Mr. President, although there may be some that can top me, I have three children and I have eight grandchildren, and I am just as much concerned about their futures as any other Member in this body. But to indicate, by inference at least, that if I do not go along with their draconian budget proposals, that I think are unwise and unfair, I am not concerned about my children and grandchildren, is just a little bit too much for me to swallow.

I was Governor of Nebraska for 8 years. As Governor, I balanced the budget each and every year, as did my colleague, Senator KERREY, from Nebraska, who is on the floor, who followed me by a few years. He balanced the budget each and every year. So I simply say, probably, from the standpoint of history, I was balancing budgets in government before some people had ever been elected to public office.

I follow that up by saying I think the record of this Senator has been very clear. All the time I have served the public of Nebraska and all the time I have had the opportunity to serve the people of Nebraska and the people of the Nation as a whole as a U.S. Senator, I have put forth many, many efforts, of which the latest was to vote for the Republican-sponsored constitutional amendment to balance the budget in 7 years. While I agree with that principle, that does not mean, nor should anyone necessarily construe anything, just because I voted for a constitutional amendment to balance the budget that was primarily supported and advanced by the Republicans with the help of nearly enough Democrats to pass it. I think my credentials of being a dedicated conservative with regard to fiscal policy are well established.

I, too, listened with great interest to the remarks made by the President of the United States today. I did not, strangely enough, come away from listening to those remarks with the same conclusions as my friend and colleague from Indiana. I thought the President of the United States today laid it on the line. I may concede that possibly he may have gone a little too far in his rhetoric, but compared with some of the rhetoric I have heard from the other side of the aisle on the Senate floor in the last few days, I would excuse the President for any oversteps that he had made in that regard.

I think it is clear to say, though, that the President of the United States said today that during his term of office he has essentially cut the annual deficit in half. That is more than has been done for a long, long time. So, at least in our criticisms of the present President of the United States, for whatever reason, we should realize and recognize that, under his leadership, we have cut the deficit and not continued to raise it.

I would simply point out, I want to share and be one of the workhorses in cooperation, in full cooperation, when I can, with my colleagues on the Republican side of the aisle to do something about the skyrocketing national debt of the United States of America. I am fearful all too few of our citizens fully understand the difference between the annual deficit and the national debt, the latter being, of course, with additions each and every year, the shortfall we have been going through here, unfortunately, for a long, long time with regard to spending more than we take in.

In that regard, though, a little history might be in order. The last Democratic President of the United States that we had before the present occupant of that high office was former Governor Carter of the State of Georgia. I would cite—and I think the record will back me up—when President Carter left office the national debt of the United States was under $1 trillion.

What happened in the intervening years when we had Republican Presidents of the United States? From 1980, when President Carter left office and the debt was under $1 trillion, some 12 years later, when President Clinton took office, the national debt had skyrocketed fivefold, from under $1 trillion to $4.5 trillion.

Some would argue during most of that time there was Democratic control of both Houses of the Congress, and that is true. But the facts of the matter are, had those Republican Presidents in the years 1980 to 1992 stood up and exercised their veto, as this President has stood up strongly and said he will exercise his veto, the national debt would not have taken the jump and be as troublesome as it is today.

The problem we are in today is not all the responsibility of the Democrats or all the responsibility of the Republicans. Certainly, the Democrats, I think, are, by our traditions, by the record that we have established, as much concerned about the children of America in the future as anyone else. I happen to think you will see a growing portion of both Democrats and Republicans in the U.S. Senate—and hopefully in the House of Representatives—anxious to come to some workable understanding, some framework where we can, indeed, balance the Federal budget in 7 years.

I am continuing to work toward that end. Meanwhile, back at the ranch, I hope once again we can contain our rhetoric just a little bit and give the leadership of the House and Senate an opportunity to come to some resolution of the crisis which faces us today.

I yield the floor.

## ANWR PROVISION OF THE RECONCILIATION BILL

Mr. MURKOWSKI. Mr. President, with the passage of the conference report on the reconciliation bill last night I thought there should be an explanation of the provision on the leasing of the coastal plain of the Arctic National Wildlife Refuge for oil and gas exploration and production. The Senate and the House versions of the budget reconciliation had responsible provisions for the leasing of the area. However, there was a substantial difference in the approach and language in the two measures. As chairman of the Energy and Natural Resources Committee I thought it would be important to outline the intent of the conferees on the ANWR provision. I ask unanimous consent that a section-by-section analysis which provides a detailed description of the ANWR provision, and other material, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANAYLSIS

*Section 5312. Short Title.*

This section adopts the chapter from section 5201 of the Senate bill. The purpose of this section is self-explanatory.

*Section 5322. Definitions.*

This section adopts the language of section 5203 of the Senate bill with minor modifications. The intent of this section is self-explanatory.

*Section 5333. Leasing Program for Lands Within the Coastal Plain.*

*Subsection 5333(a). Authorization.*

Subsection 5333(a) adopts the language in section 5204(a) of the Senate bill with minor modifications. This subsection directs the Secretary and other appropriate Federal officers and agencies to take such actions as are necessary to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain. In doing so, the Secretary is to ensure receipt of the fair market value of the mineral resources to be leased. The subsection requires the Secretary to ensure that activities will result in ''no significant adverse effect on fish and wildlife, their habitat, and the environment.'' Operations on the Coastal Plain must also be conducted using the ''best commercially available technology for oil and gas exploration, development and production.''

This ''environmental standard'' is based on the provisions of Title VII of S. 1220, authored by Senator Johnston and reported by the Senate Energy and Natural Resources Committees on June 5, 1991. This is the strongest standard ever imposed on Federal oil and gas activities. The companion provision of the House bill was based on the 1981 oil and gas leasing authorization for the National Petroleum Reserve-Alaska. Oil and gas leases have been issued under this authorization and standard. It has worked well to protect the environment, land and fish and wildlife on the North Slope.

In making its decision to authorize and direct an oil and gas leasing program in the Coastal Plain, the Conferees find that oil and gas activities authorized and conducted on the Coastal Plain pursuant to the chapter so as to result in no significant adverse effect on fish and wildlife, their habitat, and the environment, are compatible with the major purposes for which the Arctic National Wildlife Refuge was established. No further findings, decisions or reviews are required to implement this Congressional authorization. The Conferees specifically find that no further determination of compatibility by the Secretary under the National Wildlife Refuge System Administration Act is necessary to implement this Congressional authorization and direction. The Conferees believe the

provisions of the conference report in general are very clear on this point. Subsection (c) of this section again reiterates this policy and Congressional intent on this matter.

*Subsection 5333(b). Repeal*

Subsection 5333(b) adopts the language in section 5204(b) of the Senate bill and is substantially similar to section 9002(f) of the House bill. This subsection repeals the prohibitions and limitations on leasing and development of oil and gas resources on lands within the Coastal Plain set forth in section 1003 of the Alaska National Interest Lands Conservation Act of 1980, 16 U.S.C. §3143.

*Subsection 5333(c). Compatibility*

Subsection 5333(c) adopts the language in section 9002(c) of the House bill. This subsection provides that the oil and gas activities authorized by this chapter in the Coastal Plain are compatible with the purposes for which the Arctic National Wildlife Refuge was established, and that no further findings or decisions are required to implement this determination. This subsection recognizes the wealth of study and review that has already occurred pursuant to environmental, natural resources, and other statutes. Based on these reports and on the concrete experience of environmental safety of on-shore development in neighboring Prudhoe Bay and other large, producing oil and gas fields on the North Slope of Alaska, the Conferees find that development of the 1002 area is consistent with the conservation purposes for which the Arctic National Wildlife Refuge was established. This subsection reflects the intent of the Conferees that the activities authorized in this chapter commence as soon as possible, without any intervening delay that might be occasioned by further findings or decisions. This provision is, of course, repetitive of the purposes of this chapter as expressed in other sections.

