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I. Introduction

The following is an update on Alaska legislative activity and case law relating to oil, gas and mineral law from August 1, 2015 to July 1, 2016.

II. Legislative and Regulatory Developments

The Second Regular Session of the 29th Alaska Legislature began Tuesday, January 19, 2016, and ended on Wednesday, May 18, 2016; the Third Special Session of the 29th Alaska Legislature began Saturday, October 24, 2015, and ended Thursday, November 5, 2015; the Fourth Special Session of the 29th Alaska Legislature began on Monday, May 23, 2016, and ended on Sunday, June 19, 2016; and the Fifth Special Session Special Session of the 29th Alaska Legislature began Monday July 11, 2016, and ended on Monday, July 18, 2016. The following is a discussion of notable legislation.

A. Senate Bill 3001

Senate Bill 3001 ("SB 3001")—Making supplemental appropriations; making appropriations to capitalize funds; and providing for an effective date.

The Alaska Legislature passed SB 3001 in support of the Alaska liquefied natural gas project, authorizing therein the appropriation of various funds unto the Department of Law, civil division, oil, gas, and mining; the Department of Natural Resources, administration and support services, North Slope gas commercialization; the Department of Revenue, administration and support, natural gas commercialization; and the Alaska liquefied natural gas project fund.[1]

SB 3001 was signed into law on November 20, 2015.

B. House Bill 373

House Bill 373 ("HB 373")—An act approving and ratifying the sale of royalty oil by the State of Alaska to Tesoro Corporation and Tesoro Refining and Marketing Company LLC; and providing for an effective date.

Section 1 of HB 373 amends the uncodified law of the State of Alaska by adding a new section approving and ratifying the agreement for the sale and purchase of state royalty oil between and among the State of Alaska and

1. For further discussion of the purpose and scope of the Alaska liquefied natural gas project, see Ryan J. Morgan, Steven A. Rhodes, and Zachary H. Barrett, *Alaska*, 2 Tex. A&M L. Rev. (Surv. on Oil & Gas) 11, 15–19 (2015).

Tesoro Corporation and Tesoro Refining and Marketing Company LLC, and reciting that this section constitutes legislative approval under AS 38.06.055.

Section 2 of HB 373 established that Section 1 of HB 373 take effect immediately.

HB 373 was signed into law on April 24, 2016.

C. House Bill 105

House Bill 105 ("HB 105")—An act facilitating the ability of the Alaska Industrial Development and Export Authority to implement a liquefied natural gas production plant and natural gas energy projects and distribution systems in the state.

Section 1 of HB 105 amended the uncodified law of the State of Alaska by adding a new section reciting the intent of the Legislature to advance the Interior energy project, a project intended to bring affordable natural gas to as many residents of Interior Alaska communities as possible as quickly as possible; and to facilitate the Alaska Industrial Development and Export Authority's use of competitive solicitation process "to select private entities to participate in developing the liquefied natural gas production plant capacity and affiliated infrastructure."[2]

Section 6 of HB 105 amends AS Section 44.88.170 by adding a new subsection, AS Section 44.88.170(c), that limits the authority of Alaska Industrial Development and Export Authority to "enter into a gas supply contract with a natural gas producer to provide natural gas to Interior Alaska as a primary market" without legislative authority, "unless the contract is for the benefit of a natural gas liquefaction or distribution utility that is owned by the authority or a subsidiary of the authority and the contract is for the natural gas producer to provide the utility, and only the utility, with a natural gas supply that the utility uses to serve customers in Interior Alaska."[3]

Section 15 of HB 105 established that the Act would take effect immediately.

Section 14 of HB 105 established that the Act is repealed June 30, 2025.

HB 105 was signed into law on September 10, 2015.

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2. H.B. 105, § 1, 29th Leg. (Alaska 2015).
3. ALASKA STAT. § 44.88.170(c) (2015).

D. House Bill 247

House Bill 247 ("HB 247")—Oil Royalties; Tax Credit; Etc.—is a bill that addresses royalty and tax credit incentives relating to the oil and gas industry. Below are some of the more notable changes.

1. House Bill 247, Section 1: Amendment Alaska Statutes Section 31.05.030

Section 1 of HB 247 amends AS Section 31.05.030 by adding a new subsection, AS Section 31.05.030(n), that instructs the Alaska Oil and Gas Conservation Commissioner, upon request of the Commissioner of Revenue, to determine the commencement of regular production from a lease or property regarding the application of certain tax reductions under AS Section 43.55.160(f) and AS Section 43.55.160(g).

2. House Bill 247, Section 9: Amendment Alaska Statutes Section 43.05.230

Section 9 of HB 247 amends AS Section 43.05.230 by adding a new subsection, AS Section 43.05.230, that instructs the Department of Revenue to make public, by April 30 of each year, the names of each person from which they have purchased a transferable tax credit under AS Section 43.55.028, as well as "the aggregate amount of the tax credit certificates purchased from the person in the preceding calendar year."[4]

3. House Bill 247, Section 14: Amendment Alaska Statutes Section 43.55.011(k)

Section 14 of HB 247 amends AS Section 43.55.011(k) by removing a sunset provision that would have terminated the provision in the year 2022, and by establishing a cap of one dollar per barrel of oil for oil produced from a lease or property in the Cook Inlet sedimentary basin for the tax levied pursuant to AS Section 43.55.011(e).

