

OIL AND GAS LEASE SALE 85A

December 1996-February 1997 • Kenai Peninsula, Alaska

Background

There are several primary steps in the Alaska oil and gas lease sale process. The first is for the State to produce a “Best Interest Finding” for a particular area. It may take 3-5 years to complete this document, or as with Lease Sale 85A, it may take only 12-18 months. The objective is to review all facts and issues to determine if, and under what conditions, leasing an area serves the needs and interests of Alaska. During the Best Interest Finding process, the Alaska Department of Natural Resources (ADNR) is required to provide an explanation of how it considered every issue raised by the public. The next step is the actual sale. Then, finally, there’s the permitting process for any actual exploration and development. More than 100 permits may be required from different agencies to develop a site for production. This, too, can take years and has a number of public comment and input requirements. In total, it is possible for an oil and gas lease sale process to precede oil and gas development by 6-8 years.

The Problem

In July and September 1995 and again in May 1996, environmental interests and southern Kenai Peninsula residents sent letters to ADNR and the Governor regarding their concerns. In June 1996, they also submitted formal comments on the preliminary Best Interest Finding. In November, central Kenai Peninsula residents also began voicing their concerns about the State’s oil and gas Lease Sale 85A that was to be held December 18. Some of the leases were literally on the banks of the Kenai River—the “lifeline” of Peninsula residents.

After a lawsuit was filed in November, a review of the lease sale process was conducted and the administration determined that ADNR had met statutory and regulatory public notice and Best Interest Finding requirements. However, the local public’s perception differed sharply. There didn’t seem to be a collective awareness by Kenai Peninsula residents about the specifics of the lease sale, such as which parcels were for sale and what mitigation measures were required. Consequently, there was a growing sense that government had “rolled right over” the communities. Another perception that residents held was that the State didn’t care what they said. Much of this was due to the perceived lack of responsiveness from the correspondence and comments sent to ADNR and the Governor during the June through October 1996 timeframe.

Many community members and stakeholder representatives later identified additional process issues, such as the lack of government responsiveness, public disenfranchisement, and lack of good communications. Others viewed the problem as a public policy balancing act between environmental concerns and economic development. And still others saw a need to ensure that technical issues were addressed to make certain oil and gas development was conducted in a safe manner.

Governor Knowles and ADNR Commissioner Shively also saw this as a problem. They believed the legal requirements had been met but were still faced with substantial opposition and vocal frustration from Kenai Peninsula residents. This was why they decided to conduct a collaborative process and work with representatives of the affected interest groups as well as Peninsula communities. This case study describes that effort.

Lease Sale 85A: The Issues

Numerous issues were identified from the testimony presented by central Peninsula residents to ADNR's Division of Oil & Gas in a public hearing held on December 5, 1996, and followed up in a letter from central Peninsula community residents to Governor Knowles dated December 13, 1996. Concerns and issues had also been submitted as comments on June 10, 1996, in response to the preliminary Best Interest Finding and in the lawsuit filed against the state. Other issues were expressed to Governor Knowles in a public meeting arranged by Homer Mayor Cushing with Governor Knowles. Phrases like "flawed process" or "only recently learned" about the proposed lease sale were commonly heard. In conveying their concerns, some community members distinguished between process, mitigation, and implementation and monitoring concerns.

Process Issues

Given the Homer area's historical opposition to oil and gas development based partly on the expectation that the oil and gas industry would displace local culture and economy, it was perceived that the Best Interest Finding process ignored the local public's desire.

In the central Peninsula, although 17 notices were placed in the classified section and additional display ads were printed in Peninsula Clarion over the previous 29 months, these notifications were unclear. There was no mention that the "proposed sale included a corridor twenty miles wide that follows the course of the Kenai River."

Residents were frustrated with the process, because they believed the lease sale schedule didn't provide them with sufficient time to develop meaningful input that could influence the outcome.

