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STATE LAND POLICY IN ALASKA: PROGRESS AND PROSPECTS

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One of the largest land transactions in the history of the nation is taking place in Alaska today. With passage of the Statehood Act in 1958,¹ Alaska was given the right to select nearly 104 million acres from the federal public domain. This is nearly one-third of the total area of the state, or an area larger than California. It represents, in effect, the transfer of an empire. No other state has received so great a patrimony, either in acreage or dollar value. In addition, the state automatically received title to vast areas of submerged lands and tidelands amounting to an estimated fifty million acres.

Aside from its huge size, Alaska's land grant is also distinctively different in that the historical system of in-place land grants based on specified numbered sections was abandoned. Congress recognized that the checker-board pattern of land ownership which this anachronistic method of disposal engendered in the Western states was not conducive to wise management of lands and resources.² Congress also recognized that because such a minor fraction of Alaska has been surveyed, grants of specific sections would have made very little land immediately available to the state; furthermore, Congress recognized that the traditional formula would not give Alaska a broad enough economic base on which to found a fiscally sound state government. Nor was the state grant limited to the direct support of public education as was the general case in the past. It is clear from committee hearings and congressional debate that Congress realized such a limitation would be unrealistic, for the new state would need financial support for many other necessary activities in addition to education.³ Hope frequently was expressed that the greater acreage

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1. 72 Stat. 339 (1958).

2. See, *e.g.*, the historical accounts in the following: The Public Lands; Studies in the History of the Public Domain (Carstensen ed. 1963); Ottosen, Land Use Policy and Problems in the United States (1963); Udall, The Quiet Crisis 54-68 (1963).

3. *Hearings on S. 50 Before the Senate Committee on Interior and Insular Affairs*, 83d Cong., 2d Sess. (1954); *Hearing on H.R. 2535 and H.R. 2536 and Related Bills Before the House Committee on Interior and Insular Affairs*, 84th Cong., 1st Sess. (1955).

would enable Alaska to get off to a flying start in the development of its economic potential.

The freedom of choice given the state in the selection of lands represents another unique change from the past. Specifically, under the general statehood grant the state was given a period of twenty-five years to select 102,550,000 acres from lands in the United States public domain which are "vacant, unappropriated and unreserved" at the time of selection. The state was also permitted to select 400,000 acres from the National Forests for purposes of community expansion and recreational use, and another 400,000 from the public domain for the same purposes. In addition, other legislation provided grants of 1,000,000 acres to support a mental health program and about 200,000 acres for the support of public schools and the University of Alaska. The only limitation—if it may be called that—on the general grant selections is that they must be made "in reasonable compact tracts . . . containing at least 5,760 acres, unless isolated from other tracts open to selection." Also, as a defense measure, public domain lands selected north of the Yukon River require Presidential approval.⁴ The federal government is required to survey the exterior boundaries of each selection prior to the issuance of patent to the state. This greatly reduces the cost of land selection to the state.

Another major departure from precedent in the Alaska Statehood Act concerns rights to minerals. When specified sections of land were granted to the Western states upon their entrance into the Union, Congress provided that mineral lands could *not* be taken. If the specified sections were mineral in character, the states were forced to take other lands "in lieu" of the mineral sections.⁵ In 1927, Congress changed this rule so that those states which had not yet, for one reason or another, selected their sections could select lands even if they were known to contain minerals. The statute specified, however, that the states could never alienate their title to these minerals. The states could lease the mineral lands, but they could not sell them.⁶ This major change in policy was carried over into the Alaska Statehood Act which expressly provides that all minerals in the lands selected are reserved to the state. The passage of title to the minerals from state lands is positively precluded. The state may lease mineral

4. Alaska Statehood Act §§ 6(b), (g), 72 Stat. 340, 341 (1958).

5. For a summary of state provisions, see I Public Administration Service, *Alaska Constitutional Studies* 41-50 (1955).

6. 44 Stat. 1026 (1927).

deposits in such lands but cannot sell, grant, deed, or otherwise dispose of them.⁷

