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C/P No. 8a - State Land
Natural Resources
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- 4.) Jan. 30, 1956

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
ficial 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 taps. 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 polution, 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
Style & Drafting/Article VIII
January 30, 1956

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON STYLE AND DRAFTING

Hon. William A. Egan, President
Alaska Constitutional Convention

Dear President Egan:

Your Committee on Style and Drafting herewith presents its re-draft of the Article on Natural Resources for consideration by the Convention.

Respectfully submitted,

George Sundborg, Chairman
R. Rolland Armstrong
Edward V. Davis
Victor Fischer
Mildred R. Hermann
James J. Hurley
Maurice T. Johnson
George M. McLaughlin
Katherine D. Nordale

REPORT OF THE STYLE AND DRAFTING COMMITTEE

Constitutional Convention
X/Resources/8/a
Style and Drafting/Article VIII
January 29, 1956

CONSTITUTIONAL CONVENTION OF ALASKA

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

ARTICLE VIII

NATURAL RESOURCES

Statement
of Policy

1 Section 1. It is the policy of the State to en-
2 courage the settlement of its land and the development
3 of its resources by making them available for maximum
4 use consistent with the public interest.

General
Authority

5 Section 2. The legislature shall provide for the
6 utilization, development and conservation of all natural
7 resources belonging to the State, including land and
8 waters, for the maximum benefit of its people.

Common
Use

9 Section 3. Wherever occurring in their natural
10 state, fish, wildlife, and waters are reserved to the
11 people for common use.

Sustained
Yield

12 Section 4. Fish, forests, wildlife, grasslands and
13 all other replenishable resources belonging to the State
14 shall be utilized, developed and conserved on the sus-
15 tained yield principle, subject to preferences among
16 beneficial uses.

Facilities and Improvements 1 Section 5. The legislature may provide for facilities,
2 ties, improvements and services to assure greater utilization,
3 zation, development, reclamation and settlement of lands,
4 and to assure fuller utilization and development of the
5 fisheries, wildlife and waters.

State Public Domain 6 Section 6. Lands and interests therein, including
7 submerged and tidal lands, possessed or acquired by the
8 the State, and not used or intended exclusively for governmental
9 ornmntal purposes, constitute the state public domain.
10 The legislature shall provide for the selection of lands
11 granted to the State by the United States, and for the
12 administration of the state public domain.

Special Purpose Sites 13 Section 7. The legislature may provide for the acquisition
14 of sites, objects and areas of natural beauty
15 or of historic, cultural, recreational or scientific
16 value. It may reserve them from the public domain and
17 provide for their administration and preservation for the
18 use, enjoyment and welfare of the people.

Leases 19 Section 8. The legislature may provide for the
20 leasing of and the issuance of exploration permits to any
21 part of the public domain or interest therein, subject
22 to reasonable concurrent uses. Leases and permits shall
23 provide, among other conditions, for payment by the
24 party at fault for damage or injury arising from non-
25 compliance with terms governing concurrent use and for

1 forfeiture in the event of breach of conditions.

Sales and
Grants

2 Section 9. Subject to the provisions of this section,
3 the legislature may provide for the sale or grant of state
4 lands, or interests therein, and establish sales procedures.
5 All sales or grants shall contain reservations to the
6 State of all resources as may be required by Congress or
7 the State and shall provide for access to these resources.
8 Reservation of access shall not impair the owners' use,
9 prevent the control of trespass, nor preclude compensation
10 for damage.

Public
Notice

11 Section 10. No disposals or leases of state lands,
12 or interests therein, shall be made without prior public
13 notice and other safeguards of the public interest as
14 may be prescribed by law.

Mineral
Rights

15 Section 11. Discovery and appropriation shall be
16 the basis for establishing a right in those minerals
17 reserved to the State which, upon the date of ratification
18 of this constitution by the people of Alaska, were subject
19 to location under the federal mining laws. Prior discovery,
20 location and filing, as prescribed by law, shall establish
21 a prior right to these minerals and also a prior right to
22 permits, transferable licenses and leases for their
23 extraction and processing. Continuation of these rights
24 shall depend upon the performance of annual labor, the
25 payment of fees, rents or royalties, or upon other

1 requirements as may be prescribed by law. Surface uses
2 of land by a mineral claimant shall be limited to those
3 necessary for the extraction and basic processing of the
4 mineral deposits. The granting of deeds or patents to
5 mineral lands may be authorized by the State unless
6 prohibited by Congress. The provisions of this section
7 shall apply to all other minerals reserved to the State
8 which by law are declared subject to appropriation.