*Subsection 5333(d). Sole authority*

Subsection 5333(d) adopts the language of subsection 5204(c) of the Senate bill with modifications. This subsection provides that this chapter and the authorities referenced therein shall be the sole authority for oil and gas leasing on the Coastal Plain. This chapter directs a specific program of environmentally responsible leasing for the Coastal Plain. The Conferees intend that this program be carried forward and implemented in good faith by the Secretary and the Administration. The purposes and directives of this chapter are not to be frustrated or delayed by other provisions of existing law or the provisions of any treaty or international agreement to which the United States is a party. The subsection also explicitly provides that this chapter does not preempt State and local regulatory authority. The State of Alaska and the North Slope Borough (NSB) have a long record of competent and environmentally responsible regulation of oil and gas activities on the North Slope. It is the Conferees clear intent that the State and the NSB shall continue to exercise their existing regulatory responsibilities to ensure good land use planning, environmental protection, proper fish and wildlife management, and continuation of important subsistence activities.

*Subsection 5333(e). Federal land*

Subsection 5333(e) adopts the language of subsection 5204(d) of the Senate bill. This subsection provides that the Coastal Plain shall be considered ''Federal land'' for purposes of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). As provided in section 304 of FOGRMA, 30 U.S.C. §1753, that Act applies only to the extent it is not inconsistent with this chapter. In particular, the penalty provisions of sections 109–112 of the Act, 30 U.S.C. §§1719–1722, are incorporated by reference by this subsection and apply to the activities authorized by this chapter.

*Subsection 5333(f). Special areas*

Subsection 5333(f) adopts the language of subsection 5207(d) of the Senate bill with modifications. This subsection permits the Secretary to close up to 45,000 acres of the Coastal Plain to leasing if, after consulting with the State of Alaska and the North Slope Borough, he determines that the areas to be closed require special management and regulatory protection due to unique character or interest. The Conference Committee contemplates that the Secretary may use this provision to provide any special protection needed for areas such as the Sadlerochit Hot Springs. The House bill authorized 30,000 acres and the Senate 60,000 acres. This provision is a compromise on the acreage. This subsection permits the Secretary to issue oil and gas leases in such Special Areas provided that the protection needed can be attained by limiting surface use and occupancy, but permitting the use of the very significant advances made in recent years in horizontal drilling technology.

*Subsection 5333(g). Limitation on closed areas*

Subsection 5333(g) adopts language from subsection 9002(g)(3)(B) of the House bill with minor modifications. This subsection provides that the Secretary's sole authority to close lands within the Coastal Plain to oil and gas leasing and to exploration, development, and production is that set forth in this chapter. The language provides, and the Conferees intend, that only the provisions of the chapter may be used by the Secretary to close Coastal Plain lands to the activities authorized by this chapter. No other provision of law or international agreement may be used by the Secretary for this purpose.

*Subsection 5333(h). Conveyance*

Subsection 5333(h) adopts language from subsection 9002(j) of the House bill with minor modifications. The subsection directs the Secretary to convey certain surface interests in land to Kaktovik Inupiat Corporation in order to fulfill the corporation's outstanding legal entitlement under section 12 of the Alaska Native Claims Settlement Act (ANCSA). The Secretary must also convey the subsurface interests in these lands to Arctic Slope Regional Corporation in order to fulfill the August 9, 1983 agreement between Arctic Slope Regional Corporation and the United States of America. These lands have been previously identified and the United States has a legal obligation to complete the transfer of chapter in accordance with the provisions of ANCSA and the 1983 Agreement. The conveyance of these lands will remove clouds on title of lands and clarify land ownership patterns within the Coastal Plain, maximizing federal revenues by ensuring the availability of federal lands for leasing.

*Section 5334. Rules and regulations*

*Subsection 5334(a). Promulgation.*

Subsection 5334(a) adopts the language of section 5205(a) of the Senate bill. This subsection provides that the Secretary shall prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of this chapter, including rules and regulations relating to protection of the environment and resources of the Coastal Plain. Such rules and regulations shall be promulgated within fourteen (14) months after the date of enactment of this chapter.

In the formulation and promulgation of rules and regulations under this chapter, the Conferees expect that the Secretary will request and give due consideration to the views of appropriate officials of the State of Alaska, the North Slope Borough, and the Village of Kaktovik, and, where consistent with this chapter and the laws and policy of the United States, the views of others who have legitimate interests in the activities authorized and the manner in which they are carried out.

The Conferees also expect that the Secretary shall prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures in a manner designed to ensure that the activities undertaken in the Coastal Plain and authorized by the chapter are conducted in a manner consistent with the purposes and the environmental requirements of this chapter. In preparing and promulgating regulations, lease terms, conditions, restrictions, prohibitions, and stipulations under this chapter, the Conferees recommend and expect that the Secretary will consider:

(1) the environmental protection standards which governed the initial Coastal Plain seismic exploration program (50 C.F.R. §37.31–33);

(2) the land use stipulations for exploratory drilling on the KIC-ASRC private lands which are set forth in Appendix 2 of the August 9, 1983 Land Exchange Agreement between Arctic Slope Regional Corporation and the United States; and

(3) the operational stipulations for Koniag ANWR Interest lands contained in the draft Agreement between Koniag, Inc. and the United States of America on file with the Secretary of the Interior on December 1, 1987.

The Conferees further expect that the proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program authorized by this chapter will require compliance with applicable provisions of Federal, State and local environmental law and may also require compliance with:

(1) the safety and environmental mitigation measures set forth in items 1 through 29 at pages 167 through 169 of the ''Final Legislative Environmental Impact Statement'' (April 1987) on the Coastal Plain;

(2) seasonal limitations on exploration, development and related activities, where reasonably necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning and migration;

(3) limitations on exploration activities, except for surface geological studies, to the period between approximately November 1 and May 1, and requirements that exploration activities will be supported by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, and air transport methods, but that such exploration activities may be permitted at other times if special circumstances exist necessitating that exploration activities be conducted at other times of the year and such exploration will have no significant adverse effect on fish and wildlife, their habitat, and the environment of the Coastal Plain;

(4) appropriate design safety and construction standards for pipelines and any access and service roads to avoid—

(A) adverse effects upon the passage of migratory species, including caribou; and

(B) adverse effects upon the flow of surface water by requiring the use of culverts, bridges and other structural devices;

(5) any reasonable prohibitions on public access and use on pipeline access and service roads;

(6) appropriate reclamation and rehabilitation requirements, consistent with the standards set forth in this chapter, requiring the removal from the Coastal Plain of all oil and gas development and production facilities, structures and equipment upon completion of oil and gas production operations, but that the Secretary may exempt from these

requirements those facilities, structures or equipment which the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and which are donated to the United States for that purpose;

(7) appropriate and reasonable restrictions on access by modes of transportation;

(8) appropriate and reasonable restrictions on necessary sand and gravel extraction;

(9) consolidation of facility siting;

(10) appropriate and reasonable restrictions on use of explosives;

(11) the avoidance, to the extent practicable, of springs, streams and river systems; protection of natural surface drainage patterns, wetlands, and riparian habitats; and reasonable regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling;

(12) appropriate and reasonable restrictions on air traffic-related activities which might disturb fish and wildlife;

(13) accepted industry standards for the treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling muds and cuttings, if any, and domestic wastewater, in accordance with applicable Federal and State environmental law;

(14) applicable fuel storage and oil spill contingency planning;

(15) reasonable research, monitoring and reporting requirements;

(16) appropriate field crew environmental briefings;

(17) avoidance of any reasonably anticipated significant adverse effects upon subsistence hunting, fishing, and trapping by subsistence users;

(18) applicable air and water quality standards;

(19) appropriate seasonal and safety zone designations around oil and gas well sites within which subsistence hunting and trapping would be limited;

(20) reasonable stipulations for protection of cultural and archeological resources; and

(21) other protective environmental stipulations, restrictions, terms, and conditions which are reasonably deemed necessary by the Secretary and based upon prior regulatory requirements.

