

STATE OF ALASKA
FIRST JUDICIAL DISTRICT
AT JUNEAU
May 5, 2006

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

HOLLIS S. FRENCH,
Plaintiff,

vs.

FRANK H. MURKOWSKI,
JAMES CLARK,
WILLIAM A. CORBUS,
Defendants.

Case No. 1JU-06-703 CI

ORDER ON RELEASE OF STATE RECORDS

Facts and Proceedings

This case involves a Public Records request by plaintiff to view the gasline contract ("contract") that Governor Murkowski has developed with three oil companies – British Petroleum, Conoco-Phillips, and ExxonMobil ("the producers"). The contract was developed under the authority of the Stranded Gas Development Act (SGDA), and establishes the fiscal terms for the construction and operation of a natural gas pipeline running from the North Slope to Alberta, Canada, at an estimated cost of \$20 – 22 billion dollars.

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On February 21, 2006, the governor announced at a press conference that he and the oil companies had reached an agreement. He said, "I made a proposal . . . and they accepted the proposal."¹ The three producers confirmed that a contract had been completed.² In an April 9, 2006 letter to the plaintiff and the legislature, the governor's Chief of Staff, Jim Clark, confirmed that the State had reached an agreement on the gasoline contract with the North Slope producers Sponsor Group.³

At the February 21st press conference, the administration also unveiled a new proposal to change oil taxes. The Governor stated that he would like the legislature to enact the oil tax change before he released the terms of the gasoline agreement to the legislature for consideration.⁴ Mr. Clark subsequently indicated that a final gasoline contract would incorporate terms from the proposed new oil tax.⁵

On March 7, 2006, Mr. French made a Public Records request to view the gasoline contract. The Commissioner of Revenue, William Corbus, denied the request, stating that, under AS 43.82.310 (f) of the SGDA, a "proposed contract" does not become a public record until the Revenue Commissioner submits the contract to the legislature for notice and comment.⁶ Alaska Statute 43.82.310 (f) reads:

¹ See http://www.gov.state.ak.us/audio/radiomessage2_24_2006.mp3

² See http://www.alaskajournal.com/stories/022606/boom_20060226001.shtml

³ Motion for an Injunction, Exhibit 3.

⁴ See http://www.gov.state.ak.us/audio/radiomessage2_24_2006.mp3

⁵ Motion for an Injunction, Exhibit 3.

⁶ Motion for an Injunction, Exhibit 2.

(f) If the commissioner of revenue chooses to develop a contract under AS 43.82.020, the portions of the records and files of the Department of Revenue, the Department of Natural Resources, the Department of Law, and a municipal advisory group established under AS 43.82.510 that reflect, incorporate, or analyze information that is relevant to the development of the position or strategy of the commissioner of revenue, the commissioner of natural resources, or the attorney general with respect to a particular provision that may be incorporated into the contract are not public records until the commissioner of revenue gives public notice under AS 43.82.410 of the commissioner's preliminary findings and determination under AS 43.82.400. ...

Mr. French renewed the request with Governor Murkowski on April 5, 2006, but Mr. Clark denied the request in a letter dated April 9. Mr. Clark's letter confirmed that the State and the producers have reached agreement on the gasoline contract, but noted that the fiscal certainty provision of the gasoline contract could not be completed until the Legislature completes its work on the proposed oil tax changes, known as the Petroleum Production Tax (PPT). Mr. Clark also stated that the contract was not yet a public record, pursuant to AS 43.82.310 (f).

Mr. Clark cited three additional reasons for the denial of the Public Records request. They are: 1) "[t]he State negotiating team needs to know what policy choices the Legislature will make on the PPT to know what tax rate, credit rate, etc. to put into the fiscal certainty provision of the gasoline contract"⁷; 2) the Preliminary Fiscal Interest Finding (FIF) must be complete before the contract is submitted to the legislature for notice and comment; and 3) the Department of Revenue is still working on "technical

⁷ Motion for an Injunction, Exhibit 3.

changes" to the gasline contract, which are permitted under the SGDA up until the ratification vote of the legislature.

On April 21st the plaintiff filed the Complaint and Motion for an Injunction and on April 28th filed a Motion for Expedited Consideration and served the defendants. The court granted expedited consideration over the defendants' partial objection and allowed time for additional briefing. The defendants filed an additional brief and affidavits from Mr. Clark and Mr. Corbus. The plaintiff filed a reply. Defendants asked for permission to file a sur-reply and the court granted that.