4. House Bill 247, Section 16: Amendment Alaska Statutes Section 43.55.020(a)

Section 16 of HB 247 amends AS Section 43.55.020(a) by adding two new subsections to AS Section 43.55.020(a)(7) that address installment payments for taxes levied pursuant to AS Section 43.55.011(e) for oil and gas produced on or after January 1, 2022. First, Section 16 of HB 247 amends AS Section 43.55.020(a)(7) by adding subsection AS Section

4. ALASKA STAT. § 43.05.230(l)(2) (2016).

43.55.020(a)(7)(F), that addresses oil that is subject to AS Section 43.55.011(k), "for each lease or property, the greater of (i) zero; or (ii) 35 percent multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible under AS 43.55.160 for the oil produced from the lease or property from the gross value at the point of production of the oil, produced from the lease or property during the month for which the installment payment is calculated."[5] Second, Section 16 of HB 247 amends AS Section 43.55.020(a) by adding subsection AS Section 43.55.020(a)(7)(G), that addresses gas that is subject to AS Section 43.55.011(j) and AS Section 43.55.011(o), "for each lease or property, the greater of (i) zero; or (ii) 13 percent of the gross value at the point of production of the gas produced from the lease or property during the month for which the installment payment is calculated."[6]

Section 16 of HB 247 also amends AS Section 43.55.020(a) by adding a new subsection, AS Section 43.55.020(a)(10), establishing that an amount calculated under AS Section 43.55.020(a)(7)(F) or (G) of this subsection:

> for oil or gas subject to AS 43.55.011(j), (k), or (o) may not exceed the product obtained by carrying out the calculation set out in AS 43.55.011(j)(1) or (2) or 43.55.011(o), as applicable, for gas, or set out in AS 43.55.011(k) for oil, but substituting in AS 43.55.011(j)(1)(A) or (2)(A) or 43.55.011(o), as applicable, the amount of taxable gas produced during the month for the amount of taxable gas produced during the calendar year and substituting in AS 43.55.011(k) the amount of taxable oil produced during the month for the amount of taxable oil produced during the calendar year.[7]

5. House Bill 247, Section 18: Amendment Alaska Statutes Section 43.55.023(b)

Section 18 of HB 247 amends AS Section 43.55.023(b) by establishing a sunset date for a tax credit in the amount of twenty-five percent of a carried-forward annual loss, limiting the applicability to lease expenditures incurred to explore for, develop, or produce oil or gas deposits located south of 68 degrees North latitude on or after January 1, 2017; and reducing said tax credit to fifteen percent of a carried-forward annual loss, for lease

5. ALASKA STAT. § 43.55.020(a)(7)(F) (2016).
6. ALASKA STAT. § 43.55.020(a)(7)(G) (2016).
7. ALASKA STAT. § 43.55.020(a)(10) (2016).

expenditures to explore for, develop, or produce oil or gas deposits located south of 68 degrees North latitude incurred on or after January 1, 2017. Further, Section 18 of HB 247 establishes that for "lease expenditures incurred on or after January 1, 2017, any reduction under AS 43.55.160(f) or (g) is added back to the calculation of production tax values for that calendar year under AS 43.55.160 for the determination of a carried-forward annual loss."[8]

Section 18 of HB 247 also amends AS Section 43.55.023(b) to limit the applicability of said tax credit for lease expenditures incurred to explore for, develop, or produce oil or gas deposits located in the Cook Inlet sedimentary basin to those made before January 1, 2018.

6. House Bill 247, Section 19: Amendment Alaska Statutes Section 43.55.023(l)

Section 19 of HB 247 amends AS Section 43.55.023(*l*) to reduce the tax credit, established therein, for well and lease expenditures incurred south of 68 degrees North latitude from forty percent of that expenditure incurred before January 1, 2017; to twenty percent of that expenditure incurred on or after January 1, 2017; and limiting the applicability of said tax credit for well or lease expenditures incurred to explore for, develop, or produce oil or gas deposits located in the Cook inlet sedimentary basin, before January 1, 2018.

7. House Bill 247, Section 23: Amendment Alaska Statutes Section 43.55.028(e)

Section 23 of HB 247 amends AS Section 43.55.028(e) by setting a cap for the Department of Revenue's purchase of transferable tax credit certificates that had been issued under AS Section 43.55.023(d) or former AS Section 43.55.023(m) or to whom a production tax credit certificate has been issued under AS Section 43.55.025(f), mandating that the Department of Revenue cannot purchase a total of more than $70,000,000 in tax credit certificates from a person in a calendar year.