Leases and
Permits

9 Section 12. The legislature shall provide for the
10 issuance, types and terms of leases for coal, oil, gas,
11 oil shale, sodium, phosphate, potash, sulfur, pumice and
12 other minerals as may be prescribed by law. Leases and
13 permits giving the exclusive right of exploration for
14 these minerals for specific periods and areas, subject
15 to reasonable concurrent exploration as to different
16 classes of minerals, may be authorized by law. Like
17 leases and permits giving the exclusive right of prospect-
18 ing by geophysical, geochemical and similar methods for
19 all minerals may also be authorized by law.

Water
Rights

20 Section 13. All surface and subsurface waters re-
21 served to the people for common use, except mineral and
22 medicinal waters, are subject to appropriation. Priority
23 of appropriation shall give prior right. Except for
24 public water supply, an appropriation of water shall be
25 limited to stated purposes and subject to preferences

1 among beneficial uses, concurrent or otherwise, as
2 prescribed by law.

Access to
Navigable
Waters

3 Section 14. Free access to the navigable or public
4 waters of the State, as defined by law, shall not be
5 denied any citizen of the United States or resident of
6 the State, except that the legislature may by general law
7 regulate and limit such access for other beneficial uses
8 or public purposes.

No Exclu-
sive Right
of Fishery

9 Section 15. No exclusive right or special privilege
10 of fishery shall be created or authorized in the natural
11 waters of the State.

Protection
of Rights

12 Section 16. No person shall be involuntarily divested
13 of his right to the use of waters, his interests in lands,
14 or improvements affecting either, except for a
15 superior beneficial use or public purpose and then only
16 with just compensation and by operation of law.

Uniform
Application

17 Section 17. Laws and regulations governing the use
18 or disposal of natural resources shall apply equally to
19 all persons similarly situated with reference to the
20 subject matter and purpose to be served by the law or
21 regulation.

Private
Ways of
Necessity

22 Section 18. Proceedings in eminent domain may be
23 undertaken for private ways of necessity to permit
24 essential access for extraction or utilization of
25 resources. Just compensation shall be made for property

1 taken or for damages to other property rights.

Residual
Powers
(To General
Provisions)

2 Section 19. The enumeration of specified powers
3 shall not be construed as limitations on other implied
4 powers of the State in relation to the utilization,
5 development and conservation of natural resources, except
6 as specifically provided in this article.

State
Boundaries
(To General
Provisions)

7 Section 20. The State of Alaska shall consist of
8 all the territory, together with the territorial waters
9 appurtenant thereto, included in the Territory of Alaska
10 upon the date of ratification of this constitution by
11 the people of Alaska.

E N R O L L E D C O P Y

Constitutional Convention
X/Resources/8/A/Enrolled
January 19, 1956

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 and en-
2 courage settlement and development through the
3 maximum use and availability of its natural re-
4 sources consistent with the public interest.

State
Boundaries

5 Section 1. The State of Alaska shall consist
6 of all the territory, together with the terri-
7 torial waters appurtenant thereto, included in
8 the territory of Alaska upon the date of ratifica-
9 tion of this constitution by the people of Alaska.

General
Authority

10 Section 2. The State of Alaska shall provide
11 for the utilization, conservation and development
12 of all of the natural resources belonging to the
13 State, including land and waters for the maximum
14 benefit of its people.

Sustained Yield 1 Section 3. Forests, fish, wildlife, grass-
2 lands and other replenishable resources belonging
3 to the State shall be administered, utilized and
4 maintained on the sustained yield principle,
5 subject to preferences among beneficial uses.

General Reservations 6 Section 4. Fish, wildlife, and waters
7 wherever occurring in their natural states, are
8 reserved to the people for common use.

General Auth- 9 Section 5. Facilities, improvements and
orization for 10 services may be provided to assure greater
Facilities, 11 utilization, development, reclamation and settle-
Improvements 12 ment of lands, and fuller utilization and develop-
and Services 13 ment of the fisheries, wildlife and waters.

Uniform 14 Section 6. Laws and regulations governing
Application 15 the use or disposal of natural resources shall
16 apply equally to all persons similarly situated
17 with reference to the subject matter and purpose
18 to be served by the law or regulation.

Special 19 Section 7. Sites, objects and areas of
Acquisi- 20 natural beauty or of historic, cultural,
tions and 21 recreational or scientific interest may be
Purposes 22 acquired, preserved, and administered for the
23 use, enjoyment and welfare of the people,
24 under the laws of the State, and may be reserved
25 from the State public domain.

State
Public
Domain

1 Section 8. Lands and interests therein,
2 including submerged and tidal lands, possessed
3 or acquired by the State, and not used or in-
4 tended exclusively for governmental purposes,
5 constitute the State public domain.