The Conference Committee further expects that the regulations will also provide for appropriate plans to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of Coastal Plain oil and gas resources. Any such plans shall have the following objectives:

(1) avoiding unnecessary duplication of facilities and activities;

(2) encouraging consolidation of common facilities and activities;

(3) locating or confining facilities and activities to areas which will minimize impact on fish and wildlife, their habitat, and the environment;

(4) utilizing existing facilities wherever practicable; and

(5) enhancing compatibility between wildlife values and development activities.

*Subsection 5334(b). Revision of regulations*

Subsection 5334(b) adopts the language of subsection 5205(b) of the Senate bill. This subsection provides that the Secretary shall periodically review and, where and if appropriate, revise the rules and regulations to reflect new and significant data and information.

*Section 5335. Adequacy of the Department of the Interior's legislative environmental impact statement*

Section 5335 adopts language from section 5206 of the Senate bill with modifications. This section provides that the ''Final Legislative Environmental Impact Statement'' (April 1987) on the Coastal Plain, prepared by the Department of the Interior pursuant to section 1002 of the ANILCA and section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), is found by the Congress to be adequate to satisfy the legal and procedural requirements under NEPA with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of the leasing program, to conduct the first lease sale authorized by the chapter, and, in addition, to grant all rights-of-way and easements to carry out the purposes of this chapter.

Except as provided in this section, nothing in this chapter shall be considered or construed as otherwise limiting or affecting in any way the applicability of section 102(2)(C) of the National Environmental Policy Act of 1969 to other phases of exploration, development and production and related activities conducted under or associated with the leasing program authorized by this chapter.

*Section 5336. Lease sales*

*Subsection 5336(a). Lease sales*

Subsection 5336(a) adopts language from section 5207(a) of the Senate bill. This subsection provides that lands in the Coastal Plain may be leased pursuant to the provisions of this chapter to any person who is qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act, as amended.

*Subsection 5336(b). Procedures*

Subsection 5336(b) adopts language from section 5207(b) of the Senate bill with modifications. This subsection provides that the Secretary shall, by regulation, establish procedures for nominating and designating areas to be included or excluded from the lease sale. In reviewing nominations and considering lands to be offered for leasing, the Secretary shall engage in periodic consultation with the State of Alaska, the North Slope Borough and other affected local governments in Alaska, prospective oil and gas lessees, and representatives of other individuals or organizations engaged in activity in or on the Coastal Plain, including those engaged in subsistence uses.

*Subsection 5336(c). Lease sales on coastal plain*

Subsection 5336(c) adopts language from section 5207(c) of the Senate bill with modifications based on the House bill. This subsection provides that the Secretary shall, by regulation, provide for oil and gas lease sales of the lands located within the Coastal Plain. For the first lease sale, the Secretary shall offer for lease those acres receiving the greatest number of nominations, but not less than 200,000 and no more than 300,000 acres shall be offered for sale by competitive bid. If the total acreage nominated is less than 200,000 acres, the Secretary shall include in such sale any other acreage which he believes has the highest resource potential, but in no event shall more than 300,000 acres of the Coastal Plain be offered in any such sale. Thereafter, no less than 200,000 acres of the Coastal Plain may be leased in any one lease sale. The initial lease sale shall be held within twenty (20) months of the date of enactment of this chapter. The second lease sale shall be held 24 months after the initial sale, with additional sales conducted no later than every twelve (12) months thereafter so long as sufficient interest in development exists to warrant the conduct of such competitive lease sales.

*Section 5337. Grant of leases by the Secretary*

*Subsection 5337(a). In general*

Subsection 5337(a) adopts language from subsection 5208(a) of the Senate bill. This subsection provides that the Secretary is authorized to grant to the highest responsible qualified bidder by sealed competitive cash bonus bid any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary and such royalty as contained in the lease. Royalties shall be not less than 12½ per centum in amount or value of the production removed or sold from the lease.

*Subsection 5337(b). Antitrust review*

Subsection 5337(b) adopts language from subsection 5208(b) of the Senate bill. This subsection provides that following each notice of a proposed lease sale and before the acceptance of bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to conduct an antitrust review of each lease sale.

*Subsection 5337(c). Subsequent transfers*

Subsection 5337(c) adopts language from subsection 5208(c) of the Senate bill. This subsection provides that no lease issued under the chapter may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with, and give due consideration to the views of, the Attorney General.

*Subsection 5337(d). Immunity*

Subsection 5337(d) adopts language from subsection 5208(d) of the Senate bill. This subsection provides that nothing in the chapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law. It is the intent of the conferees that the findings of any antitrust review shall not create any immunity or defenses in any private or government antitrust actions.

*Subsection 5337(e). Definitions*

Subsection 5337(e) adopts language from subsection 13106(e) of the Senate bill. This subsection sets forth definitions of ''antitrust review'' and ''antitrust laws.''

*Section 5338. Lease terms and conditions*

Section 5338 adopts language from section 5209 of the Senate bill with modifications based on the House bill. Paragraph (1) provides that lease tracts shall consist of a compact area not to exceed 5,760 acres, or 9 surveyed or protracted sections, whichever is larger.

Paragraph (2) provides that oil and gas leases shall be for an initial period of ten years and shall be extended for so long thereafter as oil or gas is produced in paying quantities from the lease or unit area to which the lease is committed or for so long as drilling or reworking operations, in accordance with law and as approved by the Secretary, are conducted on the lease or unit area.

Paragraph (3) provides that leases shall require the payment of royalty of not less than 12½ per centum in amount or value of the production removed or sold from the lease or unit area.

Paragraph (4) provides that exploration activities pursuant to any lease issued or maintained under this chapter shall be conducted in accordance with an exploration plan or a revision of such plan approved by the Secretary. Prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this chapter, the holder of the lease will submit an exploration plan to the Secretary for approval. The Secretary shall act expeditiously in reviewing such plans. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of

lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if the Secretary finds that such plan is consistent with the provisions of this chapter and other applicable law.

Paragraph (5) requires that all development and production pursuant to a lease issued or maintained pursuant to a lease issued or maintained pursuant to this chapter shall be conducted in accordance with an approved development and production plan. Such plans may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if the Secretary finds that such plan is consistent with the provisions of this chapter and other applicable law.

The Conferees further expect that the Secretary, in the regulations promulgated pursuant to the chapter, will require lessees to include in any exploration or development plans submitted, appropriate and relevant information concerning the plan.

The Conferees also expect that the Secretary will provide in the regulations for the expeditious consideration of any exploration or development plans submitted. After an exploration or development and production plan is submitted for approval, the regulations should provide that the Secretary shall promptly publish notice of the submission and availability of the text of the proposed plan in the Federal Register and a newspaper of general circulation in the State of Alaska and provide an opportunity for written public comment. The Conferees expect that, within one hundred twenty days after receiving an exploration or development and production plan, the Secretary will determine, after taking into account any comments received, whether the activities proposed in the plan are consistent with this chapter and other applicable provisions of Federal law. The Secretary, as a condition of approving any plan under this section may require modifications to the plan that the Secretary determines necessary to make the plan consistent with this chapter. The Secretary may assess reasonable fees or charges for the reimbursement of all necessary and reasonable costs associated with reviewing the plan and monitoring its implementation. The Secretary may also require such periodic reports regarding the carrying out of the drilling and related activities.

Paragraph (6) provides for the posting of bond by lessees as required by section 13108.

Paragraph (7) provides that the Secretary may close, on a limited seasonal basis, portions of the Coastal Plain to protect calving during years caribou and other species use such areas.

Paragraph (8) provides that an oil and gas lease shall contain such rental and other reasonable fees as the Secretary may prescribe at the time of offering the area for lease.

Paragraph (9) provides that the Secretary may direct or assent to the suspension of operations and production under any lease granted under the terms of the chapter in the interest of conservation of the resource or where there is no available system to transport the resource. If such a suspension is directed or assented to by the Secretary, any payment of rental prescribed by such lease shall be suspended during such period of suspension of operations and production, and the term of the lease shall be extended by adding any such suspension period thereto.

Paragraph (10) provides that whenever the owner of a nonproducing lease fails to comply with any of the provisions of the chapter, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this chapter, the lease may be canceled by the Secretary if the default continues for a period of more than thirty (30) days after mailing of notice by registered letter to the lease owner at the lease owner's record post office address.