8. House Bill 247, Section 24: Amendment Alaska Statutes Section 43.55.028(g)

Section 24 of HB 247 amends AS Section 43.55.028(g) by instructing the Department of Revenue to adopt regulations

8. ALASKA STAT. § 43.55.023(b)(2) (2016).

> To carry out the purposes of this section, including standards and procedures to allocate available money among applications for purchases under this chapter and claims for refunds and payments under AS 43.20.046, 43.20.047, or 43.20.053 when the total amount of the applications for purchase and claims for refund exceed the amount of available money in the fund.[9]

Section 24 of HB 247 also amends AS Section 43.55.028(g) by instructing the Department of Revenue, when adopting the above regulations, to grant preference to the applicant with a higher percentage of resident workers, as defined in AS 43.40.092(b), in the previous calendar year,[10] and to

> provide for the purchase of the amount equal to the first 50 percent of the credit repurchase limit for each person under [AS Section 43.55.028 (e)] of this section at a rate of 100 percent of the value of the certificate or portion of the certificate requested to be purchased and the amount equal to the next 50 percent of the credit repurchase limit for each person under [AS Section 43.55.028 (e)] of this section at a rate of 75 percent of the value of the certificate or portion of the certificate requested to be purchased.[11]

9. House Bill 247, Section 25: Amendment Alaska Statutes Section 43.55.028

Section 25 of HB 247 amends AS Section 43.55.028 by adding a new subsection, AS Section 43.55.028(j) in which the Department of Revenue is instructed, when making payment for a certificate or a refund, to deduct from said payment any outstanding liability, defined as "an amount of tax, interest, penalty, fee, rental, royalty, or other charge for which the state has issued a demand for payment that has not been paid when due."[12] Section 25 of HB 247 makes clear that "satisfaction of an outstanding liability under this subsection does not affect the applicant's ability to contest that liability."[13]

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9. ALASKA STAT. § 43.55.028(g) (2016).
10. ALASKA STAT. § 43.55.028(g)(2) (2016).
11. ALASKA STAT. § 43.55.028(g)(3) (2016).
12. ALASKA STAT. § 43.55.028(j) (2016).
13. *Id.*

10. House Bill 247, Section 26: Amendment Alaska Statutes Section 43.55.028(f) and Section 43.55.028(g)

Section 26 of HB 247 amends AS Section 43.55.028(f) by establishing effective dates for the twenty percent reduction for the gross value at the point of production of oil or gas produced from a lease or property north of 68 degrees North latitude, as established therein. For oil and gas first produced from a lease or property after December 31, 2016, said reduction applies from the date of commencement of regular production of oil or gas, and expires either after three calendar years, whether consecutive or not, in which the price for Alaska North Slope crude oil for sale on the United States West Coast is more than $70; or after seven years, whichever comes first.

Section 26 of HB 247 further amends AS Section 43.55.028(f) by establishing that the above referenced reduction for oil and gas first produced from a lease or property before January 1, 2017, expires either on January 1, 2023, or on the first day of January, following three years, whether consecutive or not, in which the price for Alaska North Slope crude oil for sale on the United States West Coast is more than $70.

Section 26 of HB 247 amends AS Section 43.55.160(g) by making the ten percent reduction for the gross value at the point of production of oil or gas produced from a lease or property north of 68 degrees North latitude, as established therein, for oil and gas first produced from a lease or property after December 31, 2016, applicable from the date of regular production of oil or gas, but to expire either after three years, whether consecutive or not, in which the price for Alaska North Slope crude oil for sale on the United States West Coast is more than $70; or after seven years, whichever comes first.

Section 26 of HB 247 further amends AS Section 43.55.160(g) by establishing that the above referenced reduction for oil and gas first produced from a lease or property before January 1, 2017, either expires on January 1, 2023, or expires on the first day of January, following three years, whether consecutive or not, in which the price for Alaska North Slope crude oil for sale on the United States West Coast is more than $70.

11. House Bill 247, Section 32: Amendment Alaska Statutes Section 43.70

Section 32 of HB 247 amends AS Section 43.70 by adding a new section, Section 43.70.025 that requires that a business license applicant who is engaged in the business of oil or gas exploration, development, or production file a surety bond or a cash deposit or other acceptable

negotiable security in the amount of $250,000 [14] running to the state, conditioned upon the applicant's promise to pay all taxes, laborers, and suppliers.[15] Said bond to remain in effect until "cancelled by action of the surety, the principal, or if the commissioner finds that the business is producing oil or gas in commercial quantities, by the commissioner."[16]

Section 32 of HB 247 also amends AS 43.70 by adding a new section, AS Section 43.70.028 that allows persons to bring suit upon the bond filed pursuant AS Section 43.70.025 in satisfaction of claims for the failure to pay a liability, as described in AS Section 43.70.025(a) above. Priority for claims pending against said shall be in descending order as follows: (1) material, equipment, and supplies delivered in the state;[17] (2) labor, including employee benefits;[18] (3) taxes and other amounts due to the city and borough, in that order;[19] (4) repair of public facilities;[20] and (5) taxes and other amounts due to the state.[21]

III. Judicial Developments

A. Supreme Court Cases

1. City of Kenai v. Cook Inlet Natural Gas Storage Alaska, LLC[22]

In *City of Kenai v. Cook Inlet Natural Gas Storage Alaska, LLC*, the Supreme Court of Alaska addressed for the first time whether the pore space or gas storage rights under a tract of land in which the minerals were reserved pursuant to a statutory requirement of Alaska Statute § 38.05.125(a) are owned by the surface owner or the mineral owner.

a) Facts and Proceedings

"The Cannery Loop Sterling C Gas Reservoir is located approximately a mile below the Kenai River. The reservoir began producing natural gas in 2000." However, its gas supply was eventually depleted, leaving emptied