This clause should help to reduce conflicts in land use. And the leasing technique—with its rental and royalties and its performance and development clauses—should assure that permanent returns accrue to the state in the development of its potential mineral wealth. It does, however, create a duality of land systems with potential conflict since mineral lands can be brought to patent under federal law. The possible adverse impact of such a duality is softened somewhat by the realization that only a minor fraction of the land in Alaska is presently so patented, and if the history of the Western states is any indication, there is little reason to believe that the federal government would ever release such a substantial portion of its remaining federal domain into private hands that the mineral policies of the State of Alaska would be severely or even moderately affected.⁸

One other distinctive feature of the Alaska Statehood Act bears mentioning. In Alaska, 90 per cent of all revenues received by the federal government as rentals, royalties and bonuses from the so-called leasing-minerals (*e.g.*, coal, oil, gas, phosphate, and sodium) on the public domain are paid to the State of Alaska. In the West only 37½ per cent of these federal revenues accrue to the states, while the remaining 52½ per cent is paid into the reclamation fund. Since Alaska was not considered a reclamation state, Congress provided that the entire 90 per cent should go to the state with the result that Alaska is assured a large and continuing source of revenue from federal lands which no other state enjoys.

In viewing these unique provisions in the Alaska Statehood Act, it is evident that Congress was attempting to accomplish two ends. One was to avoid several past mistakes in congressional policy that had resulted in unsatisfactory patterns of land ownership and land-use in the Western states. The other was to provide Alaska with ample lands and resources to develop an economic base that could support a fiscally sound state government.

In the selection, classification, and disposal of these lands, Alaska is undertaking a pioneering effort. No other state in the Union has had quite the same opportunity to conceive and carry out a rational land program on such a gigantic scale. It is beginning with a relatively

7. Alaska Statehood Act § 6(i), 72 Stat. 342 (1958).

8. For further discussion of this point, see Public Administration Service, *Alaska Constitutional Studies* (1955).

unspoiled environment. Its magnificent wildlife, wilderness and scenic resources are largely intact, and there has been no complicated pattern of land settlement and development. Finally, Alaska is beginning at a time when knowledge of the principles of land management and conservation is vastly greater than it was when the West was the last frontier. The state can draw upon this store of knowledge, and it can learn from mistakes of the past in other areas. Nature and Congress have indeed been generous with Alaska.

The state has moved ahead rapidly to meet its responsibilities. The Alaska constitution, which was adopted by the people prior to statehood in 1955, includes an excellently drawn Article⁹ setting out broad policies for the utilization, development and conservation of *all* natural resources for the maximum benefit of the people. It is the first state constitution containing an overall statement of policy on lands and resources, and it includes various provisions requiring close attention to the principles of sustained yield and multiple-use management which have been widely acclaimed by constitutional authorities.

In 1959, the First Alaska State Legislature set up a Department of Natural Resources with a Division of Lands and gave it clearcut lines of authority and accountability.¹⁰ It also enacted a good, workable land law including provisions for the classification of lands for their highest and best use, for the competitive leasing and sale of those lands and resources classed as suitable for disposal, and for other essential tools required to do an effective job of land management with the active participation of private citizens and local governments.¹¹ During the last four years the Division of Lands has established detailed regulations governing land classification, land lease and sale, homesteading, tidelands leasing, materials sales, timber sales, and mineral leasing. By the end of 1964, the Division had selected about fifteen million acres of land; leased and sold land resulting in nearly \$65 million in direct revenue to the state; established the beginnings of a state parks and recreation program; brought into being a new method of homesteading designed to meet the novel conditions in Alaska; and otherwise proceeded with a program to encourage an orderly pattern of private and public development.

9. Alaska Const. art. VIII.

10. Alaska Laws 1959, ch. 169.

11. *Ibid.*

But all is not milk and honey. Alaska faces many difficult and complex policy issues, and to cast these in their proper perspective requires an understanding of the political and economic environment of the 1960's.