Paragraph (11) provides that whenever the owner of any producing lease fails to comply with any of the provisions of the chapter, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this chapter, the lease may be forfeited and canceled by any appropriate proceeding brought by the Secretary in any United States district court having jurisdiction under the provisions of this chapter.

Paragraph (12) provides that cancellation of a lease under this chapter shall in no way release the owner of the lease from the obligation to provide for reclamation of the lease site or other area disturbed by the lessees activities.

Paragraph (13) provides that the lessee may, at the discretion of the Secretary, be permitted at any time to make written relinquishment of all rights under any lease issued pursuant to this chapter. The Secretary shall accept the relinquishment by the lessee of any lease issued under this chapter where there has not been surface disturbance on the lands covered by the lease.

Paragraph (14) provides that, for the purpose of conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof, and in order to avoid the unnecessary duplication of facilities, to protect the environment of the Coastal Plain, and to protect correlative rights, the Secretary shall require, to the greatest extent practicable, that lessee unite with each other in collectively adopting and operating under a cooperative or unit plan of development for operation of such pool, field, or like area, or any part thereof. The Secretary is also authorized and directed to enter into such agreements as are necessary or appropriate for the protection of the United States against drainage.

Paragraph (15) requires that the holder of a lease or leases on lands within the Coastal Plain shall be fully responsible and liable for the reclamation of any lands within the Coastal Plain and any other Federal lands adversely affected in connection with exploration, development, or transportation activities on a lease within the Coastal Plain by the holder of a lease or as a result of activities conducted on the lease by any of the leaseholder's subcontractors or agents.

Paragraph (16) provides that the holder of a lease may not delegate or convey, by contract or otherwise, this reclamation responsibility and liability to another party without the express written approval of the Secretary.

Paragraph (17) provides that the leases issued pursuant to this chapter shall include the standard of reclamation of lands required to be reclaimed under this chapter, to a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production activities, or upon application by the lessee, to a higher or better use as approved by the Secretary. In the case of roads, drill pads and other gravel-foundation structures, reclamation and restoration shall be to a condition as closely approximating the original condition of such lands as is feasible using the best commercially available technology. Reclamation of lands shall be conducted in a manner that will not itself impair or cause significant adverse effects on fish or wildlife, their habitat, subsistence uses or the environment.

Paragraph (18) requires that the leases issued pursuant to this chapter contain terms and conditions relating to protection of fish and wildlife, their habitat, subsistence uses and the environment to avoid any significant adverse effects.

Paragraph (19) provides that the leaseholder, its agents, and its contractors use their best efforts to provide a fair share, as determined by the level of obligation described in the 1974 agreement implementing section 29 of the Federal Agreement and Grant of Right of Way for the Operation of the Trans-Alaska Pipeline, of employment and contracting for Alaska Natives and Alaska Native Corporations from throughout the State.

The Conference Committee members are fully aware of the Department of the Interior's failure to monitor and enforce section 29 of the 1974 Right of Way Agreement for TAPS. The Committee intends that the Department as well as lessees use all best efforts to enforce and comply with this statutory provision and directed lease term and condition of leases and other Coastal Plain authorizations.

Paragraph (20) provides that the leases issued pursuant to this chapter shall contain such other provisions as the Secretary determines necessary to ensure compliance with the provisions of this chapter and the regulations issued thereunder.

*Section 5339. Bonding requirements to ensure financial responsibility of lessee and avoid federal liability*

*Subsection 5339(a). Requirement*

Subsection 5339(a) adopts language from subsection 5210(a) of the Senate bill. This subsection sets forth the requirement for a bond, surety or other financial arrangement to ensure reclamation of the lease tract and restoration of any lands or surface waters adversely affected by lease operations. The provisions of the subsection are self-explanatory.

*Subsection 5339(b). Amount*

Subsection 5339(b) adopts language from subsection 5210(b) of the Senate bill. This subsection sets forth the requirements relating to the amount of the bond, surety, or other financial arrangement. The provisions of the subsection are self-explanatory.

*Subsection 5339(c). Adjustment*

Subsection 5339(c) adopts language from subsection 5210(c) of the Senate bill. This subsection provides that in the event that an approved exploration or development and production plan is revised, the Secretary may adjust the amount of the bond, surety or financial arrangement to conform to such modified plan.

*Subsection 5339(d). Duration*

Subsection 5339(d) adopts language from subsection 5210(d) of the Senate bill. This subsection provides that the responsibility and liability of the lessee and its surety under the bond, surety or other financial arrangement shall continue until such time as the Secretary determines that there has been compliance with the terms and conditions of the lease and all applicable law.

*Subsection 5339(e). Termination*

Subsection 5339(e) adopts language from subsection 13108(e) of the Senate bill. This subsection provides that within 60 days after determining that there has been compliance with the terms and conditions of the lease and all applicable laws, the Secretary, after consultation with affected Federal and State agencies, shall notify the lessee that the period of liability under the bond, surety or financial arrangement has been terminated.

*Section 5340. Oil and gas information*

Section 5340 adopts language from section 5211 of the Senate bill. This section sets forth requirements relating to oil and gas information. The provisions of the section are self-explanatory.

*Section 5341. Expedited judicial review*

Section 5341 adopts language from section 5212 of the Senate bill. This section addresses judicial review. It requires that all challenges to this chapter or to any action of the Secretary under this chapter, including the promulgation of the regulations under this chapter, be brought in a timely manner and not be raised by a defendant for review during an enforcement proceeding. The remaining provisions of the section are self-explanatory.

*Section 5342. Rights-of-way across the Coastal Plain*

Section 5342 adopts language from section 5213 of the Senate bill. This section provides that, notwithstanding Title XI of ANILCA, the Secretary is authorized and directed to grant under section 28, subsections (c) through (t) and (v) through (y) of the Mineral Leasing Act of 1920, rights-of-way and easements across the Coastal Plain for the transportation of oil and gas under such terms and conditions as may be necessary so as not to result in a significant adverse effect on the fish and wildlife, their habitat, subsistence resources and users and the environment of the Coastal Plain. Such terms and conditions shall include requirements that facilities be sited or modified so as to avoid unnecessary duplication for roads and pipelines. The comprehensive oil and gas leasing and development regulations issued pursuant to this chapter shall include provisions regarding the granting of rights-of-way across the Coastal Plain. Section 28 is not, of course, applicable to privately owned lands located within the Coastal Plain, which have a guaranteed right of access to private lands under section 1110 of ANILCA.

*Section 5343. Enforcement of safety and environmental regulations to ensure compliance with terms and conditions of lease*

*Subsection 5343(a). Responsibility of the secretary*

Subsection 5343(a) adopts language from section 5214(a) of the Senate bill. This subsection provides that the Secretary shall diligently enforce all regulations, lease terms, conditions, restrictions, prohibitions, and stipulations promulgated pursuant to this chapter.

*Subsection 5343(b). Responsibility of holders of lease*

Subsection 5343(b) adopts language from section 5214(b) of the Senate bill. This subsection sets forth responsibilities of holders of a lease. The provisions of this subsection are self-explanatory.

*Subsection 5343(c). On-site inspection*

Subsection 5343(c) adopts language from section 5214(c) of the Senate bill. This subsection provides that the Secretary shall promulgate regulations to provide for on-site inspection of facilities. The provisions of this subsection are self-explanatory.

*Section 5344. New revenues*

Section 5344 adopts language from section 5215 of the Senate bill with modifications. Section 5344 provides that the distribution of new revenues (bonus bids, royalty and rental, but not corporate or other income tax) derived from leasing the oil and gas resources of the Coastal Plain shall be equally divided between the United States Treasury and the State of Alaska. Section 5344 provides that: ''Fifty percent of all revenues . . . shall be paid by the Secretary of the Treasury semiannually to the State of Alaska. . . .'' (Section 5344(a)(2)). There has been some concern expressed about the change in law regarding the distribution of revenues derived from oil and gas leases on Coastal Plain. The following provides information regarding the distribution of the revenues from the leasing of the Coastal Plain.