14. ALASKA STAT. § 43.70.025(a) (2016).
15. ALASKA STAT. § 43.70.025(a)(1), (2) (2016).
16. ALASKA STAT. § 43.70.025(c) (2016).
17. ALASKA STAT. § 43.70.028(a)(1) (2016).
18. ALASKA STAT. § 43.70.028(a)(2) (2016).
19. ALASKA STAT. § 43.70.028(a)(3) (2016).
20. ALASKA STAT. § 43.70.028(a)(4) (2016).
21. ALASKA STAT. § 43.70.028(a)(5).
22. City of Kenai v. Cook Inlet Nat. Gas Storage Alaska, LLC, 373 P.3d 473, 476 (Alaska 2016).

pore spaces within the sedimentary rock which can be used to store non-native gas.[23]

The State of Alaska (the "State") and Cook Inlet Region, Inc. ("CIRI") own the right to minerals underlying the property because of mineral reservations required by the Alaska Land Act. The City of Kenai (the "City") was the owner of the surface rights to the property.

"Cook Inlet Natural Gas Storage Alaska, LLC [("CINGSA")] concluded that the State and CIRI held title to the pore space because they owned the mineral rights." In 2011, CINGSA obtained leases from those entities to allow it to use the porous formation as a reservoir for storing injected natural gas. "But the City claimed an ownership interest in the storage rights and sought compensation" from CINGSA.

CINGSA filed a complaint in March 2012 asking the superior court to decide who owns the storage rights and which party CINGSA should compensate for its use of the pore space. CINGSA then "filed for summary judgment arguing "CIRI and the State own the pore space and attendant storage rights because of the State's reservation of certain subsurface interests as required by [Alaska Statute § 38.05.125(a)]." The superior court agreed and granted CINGSA's motion for summary judgment. The City appealed to the Supreme Court of Alaska.[24]

b) Standard of Review

A superior court's decision on summary judgment is reviewed "de novo, drawing all inferences in favor of, and viewing the facts in the record in the light most favorable to, the non-moving party."[25]

c) Discussion

The central issue in the case is whether the mineral owner or surface owner has rights to the underlying pore space or natural gas storage rights when the mineral and surface estates "have been severed, as they commonly are under Alaska's mineral reservation statute, AS [§] 38.05.125, a provision of the Alaska Land Act."[26]

The superior court had granted summary judgment to CINGSA, holding that "(1) determining ownership of the storage rights is a question of statutory rather than deed interpretation; (2) the reserved rights under Alaska Statute § 38.05.125(a) include natural gas storage rights; and (3) the

23. *Id.* at 475.
24. *Id.* at 476-77.
25. *Id.* (citing 43 U.S.C § 1601-1629h (2015)).
26. *Id.* at 477-78.

'American rule'- by which the surface owner owns the rights to the underground spaces that have been depleted of their minerals – did not apply."[27]

(1) The superior court properly addressed the ownership of storage rights as a question of statutory interpretation

"The State patents conveying the land at issue to the City recited verbatim the reservation of mineral rights that AS [§] 38.05.125(a) generally requires."[28] The City argued the superior court erred by not interpreting the reservation using rules of deed interpretation rather than statutory interpretation. The Court found the superior court's application of a statutory interpretation to be proper because: (1) "A patent cannot convey what has been reserved by law"[29]; (2) patents "are to be given effect according to the laws and regulations under which they were issued"[30]; and that (3) "courts have consistently applied rules of statutory interpretation to determine the scope of contractual reservations required by statutes." The Court concluded that "mineral reservations required by federal statutes are interpreted in light of the apparent intent of Congress, not the intent of the parties to the instrument."[31]

(2) Interpreting AS 38.05.125(a) to include the reservation of natural gas storage rights is consistent with the statute's plain language and purpose.

Alaska Statute § 38.05.125(a) requires that "[e]ach contract for the sale, lease, or grant of state land, and each deed to state land, properties, or interest in state land" be made subject to the States' reservation of the rights to listed natural resources: "all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said land above described."[32] The statute also requires the reservation of rights of entry for exploration and the extraction of minerals, the reservation of surface rights necessary to support extraction, and the catchall reservation of "generally all rights and power in,

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27. *Id.* at 478.

28. *Id.* at 477.

29. *Id.* at 479 (quoting Leo Sheep Co. v. United States, 570 F.2d 881, 888 (10th Cir. 1977)).

30. *Id.* (quoting Swendig v. Wash. Water Power Co., 265 U.S. 322, 332, 44 S.Ct. 496, 68 L.Ed. 1036 (1924)).

31. *Id.*

32. *Id.* at 480 (quoting ALASKA STAT. § 38.05.125(a)).

to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved."[33]

The City argued that the statute reserves only "specifically identified natural resources in the land and the right to make use of the land to aid in the development and extraction of those resources," not "a place or location – the subsurface" – that would include non-mineral pore space.[34]

When determining the meaning of a statute, a court looks to both the text and purpose of the statute. The statutory language is given a "reasonable or common sense construction, consonant with the objects of the legislature."[35] Contrary to private land grants, with public land grants, ambiguities "are resolved strictly against the grantee and in favor of the government."[36]

The Alaska Land Act does not define "minerals," and the Court has not yet defined them in the context of Alaska Statute § 38.05.125(a). Other courts have found the term to be ambiguous and have interpreted it broadly.[37]

"Pore space" has been defined as "microscopic voids within rocks that are unoccupied by solid material," and is "an inextricable part of the rock strata in which it is found."[38] "Because porous rock formations are mineral, the parts that make them up are also mineral, including the microscopic pore space that constitutes much of these formations."[39] And because Alaska Statute § 38.05.125(a) broadly reserves "all . . . minerals," the Court concluded that included the "constituent parts of those minerals."

