Section 3. Public Relief.

14 The maintenance and distribution, at reasonable rates,  
15 or free of charge, of a sufficient supply of food, fuel, cloth-  
16 ing and other common necessities of life, and the providing of  
17 shelter, for the needy, are public functions, and the state and

1 its civil divisions shall provide the same for their inhabitants  
2 in such manner and by such means as may be prescribed by law.

3 Section 4. Inspection of Private Institutions and Agencies.

4 The State shall have the power to provide for the inspec-  
5 tion by such state departments, offices or agencies, and in such  
6 manner as the legislature may determine, of all private institu-  
7 tions and agencies in the state, whether incorporated or not in-  
8 corporated which are engaged in charitable, correctional, or  
9 health activities.

10 Section 5. Public Housing.

11 The state may provide for low rent housing for persons of  
12 low income as defined by law, or for the clearance, replanning,  
13 reconstruction and rehabilitation of substandard or unsanitary  
14 areas, or for both such purposes, and for recreational and other  
15 facilities incidental and appurtenant thereto, in such manner,  
16 by such means, and upon such terms and conditions as may be  
17 prescribed elsewhere in this constitution, or as may be pre-  
18 scribed by law.

19 Section 6. Conservation.

20 The conservation, development, and utilization of the  
21 agricultural, mineral, forest, water and other natural resources  
22 of the state are public functions, and the legislature shall  
23 have the power to provide for the same and to enact legislation

1 necessary, requisite and expedient therefor.

2 Section 7. Scenic Beauty and Historical Association.

3 The natural beauty, historic associations, and the physical  
4 good order of the state and its parts contribute to the general  
5 welfare and shall be conserved and developed as a part of the  
6 patrimony of the people, and to that end private property shall  
7 be subject to reasonable regulation and control.

8 Section 8. General Powers of the State.

9 The enumeration in this article of specified functions  
10 shall not be construed as a limitation upon the powers of the  
11 state government. The state government shall have full power  
12 to act for the government and good order of the state and for  
13 the health, safety, and welfare of its citizens, by all nec-  
14 essary and convenient means, subject to the limitations pre-  
15 scribed in the Constitution of the United States.

Referred to Committee  
on Resources

November 23, 1955

Constitutional Convention of Alaska

DELEGATE PROPOSAL NO. 18

Introduced by Truman C. Emberg and John S. Hellenthal  
Natural Resources: Maximum publicity and public hearing  
after notice, where disposal of natural resources involved.  
RESOLVED, that the following be agreed upon as part of the  
Alaska State Constitution.

1       The Legislature shall provide that no disposal of the natural  
2 resources including lands be made, unless, after public hearing  
3 on written application therefor, and after written report and  
4 recommendations of government agency involved, and preliminary  
5 comprehensive findings and decision of said agency, and later  
6 final public hearing and decision. Notice by publication  
7 throughout Alaska shall be given of all hearings.

Delegate Proposal No. 18



Constitutional Convention  
Delegate Proposal No. 26  
Referred to the Committee  
on Resources  
November 25, 1955

CONSTITUTIONAL CONVENTION OF ALASKA

DELEGATE PROPOSAL NO. 26

Introduced by M. R. Marston

DISPOSAL OF STATE LANDS TO ACHIEVE CERTAIN SOCIAL  
AND ECONOMICALLY BENEFICIAL PURPOSES

RESOLVED, that the following be agreed upon as part  
of the Alaska State Constitution.

1           1. The present social and economic gains by Alaskans of  
2 Indian, Aleut, and Eskimo ancestry must to no degree be lost  
3 or abridged. As a partial means of accomplishing this pur-  
4 pose, the State of Alaska shall make its initial selection  
5 from lands granted by the Congress of the United States in  
6 such manner that it in turn will be able to grant immediately  
7 to the head of each household full title to two parcels of  
8 land as follows:

9           (a) lands now occupied as homesites or headquarters  
10           within established communities; and

11           (b) lands used seasonally as fishing, hunting, or  
12           trapping headquarters and camps.