I

POLITICAL ENVIRONMENT

When the Territory of Alaska was purchased from Russia in 1867, it became the last major acquisition in the Nation's public domain. Owing to its northern location and existing physical and climatic conditions, little development and settlement occurred until around the turn of the century. By that time the conservation movement had gotten underway in the United States. Its genesis was a strong reaction against national land disposal policies that had resulted in unsavory land frauds, speculation, corruption, and the brutal exploitation of forests, minerals, topsoil and wildlife. It was recognized belatedly that portions of the public domain were imbued with an important public interest, and measures were immediately taken to acquire and set aside large areas of public lands to meet growing national needs. The national land policies of this reservation era, rather than the earlier disposal policies, have had a major impact upon Alaska and its unique pattern of land ownership. By 1958, the year the Alaska Statehood Act was passed, 99.8 per cent of this vast land was still owned by the federal government. Only a little over a million acres had been patented or entered by private individuals, and except for a few minor land grants for the support of schools there was no way for the Territorial Government to obtain title to any lands.

Federal land policy completely dominated, and the establishment of special purpose reservations was the predominant philosophy. Over the years about 93 million acres were alienated from the public domain for such purposes as National Forests, National Parks and Monuments, National Wildlife Refuges and Ranges, Indian and military reservations, and various other public needs. (See Table I.) These reserves encompass over a quarter of the total land area of Alaska. Most of the remaining land area, or nearly 260 million acres, is vacant, unappropriated public domain under the jurisdiction of the Bureau of Land Management.

The magnitude of these federal land holdings in Alaska becomes clearer when they are compared with total federal land holdings in the Nation as a whole. Alaska today contains approximately 11 per

cent of the total United States National Forest lands; 31 per cent of all National Park lands; 69 per cent of all lands reserved for the United States Coast Guard; 70 per cent of all lands reserved by the Fish and Wildlife Service for wildlife ranges and refuges; 73 per cent of all lands owned by the Federal Aviation Agency; and 88 per cent of all lands under the jurisdiction of the Bureau of Indian Affairs. In addition, 64 per cent of the Nation's remaining unreserved and unappropriated public domain is located in Alaska.¹²

TABLE 1
MAJOR FEDERAL LAND RESERVES IN ALASKA¹³
1964

<i>Federal Land Reserves</i>	<i>Approximate Acres</i>
Forest Service	20,700,000
Fish and Wildlife Service	19,000,000
Navy Petroleum Reserve No. 4	23,800,000
Northern Alaska Oil Reserve ¹⁴	11,300,000
National Park Service	6,900,000
Bureau of Land Management	5,600,000
Bureau of Indian Affairs	4,100,000
Defense	1,000,000
Other	200,000
Total Reserved Lands	92,600,000

The policy implications of this massive federal land ownership are great. These federal reservations contain some of the most valuable lands in Alaska, and none of these lands are open to state selection (except for 400,000 acres in the National Forests). The state is thus faced with a much more difficult problem in its land selection program than first meets the eye. Indeed, there is some conjecture today as to whether the state will in fact be able to locate lands of sufficient value in the public domain during the next twenty years to permit it to make full use of the liberal land grant provisions.

12. Bureau of Land Management, U.S. Dep't of the Interior, Public Land Statistics, 1962, *Table 9*, pp. 14-27, and *Table 10*, p. 28 (1963).

13. These figures are based on data as of January 1, 1963. The data was obtained from Bureau of Land Management, U.S. Dep't of the Interior, Public Land Statistics, 1962 (1963), and from the Alaska Department of Natural Resources. Estimates from different sources vary slightly on some reserves.

14. The Public Land Order setting aside this reserve was revoked in 1960 but 11.3 million acres of the original 25 million acres are not yet available for oil and gas leasing and so were included in the table.

During the first few years of statehood, the question of what lands to select was not particularly difficult because considerable lands with known economic values around the centers of population were available for selection. However, nearly all of these lands now have been taken. As the state proceeds further into the hinterlands with land selections, the quality and completeness of technical information concerning the lands and resources diminish, and it is becoming much more difficult to render sound decisions. According to the Division of Lands, each acre of land selected increases direct management and other costs¹⁵ to the state by about ten cents per acre. This is no small expense considering the millions of acres involved. It is imperative that discretion and judgement be carefully exercised and that the state does not blindly select the land for the mere sake of massive ownership. As one spokesman for the Division of Lands put it, without proper planning the generosity of the grantor could prove to be the undoing of the grantee.¹⁶