Relevant Stranded Gas Act Provisions

In addition to AS 43.82.310 (f), three other provisions of the SGDA are relevant to the resolution of this dispute. They are the "Purpose" section; the "Contract Development" section; and the "Notice and Comment Regarding the Contract" section.

The "Purpose" section, section AS 43.82.010, reads:

The purpose of this chapter is to

- (1) encourage new investment to develop the state's stranded gas resources by authorizing establishment of fiscal terms related to that new investment without significantly altering tax and royalty methodologies and rates on existing oil and gas infrastructure and production;
- (2) allow the fiscal terms applicable to a qualified sponsor or the members of a qualified sponsor group, with respect to a qualified project, to be tailored to the particular economic conditions of the project and to establish those fiscal terms in advance with as much certainty as the Constitution of the State of Alaska allows; and

- (3) maximize the benefit to the people of the state of the development of the state's stranded gas resources.

The "Contract Development" section, section AS 43.82.200, reads in material part:

If the commissioner approves an application and proposed project plan under AS 43.82.140, the commissioner may develop a contract that may include

- (7) other terms or conditions that are
 - (A) necessary to further the purposes of this chapter; or
 - (B) in the best interests of the state.

The "Notice and Comment Regarding the Contract" section, section AS 43.82.410, reads:

The commissioner shall

- (1) give reasonable public notice of the preliminary findings and determination made under AS 43.82.400;
- (2) make copies of the proposed contract, the commissioner's preliminary findings and determination, and, to the extent the information is not required to be kept confidential under AS 43.82.310, the supporting financial, technical, and market data, including the work papers, analyses, and recommendations of any independent contractors used under AS 43.82.240 available to the public and to
 - (A) the presiding officer of each house of the legislature;
 - (B) the chairs of the finance and resources committees of the legislature; and
 - (C) the chairs of the special committees on oil and gas, if any, of the legislature;
- (3) offer to appear before the Legislative Budget and Audit Committee to provide the committee a review of the commissioner's preliminary findings

and determination, the proposed contract, and the supporting financial, technical, and market data; if the Legislative Budget and Audit Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to the public and all members of the legislature; if the financial, technical, and market data that is to be provided must be kept confidential under AS 43.82.310, the commissioner may not release the confidential information during a public portion of a committee meeting; and

(4) establish a period of at least 30 days for the public and members of the legislature to comment on the proposed contract and the preliminary findings and determination made under AS 43.82.400.

Contentions

Mr. French argues that the gasline contract is a public record under AS 40.25.220 and subject to inspection under the Public Records Act. He argues that defendants' reliance on AS 43.82.310 (f) is misplaced because the subsection is not an explicit confidentiality provision that keeps the contract secret. Mr. French characterizes AS 43.82.310 (f) as a statutory-based privilege that applies to the process of deliberation. A deliberative-process privilege protects documents that reveal the administration's strategy and consultative process.⁸ Under this reading, until the commissioner makes preliminary findings, the administration may withhold from public purview only documents that reveal negotiation strategy, or the development of the state's position – but not a contract. Mr. French argues that AS 43.82.310 (f) is ambiguous and must fall before the policy of the Public Records Act to ensure "broad public access to government records."

⁸ Gwich'in Steering Committee v. State, Office of the Governor, 10 P.3d 572, 578 (Alaska 2000).

Defendants argue that the contract is only a "draft contract." As such, the contract does not become a public record until the commissioner "proposes" the contract to the legislature, gives notice, and makes it available for comment. Defendants provide numerous reasons why the contract is not yet final and argue that "[t]he Act does not direct the Commissioner to release preliminary drafts for the obvious reason that preliminary drafts do not necessarily represent the contract that will ultimately be 'proposed' to the Legislature."⁹ Under this reading of AS 43.82.310 (f), a draft contract may not be a public record subject to the Public Records Act.

Defendants say that on April 6th, the day after Mr. French requested that the records be made public, they sent a letter to the Producers saying that the contract would be treated as confidential. Defendants say that this letter triggered subsection AS 42.83.310(c) that would require giving the Producers notice to allow them an opportunity to be heard before releasing any information deemed confidential. Defendants say that the governor is to release the contract on May 10th but it is unclear whether the Producers have been given notice of this release and an opportunity for hearing.

