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## Who will pay for buybacks? What peninsula priority will be sacrificed?

*Enough rhetoric on gas leases*

**Sen. Tom Wagoner**

*Voices Of The Peninsula*

The rhetoric about shallow gas drilling in the Matanuska-Susitna Borough and the Kenai Peninsula Borough has escalated to the point where some background information for rational discussion of the issue is required. I'm especially concerned about four areas: history, public notice, local planing and state interests vs. private interests.

**History:** Most of the resources (surface and subsurface) are owned by the state of Alaska. In fact, that was a primary concern when the Alaska Statehood Act was being debated. It was decided that in order for this new, remote, sparsely populated state to be able to govern and provide for itself, it needed resources for financial stability.

Alaska was allowed to select more than 100 million acres of land as an economic base for the new state. It was granted the right to all minerals underlying these sections and, in fact, is required to retain this mineral interest when conveying interests in the surface estate. If it fails to do so, the rights revert to the federal government.

These mineral interests support the permanent fund dividend check that each Alaskan gets annually. It's the subsurface mineral rights in the entire state, not just those in Prudhoe Bay, that fuels the divided program for all Alaskans.

**Public notice:** The notice process is being used as a basis for requesting a lease buyback for the southern peninsula. In the Mat-Su, criticism from local entities included allegations regarding insufficient notice to allow for comment. Criticism on the southern peninsula included allegations that citizens were unaware of the state's interests.

In 1996, the state's Lease Sale 85A in Cook Inlet offered lands in which the state owned surface and subsurface estate and lands in which the state owned only the subsurface while surface rights were owned privately or owned by a municipality. The lease sale affected the southern peninsula and was widely debated, published and noticed.

The Cook Inlet Areawide Plan, completed in 1999, also was widely debated, published and noticed. It is the basis of lease sales for 10 years under a program initiated by former Gov. Tony Knowles.

Perhaps people who have just moved to the Homer area were unaware of these mineral holdings, but I can't imagine anyone else saying they didn't know they didn't own the subsurface rights to their land < at least not with a straight face. Public

notice was provided on Lease Sale 85A and the Cook Inlet Areawide Plan via the Anchorage Daily News, the Peninsula Clarion and the Homer News.

I asked the Division of Oil and Gas to provide a brief outline of its process for the recent shallow natural gas lease program. Here's the outline (note the Peninsula Clarion was involved because the lease area included Nikiski, not just the southern peninsula):

The original shallow natural gas applications received in February 2000 for the Mat-Su and the Kenai Peninsula required a 60-day comment period under AS 38.05.177 and 38.05.945 (specifically, one day in a newspaper of statewide circulation and one day in a newspaper in the area affected) and a full Alaska Coastal Management Program review.

The public notice that was issued was a combined notice for the purposes of the comment period and the coastal management review. It was published in the Anchorage Daily News, the Frontiersman and the Peninsula Clarion.

Additional requests for comments, postmaster letters, etc. also were sent out. The public notice also was posted on the division, department and state Web sites.

The division actually added an additional step in the review process by circulating a draft Alaska Coastal Management Program consistency analysis and director's decision to all who had commented in the original notice process. This additional step was done as this was a new program that had not gone through the coastal management process before.

I point out that those notices also were sent to numerous individuals and entities, and included the Kenai Peninsula Borough, the Mat-Su Borough and the mayors of the cities within those boroughs.

Local planning: As a former mayor, I am particularly offended by allegations that the local planning and zoning authority was preempted with House Bill 69.

Further, assertions that it was "rushed through" the Senate are patently absurd. The record clearly shows that it was referred to the Senate Resources Committee on Feb. 14 and passed out of that committee on March 28.

I chaired the final hearing before Resources, and I also was involved in the language that was inserted regarding the local planning authority. The Alaska Municipal League had expressed concerns with the language in the draft bill and so I had my staff prepare an amendment for inclusion in the bill.

The amendment used language in existing statute (AS 35.30.030) and says, quite simply, that if the Department of Natural Resources clearly demonstrates an overriding state interest, waiver of local compliance requirements may be granted by the commissioner.

Quite frankly, my understanding was that the Alaska Municipal League was in contact with the affected municipalities, including the Mat-Su Borough, and that they

supported by amendment as opposed to the previous draft language. I obviously did not find it to be onerous.

I'm certain that some municipalities would prefer to have no state involvement, but that is simply not acceptable. My own borough assembly has suggested by passage of Resolution 2003-129 that the Kenai Peninsula Borough is better equipped than the state to handle this type of development. I find that to be an intriguing concept from a second-class borough that has no zoning authority.

Let's talk about local control. I'm confident that if we left the good people in the Homer area in charge, they would never provide for this resource that benefits all of us < including them.

Instead, they want to have their peninsula neighbors (Nikiski, Kasilof, Ninilchik, etc.) as well as other areas of the state to take any risk and then share in the benefit of the tax base generated by those risks.

Oh, and still take their permanent fund divided check, of course.

State interests vs. private interests: As I mentioned before, House Bill 69 includes language based on an existing statute that provides for a waiver of local requirements when there is an overriding state interest.

This language complies with the Alaska Constitution, Article VIII, Section 2, which states the Legislature shall provide for the utilization, development and conservation of all natural resources belonging to the state, including land and waters for the maximum benefit of its people.

The Constitution also states in Article VIII, Section 16, that no person shall be involuntarily divested of his interests in lands or improvements affecting either except for a superior beneficial use or public purpose and then only with just compensation.

For those of you who have taken the time to read this missive, I thank you.

My concern about this matter is great. As I stated before, my own assembly saw fit to support a resolution in support of buying back the leases in the southern peninsula. I'm ashamed of that resolution and applaud the three members who refused to be muscled: Gary Superman, Grace Merkes and Paul Fischer.

There is a simple question to be asked now: Who is going to pay for these buybacks? Which project that is on the Kenai Peninsula's priority list is going to be removed to let this new priority take its place?

Here's a suggestion: Perhaps those people who support the buybacks should step forward and turn in their permanent fund dividend checks.

Sen. Tom Wagoner is a Republican who lives in Kenai. He represents District Q in the state Senate. He was elected to the Senate in 2002.