One thing is clear. Even if the state does manage to select all the lands it is entitled to, the federal government will still own two-thirds of Alaska. The need for close cooperation between the land and resource agencies of the two levels of government is great, especially during these early transitional years. There has been some effort in recent months to establish a high-level Joint Federal-State Natural Resources Committee, but as yet no definite action has been taken. If such a committee were established, it could provide an effective mechanism for overall guidance and coordination of land and resource programs to the great benefit of Alaska, and if successful it could provide a model for other regions in the United States.¹⁷

Ironically, while the federal government has maintained stringent restrictions in the management of reserved lands, virtually no controls have been exercised on public domain lands to encourage their proper use. The public domain in the Western states has been protected since 1934 by the classification authority contained in the Taylor Grazing Act,¹⁸ but the provisions of this Act were not extended to Alaska. As a result, 270 million acres of public lands are open to settlement and entry in Alaska *without* the managerial pro-

15. The other major cost is an indirect one resulting from the loss of federal highway matching funds which are based on the extent of federal land ownership within the state.

16. Lang, *Progress in State Land Administration—Selection Policy Considerations*, Paper Delivered at the Alaska Science Conference, Anchorage, Sept. 1963.

17. Definite action was taken late in 1964 to establish the organizational framework for joint federal-state planning but the program has been slow in getting underway.

18. 48 Stat. 1269 (1934), as amended, 43 U.S.C. §§ 315-315m (1959).

tection of modern land classification techniques to assure best land use. From the swamps to the highest mountains, all these lands are subject to the filing of homestead and other claims, and over the years many thousands of acres of non-agricultural lands have been claimed under the homestead laws because there was no legal means of preventing such settlement. While it is true that many of these claims eventually fail, in the interim the land is unavailable for other perhaps more appropriate uses and may have suffered considerably from efforts by the settlers to prove up their claims. For example, the Bureau of Land Management reports many instances of seventy-degree slopes being put to cultivation and, as a result, exposed to heavy erosion damage.¹⁹

This lack of authority has not only created heavy administrative problems for the Bureau of Land Management, but it has forced the state to make what are termed "defensive" land selections. These are required to prevent indiscriminate private land developments and scattered settlement on the federal public domain which eventually could either saddle the state with impossible financial burdens in providing public services, or result in the destruction of resources having high potential value for other uses. Such costly and untimely defensive selections will continue to be necessary until Congress acts to provide the Bureau of Land Management with the classification powers it must have to meet its tremendous responsibilities in Alaska.²⁰

One other facet of this pattern of federal land ownership needs to be considered. The policies of the reservation era became the roots of a major political controversy which grew in intensity over the years. During Territorial days it was commonly believed that overly restrictive federal land laws and policies had prevented a normal, healthy flow of land from public to private ownership and that this was the fundamental reason for the slow rate of economic growth. Phrases like "putting Alaska in deep freeze" or "locking Alaska's resources" gained popular acceptance. In this manner, federal land policies and their influence upon economic development became burning issues in the long and successful fight for statehood.

The degree of truth or falsity of these political opinions is not significant in the context of this paper. Obviously the issue is not

19. Robinson, BLM and Alaska's Recreation Program, Paper Delivered at the Alaska Science Conference, Anchorage, Sept. 1963.

20. Recent passage by Congress of the Classification and Multiple Use Act, 78 Stat. 986, in September, 1964, should provide the agency with the necessary authority to rectify this situation.

black or white. What *is* significant is that in the process a myth was created which has persisted into the sixties. This myth is: with statehood the shackles of the federal bureaucracy upon the lands would be thrown off and the economy would immediately flourish. It is important at this point to review the trends in the Alaskan economy and their influence on emerging land policies.

II

ECONOMIC TRANSITION

Alaska is passing through a difficult period of economic transition which has been partially obscured by the excitement and fanfare given the political transition to statehood. The origins of this economic transition reach back into the past.

Prior to World War II, Alaska's economy was dependent upon the harvesting, processing, and export of natural resources with three products forming a narrow and highly specialized base—furs, canned salmon, and gold. During this so-called "colonial period," population growth was slow and erratic, depending primarily upon the ups and downs in the production of these three products. This economy did, however, stimulate some limited permanent settlement and capital formation. Following 1940, this extractive economy was eclipsed by the rise of the federal-military economy as Alaska's strategic military location was recognized and exploited. During the next two decades billions of dollars were expended in the construction of military bases, the improvement of surface and air transportation, and the construction of other public works related to the needs of a huge military establishment. It was this massive shot in the arm that was primarily responsible for the Territory's phenomenal population growth and increased economic well-being during the forties and fifties, and the expenditures contributed greatly to the ultimate political development of statehood.