Defendants argue that the issue is a political question not subject to review by the court and that the contract is subject to the deliberative-process privilege as recognized by the Alaska Supreme Court. Defendants offered Mr. French an opportunity to see the

⁹ Motion for an Injunction, Exhibit 3.

contract if he would sign a confidentiality agreement and he refused. Mr. French voted as a legislator on an oil bill without having access to the contract.

Injunction

When a person seeking an injunction shows irreparable harm and that the other party can be protected from injury, the court must balance the hardships between the two parties.¹⁰ In balancing the hardships, it will ordinarily be enough that the plaintiff has raised 'serious and substantial' questions going to the merits of the case. However, where there is no showing of irreparable harm or where the party against whom the injunction is sought will suffer injury, the plaintiff must make a clear showing of probable success.¹¹

The court imposes on plaintiff here the heightened standard of a clear showing of probable success on the merits. The defendants have not articulated an injury suffered by making the gasline contract public immediately. However, the court believes that whatever injury the defendants will suffer if the injunction is granted cannot be undone. An injunction would release the fiscal terms of the contract.

Public Records

Alaska has two primary public records statutes, AS 40.24.110 and AS 40.25.120, which govern the release of records to the general public. AS 40.24.110 provides that

¹⁰ Keane v. Local Boundary Com'n, 893 P.2d 1239, 1249-50 & n.22 (Alaska 1995).

¹¹ A. J. Industries, Inc. v. Alaska Public Service Commission, 470 P.2d 537, 540 (Alaska 1970).

public records are open to inspection and copying. Section 40.25.120 sets out exceptions to the right to inspect a public record.

AS 40.25.110 (a) states in relevant part: "[u]nless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours."¹² AS 40.25.120 restates the general rule of availability to inspect a public record and sets out the exceptions to this right.

Section 120 (4) excepts from the right to inspect a public record any record protected under federal or state law:

Every person has a right to inspect a public record in the state, including public records in recorders' offices except:

...
(4) records required to be kept confidential by a federal law or regulation or by state law.¹³

The term "state law" in AS 40.25.120 (4) refers to any statute protecting the confidentiality of records. It also covers any constitutional provision, most notably the right to privacy,¹⁴ as well as the executive privilege doctrine, and other privileges which require confidentiality.¹⁵ The Alaska Supreme Court also has indicated that the reference to state law includes common law.¹⁶

¹² AS 40.25.110 (a).

¹³ AS 40.25.120 (4).

¹⁴ Alaska Const. art I, § 22.

¹⁵ See, e.g. Margot O. Knuth, Inspection and Discovery of State Records in Alaska, 4 Alaska L. Rev. 277, 280 (1987).

¹⁶ Mun. of Anchorage v. Daily News, 794 P.2d 584, 590 (Alaska 1990).

The Alaska Supreme Court has noted that "[t]here is a strong public interest in disclosure of the affairs of government," and "[sections] .110 and .120 articulate a broad policy of open records."¹⁷ Courts have characterized the right of citizen access to public records as a "fundamental right."¹⁸ To further the legislative policy of broad public access, courts narrowly construe any exceptions.¹⁹ The Supreme Court has quoted the legislative finding:

In the most recent amendment to the statute, the legislature added a legislative findings and intent section. The legislature stated that "public access to government information is a fundamental right that operates to check and balance the actions of elected and appointed officials and to maintain citizen control of government." Ch. 200, § 1, SLA 1990.²⁰

Discussion

The question is whether the contract announced at the governor's press conference is part of the "portions of the records and files" that the confidentiality provision of the SGDA, AS 43.82.310 (f), protects. If the contract is protected, AS 40.25.120 (4) keeps the document from being a public record. The court must interpret the statute in context to determine its meaning.

¹⁷ Gwich'in Steering Committee v. State, Office of the Governor, 10 P.3d 572, 578 (Alaska, 2000).

¹⁸ Id.

¹⁹ See, e.g., Doe v. Alaska Superior Court, 721 P.2d 617, 622 (Alaska 1986).

²⁰ Capital Info. Group v. State, Office of the Governor, 923 P.2d 29, 33 (Alaska 1996).