13           These grants shall be made without direct or indirect  
14 cost to the grantees.

15           2. Alaskans of Indian, Aleut, or Eskimo ancestry shall  
16 be given every opportunity and encouragement to participate

1 in and benefit from the future development of the State of  
2 Alaska as full and equal partners with all other Alaskans.  
3 As a means of providing them with a stake in this future,  
4 the State of Alaska shall by use of land script, or other  
5 simple means to be determined by the legislature, permit  
6 the head of each household to select from and acquire title  
7 to State lands not otherwise reserved, not to exceed an aggre-  
8 gate of one hundred and sixty acres.

9 3. These grants are made in the spirit of recognition  
10 of past advancement and as a token of participation in future  
11 development and are in no way to be considered as settlement  
12 in whole or part or to otherwise prejudice prior claims made  
13 by these Alaskans to hold and own lands by right of aboriginal  
14 occupancy or use.

15 4. To encourage the development and expansion of estab-  
16 lished communities, the State of Alaska upon application shall  
17 make grants from State lands to established communities for re-  
18 creational areas, (industrial development areas) community ex-  
19 pansion and other social and economic purposes. The legisla-  
20 ture shall prescribe the manner in which these grants shall be  
21 made.

Constitutional Convention  
Delegate Proposal No. 30  
Referred to Committee on  
Resources  
December 1, 1955

CONSTITUTIONAL CONVENTION

DELEGATE PROPOSAL NO. 30

Introduced by James J. Hurley

STATE LANDS AND NATURAL RESOURCES

RESOLVED, That the following be agreed upon as  
part of the Alaska State Constitution:

1       Section 1. Lands belonging to the State may be sold, grant-  
2 ed or leased under such general laws as the Legislature may pre-  
3 scribe. Each sale or grant shall contain a reservation to the  
4 State of all minerals, oil and gas. Mineral, oil and gas de-  
5 posits may be leased by the State under such general laws as the  
6 Legislature may prescribe.

7       Section 2. The State shall not sell, or lease for a period  
8 of more than 50 years, more than 2660 acres of State land to any  
9 one individual, association or corporation.

10       Section 3. All natural resources shall be utilized for the  
11 benefit of all of the people of the State. Resources which by  
12 their nature are reproduceable shall be utilized on a sustained  
13 yield basis. Resources which by their nature are not reproduce-  
14 able shall be utilized so as to realize their greatest potential.

15       Section 4. No law shall be passed restricting the right of  
16 all of the people of the State to fish, hunt or trap for non-com-

1 mercial domestic use, except that regulations pertaining thereto  
2 may be made in the interest of conservation or the public safety.

3       Section 5. The navigable waters of the State shall be open  
4 to free use by citizens of the State or of the United States ex-  
5 cept that the Legislature may by general law regulate such use  
6 when the interest of the State may require.

7       Section 6. The Legislature shall provide for the adminis-  
8 tration of State Lands and natural resources by one or more admin-  
9 istrative boards, appointed in a manner that will assure represent  
10 ation from major economic areas of the State without regard to  
11 political affiliations.

Constitutional Convention  
Delegate Proposal No. 32  
Referred to Committee on  
Resources  
December 5, 1955

Constitutional Convention of Alaska

DELEGATE PROPOSAL NO. 32

Introduced by R. E. Robertson

STATE LANDS AND NATURAL RESOURCES

RESOLVED, That the following be agreed upon as part  
of the Alaska State Constitution.

1           Section 1. Public lands, sold or leased, shall revert  
2 to the State unless utilization of the land is made within  
3 a time specified by the Legislature.

DELEGATE PROPOSAL NO. 32

Constitutional Convention  
Delegate Proposal #33  
Referred to Committee on  
Resources  
December 5, 1955

CONSTITUTIONAL CONVENTION OF ALASKA

PROPOSAL NO. 33

Introduced by Eldor Lee

ABOLITION OF FISH TRAPS

RESOLVED, that the following be agreed upon  
as part of the Alaska State Constitution:

- 1       The use of fish traps for the taking of salmon for
- 2       commercial purposes is hereby prohibited in all waters of
- 3       the state of Alaska.

