

June 27, 1979

PRELIMINARY DECISION AND FINDINGS OF THE
DIRECTOR, DIVISION OF LANDS THROUGH THE DIRECTOR,
DIVISION OF MINERALS AND ENERGY MANAGEMENT
DUCK ISLAND UNIT

INTRODUCTION

Pursuant to AS 38.05.180(p) the Commissioner of the Department of Natural Resources is authorized to enter into and approve lessees' entrance into unit agreements to conserve the natural resources of all or a part of an oil or gas pool or field when the Commissioner determines that such agreements are necessary or advisable in the public interest and such unit agreements insure the proper protection of the public interest.

On February 3, 1978, an application was submitted by Exxon Corporation (Exxon) to the Director, Division of Minerals & Energy Management (DMEM) for approval of a Duck Island Unit agreement. The Director, DMEM, preliminarily concluded that this agreement was acceptable on March 6, 1978, in that it adequately provided for conservation of the oil and gas resources and otherwise protected the interests of the State and the public. On April 20, 1978, formal application for approval of the unit was filed. On April 28, 1978, Chevron U.S.A., Inc. requested that additional lands be included in the proposed unit area. Preliminary approval of the inclusion of the additional lands occurred on June 23, 1978. On August 21, 1978, the Duck Island Unit Agreement was formally approved by Mr. Frederick H. Boness, Deputy Commissioner of the Department of Natural Resources by execution of an APPROVAL-CERTIFICATION-DETERMINATION for the Duck Island Unit.

On November 3, 1978, a lawsuit was filed challenging the validity of the State's approval of the Duck Island Unit. That suit, Village of Kaktovik, et al v. Robert E. LeResche, Commissioner, Department of Natural Resources et al, Civil No. 3AN-78-7331, was filed in the Third Judicial District at Anchorage, Alaska. That lawsuit is still pending. At issue

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in that lawsuit, inter alia, is whether the State must give public notice prior to approving a unit agreement and designation.

The Free Conference Committee of the First Session of the Eleventh Legislature developed a Free Conference substitute to House Bill 66 which was subsequently passed by the Legislature and which Bill has subsequently been signed into law by the Governor of the State of Alaska. AS 38.05.305 was amended by addition, inter alia, of a new subsection e, which although (like AS 38.05.305 and .345 generally) the State does not believe to be applicable to approval of formation of a unit, the State believes may permissibly be voluntarily complied with without waiving any legal arguments made in the above-captioned lawsuit.

History of Duck Island Unit Agreement

The original Duck Island Unit as approved August 21, 1978, encompassed an area of approximately 22,800 acres, more or less, all of which was subject to oil and gas leases issued by the State of Alaska. The working interest owners submitted geologic and engineering data adequate to support the original unit boundaries. The expansion requested by Union includes some 44,549 acres, more or less, all of which are also subject to state oil and gas leases. These lands, if approved for inclusion, would be subject to the Duck Island Unit Agreement. Union submitted technical data to justify the inclusion of a substantial portion of such lands.

Separate provisions in the Duck Island Unit Agreement provide for expansion and/or contraction of the unit area at specified times to comport with actual field limits. These provisions also provide for segregation of leases upon expansion or contraction under certain conditions.

The unit agreement provided for the drilling of an exploratory well within twelve (12) months after the effective date of the agreement. A well was drilled and tested on lands within the proposed unit area. There has been no public announcement as to whether any oil or gas was encountered or whether oil or gas was encountered in commercial quantities.

The basic form of the unit agreement is modeled after the State's standard unit form (DL-244, revised June, 1976), with modifications to portion of Section 7 (accounting provisions and unit operating agreement), and Section 9 (drilling to discovery). Section 7 of the agreement as originally submitted,

allowed the unit operator to file the unit operating agreement within ninety (90) days after the effective date of the unit. This modification was found acceptable and the unit operating agreement was submitted on November 15, 1978. Union has indicated it will request the unit operator (Exxon) to secure necessary unit operating agreement ratifications in compliance with the unit agreement.

The unit agreement provides for plans of operation and development of the area within the unit without regard to lease boundaries and diverse ownership of those leases. This action will minimize the impact of development activities, avoid unnecessary duplication of exploration and development efforts on and beneath the surface, centralize environmental responsibility and facilitate regulation by State agencies. This will substantially reduce environmental impact on the area by reducing it to a level substantially below that which would likely result if attempts were made to explore and develop the leases individually instead of on a unitized basis.

This unit agreement provides for establishment of participating areas for each reservoir capable of sustained commercial production and for ultimate participation and allocation of production in accordance with acceptable methods.

The unit agreement includes a general plan for development and operation that provides for orderly development of the unit, including number of wells and operating practices, which is subject to further approval by the Director. The plan is subject to further adjustments in the interest of conservation and the prevention of waste. The unit operating plan also insures that the working interest owners will diligently pursue exploration and development of any reservoirs within the unit, subject to the approval of the Director.