Mitigation Issues

The primary concern was that mitigation measures were inadequate. Several items specifically noted were:

- Drilling setbacks along the Kenai River were only 1/4 mile, while others within the Cook Inlet Basin were 1/2 mile.

- Water consumption and flow levels might be inadequate to sustain fish populations.
- Development of permanent roads without any public notice.
- No visual or noise pollution mitigation measures for residents or visitors of the area.
- Safe use of explosives.

Another issue raised pertained to the process for waiving mitigation measures. However, at one of the public meetings, a resident pointed out that ADNR had provided 11 opportunities to seek exceptions to the proposed mitigation requirements during the Lease Sale 85A process. The concern was that it might be too easy and be done without public input. Therefore, the effectiveness of the measures might be reduced.

Monitoring and Implementation Issues

The primary concern was that insufficient data existed to establish a baseline for trends and monitoring. Suggestions were made that sufficient monitoring be conducted and that an independent process for monitoring industrial development should be implemented. It was recognized that such an effort would require a collaborative working relationship on the part of government, industry, and communities to review the oil and gas development process with the intent to improve it for all concerned.

The Public Official's Dilemma: What to do when everybody's right?

Public decision makers often find themselves faced with difficult decisions. In the case of Lease Sale 85A, the State believed all legal requirements had been met, and substantial time, effort, and resources had gone into development of the lease sale both by the State and industry. Yet, community spokespeople had clearly articulated their concerns and had done so in a constructive manner, conveying legitimate questions and issues they believed had not been addressed satisfactorily.

From ADNR's perspective, after listening to the communities' concerns, it was able to refer to the Final Best Interest Finding's report and show in detail how most of the concerns raised by the communities were actually addressed and had been thought through.

With the lease sale date fast approaching, the Governor was under increased pressure from community residents to either postpone or withdraw tracts from the sale. By looking at both sides, first that the communities had raised numerous valid concerns and, secondly, that there were substantiated reasons to believe that ADNR had done its legally required job, the Governor made a decision. He decided to conduct the lease sale as planned on December 18, 1996, and immediately imposed a 90-day moratorium in which no exploration drilling permits would be issued. During this time, the State would work with the communities in hopes of resolving their issues.

The Commissioner and Kenai Peninsula Residents: Are we willing to solve problems together?

At this point, Commissioner Shively was faced with a number of issues:

- A 90-day window in which to meet the objectives set out by the Governor.
- Repair the State's credibility with Kenai Peninsula residents in order to have constructive and productive discussions.
- Clearly identify and understand the key issues Kenai Peninsula residents were concerned about and work with them to jointly resolve the issues.

On January 16, 1997, now 28 days into the moratorium, Commissioner Shively met with constituents at a Kenai River Special Management Area Advisory Board (KRSMA) meeting. The Commissioner presented some ideas about how they might work together and asked: What would a responsive public process be?

Based on the ensuing discussion and additional conversations, the Governor decided to hire someone not affiliated with ADNR. By doing so, it was hoped that a credible communication link between residents and the Department would develop. Further, this individual would have specialized expertise to help design and facilitate the problem-solving process. As a result, public meetings would be more constructive than in the past. Governor Knowles chose Mr. Gene Burden, an attorney-mediator, who would act as a third-party neutral. As a former Alaska Department of Environmental Conservation (ADEC), Commissioner and executive with the oil industry, Mr. Burden's knowledge about Alaska's oil and gas development and environmental laws and regulations was well regarded.

A mediator's role is largely to open lines of communications; a mediator does not make decisions about the issues at hand. It is most beneficial to use a third-party neutral when emotions run high or when there is a history of miscommunications, lack of credibility or distrust, or when there are numerous, complicated issues that need to be sorted out.

Stakeholders Process

Step 1

Conduct independent project assessment. The mediator interviewed affected community members and leaders to help identify and clarify the issues. Based on the information collected and constraints (such as time and resources available for travel and conducting additional meetings), the Commissioner and Governor's staff, in consultation with the mediator, decided on the following approach.