PRESS RELEASE

ALASKA CONSTITUTIONAL CONVENTION

November 25, 1955

The Committee on Resources of the Alaska Constitutional Convention invited E. L. (Bob) Bartlett, Delegate to the United States Congress from Alaska, to attend its November 22 meeting, and to discuss with the Committee the history of resource provisions in Statehood enabling bills in Congress.

Chairman W. O. Smith explained that Senate Bill 49 and H. R. 2535, the most recent statehood bills are almost identical in their treatment of land grants to the state. Both provide that the state shall be granted approximately 103,550,000 acres of land as follows:

800,000 acres for the purpose of furthering the development of and expansion of communities.

100,000,000 acres for general support of state government.

500,000 acres for legislative, executive and judicial buildings.

200,000 acres for institutions for the mentally ill.

200,000 acres for penitentiaries.

200,000 acres for schools and asylums for the deaf, dumb and blind.

500,000 acres for normal schools.

200,000 acres for state, charitable, penal and reformatory institutions.

250,000 acres for homes for needy pioneers.

500,000 acres for the University of Alaska in addition to grants heretofore made.

All grants to the state made or confirmed under these bills would include mineral deposits. The grants of mineral lands to the state and the right to prospect and mine them would be made upon the express condition that all sales of any of the mineral lands so granted shall contain a reservation to the state of such minerals. The bills provide that any lands or minerals disposed of contrary to the Acts shall be forfeited to the U. S. by appropriate proceedings instituted by the Attorney General for that purpose in the U. S. District Court for Alaska. It should be noted that no lands would be granted to the state of Alaska for the express purpose of supporting public elementary and high schools. The 100,000,000 acre grant for general purposes of state government would presumably cover support of public schools.

Mr. Bartlett was asked about the possibility of the Senate's adhering rigidly to the Reservation concept of mineral rights as expressed in recent enabling bills.

Mr. Boswell raised the question of duality of mineral disposition procedures in the event mineral rights were reserved to the State for disposition only through lease. He expressed concern that in a competitive position with Public Domain lands, State lands would be less attractive to mineral claimants.

Mr. Bartlett stated that earlier bills did not instruct the states as to the administration of subsurface lands; that in 1950 and 1951 thinking on the Senate side commenced to change,



that S50 of the 82nd Congress contained three limitations:

1. State could not dispose of more than 640 acres to any one person, firm or association.
2. State required to observe royalty provision of not more than 12½ percent.
3. Income derived to be covered into Public School fund.

Mr. Bartlett stated further: The first committee draft of the reservation concept provided for a fixed royalty rate which was later modified to set merely an upper limit, leaving to the State legislature establishment of a royalty scale within that top limit.

In the 83rd Congress, Mr. Bartlett stated, the bill reported out by the late Senator Butler provided that grants of mineral lands be made on the express condition they contain mineral reservation in the State, and be disposed of only by lease.

The measure which passed the Senate in 1954 contained substantially similar requirements as to reservation to the state of minerals and their disposition by lease.

The current bills are substantially similar except that the prohibition against the sale of more than 640 acres to any one purchaser has been removed. In this respect the proposed Tayia project was cited.

Reference was made by Mr. Bartlett to a memorandum from Herbert J. Slaughter of the Solicitor's Office, which memorandum was made available to the Committee and traces the history of

Congressional thinking on the point of reserving minerals, in Federal grants, to the State. The bills before the last Congress differed in one respect - namely, that concerning mineral reservations in the proposed 800,000 acre grant for Community Development purposes.

Mr. Slaughter's conclusions suggest that the 1927 Act confirming title of mineral bearing school sections evidenced for the first time a change in Congressional attitude which is reflected in turn in recent statehood enabling bills.