The purpose of the Alaska Land Act is to "maximize revenue for the state"[40] and sections of it have been interpreted as intended "to provide for

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33. *Id.*

34. *Id.*

35. *Id.* (quoting Mech. Contractors of Alaska, Inc. v. State, Dep't of Pub. Safety, 91 P.3d 240, 248 (Alaska 2004) (quoting Mack v. State, 900 P.2d 1202, 1205 (Alaska App. 1995)).

36. *Id.*

37. *Id.* at 481.

38. *Id.* (quoting Kevin L. Doran & Angela M. Cifor, *Does the Federal Government Own the Pore Space under Private Lands in the West? Implications of the Stock-Raising Homestead Act of 1916 for Geologic Storage of Carbon Dioxide*, 42 ENVTL. L. 527, 530 (2012)).

39. *Id.*

40. *Id.* at 481 (quoting Marathon Oil Co. v. State, Dep't of Nat. Res., 254 P.3d 1078, 1085 (Alaska 2011)).

orderly oil and gas leasing that maximizes state return on its oil and gas resources."[41]

The Court found the federal case *Watt v. Western Nuclear, Inc.*[42] to be instructive in illustrating how legislative purpose drives the definition of "minerals" in different statutory contexts. "In *Watt v. Western Nuclear, Inc.*, the United States Supreme Court held that gravel found on lands patented under the Stock-Raising Homestead Act (SRHA) was a 'mineral' reserved to the United States by statute . . . [because] 'Congress' underlying purpose in severing the surface estate from the mineral estate was to facilitate the concurrent development of both surface and subsurface resources,'" and that "it sought to ensure that valuable subsurface resources would remain subject to disposition by the United States."[43] Similarly, "the Alaska Land Act contemplates retained State control over potential mineral wealth even as the surface estate passes to other parties for productive surface uses."[44]

Because the statutory language and persuasive authority suggest a broad interpretation of the term "minerals" in Alaska Statute § 38.05.125(a), and because interpreting "minerals" to include pore space is consistent with both the language and the purposes of the statute, the Court rejected the City's argument and concluded that pore-space ownership is reserved as part of the mineral rights reserved under Alaska Statute § 38.05.125(a), and "storage, even for non-native natural gas, is reserved as part of the 'rights and power in, to, and over said land…reasonably necessary or convenient to render beneficial and efficient the complete enjoyment' of the State's other reserved mineral rights."[45]

(3) The "American Rule" does not apply

Courts have approached the issue of pore-space ownership with two main theories: the American Rule and the English Rule.

> [I]n the absence of language in the severing deed dictating a different construction, the English and Canadian rule is that the cavern which remains in the land after the hard minerals are

41. *Id.* (quoting Chevron U.S.A. Inc. v. LeResche, 663 P.2d 923, 931 (Alaska 1983).
42. 462 U.S. 36, 60, 103 S. Ct. 2218, 76 L. Ed. 2d 400 (1983).
43. *City of Kenai*, 373 P.3d at 482.
44. *Id.* at 483.
45. *Id.*

> mined is owned by the mineral interest owner; the America view is that the cavern is owned by surface owners.[46]

The City argued for the Court to adopt the American rule, citing to *Ellis v. Arkansas Louisiana Gas Co.* as the proper application of the American rule to gas storage rights. However, the Court found the present case to be distinguishable because in *Ellis* there was no statutory reservation at issue, leading the court in *Ellis* focus on the intent of the private parties, instead of the intent of a statute.[47] The Court concluded that the American rule does not apply to a determination of the ownership of pore-space storage rights in a case involving a reservation of rights to the State under Alaska Statute 38.05.125(a).[48]

d) Conclusion

Because the rights at issue are governed by the terms of the statutory reservation, and because the Court interpreted that reservation as including pore-space storage rights, the Court held that the superior court acted properly, and held that pore space or gas storage rights underlying a tract of land in which the minerals have been severed due to the statutory requirement of Alaska Statute § 38.05.125(a) belong to the mineral owners rather than the surface owners.

The judgment of the superior court was affirmed.

2. City of Valdez v. State[49]

In *City of Valdez v. State*, the Supreme Court of Alaska addressed whether the appeal process on taxability determinations of oil and gas property that excludes the State Assessment Review Board ("SARB"), as established in Alaska Admin. Code tit. 15, § 56.015(b)-(c)[50], is in conflict with Alaska Statute § 43.56.110.-.130 that requires SARB to hear administrative appeals of all "assessment[s]" of oil and gas property.[51]

a) Regulatory Background

In 1973 the legislature established an overarching regime for the statewide assessment of oil and gas property in order to levy ad valorem

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46. *Id.* (quoting Ellis v. Ark. La. Gas Co., 450 F. Supp. 412 (E.D. Okla. 1978) *aff'd*, 609 F.2d 436 (10th Cir. 1979)).