Interpreting the Statute

In interpreting a statute, the court starts from "the language of the statute construed in light of the purpose of its enactment."²¹ "[I]f the language of a statute is unambiguous and expresses the intention of the legislature, it should not be modified or extended by judicial construction."²² However, if there is some ambiguity, the court applies a sliding scale approach in interpreting the statute. Under that approach, when legislative intent conflicts with plain meaning, the court seeks a balance between the two: "the plainer the language of the statute, the more convincing contrary legislative history must be."²³

AS 43.82.310(f) is Ambiguous

There is ambiguity as to whether AS 43.82.310 (f) protects this contract. The statute addresses the documents relating to strategy – not the contract itself. On one hand, a draft contract could "reflect, incorporate, or analyze" information relevant to the development of position or strategy. On the other hand, a contract, already offered and accepted, is not clearly part of the "records and files" that fall under purview of the statute. The statute does not explicitly protect contracts, whether in negotiation or those that have been offered and accepted. A draft contract that was being circulated among the parties might be covered by the protection accorded to strategies and positions. But a

²¹ J & L Diversified Enter. v. Municipality of Anchorage, 736 P.2d 349, 351 (Alaska 1987).

²² Alaska Public Employees Ass'n v. City of Fairbanks, 753 P.2d 725, 727 (Alaska 1988), citing State Department of Natural Resources v. City of Haines, 627 P.2d 1047, 1049 n. 6 (Alaska 1981).

²³ Putnam v. State, 930 P.2d 1290, 1292, n.2 (Alaska App. 1996) (citations omitted).

contract that has been essentially agreed to among the parties no longer has those characteristics protected by the statute.

The Ambiguity in the Statute has Two Implications

First, an ambiguity in statutes making state records secret is construed to cause release of the documents to the public. The legislature "has expressed a bias in favor of public disclosure" and determined that "[d]oubtful cases should be resolved by permitting public inspection."²⁴

The second implication requires the court to look at the purpose and intent of the legislature. When trying to find the meaning of an ambiguous statute the court must look at the legislative purpose and intent in context of the act as a whole.

In looking at the legislative intent as well as purpose of AS 43.82.310(f) the court reviewed testimony before the legislature when it was considering the Stranded Gas legislation. Then Commissioner of Revenue Wilson Condon testified that the law was meant to use the following procedure:

The commissioner of revenue must answer the following questions: Is the gas stranded? Do the proposers meet the standards for a qualified sponsor? Is the proposal a qualified project? ...

When the commissioner of revenue completes the contract, it would be made open for review by the public and legislature. There would be a period of legislative review before being submitted for final review and approval. After the initial review, there would be an opportunity to make modifications, if necessary. The proposal would then be submitted to the

²⁴ City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1316, 1323 (Alaska 1982).

governor. The governor would then submit the proposed contract, along with legislation, to the legislature. The legislature would then determine whether to approve it or not.²⁵

That was the eventual statute adopted by the legislature and the law that defendants cite to prevent disclosure. It is clear that the legislature envisioned the possibility of multiple contracts being submitted for review as this is specifically provided for in AS 43.82.400.

The testimony of Mr. Condon would suggest that it was the intent of the legislature to have the legislature look at the contract before it was finalized.

The history of the bill adoption process shows legislative provisions were added to the governor's version of AS 43.82.310 that increased the legislature's scrutiny. In subsection (d) the bracketed material was added to the governor's bill.

Notwithstanding the limitation in (c) of this section, the Department of Revenue and the Department of Natural Resources may provide to one another, to the Department of Law, [to the legislature] and to the Office of the Governor any information provided under AS 43.82.300 ...

And in subsection (e) the legislature added the bracketed text in place of the italicized text below:

(e) Notwithstanding the limitation in (c) of this section, information that is determined to be confidential under (b) of this section [shall be disclosed on request] replacing the text *may be disclosed*.²⁶

²⁵ March 26, 1998 House Resources Committee minutes.

The court also interprets an ambiguous section of a statute in light of the Legislature's stated purpose of the entire act. The legislature's stated purpose of the SGDA is to encourage new investment of the state's stranded gas reserves "without significantly altering tax and royalty methodologies and rates on existing oil and gas infrastructure and production."²⁷

It is clear that the proposed Petroleum Production Tax does significantly alter the existing tax and royalty methodologies and rates for existing oil. The court must decide whether interpreting AS 43.82.310 (f) to keep the contract secret is consistent with the purpose of not significantly alter[ing] the tax and royalty methodologies and rates on existing oil and gas infrastructure and production.