Mr. Stewart raised the question of the taxability of leasehold interests under the proposed State lease arrangement and indicated also that certain exemptions were granted lessees of Federal Coal Lands.

Mr. White inquired "Could not the Constitution state that disposition of minerals be made by methods other than leasing, should the enabling act allow?" Mr. Bartlett replied that it could.

Questions were propounded by Delegates Ralph Rivers, Yule Kilcher, and Committee members touching on related subject matter. Mr. Rivers suggested that state lands' administration be determined by the legislature subject to terms and restrictions of the enabling law.

Delegate Kilcher's questions brought out the provision in current enabling bills whereby a limited State preference right of selection would exist on restoration to public domain of lands in Federal reservations, subject, however, to priority of

the Veteran's Preference Act of September 1944, as amended.

Mr. Bartlett's concluding references were to the effect that the latest language contained in enabling bills did not prescribe rates of royalty; that the Senate feels it is being especially liberal as to proposed acreage grants as well as to any grant of minerals; that the Congress may well feel it is committed to the course followed elsewhere since 1927 which may continue to be observed and which, therefore, accounts for the reservation language in present enabling acts.

TERMS

APPROPRIATION - mining

The term "appropriation" in mining law means the posting of notice at or near the point where the ledge is exposed; next the marking of the boundaries. (Ricketts, Am. Mining Law)

APPROPRIATION - water

An appropriation of water consists in the capture, impounding, or diversion of it from its natural course or channel and its actual application to some beneficial use private or personal to the appropriator, . . . exclusion to the extent of the water appropriated of all other persons, to constitute a valid appropriation, there must be an intent to apply the water to some beneficial use existing at the time or contemplated in the future, a diversion from the natural channel by means of a ditch or canal, or some other open physical act of taking possession of the water, and an actual application of it within reasonable time to some useful or beneficial purpose. (Black's Legal Dictionary)

Elements of valid appropriation of water are:

- (1) an intent to apply it to some beneficial use, existing or contemplated,
- (2) a diversion from a natural stream (or source),
- (3) an application of it within a reasonable time to some useful ends. (long line of Western cases).

BENEFICIAL USE

In both water and mining law a condition of the retention of a right is continued beneficial use. Beneficial use involves

making use, continuing active utilization or work.

In the laws of many states certain uses of water including the disposal of wastes and the preservation of scenic features are not recognized as beneficial uses and therefore not subject to appropriation for those purposes. Those uses that are beneficial and subject to appropriations may then be ordered in their importance so that a higher use can prevail over a lower use through eminent domain proceedings allowing for just compensation to the lower user for his rights and improvements. (V.O.)

Federal grazing permit on natural forests held to be sufficient "beneficial use" to support condemnation of defendants' land for access thereto (126 P2d 481)

Reservoir to hold water in reserve for use only if necessary held a sufficient beneficial use to defeat forfeiture through non-use and that Company could recover from U. S. for construction of the Friant Dam on San Joaquin River which cut off its reservoir source. (76 Fed Sup 836)

Summer resorts' use of a waterfall for its esthetic purposes in attracting patronage has been held a beneficial use sufficient to preclude diversion from above for purposes of generating electric power.

Cases hold irrigation and the generation of electric power to be among the many instances of the beneficial use of water. Where legal title is in one person and the right to beneficial use is in another (as in the case of a homesteader who has complied fully with requirements for patent) he is deemed the beneficial owner of the property pending issuance of patent.

## CLASSIFICATION OF LANDS

Classification is characterization through the selection of some quality or feature, and therefore lands may be classified as pasture, grazing, timber, arable or mineral. It is determined by surface indications. Minerals may be hidden under any surface but a surveyor is not expected to explore for them that he may include or exclude reference to them in his reports. (8F Sup 407).

A surveyor's report that lands if cleared should be suitable for grazing, but at the time of the report were more valuable for timber, is, when accepted by the land office, a classification of the lands as non-mineral. (16 USCA 91 244 US 90).