6 The Legislature shall make provision for
7 the selection of lands granted to the State by
8 the United States, and for the administration
9 of the State public domain.

Leases

10 Section 9. The Legislature may provide for
11 the leasing of and the issuance of exploration
12 permits on any part of the public domain, or
13 interests therein, subject to reasonable con-
14 current uses.

15 Leases shall provide, among other conditions,
16 for payment by the party at fault for damage or
17 injury arising from noncompliance with terms
18 governing concurrent use and for forfeiture in
19 the event of breach of conditions.

Sales and
Grants

20 Section 10. The Legislature may provide
21 for the sale or grant of State lands or interests
22 therein, and establish sales procedures subject
23 to the following conditions:

24 All sales or grants of State land shall
25 contain such reservations to the State of all

1 resources as are required by the Congress, or
2 the State, and shall provide for access thereto;
3 except that the reservation of access shall not
4 impair the owners' use, prevent the control of
5 trespass, nor preclude compensation for damage.

Public
Notice
and Other
Safeguards

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

Mineral
Rights

11 Section 12. Discovery and appropriation
12 shall be the basis for establishing a right in
13 those minerals subject to location under the
14 Federal mining laws in force upon the date of
15 ratification of this Constitution by the people
16 of Alaska and thereafter reserved to the State,
17 as well as in all other metallic minerals re-
18 served to the State. Prior discovery, location
19 and filing shall, as prescribed by law, give
20 prior right to such minerals and to issuance of
21 permits, and transferable licenses, leaseholds,
22 deeds, or patents if authorized by the Congress,
23 and by the State, for the extraction thereof.
24 Except as title to mineral lands shall have been
25 conveyed by the State, continuance of such right

1 shall depend upon performance of annual labor, on
2 payment of fees, rents, or royalties, or such
3 other requirements as may be prescribed by the
4 Legislature.

5 Surface use of such lands, by the mineral
6 claimant, shall be limited to those necessary to
7 either the extraction or basic processing of
8 mineral deposits.

9 The Legislature shall provide for the
10 issuance, type, and terms of leases for coal,
11 oil, gas, oil shale, sodium, phosphate, potash,
12 sulfur, pumice, and other minerals as may be
13 prescribed by law.

14 Leases and permits giving exclusive right
15 of exploration for specific periods and areas,
16 subject to reasonable concurrent exploration as
17 to different classes of minerals, may be
18 authorized for exploration conducted for coal,
19 oil, gas, oil shale, sodium, phosphate, potash,
20 sulfur, pumice and other minerals as may be
21 prescribed by law. Like permits and leases
22 may also be authorized by law for the use of
23 geophysical, geochemical and similar methods of
24 prospecting for all minerals.

Water
Rights

1 Section 13. All surface and subsurface
2 waters reserved to the people for common use, shall
3 except mineral and medicinal waters, be
4 subject to appropriation. Priority of appropria-
5 tion shall give prior right. An appropriation
6 of water, except for public water supply, shall
7 be limited to stated purposes and subject to
8 preferences among beneficial uses, concurrent
9 or otherwise, as prescribed by the Legislature.

Access to
Navigable
Waters

10 Section 14. Free access to the navigable or
11 public waters of the State as defined by the Legis-
12 lature shall not be denied any resident of Alaska
13 or citizen of the United States, except that the
14 State may by general law regulate and limit such
15 access for other beneficial or public purposes.

No Exclu-
sive Right
of Fishery

16 Section 15. There shall be no exclusive
17 right or special privilege of fishery created or
18 authorized in the natural waters of the State.

Divestment
of Rights

19 Section 16. No person shall be involuntarily
20 divested of his right to use of waters, his
21 interests in lands, or improvements affecting
22 either, except for a superior beneficial or
23 public use and then only with just compensation
24 and by operation of law.

Private
Ways of
Necessity

1 Section 17. Proceedings in eminent domain
2 may be undertaken for private ways of necessity
3 to permit essential access for extraction or
4 utilization of resources, and just compensation
5 for such taking, as well as for the taking of or
6 damages to inferior property rights, shall be
7 made.

Residual
Powers

8 Section 18. The enumeration of specified
9 powers shall not be construed as limitations on
10 other implied powers of the State in relation
11 to the utilization, development and conservation
12 of natural resources, except as specifically
13 provided herein.

McKay
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

Ada B. Wien

Leonard King

B. D. Stewart

Peter L. Reader

Barrie M. White, Jr.

Truman C. Emberg

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

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**.

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

Water
Rights

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 Ex-
clusive
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.

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 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 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.