47. *Id.*

48. *Id.* at 484.

49. *City of Valdez v. State*, 372 P.3d 240 (Alaska 2016).

50. 15 AAC 56.015(b)-(c).

51. ALASKA STAT. § 43.56.110.-.130 (1973).

taxes.[52] Under the statewide regime, codified as Alaska Statute § 43.56, Revenue manages the assessment process, determining whether property is taxable under Alaska Statute § 43.56 and, if so, its taxable value. Municipalities are permitted to tax oil and gas property located within their boundaries at the same rate as they do local property.[53]

When "the legislature initially established this assessment scheme, all appeals of Revenue's oil and gas property tax assessments were heard by SARB."[54] However, in 1986 Revenue promulgated a more detailed framework to govern the appeals, setting up a separate appeal track for appeals on the issue of taxability. Under this new track, appeals of Revenue's determination on taxability still initially are appealed to Revenue, which issues an informal conference decision; however, an appeal from this informal conference decision is then heard by a hearing officer appointed by the Commissioner of Revenue, not by SARB.[55] The hearing officer's decision can then be appealed to the superior court, but unlike a valuation appeal, whether a taxability appeal is a trial de novo is in the discretion of the superior court judge.[56] Therefore, through its regulation, Revenue has made an interpretation of "assessment" in Alaska Statute § 43.56 to not include Revenue's initial determination of taxability.

b) Facts and Procedural History

"The Trans-Alaska Pipeline System ([‌"TAPS"]) is an 800-mile-long oil pipeline system that connects the North Slope oil fields to a shipping terminal in Valdez," crossing through the North Slope Borough ("NSB"), the Fairbanks North Star Borough ("FNSB"), and the City of Valdez ("Valdez").[57] "In February 2013 Revenue issued a notice of assessment for oil and gas property held by the TAPS owners for Assessment Year 2013." The TAPS owners appealed this notice of assessment, objecting both to Revenue's assessed value of the property and its determination that certain pieces of property were taxable as oil and gas property under Alaska Statute § 43.56.[58]

Both appeals proceeded simultaneously on the two separate appeal tracks (taxability and valuation) until each sat with the superior court. NSB then

52. Ch. 1, §1, FSSLA 1973.
53. ALASKA STAT. § 43.56.010(a)-(b).
54. *City of Valdez*., 372 P.3d at 244.
55. *Id.*
56. *Id.*
57. *Id.* at 245.
58. *Id.*

filed a complaint for declaratory and injunctive relief with the superior court, followed by Valdez and FNSB successfully intervened and filed a separate complaint.[59] The municipalities all challenged the validity of Alaska Admin. Code tit. 15, § 56.015(b)-(d) arguing the regulation impermissibly delegated the authority to decide taxability appeals to Revenue, contravening the statute's grant of authority to SARB to hear all appeals from initial assessment of such property.[60]

The intervenors moved for summary judgment, and the superior court denied the municipalities' request to invalidate the regulation, and holding that Revenue's interpretation was a permissible interpretation of the statue.[61] The superior court then entered a final judgment to this effect. Valdez appealed that decision to the Supreme Court of Alaska.[62]

c) Standard of Review

The Supreme Court of Alaska ("the Court") utilized a substitution of judgment review standard because this case involves both statutory interpretation of a non-technical statutory term, a task in which the courts are well versed, and the question of the scope of the relationship between Revenue and SARB's jurisdictions.[63]

In applying substitution of judgment review, a statute is interpreted de novo, taking into consideration the text, legislative history, and purpose behind the statute.[64] Such determinations are made on a sliding scale where the plainer the language of the statute is, the more convincing any contrary legislative history must be to overcome the statues plain meaning.[65]

d) Discussion

Revenue promulgated Alaska Admin. Code tit. 15, § 56.015 in 1986, providing a more detailed framework to govern the appeals, setting up a separate appeal track for appeals on the issue of taxability.[66] Subsection (a) provides for appeals of the assessed value of oil and gas property to be filed with Revenue, whose determination may then be further appealed to

59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.* at 246.
63. *Id.* at 247.
64. *Id.* at 248.
65. *Id.*
66. ALASKA ADMIN. CODE tit. 15, § 56.015.

SARB.[67] Subsections (b) and (c) set taxability appeals on a separate procedural route, still initially filed with Revenue, but whose determination may not be appealed to SARB, but instead are appealed to a formal hearing before Revenue.[68] However, Alaska Statute § 43.56.110-.130 provides that SARB shall hear administrative appeals of all "assessment[s]" of oil and gas property.