## GAME

Migratory fish in navigable waters of a state, like game within

its borders, are classified as animals *ferae naturae*, the title to which so far as susceptible to assertion before possession is obtained, is held by the state in its sovereign capacity, in trust for all its citizens. As an incident of the assumed ownership the state may protect the species from extinction by exhaustive measures of capture. (95 P 808)

#### INTEREST IN LAND

An interest in land is the legal concern of a person in the thing or property or in the right to some of the benefits or uses from which the property is inseparable. (273 Nw121)

An appropriator's right pending determination of his application to use public lands was an "interest in real property" which he could protect by suit to determine conflicting claims. (119 P 34)

A right to take water from a well by reason of occupation of a dwelling house, and for the more convenient occupation thereof, is an interest in land. (22 WP)

Most cases hold a mortgage not to be an interest in land but mere security until foreclosure.

A conveyance of an interest in the oil, gas and minerals in and under a tract of land is a conveyance of an interest in the land. (220 SW623)

Whether such right resides in lessee or lessor, as royalty, it is an interest in land (49F (2nd) 76)

Fractional mineral rights constitute an interest in land (78 P692)

A leasehold interest constitutes an interest in land; a contract for sale of land has been held an interest in land,

as has been a written option to purchase; standing timber is an interest in the land which the state may convey, but upon conveyance of stumpage, to be removed at once, such stumpage becomes personal property as distinguished from an interest in land. An agreement to sell forest products is an interest in land.

#### NATURAL WATERS

Navigable waters within the meaning of 5 Stat. 726 giving District Courts jurisdiction over contracts and torts pertaining to vessels navigating between different ports in different states and ports upon the lakes and waters connecting said lakes is not to be understood in the same sense as natural waters but includes artificial waterways as well. (21 Fed Cas. 851, No. 12549)

#### NAVIGABLE WATERS

Actually navigable in fact.

Capacity for navigation or capable of being navigated to float boats, ships, or produce of the country.

#### RESERVED TO THE PEOPLE FOR COMMON USE.

Ancient traditions in property rights have never recognized that a private right and title can be acquired by a private person to wildlife in their natural state or to water in general. The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition. Rather rights to use are secured by the general laws of the state. In all



English and American legal systems ownership of water cannot be asserted, rights acquire only to the use of water. Once wildlife is captured and removed from their natural state possessory right accrues to the captor, provided that the wildlife was captured in conformity with provisions of law. (V.O.)

#### SEVERAL RIGHT

A several fishery is an exclusive right to fish which is derived from the owner of the soil. (39 W&P 89)

The right may attach as well to an arm of the sea where the tide ebbs and flows as to fresh water. (60 NY 56)

"Sole and exclusive fishery" were, after verdict, equivalent to a description of a several fishery. (30B 426)

#### SUSTAINED YIELD PRINCIPLE

As to forests, timber volume, rate of growth, and acreage of timber type can be determined with some degree of accuracy. For fish, for wildlife, and for some other replenishable resources such as huckleberries, as an example, it is difficult or even impossible to measure accurately the factors/<sup>by</sup> which a calculated sustained yield could be determined. Yet the term "sustained yield principle" is used in connection with management of such resources. When so used it denotes conscious application insofar as practicable of principles of management intended to sustain the yield of the resource being managed. That broad meaning is the meaning of the term as used in the Article.

#### WHITE ACT PROVISION 48 U.S.C.A. 222

That every such regulation made by the Secretary shall be of general application within the particular area to which it applies, and that no exclusive or general right of fishery

shall be granted therein, nor shall any citizen of the U. S. be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary.

With respect to traps, applications for sites within areas which the Secretary finds consistent with proper conservation, should be allotted in order of priority of time in applications among qualified applicants.

The word "exclusive" forbids not only a grant to a single person or corporation, but to any special group or number of people. (Hynes-Grimes Karluck Reservation)