Decision and Findings

Subject to further consideration following public comments regarding this matter, as previously requested, I find:

1. It is necessary and advisable in the public interest to approve the Duck Island Unit as expanded and ratify the original unit agreement, because such unitized development and operation would:

- (a) prevent and assist in preventing waste of oil and gas;
- (b) provide for and ensure conservation of natural resources;

- (c) reasonably increase the probability of recovering substantially more oil and gas from the unit area;
- (d) protect the correlative rights of persons owning interests in the tracts of land referred to in the proposed agreement;
- (e) protect the State royalty interest in any oil and gas in the unit area;
- (f) ensure efficient exploration and development of the unit area; and
- (g) reduce the cost of exploration and development of the tracts included in the proposed agreement.

2. The unitized development and operation of the subject tracts as a unit would substantially reduce the amount of surface lands and resources that would be utilized if the oil and gas leases were to be developed and operated on a non-unitized basis. This reduction in environmental impact would be in the public interest. Approval of this agreement will not limit or diminish access to public and navigable waters beyond any limitations (if any) already contained in the oil and gas leases covered by the unit agreement.

3. The agreement would fairly, equitably, reasonably and adequately protect all parties in interest, including the State of Alaska. Each present and prospective party to the unit agreement is a holder of an Alaska oil and gas lease, or interest therein, and the signatories to the agreement hold sufficient interests in the proposed unit area to give reasonably effective control of operations.

4. The provisions of the unit agreement which establish, alter, change or revoke provisions of the oil and gas leases relating to drilling, producing, term, rental, minimum royalty and royalty, protect the correlative rights of all parties having interests in the oil and gas resources and secure the proper protection of the public interest.

5. Inclusion within such unit area of all hydrocarbon pools will further the production and development of those pools and is, therefore, in the public interest.

6. The area contained within the original Duck Island Unit is proper, based on geologic and engineering data submitted to the department. Further, that portion of the area contained in Union's requested expansion as preliminarily approved on June 27, 1979, is justified. Therefore, the public interest and the correlative rights of all parties are protected.

7. The unitized development and operation of the tracts as provided in the unit agreement is necessary to prevent waste, ensure a greater ultimate recovery of oil and gas, protect the correlative rights of persons owning interest in the tracts referred to in the unit agreement, and increase recovery of oil and gas from the unit area, and otherwise furthers conservation of natural resources in the public interest.

8. The "traditional uses" of the land encompassed by the existing Duck Island Unit and by the lands proposed for inclusion in an expanded Duck Island Unit which have been maintained subsequent to Native population concentration movements to larger villages such as Barrow have been generally discussed in such studies as the draft Environmental Impact Statement for the proposed Federal/State Oil and Gas Lease Sale for the Beaufort Sea and appear primarily to have been limited to occasional instances of such Native subsistence activities as seasonal berry picking, fishing, trapping and hunting. The "potential" conflicts with such uses which could result from approval of the Duck Island Unit as expanded would be minimal and limited and would be less than would probably occur if approval were not granted. The "potentials" for conflict which have been considered include, but are not limited to, the following:

- (a) minimal impacts on any berry picking from any seismic or exploratory activity which might disrupt a few small berry patches; and production activity impact on berry picking would be too speculative to assess at this time, but would be subject to detailed environmental impact assessment by the Corps. of Engineers; very few, if any, Natives pick berries in the confines of the Duck Island Unit, but any that do so should not be affected in that pursuit by this approval;
- (b) minimal impacts could be expected on fishing, trapping and hunting from any potential interference with fish spawning and animal breeding or feeding areas from any gravel removal, water use, increased transportation activity, or other exploration or development related activities, all of which would be subject to continued review by the Alaska Department of Fish & Game through permitting processes; any Natives who have fished, trapped or hunted any area within the Duck Island Unit should not be affected in that pursuit by this Unit Approval in that these surface use activities would not likely conflict with surface operations of the Duck Island Unit.

operator. However, minimal impact on these uses could occur as a result of noise, visual and other impacts affecting the animals from any exploratory or production operations. As noted, this would be subject to continuing state administrative review;

- (c) other potential conflicts with traditional uses have been considered as identified in various studies such as the draft Environmental Impact Statement for the proposed Federal/State Oil and Gas Lease Sale for the Beaufort Sea.

9. Because approval of this Duck Island Unit as expanded as opposed to not approving the Unit would make it much less likely that any of the identified "potential" conflicts would actually occur and because it is uncertain whether any oil or gas exists in commercial quantities within the Duck Island Unit, I do not find it necessary at this time to develop a plan to resolve or mitigate any of the above potential conflicts. Developing such a plan will be considered in the future should development of facilities for any production from this Unit be proposed.

Thomas Cook
Thomas Cook, Director
Division of Minerals & Energy
Management

Date: June 27, 1979