Step 2

Select stakeholder representatives who would be charged with developing recommendations to address issues brought forward by community

members and others identified during the stakeholders process. The following individuals were appointed to the panel by the Governor based on their knowledge about the issues and ability to act as problem solvers:

Environmental Groups:	Ann Rothe, Trustees for Alaska
Alaska Oil and Gas Association:	Kevin Tabler, Unocal
Industry/Small Business:	Mike McBride, Homer
Sports Fishing:	Ben Ellis, Kenai River Sportfishing Association
Native Corporations:	Al Hastings, Cook Inlet Region, Inc
Commercial Fishing:	Ken Castner, Homer
Private Landowner:	Charles Quarre, Kenai Watershed Forum
Observer Status:	Steve Planchon, Mental Health Trust Authority

A representative from an Alaska Native constituent group was also asked to participate, but declined. The others accepted the Governor’s appointment and participated in all the public meetings and problem-solving sessions. (A listing of their recommendations begins below and continues to page 6.)

Step 3

Conduct three meetings—one each in Soldotna, Homer, and Anchor Point on February 24, 25, and 26, respectively. These communities were chosen because of their proximity to the actual lease sale. The meetings would be a combination of joint problem solving during the day by the stakeholder representatives and public meetings during the evening from 7-10 p.m. The public meetings aspect was intended to allow a larger number of residents to identify the problems and help shape the solutions. The joint problem-solving component would provide the appointed stakeholder representatives the time to develop recommendations based on the issues brought forward from the communities in November and December, before the lease sale, and during public testimony. The problem-solving meetings were scheduled to continue on February 27 immediately following the three public meetings.

Step 4

Submit recommendations to the Governor for his review and revisions within the 90-day time frame.

Outcomes

In addition to meeting the target date, the panel agreed to some general ground rules on how they would conduct business with each other prior to tackling the problems identified with Lease Sale 85A. This seemed important given the diverse viewpoints represented in the stakeholders process.

Samples of the ground rules agreed to were:

- ADNR will implement proposals that have full consensus, subject to any existing legal prohibitions.
- Participants will be expected to disclose all pertinent information, listen and keep an open mind, be willing to consider alternatives without holding to a fixed position, and agree to keep any agreements that are made.
- Parties will abide by rules of common courtesy with no interruptions, inflammatory language, or counter-constructive behavior. Stakeholder representatives will be encouraged to take notes as to alternatives to views of another stakeholder and present their views during their own uninterrupted presentations.
- Formal recommendations from the stakeholder group will only address those issues on which a consensus recommendation is developed.

Consensus Recommendations

The following 10 items are quoted from the report submitted to the Governor by the panel.

1. Engineering Standards for New Production Facilities

The panel agrees that the State should require a minimum standard of

engineering and materials in the construction of permanent surface production facilities associated with Lease Sale 85A which are not covered under existing regulation. We recommend that the Department of Natural Resources or appropriate agency incorporate applicable American Petroleum Institute (API) and/or other industry standards in establishing these minimum requirements.

2. Lease Sale Communications

There should be priority given to provide notification to those who express interest in participating in the process. Public notice of future sales should include:

- *Use of straightforward language (“Plain English”).*
- *Use of names in general use.*
- *Placing graphically interesting display ads in the front section of the newspapers that would refer the reader to more detailed information in other sections of the newspaper.*
- *The notice should include a map of sufficient detail to illustrate the general characteristics of the area as well as indicate the availability of more detailed maps depicting areas in question showing developments, roads, streets, and physical landmarks so landowners can identify his/her parcel.*
- *The notice should include a description of major habitats and/or sensitive areas (including designated critical habitat areas and wildlife refuges).*

Following issuance of a lease, all landowners within 1/2 mile should be notified of planned lease action. Information provided in the announcement should include responsibility and rights of landowner and procedure to follow to ask for reconsideration by the Commissioner and how to qualify and proceed as an aggrieved party.