By 1960, however, it became evident that changing military technology and defense concepts had reduced Alaska's military importance. There occurred a large out-movement of Armed Forces personnel and a decline in important construction activities. This has resulted in acute problems of unemployment and local economic distress, even though federal expenditures still remain the most important single element in the Alaska economy (federal funds appropriated for Alaska in 1964 amounted to about \$500 million).²¹ For

21. Senator Bartlett, Report from Washington, Feb. 1964.

the present and immediate future, therefore, one of Alaska's most pressing problems is the promotion of a smooth transition from a federal-military economy to one based, as before, almost exclusively upon its natural resources.

The problems are great. The old natural resource props of furs, fish and gold have declined steadily during the forties and fifties as a result of changing demands, costs, and, in the case of salmon, as a result of over-fishing which led to severe depletion of the resource.²² These losses add immensely to the difficulties of transition.²³ Fortunately, however, since the mid-1950's some impressive gains have been made in three major natural resource areas: (1) the expansion of forest products industries; (2) the exploration and production of oil and gas; and (3) the growth of tourism and recreation. By 1964 these resources had definitely emerged as dynamic factors in Alaska's economy. But the continued growth in these sectors has been unable completely to offset the decline taking place in other segments of the economy, and Alaska remains in a precarious position with high unemployment rates, a much too narrow economic base, a heavy reliance on government spending, and an ever-threatening continued downward adjustment in the total superstructure.

The state government has given much attention in the last five years to the possibilities of developing other natural resources in a valiant effort to broaden and strengthen the economic base. But Alaska's resources are still far from fully explored. The consensus of reputable local economists and national consulting firms who have studied the available data is that while the long-term prospects for development are bright, many of the resources known to exist at the present time are either too low in quality, or existing production costs are too high, to warrant immediate large-scale development.

The impact of these diverse economic trends is reflected in the existing financial situation confronting the state government. State government expenditures have increased rapidly during the last few years as Alaska accepted the added responsibilities and costs of state-

22. For a full account of the decline of the salmon fishery under federal management in Alaska, see Cooley, *Politics and Conservation* (1963).

23. Other natural resources contributed to the pre-World War II economic base. Between 1911 and 1938 copper ore production was important but since 1938 it has virtually disappeared. A number of other minerals were produced, mostly as by-products of gold and copper, but their total values were never significant over any period of time. Coal, sand, and gravel became important sources of value with the advent of the military establishment and they continue as minor components of the natural resource output.

hood. A new land program was launched; the full cost of managing fish and game was assumed; judicial and other purely local and state functions formerly performed by the federal government were transferred to the state; and highways, airfields, and other capital needs which previously had been paid for entirely by the federal government became state responsibilities. To be sure, with these new financial responsibilities there came additional sources of revenue. Owing to the unstable nature of the economy, however, total revenues from all sources have not increased as rapidly as total expenses, with the result that in 1964 the Third Alaska State Legislature was faced with a serious financial crisis. For the first year since statehood total revenues have declined—by about 12.5 per cent—and this decline in the presence of expanding demands for appropriations to meet the continually growing budgetary needs of the state government.²⁴ The devastating earthquake that occurred in south central Alaska on March 27, 1964, has greatly increased the fiscal problems of the new state government.

This critical turning point in the financial picture would have occurred earlier except that the state unexpectedly received large bonuses from the leasing of state-owned oil and gas lands amounting to approximately \$60 million in the last few years. These non-recurring revenues were used to meet the growing costs of state government. In recent years, however, these windfall profits did not materialize as expected. In addition, special federal grants totaling \$28.5 million, which had been appropriated by Congress to facilitate an orderly transition from territorial status to statehood, ended in 1964.