Valdez challenged the regulation arguing that Revenue not including the initial determination of taxability within its definition of "assessment" was in conflict with Alaska Statute § 43.56.110-.130 which requires that SARB shall hear administrative appeals of all "assessments" of oil and gas property.[69]

The Court independently interpreted Alaska Statute § 43.56 utilizing the three metrics for statutory interpretation: text, legislative history, and purpose.[70]

(1) Revenue's Interpretation of "Assessment" Through Its Regulation Is Not Consistent With The Text Of AS 43.56

First, the Court examined the plain text of the statute. Alaska Statute § 43.56 does not define the term "assessment," and the only explicit appellate path specified in Alaska Statute § 43.56 is through SARB. Therefore, the Court looked to the scope of the statutory term "assessment" within Alaska Statute § 43.56 to determine whether Alaska Statute § 43.56 is flexible enough to accommodate Revenue's interpretation through its regulation.[71]

(a) The text of the overall statutory scheme

In examining how the term "assessment" was used throughout Alaska Statute § 43.56's statutory scheme, the Court found, *inter alia*:

i. Alaska Statue § 43.56.120 simply and unequivocally provides that whatever is appealed to Revenue under Alaska Statute § 43.56.110 can be further appealed to SARB: "*[a]fter a ruling by [Revenue] on an appeal made under AS 43.56.110, the owner or a municipality may further appeal to [SARB].*";[72]
ii. Alaska Statute § 43.56.130 indicates that the legislature did not intend to grant SARB or Revenue the discretion to categorically

67. *Id.* at 56.015(a).
68. *Id.* at 56.015(b)-(c).
69. *City of Valdez*, 372 P.3d at 248.
70. *Id.* at 249.
71. *Id.*
72. *Id.* at 250 (quoting ALASKA STAT. § 43.56.120) (emphasis added).

remove a class of appeals from SARB's jurisdiction. Instead, it mandates that SARB "*shall* hear appeals filed under AS 43.56.120(a).";[73] and

iii. Alaska Statute § 43.56.135's mandates that that Revenue "shall certify the final assessment roll and mail…a statement of the amount of tax due to each owner of taxable property by June 1 each year."[74] The Court found (1) this requirement to imply that all issues relating to the assessment roll must be resolved at the administrative level by June 1 of each year; (2) this requirement must encompass taxability appeals, because an assessment roll is not final if it still contains property whose owners are disputing its taxability in appeal proceedings before Revenue; and (3) allowing taxability appeals at the administrative level to extend beyond June 1, as taxability appeals before Revenue currently do, contravenes this clear statutory requirement.[75]

(b) Common usage of the term "assessment"

Having found no definition for "assessment" in the context of property taxation in the entirety of the code, the Court examined dictionaries and texts in the field of property assessment in order to ascertain the meaning of "assessment."[76]

The edition of *Black's Law Dictionary* in existence at the time of drafting and enactment of Alaska Statute § 43.56 defined "assessment" generally as "the process of *ascertaining* and adjusting the shares respectively to be contributed by several persons towards a common beneficial object according to the benefit received."[77] And also defined "assessment" specifically for the purposes of property taxation as "[t]he *listing* and valuation of property for the purpose of apportioning a tax upon it."[78] The Court found both definitions to contemplate the scope of "assessment" as including the initial identification of that property which as eligible for taxation.[79]

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73. *Id.* (quoting ALASKA STAT. § 43.56.130) (emphasis in original).

74. *Id.* at 251 (quoting ALASKA STAT. § 43.56.135).

75. *Id.*

76. *Id.*

77. *Id.* (quoting *Assessment*, Black's Law Dictionary (rev. 4th ed. 1968)) (emphasis in original).

78. *Id.* (quoting *Assessment*, Black's Law Dictionary (rev. 4th ed. 1968)) (emphasis in original).

79. *Id.*

The Court examined two texts written by those who work in the field of property assessment. The first defined "assessment" with respect to property taxation as "the official act of *discovering*, listing, and appraising property, whether performed by an assessor, a board of review, or a court."[80] The second described the assessment process and the tasks of assessors as including the initial step of "locating and identifying all taxable property in the jurisdiction."[81] The court found these common definitions of "assessment" to indicate inclusion of the step of an initial determination of taxability.[82]

(c) The significant consequences of Revenue's interpretation

The statute explicitly grants a party appealing a decision by SARB a right to a trial de novo in the superior court.[83] In contrast, under Revenue's interpretation, whether an appeal to the superior court of a taxability decision by Revenue is granted a trial de novo is left to the discretion of the superior court judge.[84] If a discretionary trial de novo is not granted on a taxability claim, the superior court's review of Revenue's decision will be limited to the record on file with Revenue and will be deferential to Revenue's findings.[85] The Court found it unlikely the legislature would have intended for these serious consequences to arise from a distinction not provided for in the text of the statute.[86]

The Court concluded that while Alaska Statute § 43.56's plain text is silent on the scope of the term "assessment," "the text of the overall statutory scheme, the common usage of the term 'assessment' in the property taxation context, and the significant consequences of Revenue's interpretation of the statute" led to the conclusion that the statute's text indicates that "assessment" "encompasses the initial taxability determination."[87]

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80. *Id.* at 252 (quoting Int'l Assoc. of Assessing Officers, Glossary for Property Appraisal and Assessment 11 (2d ed. 2013).

81. *Id.* (quoting Int'l Assoc. of Assessing Officers, Glossary for Property Appraisal and Assessment Administration 18 (Joseph K. Eckert ed., 1990)).

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 252-53.