Following the issuance of the 1987 Department of the Interior Report and LEIS pursuant to which the then Secretary recommended opening the Coastal Plain to an environmentally responsible program of oil and gas leasing, some opponents of leasing have alleged that the State might receive 90 percent, rather than 50 percent, of such revenues. This allegation is based upon a provision of the 1958 Alaska Statehood Act which granted Alaska 90 percent of revenues derived from oil and gas resources located on public lands in Alaska. After this contention was first made, Senator Johnston, then Chairman of the Senate Energy and Natural Resources Committee, requested the Solicitor of the Department of the Interior to prepare a legal memorandum and opinion on the legal validity of this contention. The Solicitor's legal opinion, reprinted as Appendix A following this statement, was completed and transmitted to Senator Johnston and the Congress on November 4, 1987. The Solicitor's legal memorandum and opinion found that under the Property Clause of the United States Constitution, the Congress has full authority to determine the future distributions of revenues derived from oil and gas leases on public lands generally and on the Coastal Plain in particular.

Finally, when this contention was made again in recent weeks during this Congress, Governor Tony Knowle's of Alaska submitted a letter to the Congress in which he volunteered to submit legislation to the State Legislature to amend the Statehood Compact to make clear that the State would agree to accept only 50 percent of Coastal Plain oil and gas lease revenues. Ms. Drue Pearce, President of Alaska State Senate, and Ms. Gail Phillips, Speaker of Alaska Legislature's House of Representatives, supported Governor Knowles position and, again, in letters to the Congress pledged their best efforts to secure the Legislature's enactment of such legislation. Copies of these letters are attached as Appendix B.

*Subsection 5344(a). Distribution of revenues*

Paragraphs (1) and (2) of subsection 5344(a), similar to paragraph (1) of subsection 9002(I) of the House bill, provide that notwithstanding any other provision of law, all revenues received from competitive bids, sales, bonuses, royalties, rents, fees, or interest derived from the leasing of oil and gas resources on Federal lands within the Arctic National Wildlife Refuge, Alaska shall be distributed to the U.S. Treasury, with 50 percent of such revenues to be distributed to the State of Alaska on a semiannual basis.

Subparagraph (3)(A) generally follows the last clause of subsection 5215(a) of the Senate bill. It requires that the Secretary of the Treasury monitor the total amount of bonus bid revenue deposited into the Treasury from oil and gas leases issued under the authority of this chapter. All monies deposited in the Treasury in excess of $2,600,000,000 shall be distributed as follows: 50 per centum to the State of Alaska and 50 per centum into a special fund established in the Treasury of the United States known as the ''National Park, Refuge and Fish and Wildlife Renewal and Protection Fund'' (''Renewal Fund''). While the terminology for the Renewal Fund comes from subsection 5215(a) of the Senate bill, the Renewal Fund is also intended to incorporate the purposes of the National Endowment for Fish and Wildlife that would have been established under subsection 9002(n), paragraph (1) of the House bill.

Subparagraph (3)(B) is similar to subsection 9002(n), subparagraph (2)(B) of the House bill. It caps deposits into the Renewal Fund at $250,000,000. Subparagraph (2)(C) provides that deposits into the Renewal Fund shall remain available until expended and requires the Secretary to develop procedures for the use of the Fund to ensure accountability and demonstrable results.

*Subsection 5344(b). Use of renewal fund*

Subsection 5344(b) explains the purposes for which the Renewal Fund shall be used. These purposes are drawn from subsection 5215(b) of the Senate bill as well as subsection 9002(n)(4) of the House bill. While subsection 5344(b) would not establish a Fish and Wildlife Conservation Commission as provided for under subsection 9002(n)(3) of the House bill, the conferees intend that the Secretary would fulfill essentially the same fish and wildlife conservation purposes of the Commission under subsection 5344(b), as well as other purposes. Specifically, subsection 5344(b) provides for a distribution of Renewal Fund resources as follows: (1) 25 percent for the National Park System, similar to requirements of the Senate language; (2) 25 percent for the National Wildlife Refuge System, similar to requirements of the Senate language; (3) 25 percent for the acquisition of privately held habitat of threatened or endangered species, similar to requirements of the House language; and (4) 25 percent for wetlands projects under the North American Wetlands Conservation Act, similar to the House language.

*Subsection 5344(c). Community assistance*

Subsection 5344(c) mostly follows subsection 9002(l) of the House bill. This subsection would establish a Community Assistance Fund for distribution, upon application, of funds to organized boroughs, other municipal subdivisions of the State of Alaska, and recognized Indian Reorganization Act entities which are directly impacted by the exploration and production of oil and gas on the Coastal Plain authorized by this chapter. These organizations, in turn, shall use the funding to provide public and social services. The Secretary shall have at his or her disposal $30,000,000, and $5,000,000 or less may be distributed in grant form in any given year.

The Conferees anticipate that the services provided by local and Native organizations would likely bear some relation to the activities authorized by this chapter. However, the Conferees have chosen not to limit the purposes for which a local or Native organization may devote Fund proceeds. Thus, a local or Native organization could provide services such as a transportation shuttle, a job training and placement service, or a conservation program, which would be directly related to the activities authorized by this chapter. Nevertheless, out of deference to local decisionmakers, subsection 5344(c) would not prohibit a local or Native program addressing immunization, education, or another service less directly related to oil and gas leasing on the Coastal Plain.

Subsection 5344(c) allows funds to be distributed only to groups ''directly'' impacted by the activities authorized under this chapter. The choice of the word ''directly'' is a deliberate effort to provide funds only to those groups with a direct nexis to Coastal Plain activities. The subsection does not specify a bright-line test of physical proximity, dollar impact, or any other criterion, but any group seeking a grant from the Community Assistance fund must demonstrate an actual, ''direct'' impact. The conferees anticipate that demonstration of a ''direct'' impact would be similar to the demonstration necessary to obtain standing in a federal court—there must be an actual impact, clearly traceable to the activities authorized by this chapter.

The Conferees expect that funds will be distributed to communities and groups representing the Inupiat Eskimo people on Alaska's North Slope who will clearly be impacted by exploration and development activities in the Coastal Plain. The Conferees anticipate that funds may also be made available to communities or organizations representing the Gwich'in Indians in the event that these representatives demonstrate an impact from activities in the Coastal Plain.

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APPENDIX A

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
*Washington, DC, November 4, 1987.*

M–36957.
*CLC.SO.0001.*
*Memorandum to: Secretary.*
*From: Solicitor.*
*Subject: Division of Receipts from Oil and Gas Development from the Arctic National Wildlife Refuge.*

You have asked whether the Alaska Statehood Act (ASA), Pub. L. 85–508, 72 Stat. 339 (1958), in any way limits Congress' ability to enact a revenue distribution scheme for oil and gas revenues from new leases in federal wildlife refuges that is different from the revenue distribution scheme set out in the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. §181. Your question refers specifically to the Arctic National Wildlife Refuge (ANWR). The MLA formula provides for the distribution to Alaska (the State) of 90 percent of revenues received by the United States from oil and gas leasing on public lands within the State. For the reasons discussed below, we conclude that the ASA in no way restricts Congress to the distribution scheme set out in the MLA when it enacts legislation to provide for distribution of revenues from new mineral leases in federal wildlife refuges.

BACKGROUND

At issue is the authority of Congress to determine the distribution of revenues from oil and gas leases on public lands in Alaska, and, specifically, from lands that are part of the National Wildlife Refuge System. At present, a distinction is made between revenues from acquired lands and those from reserved public domain refuge lands. Federal oil and gas revenues from acquired lands within refuges are distributed according to a schedule set out in the Wildlife Refuge Revenue Sharing Act (WRRSA)[1] which allots 25 percent to the county in which the refuge is located and 75 percent to the Migratory Bird Conservation Fund, while federal revenues from reserved public domain lands within refuges are distributed in accordance with the Mineral Leasing Act,[2] which allots 50 percent to the states, except Alaska, in which the refuge is located, 40 percent to the Reclamation Fund, and 10 percent to miscellaneous receipts in the U.S. Treasury. Alaska receives 90 percent of MLA lease revenues derived from within the State. The remaining 10 percent goes to miscellaneous receipts in the U.S. Treasury. As the refuge currently at issue, ANWR, is on reserved public domain land, we will focus on the provisions of the Mineral Leasing Act in analyzing the issue presented to us.