Permission must be obtained from a landowner before entry onto the owner’s private lands for inspection. The State shall provide the landowner with information as to his/her options as to the course of action in the event of damages to the property.

Citizens who participate in meetings associated with the lease sale, or who sign petitions associated with the lease sale, or write letters or call in regards to the lease sale, should be added to the State mailing list and provided notification of decisions and reasons as well as notices of planned meetings on the subject lease sale. This list should be made available to interested parties.

The agency should acknowledge correspondence received regarding the lease sales.

3. Seismic Communications

ADNR should encourage the geophysical exploration companies to develop a community outreach program.

4. River Surface Entry Offset

Subject to the consent of the lessee, the following stipulations should apply to leases issued in Lease Sale 85A and in all future leases affecting the Kenai Peninsula. Siting of new facilities within key wetland and sensitive habitat areas should be avoided; however, in the event of such siting the policy should seek to minimize and mitigate impact(s).

The siting of new onshore facilities, other than docks, road, and pipeline crossings, will be prohibited within 1/2 mile of the banks of Harriet Creek and the Drift, Chuitna, Kenai, Kasilof, Ninilchik, and Anchor Rivers.

An exception may be granted by the Director, with the concurrence of the Alaska Department of Fish & Game (ADF&G) to allow siting of new facilities within the 1/2 mile if the lessee demonstrates that the alternate location is environmentally preferable; however, in no instance will a facility be located within a 1/4 mile of the riverbank.

The lessee will minimize sight and sound impacts for new facilities sited less than 1/2 mile of the riverbank and areas of high recreational use by:

- *Providing natural buffers and screening to conceal facilities*

- *Conducting exploration operations between October 1 and April 30*
- *Using alternative techniques to minimize impacts*

New facilities that are sited in key wetland and sensitive habitat areas should be limited to the extent possible. In the event such siting is within these areas, the lessee should demonstrate to the satisfaction of ADNR and ADF&G that the impacts are minimized or that mitigation measures are provided. A freshwater aquifer monitoring well with quarterly water quality monitoring should be required down gradient of a permanent storage facility unless alternative acceptable technology is approved by ADEC.

5. Coordination of Water Quality Monitoring

There is a recognized deficiency of data collection and analysis depicting the water quality of some waterways in the Kenai Peninsula. A coordination of existing data including aquifer data from ADEC, required drinking water tests with other data generated by federal and state agencies, as well as local government and private entities is recommended. The efforts to improve the understanding of the health of the Kenai Peninsula water quality and its trends as it relates to human and aquatic life is important to future resource development, as well as management of its many other natural resources. The Exxon Valdez Oil Spill settlement is an appropriate funding source for addressing water quality issues in the Cook Inlet region. The state should support the presently scheduled "Watersheds '97" Conference scheduled for October 1997 to assure that it is an effective vehicle for promoting and implementing necessary coordination of data gathering and analyses and a Kenai Peninsula component of the conference should be developed.

6. Improve Expression of Mitigation Measures in Best Interest Findings

The ADNR is recommended to convene a workshop on mitigation measures that would include invitations to all interested parties.

7. Modification of Leasing Strategy Objectives

Amend the existing objectives to reflect that development anticipated in a lease sale will be conducted in a manner that protects affected cultures, fish and wildlife resources, and existing economies

8. Negotiated Best Interest Findings Process for Cook Inlet Areawide Oil and Gas Leasing.

The process for securing public involvement in developing the Best Interest Finding and formulating mitigation measures shall be improved. It is the consensus of the parties that this can best be achieved by convening a group of citizens that represent the diverse interests of the Cook Inlet basin to develop recommendations to the Commissioner for the Best Interest Finding for oil and gas leasing on state lands in the region. The Negotiated Rulemaking Act of 1990 (5 U.S.C. Sec. 581-590) is suggested as one of the references to assist in defining the framework of the process we are recommending.