(2) Revenue's Interpretation Of "Assessment" Through Its Regulation Is Not Consistent With The Legislative History of AS 43.56

When interpreting a statute, the Court also examines the legislative intent behind the statute, applying a "sliding scale approach, where '[t]he plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.'"[88]

The Court found the legislative history of Alaska Statute § 43.56 to supportive of the plain text of the statute, that being Revenue's determination of the taxability of oil and gas property is part and parcel of the assessment process.[89] "In a letter to the speaker of the house introducing the bill that would become codified as Alaska Statute § 43.56, then-Governor Egan explained that '[SARB] is created to serve the function of the local board of equalization' and that '[t]he manner of assessment and collection of the tax is similar to that provided for municipalities.' Under Alaska Statute § 29.45, which establishes the manner in which municipalities assess and collect tax, the municipality's governing body sits as a board of equalization when hearing appeals from municipal tax assessments.[90] These municipal boards of equalization routinely hear both valuation and taxability appeals."[91]

The Court found it compelling that the legislature emphasized the virtue of condensing power to hear such appeals in a single entity.[92] The committee drafting the bill heard extensive testimony on the need for a uniform standard for assessment of oil and gas property, and ultimately created only a single entity to hear appeals: SARB.[93] The Court found it "exceedingly unlikely that the legislature intended to create a bifurcated appeal process without expressly doing so, particularly after hearing unrebutted testimony on the importance of uniformity."[94]

The legislative history shows the legislature modeled SARB after municipal boards of equalization and was aware of the importance of a uniform assessment process overseen by a single entity. The Court found both of these factors to be inconsistent with Revenue's interpretation of the statute.

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88. *Id.* (quoting State, Commercial Fisheries Entry Comm'n v. Carlson, 270 P.3d 755, 762 (Alaska 2012) (alteration in original).

89. *Id.* (quoting 1973 House Journal 41).

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 254.

(3) Revenue's Interpretation Of "Assessment" Is Not Consistent With The Purpose Of AS 43.56

"The goal of statutory construction is to give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others."[95] The aim is to "construe a statute in light of its purpose."[96] The Court focused on two indicia of what the legislature intended "assessment" to mean in Alaska Statute § 43.56: (1) SARB decisions made nearly contemporaneously with the enactment of Alaska Statute § 43.56, and (2) the compressed timeline that the legislature set forth in Alaska Statute § 43.56 for the resolution of appeals regarding assessments.[97]

(a) Prior SARB decisions

In 1974, only one year after the passage of Alaska Statute § 43.56 and the establishment of SARB, SARB issued an opinion describing the scope of its jurisdiction as including both taxability and valuation appeals concluding that: "[t]he standards set forth in AS 43.56 include both taxability and valuation standards. To say that [SARB] must accept without question the taxability of a particular piece of property would prevent [SARB] from acting as an appella[te] and . . . would subvert the legislative intent in creating [SARB]."[98] The Court found such a nearly contemporaneous interpretation to be reliable indicia of legislative intent and supportive of the argument that "assessment" includes an initial determination of taxability."[99]

SARB continued to follow its 1974 interpretation of its own jurisdiction through 2008, at which point it began to abide by Revenue's promulgated interpretation.[100] However, the Court was not swayed by SARB's recent acceptance of Revenue's interpretation, pointing out that from its inception and for several subsequent decades SARB understood its jurisdiction to encompass taxability appeals.[101]

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95. *Id.* (quoting City of Fairbanks v. Amoco Chem. Co., 952 P.2d 1173, 1178 (Alaska 1998) (quoting Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896, 905 (Alaska 1987)).

96. *Id.* (quoting Alaska for a Common Language, Inc. v. Kritz, 170 P.3d 183, 193 (Alaska 2007)).

97. *Id.*

98. *Id.* (quoting *Alaska Pipeline*, No. 001-000-0015 (State Assessment Review Bd. Dec. 9, 1974)).

99. *Id.*

100. *Id.*

101. *Id.*

(b) The timeline set forth in the statute

The legislature set up a compressed time frame for appeals that requires all appeals from Alaska Statute § 43.56 initial assessment notices be resolved at the administrative level within approximately three months, by no later than June 1 of each year.[102]

In contract, the process promulgated by Revenue for taxability appeals can take years for a final judgment to be rendered. The Court found such a lengthy process to be contrary to the expedited timeline the legislature set forth for appeals before SARB, and preventative of valuation appeals before SARB from being decided in the timely manner prescribed by the legislature due to valuation appeals before SARB sometimes being stayed pending resolution of taxability appeals before Revenue.[103]

The Court recognized the grave financial implications such a lengthy process for taxability appeals before Revenue could have on affected municipalities because they must refund overpayments of taxes to taxpayers at eight percent interest and must plan annual budgets without knowing their expected tax revenue.[104]

The Court held Revenue's interpretation of Alaska Statute § 43.56 through its regulation to be inconsistent with the statute's text, legislative history, and purpose, and therefore, rendered the challenged regulation invalid because it has no reasonable basis in the statute and thus falls outside of Revenue's statutory authority.[105]

e) Conclusion

The Court reversed the superior court's decision and remanded for entry of judgment in favor of the City of Valdez, holding that (1) Revenue's interpretation of Alaska Statute § 43.56, through its regulation Alaska Admin. Code tit. 15, § 56.015(b)-(c), was inconsistent with the statute's text, legislative history, and purpose[106]; and (2) Revenue's interpretation rendered the regulation invalid because it had no reasonable basis in the statute and thus, fell outside of Revenue's statutory authority.[107]

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102. *Id.*
103. *Id.*
104. *Id.*
105. *Id.* at 256.
106. *Id.*
107. *Id.*