The distribution system set out in the Mineral Leasing Act was extended to Alaska in section 28(b) of the Alaska Statehood Act, as follows:

(b) Section 35 of the Act entitled ''An Act to promote the mining of coal, phosphate, oil, shale, gas and sodium on the public domain'', approved February 25, 1920, as amended (30 U.S.C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following:'', and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof.''

After amendment, section 35 of the Mineral Leasing Act read as follows:

All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of sections 181–184, 185–188, 189–192, 193, 194, 201, 202–209, 211–214, 223, 224–226, 226d–229a, 241, 251, and 261–263 of this title shall be paid into the Treasury of the United States; *37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located;* said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as part of the reclamation fund created by sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, *and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: Provided,* That all moneys which may accrue to the United States under the provisions of sections 181–184, 185–188, 189–192, 193, 194, 201, 202–209, 211–214, 223, 224–226, 226d–229a, 241, 251, and 261–263 of this title from lands within the naval petroleum reserves shall be deposited in the Treasury as ''miscellaneous receipts'', as provided by section 524 of Title 34. All moneys received under the provisions of sections 181–184, 185–188, 189–192, 193, 194, 201, 202–209, 211–214, 223, 224–226, 226d–229a, 241, 251, and 261–263 of this title not otherwise disposed of by this section shall be credited to miscellaneous receipts. (Feb. 25, 1920, ch. 85, §35, 41 Stat. 450; May 27, 1947, ch. 83, 61 Stat. 119; Aug. 3, 1950, ch. . . . 282; July 7, 1958, Pub. L. 85–508, §§6(k), 28(b), 72 Stat. 343, 351.)[3] (Emphasis added.)

The United States Senate is presently considering a bill, S. 735, that would change the distribution system as applied to revenues derived from oil and gas leasing within units of the National Wildlife Refuge System. Specifically, the bill provides that 50 percent of such revenues would go to the state, 25 percent to the Land and Water Conservation Fund and 25 percent to the federal government. If the bill passes, it will apply to all leases in any wildlife refuge issued after enactment, but it is expected that the refuge most immediately affected will be ANWR.

In recent testimony on S. 735 before the Senate Energy and Natural Resources Subcommittee on Public Lands, National Parks and Forests, and in documents submitted to us in connection with our consideration of this issue, representatives of the State of Alaska have argued that Congress cannot legally enact a revenue distribution formula that provides Alaska less than 90 percent of mineral leasing revenues from the leasing of public lands in Alaska without the consent of the State.[4]

ANALYSIS

The enactment of legislation establishing a distribution formula for federal revenues obtained from the leasing of federally owned minerals falls within the power of Congress enumerated in the Property Clause of the Constitution:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. * * *

U.S. Constitution, art. IV, §3, cl. 2.

The Mineral Leasing Act of 1920 is an example of the use of this power. Once having enacted such a system of mineral leasing, Congress has the authority under the Property Clause to change the distribution schedule set up with regard to the revenues resulting from those leases. As indicated in *United States* v. *Locke,* 471 U.S.S. 84, 104 (1985), ''[t]he United States, as owner of the underlying fee title to the public domain, maintains broad powers over the terms and conditions upon which the public lands can be used, leased, and acquired,'' In the *Locke* case, the Supreme Court was called upon to determine the constitutionality of a legislative provision that subjected holders of unpatented mining claims to forfeiture of those claims if they failed to comply with the annual filing requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §1701. In holding the regulation to be constitutional, the Supreme Court indicated that ''[c]laimants thus must take their mineral interests with the knowledge that the Government retains substantial regulatory power over those interests.'' [The Court compared this holding to *Energy Resources Group, Inc.* v. *Kansas Power and Light Co.,* 459 U.S. 400 (1983), dealing with the impairment of contractual relations.] *Id. at* 105.[5]

Against this background, Alaska must sustain a heavy burden to show that Congress lacks the authority under the Property Clause to change the distribution system for federal revenues derived from oil and gas leases on federal lands, including wildlife refuges.

Alaska's primary[6] argument against Congress' power to enact a distribution formula for receipts from the lease of refugee minerals that is different from the formula set out in the MLA is that the MLA distribution scheme was incorporated into and made a part of the compact of statehood. According to that argument, the MLA was so incorporated by virtue of the inclusion in the Alaska Statehood Act of a section amending the MLA to apply it to Alaska. The State argues that Congress made the distribution formula part of the compact as a vehicle granting Alaska a permanent property interest in mineral revenues from public lands.[7] According to the argument, as a grant made to the State in the compact of statehood, the property interest may not be changed. Thus the State argues that the distribution system comes within the narrow confines of *Beecher* v. *Wetherby,* 95 U.S. (5 Otto) 517 (1877), a case holding that a grant made in a statehood act is an ''unalterable condition of the admission [of the State into the Union], binding upon the United States.''

We do not dispute that a grant made in a statehood act may be unalterable. However, we believe that in this instance, Alaska paints too broadly the compact of statehood. Rather than being a grant incorporated into that compact, the distribution system applied to Alaska in section 28(b) is nothing more than an exercise of Congress' powers under the Property Clause to dispose of and make needful rules for the public's property.

Judicial precedent instructs that not every provision in a statehood act is an irrevocable grant to the state. Thus, we must look carefully at the provisions of the ASA to ascertain what must be included within the terms of its statehood compact with the United States. The Supreme Court has had occasion to consider the different kinds of authority Congress may exercise in passing a statehood act and what provisions of a statehood act may properly be considered part of the compact entered into at statehood. In *Coyle* v. *Oklahoma,* 221 U.S. 559 (1911), the Court held

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Footnotes at end of article.

that certain conditions contained in Oklahoma's statehood act were not part of the compact of statehood. The Supreme Court pointed out that in admitting a new state into the Union, Congress may simultaneously exercise other of its powers, such as the power to regulate commerce or the power ''to make all needful rules and regulations respecting the territory of other property of the United States'' (citing *Pollard's Lessee* v. *Hagan,* How. 212 (1845)). The Supreme Court concluded that provisions contained in a statehood act that are enacted under one of these other powers, ''cannot operate as a contract between the parties, but are binding as law.'' *Coyle,* at 571. The Court then went on to say:

It may well happen that Congress should embrace in an enactment introducing a new state into the Union legislation intended as a regulation of commerce among the states, or with Indian tribes situated within the limits of such new state, or regulations touching the sole care and disposition of the public lands or reservations therein, which might be upheld as legislation within the sphere of the plain power of Congress. But in every such case such legislation would derive its force not from any agreement or compact with the proposed new state, nor by reason of its acceptance of such enactment as a term of admission, but solely because the power of Congress extended to the subject.* * *

Id, at 574.[8]

Section 28 of the ASA is just such an enactment. It is based on Congress' power under the Property Clause to administer federal property interests. The MLA itself was similarly based, and the amendment to it contained in the ASA cannot be used to alter its origins or elevate it to compact status so that it cannot be amended.

Section 28 of the ASA, on its face, does not purport to be either a part of the compact between the United States and to the State of Alaska or a permanent grant of mineral revenues to the State. In fact, section 28 did nothing more than amend a statute that had already been in existence for over 30 years before the ASA was enacted and had long been applied to federal lands in all other states.[9] Further, section 28 is but one of several sections added at the end of the ASA to amend existing law to apply it specifically to Alaska. Section 28(b) in particular was a necessary and timely expedient because Congress wanted to extend to and adapt for Alaska the revenue distribution system already in place in other states.