9. Tax Credit Water Quality Sampling

Entities that are 1) currently impacting a watershed, or 2) proposing an activity that could impact the watershed in the future, should receive tax credits for instituting a voluntary water quality monitoring program. The program must be approved by ADEC and the tax credits would cover only direct monitoring costs subject to an annual limit of \$100,000 per year per entity. The sampling program activities must represent actions beyond those required under any compliance obligations.

10. Recognition for Exceeding Environmental Requirements

As an incentive for exceeding minimum environmental requirements, a company may receive tax credits for 90% of the direct incremental costs of doing the additional work. The appropriate state agency would have to verify that the increased environmental benefits exceed the cost of achieving these benefits. Tax credits would be limited to \$500,000 per year per company.

Lessons Learned

Based on interviews conducted shortly after the stakeholder representatives signed and sent their recommendations list to the Governor, some key lessons learned were revealed. What follows is a synthesis of respondents' comments. Each is followed by Resource Solutions' observations, which are based on our general experience about public problem solving and national trends.

Although collectively a diverse group, the stakeholder representatives appreciated the opportunity the Lease Sale 85A stakeholders process provided for them to “get to know” each other and work together on issues important to them.

This is a fairly typical occurrence. Why? Because until individuals who represent different and often opposing views have an opportunity—or are challenged to “work it out,” they usually do not “know each other.” Instead, what they know of each other are stereotypes depending on what perspective the other represents, what gets reported in the media, and rumors. This lack of relationship perpetuates divisiveness and distrust and allows public problems to go on, sometimes for years, without being resolved. This is a fundamental tenant of resolving problems—people are much more likely to try to work things out when they know each other, and especially when they like and respect each other.

Most believed that the stakeholders process occurred too late. Some noted that if a similar process had been conducted during preparation of the Best Interest Finding there would have been a good chance the moratorium could have been avoided and the “last minute” alarms sounded by affected communities might never have “gone off.”

Many public officials are beginning to recognize the need for government to play a very different role than it traditionally has for the past 40+ years. Government, like a society, is slow to change. In general, government's role has been to make decisions on behalf of the public. It hasn't done this in a complete vacuum—public hearings, testimony, etc.

have helped shape public decisions. In spite of these attempts to involve the public, the public's frustration with government's decisions and the feeling that it has been left in the dark when it comes to making those decisions, has reached a heightened level. We find that government is most often willing to take a different approach when an issue reaches a crisis and no other options seem to exist. The intervention is, therefore, conducted at the end of a decision-making process rather than at the beginning. This is unfortunate because the best strategy for resolving disputes is to prevent them in the first place.

Commissioner Shively's participation and attendance at all the meetings conveyed a sense of importance and credibility to the process that otherwise could not have been achieved.

Commissioner Shively's willingness to devote his time to this problem-solving process added credibility to the government's commitment to resolve these issues. Government has convened many citizen groups and initiatives, asked for their time and recommendations, then seemingly disregarded their input. Because of this, when government requests help on an issue, it is met with a good deal of skepticism from citizens. When government decision makers participate in collaborative efforts, citizens have a great deal more confidence that the real concerns are understood and will be addressed.

Some of the stakeholder participants felt severely limited in their options for solving problems because the State had already transferred a property right (the leases) to private entities. In addition, the agreements the panel developed were not binding, but voluntary on the part of the lease holders.

This, too, is a timing issue. It exemplifies that when a collaborative effort is convened, the credibility of the process will be affected—either positively or negatively. Some stakeholders who felt the collaborative effort was too late decided to participate because they believed the Commissioner and Governor would apply the consensus recommendations to future lease sales in Cook Inlet.

There was a good deal of skepticism that the administration will actually implement or be able to implement the recommendations made by the stakeholders, even though it has indicated it will.