Mr. French argues that the oil and gas tax changes and new gasline contract are inextricably related and that voting on the first without knowing the terms of the second would cause irreparable harm. "Too high an oil tax may scuttle the gas line contract. The negative economic consequences of that possibility are potentially enormous. Too low a tax shortchanges the people of Plaintiff's district and of the state."²⁸

In his April 9 letter rejecting Mr. French's second Public Records request, Mr. Clark argued that the Legislature does not need to know the terms of the gasline contract in setting tax policy. He acknowledged that "the Legislature does need to be cognizant of

²⁶ See Minutes of 3/24/98 O&G Committee CSIB 393 markup.

²⁷ AS 43.82.010 (1) (emphasis added).

²⁸ Memorandum in Support of Plaintiff's Motion for an Injunction at 9.
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the risks and ramifications of setting the tax rate.”²⁹ Mr. Clark said that the administration plans to request amendments to the SGDA because

“the Legislature will need the gasoline contract to see how the fiscal certainty on oil provisions and the other amendments to the SGDA, we will be requesting would fit within the gasoline contract.”³⁰

The court finds that the proposed oil tax changes and gasoline contract are so dependent on each other that interpreting AS 43.82.310(f) to keep the contract secret is contrary to the purpose of the Stranded Gas Act. It is hard to see how the legislature can be cognizant of the risks and ramifications of the oil tax without seeing the contract that it will affect. The court does not believe the sub-section 310(f) prohibits the contract from being made public. The public as well as the legislature has a right to know of the implications of the proposed contract on the oil and gas revenues of the State and how that will affect fiscal certainty.

Political Question

The court does not find this to be a political question. This is an issue of statutory interpretation not a delving into the minds of legislators. It makes no difference whether individual legislators want to see the contract before making a decision on the oil tax. The court need not look into the mental processes of legislators. The only issue is

²⁹ Motion for an Injunction, Exhibit 3 (emphasis added).

³⁰ Id.

whether there is a statutory right to have the contract made public. The court makes no inquiries into the motives of those proposing, enacting or rejecting proposed legislation.³¹

The view that political questions are nonjusticiable stems primarily from the separation of powers doctrine.³² As noted by the United States Supreme Court in Baker: "[i]t is the relationship between the judiciary and the coordinate branches of the . . . Government . . . which gives rise to the 'political question.'"³³ Characterizing a case as political in nature will not render it immune from judicial scrutiny. In Baker, the Court was careful to point out the "confusion [which may result] from the capacity of the 'political question' label to obscure the need for case-by-case inquiry."³⁴ The Court in that case did identify various elements, one or more of which is "[p]rominent on the surface of any case held to involve a political question"³⁵ These elements include: (1) a textually demonstrable commitment of the issue to a coordinate political department; (2) the impossibility of a court's undertaking an independent resolution of the case without expressing lack of respect due coordinate branches of government; and (3) the need for adherence to a political decision already made.³⁶ None of these elements is present in this case.

³¹ Alaska Dept. of Natural Resources v. Tongass Conservation Soc., 931 P.2d 1016 (Alaska 1997).

³² Baker v. Carr, 369 U.S. 186, 210 (1962).

³³ Id.

³⁴ Id. at 210-11.

³⁵ Id. at 217.

³⁶ Id.

Defendants correctly note that the question before this court is not whether the information about the proposed gasline contract will be disclosed, but when.³⁷

Defendants then suggest that a judicial determination requires the court to decide much information a legislator will need to vote on the PPT bill. In fact, the court need not consider any legislator's motives in any degree to resolve the issue of whether Mr. French or the public will suffer irreparable harm if the proposed contract is not released. A proper recognition of the respective roles of the legislature and the judiciary does not interfere with the court's responsibilities in construing a statute.

Defendants cite Malone v. McEekins,³⁸ which notes that a violation of legislature's own rules is solely the business of the legislature and does not give rise to a justiciable claim. The present case is distinguishable from Malone in a number of important respects. First, the present case involves statutory interpretation. Second, the statute at issue is accompanied by a clear and specific statement of legislative purpose: to encourage new investment "without significantly altering tax and royalty methodologies and rates on existing oil and gas infrastructure and production." Third, if the injunction were not issued, the irreparable harm would also be suffered by the public at large.

³⁷ Memorandum in Opposition to Motion for Preliminary Injunction at 4.
³⁸ 650 P.2d 351, 359 (Alaska 1982).