Futher, section 28(b) is very limited in that it is applicable only to lands leased under the MLA, not to other federally owned lands leased under other authority. For example, section 35 of the MLA gave Alaska no share of receipts from the navel petroleum reserves, and Naval Petroleum Reserve No. 4 (now NPR–A), constituting roughly 23 million acres in Alaska, was separately addressed in Section 11 of the ASA, This separate treatment indicates that Congress did not intend, as argued by the State, that the MLA be a vehicle for an irrevocable 90 percent interest in revenues from all federal mineral lands.[10] This point is further supported by a 1981Supreme Court decision in which the Court found that a 1964 amendment to the Wildlife Refuge Revenue sharing Act, which included mineral revenues within its 75/25 distribution schedule, was properly applied to oil and gas leasing revenues from wildlife refuges on acquired federal lands in Alaska *Watt* v. *Alaska,* 451 U.S. 259 (1981).[11]

Further, section 28 of the ASA did not purport to grant Alaska a 90 percent royalty interest in the minerals themselves. Rather, the section amended an entirely separate statute, the MLA, which itself does not grant the state any interest in minerals, but merely prescribes a formula for the distribution of certain federal oil and gas revenues. We have previously considered the issue of what interest states have in federal oil and gas under the the MLA and concluded that they have no economic interest in the oil in place. As stated in Solicitor's Opinion M–36929, 87 I.D. 661, at 664, 665 (1980):

States have no pecuniary or legal interest in federally owned oil until that oil is leased, extracted and the royalty payments are made to the federal government. In sum, sec. 35 simply provides for the disposition of federal royalty revenue; it does not confer on states an economic interest in the oil in place. * * *

Therefore, under the amendment of the MLA contained in the ASA, the State receives only a periodic distribution of 90 percent of the revenues produced each year from the leasing and production of minerals under the MLA. Alaska receives no revenues under the MLA unit such revenues are produced, and more importantly, receives its MLA royalty distribution only by virtue of the provisions of the MLA, not by virtue of the ASA.[12]

Our conclusion must be, then, that Congress was using the amendment to the MLA contained in section 38 not as a vehicle for granting the state a perpetual 90 percent interest in federal minerals in Alaska, but rather as an exercise of its authority under the Property Clause to dispose of and make needful rules for certain federal property, in this case, to set out the distribution scheme applicable to minerals leased under the MLA.

Our view that the MLA was not incorporated into the compact between the State and the federal government and that it does not amount to a permanent grant is supported by examples of cases in which Congress has exorcized its Property Clasuse powers to amend the MLA since Alaska gained statehood to the detriment of Alaska's 90 percent interest in revenues from mineral leases. For example, on December 18, 1971, Congress passed the Alaska Native Claims settlement Act (ANCSA), 43 U.S.C. §1601, et seq., amending the royalty distribution ratio of the MLA to reduce the State's share of royalties and pay a portion to Alaska Native corporations. Section 9 of ANCSA, 43 U.S.C. §1608, provided in part that a royalty of 2 per centum of the gross value of minerals and 2 per centum of all rentals and bonuses would be deducted from the mineral revenues from public lands and paid to the Alaska Native Fund. Prior to ANCSA, the standard royalty on oil and gas leased was 12.5 percent of production. This meant 1.25 percent went to the U.S. Treasury, and 11.25 percent went to the state of Alaska, whereas after ANCSA these percentages were 1.05 and 9.45, respectively.

Similarly, the Crude Oil Windfall Profit Tax of 1980, Pub. L. No. 96–223, 94 Stat. 229 (1980), exacts a tax on MLA revenues prior to the application of the revenue sharing formula *New Mexico* v. *U.S.* 11 CL. CT. 429 (1986), affirmed ——F.2d——, No. 87-1210 (1987), See also, Solicitor's Opinion M–36929 supra.

These examples clearly demonstrate Congress' continuing authority to change the distribution scheme for mineral revenues from federal land whenever it perceives a need to do so.

## CONCLUSION

For the reasons stated, we must conclude that Congress has the authority under the Property Clause of the Constitution to alter the distribution formula set out in the Mineral Leasing Act for oil and gas revenues from the Arctic national Wildlife Refuge. The State of Alaska has not met the heavy burden of persuasion with respect to the argument that those Property Clause powers were terminated by the section in the Statehood Act amending the MLA to include Alaska in the act's revenue distribution formula. We can find no support in the Alaska Statehood Act for the proposition that the MLA was incorporated into the compact between the federal government and the State. In fact, opposite the proposition, we find other instances in which Congress has amended the MLA in a manner which adversely affected the State's interests.

RALPH W. TARR.

## FOOTNOTES

[1] Section 401, 16 U.S.C. §715s(c); *Watt* v. *Alaska,* 451 U.S. 259 (1981).

[2] Section 35, as amended, 30 U.S.C. §191.

[3] The net effect of the amendment was to accord Alaska both the 37½ percent share enjoyed by all other states and the 52½ percent that would otherwise have gone to the Reclamation Fund, for a total of 90 percent. A succession of subsequent amendments to section 35, most recently in section 104(a) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. §1701, has changed these figures to 50 percent for states and 40 percent for the Reclamation Fund in states other than Alaska, and 90 percent for Alaska, to be distributed on a monthly basis.

[4] Alaska also raises a number of political and policy issues arising from the historic relationship between the federal government and the states and, specifically, federal government and * * *.

[5] The people of Alaska implicitly acknowledged the powers reserved to Congress under the Property Clause when they agreed in the Alaska State Constitution that:

''The State of Alaska and its people forever disclaim all right and title or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union. The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.'' (Alaska Constitution, art, 12, §12.)

[6] Alaska also argues that a change in the distribution, such as that proposed in S. 735 would result in the State being treated differently than other states. Specifically, Alaska argues that it is the only state that has a refuge producing oil and gas revenues on reserved lands and, therefore, is the only state that will be impacted by a provision changing the distribution formula for reserved wildlife refuges. Although this appears to be primarily a policy issue, Alaska does suggest that the equal footing doctrine may be implicated by such unequal treatment. However, after reviewing this matter, we do not believe that it raises substantial legal questions. Factually, the proposed law would apply to all new leases on all wildlife refuges. As a factual matter, it is not clear that it would have an unequal impact in the long run. As a legal matter, even if there were an unequal impact, this impact would not constitute a violation of the equal footing doctrine. In *Nevada* v. *U.S.,* 512 F. Supp. 166 (D. Nev. 1981), a case in which the State of Nevada challenged a moratorium on the disposal of public lands under the equal footing doctrine, the court accurately summarized this doctrine as follows:

''Federal regulation which is otherwise valid is not a violation of the 'equal footing' doctrine merely because its impact may differ between various states because of geographic or economic reasons. *Island Airlines, Inc.* v. *CAB,* 363 F.2d 120 (9th Cir. 1966). The doctrine applies only to political rights and sovereignty; it does not cover economic matters, for there never has been equality among the states in that sense, *U.S.* v. *Texasm* 339 U.S. 707 (1950). Said case points out that, when they entered the Union, some states contained large tracts of land belonging to the federal government, whereas others has none. ''The requirements of equal footing was designed not to wipe out these diversities but to create parity as respects political standing and sovereignty,' *Id.,* at 716. Accordingly, Congress may cede property to one state without a corresponding cession to all states. * * * the equal footing doctrine

does not affect Congress' power to dispose of federal property. * * *''

[7] In documents submitted to us, the State cites several instances in the legislative history of ASA in which Members of Congress expressed an intent to provide Alaska with sufficient revenues to function as a state, and several other instances in which congressman or reports cited the 90/10 distribution system. However, these expressions of intent do not answer the question of whether the 90/10 distribution was to be a permanent grant of a property interest and whether, by setting out such a formula in 1958, Congress sought to terminate its Property Clause powers with regard to federal mineral revenues from federal lands forever. Our analysis of the statutes and judicial precedent compel a negative answer to both questions that is not changed by the suggestion a general intention to provide the new state with revenue.