For Lease Sale 85A specifically, the fact that the lease sale had already occurred added to participants' doubts. In more general terms, the public's skepticism has to do with government's lengthy track record of asking for input and then ignoring it.

It's important to be clear about the process. Many of the stakeholder representatives did not realize that the Governor would review, and if deemed necessary, revise (in this case added to) their recommendations. The role of the representative from the Governor's office, who attended the meetings, was also unclear.

There are three fundamental elements involved with decision making—the substance or the issue, the process, and the psychological aspects. Because of government's lack of credibility and follow through when working with the public, there's a high degree of skepticism and distrust. This speaks to psychological elements. When the process seemed to change (e.g., the Governor reviewed and added to the recommendations) or when it wasn't clear (e.g., the role of the Governor's staff person), this impacted the psychological element of the process. Participants then became somewhat suspicious that outcomes would be altered and their efforts undone. Government needs to create a good track record of listening and being responsive to its citizens before this will change.

Proving the viability of this facilitated, problem-solving kind of process was most often cited as the real accomplishment of the stakeholders process, and many suggested that state agencies could use it in other situations as well.

Although popular opinion may have us believe differently, people actually prefer to be part of a solution. However, the way in which our public input process is structured, it actually encourages divisiveness. Many years ago when this input process was developed, it was not the intent to magnify differences, but nonetheless, it is the result. When the opportu-

nity to share responsibility for public decisions is linked with a process structure that discourages and perhaps even disallows purely selfish, self-interest behavior and attitudes, citizens will rise to the occasion. The benefit is twofold: government and the public work together, not against each other; and better decisions result. The decisions are better because although government officials have conceptual and factual knowledge, it's the citizens who have day-to-day real life experiences to draw on. They are the ones who must live with the changes resulting from public decisions. Further, if they are part of the process to make these decisions, there is a much higher likelihood that they will abide by them and a much lower probability that legal action will be taken.

Participants preferred the third meeting held at Anchor Point substantially more than the first two. The "informal setting," "no microphones," and "the free-flowing question-and-answer discussion helped to build understanding of the issues," were all given as reasons for this preference.

This has so much to do with basic human nature. If you had a choice to be in a place where you feel comfortable and at ease to ask questions you're sincerely unclear about, rather than having three minutes to testify at a formal hearing, which would you prefer? With so many rural and small communities, this preference for informality may even be more prevalent in Alaska than elsewhere.

Some key perspectives were missing in the stakeholder process that caused some disgruntlement and distrust from those not invited to be a representative but were purportedly represented.

These are issues that are usually addressed in the "convening" stage. Time and resource constraints severely limited the "convening" step in the Lease Sale 85A collaborative problem-solving process. Depending on the complexity of a case, the convening phase itself may take several months. The purpose of this step is to determine who should participate and in what capacity.

There was widespread sentiment that this kind of process should precede decisions being made on major issues where contention is likely.

In some cases it may be apparent that contention is likely, but in many it's not. In the case of Lease Sale 85A, the State was probably aware that residents in the southern part of the Peninsula would raise some concerns. However, the issues from the central Peninsula were somewhat of a surprise. It may be useful to agencies, or even at the division level, to devise a checklist or evaluation criteria to determine whether or not an issue is contentious. If it's a long-term project, it may be useful to have periodic check-ups and reassess if it's still on track. If there are signs of trouble, then there should be pathways or options that the agency can consider taking, before the project gets "derailed."

Conclusion

Although our government institutions have many capable and competent employees, the public's involvement is the cornerstone of our governmental process. Good public involvement requires more than public hearings and lobbying efforts. It should create the opportunity and responsibility for citizens to work with government officials, with each other, and in particular, with their opponents. In these situations, a citizen's responsibility is to make decisions that benefit the larger public; not just their own self-interests. This isn't easy, and it's certainly different than the traditional roles government and citizens have played. The benefit? Government officials, elected and appointed, are no longer solely responsible, or the only ones to blame, for the outcome of public decisions.