Executive Privilege

The court has reviewed the Alaska Supreme Court's decisions on executive or deliberative process privilege. The privilege covers only things that are (1) predecisional, (2) a part of the deliberative process and (3) in circumstances in which the purposes behind confidentiality out-weigh the public interest in disclosure.³⁹

"The deliberative process privilege" is a widely recognized confidentiality privilege asserted by executive officials. It rests on the ground that public disclosure would deter the open exchange of opinions and recommendations between government officials.... [and] is intended to protect the executive decision-making process, its consultative functions, and the quality of its decisions.⁴⁰

The Supreme Court has been very deferential to the internal workings of the Governor's office. In Gwich-in the court refused to allow access to Governor's Office materials relating to lobbying for the opening of ANWR. In Capital Group the Supreme Court wouldn't allow access to financial materials that had been prepared for submittal of the state's budget. The court said in that case,

[The Governor] is formulating his own political legislative package which will reflect his own priorities and agenda. In doing so, he must determine not only which of the agency proposals have merit but also which warrant the expenditure of his own political capital in their pursuit. This is one of the most sensitive and important functions that the Governor performs while in office, and the need for frank discussion of policy matters among the Governor's advisors is perhaps greater here than in any other area ... the

³⁹ Gwich-in, 10 P.3d at 578-580.

⁴⁰ Natalie A. Finkelman, Note, Evidence and Constitutional Law, 61 Temp.L.Rev. 1015, 1033 (1988), quoted in Capital Info. Group, 923 P.2d at 33 (Alaska 1996).

need for effective decision-making in the Governor's office in the formulation of his legislative agenda is not overcome by [the requestor's] desire to "shed light on the needs of the agencies."⁴¹

The contract may be pre-decisional. It is a close question. Documents that contain "opinions and interpretations" of a policy decision already made are not considered deliberative.⁴² The Governor and Producers have agreed in principle but numbers need to be added after the legislature makes decisions on the oil tax.

It is more questionable whether the draft contract is deliberative. At this point in the process there can be little of the "give and take" referred to in the Supreme Court decisions about consultative privilege.⁴³ That process is over.

This court believes the contract is not within the deliberative-process privilege at this time given the Supreme Court's rulings. After it has been agreed to by the parties, the contract itself is not a part of deliberations. If the court had found that the contract was within the deliberative process privilege the court would then look to see if the importance of keeping the contract secret out-weighed the public interest in disclosure. The governor's counsel has represented to this court that the contract will be released on May 10. The court cannot say, on the record before it, that the release now rather than six days from now harms the consultative process.

⁴¹ Capital Info. Group, 923 P.2d at 38.

⁴² Gwich-in, 10 P.3d at 579.

⁴³ Capital Group, 923 P.2d at 33; Gwich-in at 579.

Oil and gas revenues are of great public importance in Alaska. The public has a right to participate in the discussions of those issues.

Conclusion

The parties had agreed that the question before the court was strictly a legal decision. Both parties, however, have submitted affidavits on factual matters that they believe help their cause. There has been no evidentiary hearing to flesh out some of the issues raised above. The court has not had access to the contract. It is not clear from whom the contract is being kept secret. The Producers know of the contract, legislators have been offered access to it on a condition of confidentiality. There has been no showing of injury if it is released.

The court finds on the law that the contract must be released.

The plaintiff is clearly likely to prevail on the merits for two reasons. The statute is ambiguous. The law on access to Public Records says ambiguous statutes about confidentiality are to be construed to require disclosure. Second, keeping the contract secret at this time is not consistent with the purposes of the Stranded Gas Act.

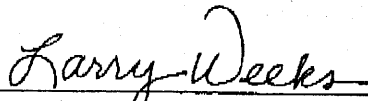
Defendants, in their affidavits, say that the day after Mr. French made his request for disclosure, a letter was sent to the Producers saying that the contract would be treated as confidential. The State is obligated to give notice to Producers pursuant to AS

43.80.310(b) & (c) as a result of that letter. That notice gives the Producers opportunity to be heard on release of any proprietary information only.

The contract shall be released to the public. That shall be done after giving the notice to Producers required by the April 6th letter and opportunity for Producers to be heard.

Plaintiff's motion is granted.

Dated this 5th day of May, 2006, at Juneau, Alaska.

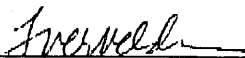

Larry R. Weeks
Superior Court Judge

CERTIFICATION OF SERVICE

I certify that I served the following parties on the 5th day of May, 2006:

Senator Hollis French - FAX
State Capital
Juneau, AK 99801

Lawrence Z. Ostrovsky - FAX
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