[8] See also, *Nevada* v. *U.S.*, 512 F. Supp. at 171–172: ''Regulations dealing with the care and disposition of public lands within the boundaries of a new state may properly be embraced in its act of admission, as within the sphere of the plain power of Congress.'' (Citing, *U.S.* v. *Sandoval*, 231 U.S. 28 (1913).

[9] All of the contiguous lower 48 states had already been admitted to the Union when the MLA was passed in 1920. The MLA was not ''incorporated'' into the statehood act of any other state.

[10] The State's argument implies that 90 percent of MLA revenues goes to all states, not just Alaska. This argument appears to be based on an interpretion of the MLA whereby the 40 percent of MLA revenues which is earmarked for the Reclamation Fund ultimately is returned to the states in the form of reclamation projects. This argument has several problems. The assertion that the 40 percent of MLA receipts from states other than Alaska is returned to the generating states if illusory. In fact, any such money that are returned to the states arrive there only through an express appropriation from Congress after competing with other appropriations proposals, and there is absolutely no guarantee that such moneys as are appropriated will be proportionately returned to the states from which they were generated. The 90 percent provided to Alaska, however, is distributed directly to the State, to be disposed of as the state legislature directs. To the extent Alaska argues that it has been treated the same as other states in receiving the 90 percent share of MLA revenues, it implicitly admits that equal treatment would allow Congress to change the MLA formula for Alaska, because Congress clearly has the power to amend the MLA to affect the royalty shares of the other states. *New Mexico* v. *U.S.*, 11 Cl. Ct. 429 (1986); affirmed,—F.2d—, 87–1210 (1987).

[11] The case cited in the text focused on section 401 of the Revenue Sharing Act, 16 U.S.C. §715s(c), which after the 1964 amendment provided that 25 percent of the receipts, including mineral receipts, generated by a refuge would go to the county in which the refuge was located and 75 percent to the Migratory Bird Conservation Fund. The Kenai Borough (the county in which the Kenai Moose Range is located), and the State of Alaska, each filed suit to challenge the federal interpretation that this formula applied to oil and gas revenues generated from the refuge. The U.S. District Court, District of Alaska, and the Ninth Circuit Court of appeals each found in favor of the state of Alaska, that is, that section 35 of the MLA and not section 401 of the WRRSA, controlled the distribution of receipts from Kenai Moose Range. The Supreme Court held that the 1964 amendment clearly covered oil and gas receipts, but also found that it has not been the intent of Congress to amend section 35 of the MLA. Therefore, the court ruled that the WRRSA applied to oil and gas receipts from acquired lands in wildlife refuges, but not to reserved public lands in wildlife refuges. *Watt* v. *Alaska*, U.S. 259 (1981). Even though the Court distinguished between acquired lands in refuges and public domain, this decision supports the proposition that Congress is not bound by the ASA to give Alaska 90 percent of oil and gas leasing revenues from all federally owned land.

[12] In contrast for example, the ASA explicitly granted Alaska 103,350,000 acres of land, which * * *.

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DEPARTMENT OF JUSTICE, ENVIRONMENT AND NATURAL RESOURCES DIVISION

*Washington, DC, May 8, 1991.*

Re Artic National Wildlife Refuge.

Mr. PAUL SYMTH,
*Acting Associate Solicitor, Energy and Resources, Department of the Interior, Washington, DC.*

DEAR MR. SMYTH: I have reviewed Solicitor's Opinion M–36957 concerning the eventual division of oil and gas revenues from the Arctic National Wildlife as you recently requested. I concur in its conclusion that for ANWR Congress may alter the 90/10 distribution set out in the Mineral Leasing Act.

Although it may be premature to say that we would arrive at our conclusion through the same analysis followed in the Opinion, we are convinced that Congress may authorize the altered distribution and would certainly feel comfortable defending that conclusion in court.

Thank you for making us aware of this potential issue in advance of litigation. We would be interested in knowing what Congress ultimately decides.

Sincerely,

MYLES E. FLINT,
*Deputy Assistant Attorney General.*

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APPENDIX B

STATE OF ALASKA,
OFFICE OF THE GOVERNOR,
*Juneau, AK, October 17, 1995.*

Hon. FRANK MURKOWSKI,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR MURKOWSKI: During my recent visit to Washington, DC, it became clear to me that a central issue in the debate related to oil development in the Arctic National Wildlife Refuge (ANWR) is the allocation of the revenue between the State of Alaska and the federal government. Accordingly, I am writing to you to reiterate my position on this issue.

By your legislation, and that of Congressman Young, you have concluded that fifty percent of the revenues of ANWR should be used to reduce the Federal budget in order to accomplish Congressional approval.

The state is entitled to receive ninety percent of oil and gas revenues generated from federal lands in Alaska. According to your reports, Congressional action is highly unlikely unless Congress sees some direct benefit to the federal budget. In addition to all of the other strong arguments in support of opening ANWR, it has been made clear to us that a fifty-fifty split of the revenue is necessary to attain favorable Congressional action. I support your strategy to split the revenues evenly between the state and federal governments.

If there is federal enactment of the fifty-fifty revenue split, it would constitute an amendment of the Alaska Statehood Act. According to the Alaska Department of Law, an amendment to the Statehood Act requires state concurrence. This concurrence must occur through the enactment of a bill by the Alaska Legislature and approval by the Governor.

Therefore, I will introduce and pursue legislation to accept such a change if Congress adopts a fifty-fifty revenue split. In this way, Alaska's elected officials in Juneau will have a full opportunity to debate the merits of agreeing to any modification of the ninety-ten revenue formula.

I firmly believe any amendment of the ninety-ten revenue split should apply to ANWR only. I will continue to insist, by way of the statehood compact lawsuit, that Alaska receive its full entitlement on the development of other federal lands in Alaska.

The State of Alaska stands ready to assist you in attaining Congressional approval of opening ANWR.

Sincerely,

TONY KNOWLES,
*Governor.*

ALASKA STATE LEGISLATURE.
*Juneau, AK, October 17, 1995.*

Hon. NEWT GINGRICH,
*Speaker of the House,*
*Washington, DC.*

DEAR SPEAKER GINGRICH: On behalf of the Alaska State Legislature, we would like to thank you for taking the time to meet with us during our recent visits to Washington, D.C. and for your support of oil and gas leasing in ANWR.

As the Republican leaders of the state Senate and House, we would like to state our unqualified support for current congressional plans to allow oil and gas development on the coastal plain of ANWR and to share lease revenues 50-50 between the state and federal governments.

We are aware that some House Republicans have expressed concern about this revenue sharing in light of Alaska's right under its statehood compact to receive 90% of revenues from oil and gas leases on federal lands.

Governor Tony Knowles announced on September 28th before the National Press Club that he backs the 50-50 state-federal split of ANWR lease revenues as proposed in the budget reconciliation act. He is on record saying he will introduce legislation to change the statehood compact to provide a 50-50 revenue split for ANWR lease revenues.

As the U.S. House and Senate works to complete action on the budget reconciliation act, Members of Congress should know that we will do everything in our power to ensure that such a bill passes the Alaska State Legislature and becomes law.

Sincerely,

DRUE PEARCE,
*Senate President.*
GAIL PHILLIPS,
*House Speaker.*

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## MONTANA'S CENTER FOR WILDLIFE INFORMATION

Mr. BAUCUS. Mr. President, we all recognize general Norman Schwarzkopf as a great military leader. But what most Americans probably do not know is that he is also deeply devoted to the cause of conserving one of our most precious resources, our wildlife. In cooperation with a number of my constituents in Montana, General Schwarzkopf have been involved in a remarkable effort to increase public understanding and appreciation of the wildlife that help make Montana and America so special. As General Schwarzkopf has said:

In traveling and living throughout all parts of our world, I have learned that we possess in this country of ours and in neighboring Canada one of the most marvelous arrays of wildlife and wildlands found anywhere.

Yet, as any Montanan can tell you, each year people are killed or injured and wildlife is lost unnecessarily because of conflicts that should have been avoided. So General Schwarzkopf and Chuck Bartlebaugh of Missoula, MT have decided to do something about it. The Center for Wildlife Information has been established in Missoula. By creating a series of public