These comments on the contemporary economic and financial situation have direct implication in relation to the state's emerging program for the selection, classification, and disposal of its lands. It is true that because Alaska's economy is only beginning to develop, the state has an unprecedented opportunity to draw upon the knowledge and experience of the past in planning for the wise use of its natural resources. But from a practical politico-economic standpoint, the immediate need for quick cash to maintain government services may become the controlling factor in determining land and resource policies. Lack of adequate state revenues could lead to a decrease in funds available for important resource management and conservation programs, and to increasing pressures on the state to sell or

24. More specifically, actual state revenues amounted to about \$72 million in fiscal 1963-64, and this declined to an estimated \$63 million for fiscal 1964-65.

otherwise dispose of its land and natural resource base in any way that would bring immediate revenue with little regard for the long-range consequences. If a downward spiral of this nature were to set in, it would have a devastating impact on the environment and on the quality and character of life in the new state in the decades ahead.

III

THE CHALLENGE

The paramount challenge facing the State of Alaska has been fully recognized by the Division of Lands. It is to resolve the conflict between (1) the need for more and faster development of the lands and resources so that the region can become a healthy, productive segment of the United States economy, and (2) the need to retain the qualities of wild country, grand scenery, and a hunting and fishing paradise which are the state's special attributes.²⁵

Resolving the conflict will not be easy. Alaska has attracted an inordinate number of people whose views seem to fall near either pole of a development-conservation spectrum. There are the extreme twentieth-century developers who think of Alaska as a northern extension of the Western frontier which they wish to populate and industrialize as rapidly as possible. They envy California her crowded millions and want to create in Alaska cities like Los Angeles, Chicago or New York. They see themselves as the modern pioneers, and they demand the freedom of action that was given their counterpart a century earlier. To them, *any* resource use is a good use. What they do not realize is that in their zeal they may be sacrificing those unique natural values which in the long run may be the only real values upon which Alaska can build a healthy, productive economy. In short, they may be making mud pies out of gold dust.

At the other end of the spectrum are the extreme conservationists who more than likely came to Alaska primarily to get away from the kind of rushing industrial environment the developers wish to create. They believe economic development has gone much too far already, and they are quick to attack any proposal for additional development. They would prefer an Alaska as wild and unsettled as it was when the United States took it over from Russia. What they do not realize is that by following such a negative philosophy

25. De Leonardis & Lang, *Planning for Alaska's Resources*, in *A Place to Live* 509-18 (USDA Yearbook 1963). The authors are officials of the Alaska Division of Lands.

they may be defeating their own purpose, for a state in the throes of economic bankruptcy will be in no position to countenance policies of conservation. In short, they may be killing the goose that lays the golden egg.

Fortunately, a questioning voice is raised occasionally which points the way toward a blending of these dichotomous views. A case in point is found in a recent editorial in the daily newspaper of Juneau which focused succinctly on the real issue. Said the editor:

The progress (or development) complex has infected Alaska. We are caught firmly in its grip and cannot extricate ourselves. . . . Yet we cannot entirely shrug off the strange whisper that comes sometimes in the night and asks why we must continue to move onward from the peaceful, grassy knoll into an unknown future of dense and swirling population. Who has carefully considered the situation and decided that Alaska would be better with a million people, or two million people, than with the present two hundred and thirty thousand? In what way will it be better? Will it be better for you individually—or for your friends and neighbors? Will you enjoy Alaska more then—its beautiful mountains and glaciers, its coastlines and tundra, its recreational opportunities? Will you find it easier to pay your bills? Will the State government?

. . . We cannot and would not halt the march of time, but let us, to the extent possible, move forward with farseeing eyes, striving to guide the bandwagon instead of riding it blindly toward some strange place and condition that may not be as desirable, in truth, as where we are today.²⁶

The thinking of a large majority of the people in Alaska probably coincides with this more cautious approach to the future. While this less vociferous majority holds the balance of political power, so far they have not entered the arena and joined the battle. It is this group that must stir into action if Alaska is to use its great land patrimony to create a way of life in accord with factual reality rather than the present tendency toward making major decisions and setting major goals on the basis of out-dated prejudices, prevailing opinion, sentiment, and unfounded dreams. It is not a play on words to say that development and conservation can and must move ahead hand-in-hand if the state is to carve out a future that supplements rather than destroys those natural and human qualities that now make Alaska unique among the fifty states.

26. Lambert, *Daily Alaska Empire*, July 8, 1962, p. 4, col. 1.