MEMORANDUM

State of Alaska

Department of Law

To: Robert D. Storer
Executive Director
Alaska Permanent Fund Corporation

Date: September 25, 2001

File No.: 663-02-0012

Tel. No.: (907) 465-4118

From: Michael A. Barnhill
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Subject: Distribution of National Petroleum Reserve – Alaska Receipts

You have asked for an opinion regarding the distribution of National Petroleum Reserve-Alaska ("NPRA") receipts. Specifically, the Alaska Permanent Fund Corporation would like to know whether the amount of NPRA receipts distributed to the Permanent Fund should be calculated based on (a) the gross amount of NPRA receipts received from the federal government or (b) the net amount of NPRA receipts after federally required grants are made to impacted communities. The short answer is that federal law preempts the Alaska Constitution's requirement that twenty five percent of all receipts be deposited in the Permanent Fund. In light of this preemption, the statute (AS 37.05.530(g)) that requires deposit of twenty five percent of the net proceeds is valid. Accordingly, the Permanent Fund is entitled to only 25 percent of the net amount of NPRA receipts.

This is a fairly complex issue and the Department of Law has opined on it on multiple occasions. Moreover, distribution of the NPRA receipts was the subject of litigation between the State and the North Slope Borough. Consequently, a somewhat detailed departure into the background of the issue is necessary.

BACKGROUND

The National Petroleum Reserve Alaska was originally established by President Harding in 1923 as the Naval Petroleum Reserve No. 4 ("Pet 4"). The NPRA was never subject to the federal Mineral Leasing Act of 1920, and therefore is not subject to the revenue sharing provided for in section 28 of the Alaska Statehood Act. See 1987 Inf. Op. Att'y Gen. (March 2; 663-87-0402).

In 1976, Congress enacted the Naval Petroleum Reserves Production Act, which redesignated Pet 4 as the "National Petroleum Reserve in Alaska" and transferred jurisdiction of it from the Navy to the Department of Interior. *See* Naval Petroleum Reserves Production Act of 1976, Pub. L. No. 94-258, §§ 102-103, 90 Stat. 303 (1976). P.L. 94-258 also authorized the Department of Interior to continue the exploration efforts in the NPRA begun by the Navy. *Id.* at § 104.

A. Federal Revenue Sharing Legislation

In 1980, Congress enacted an appropriations bill (P.L. 96-514) which authorized "an expeditious program of competitive leasing of oil and gas" in the NPRA. *See* Department of Interior and Related Agencies Appropriations Act, Pub. L. No. 96-514, Title I, 94 Stat. 2957, 2964 (1980) (codified at 42 U.S.C. § 6508). P.L. 96-514 also authorized revenue sharing of NPRA proceeds with the State of Alaska:

> [A]ll receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this Act shall be paid into the Treasury of the United States: *Provided,* That 50 per centum thereof shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: *Provided further,* That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act.

Id. Thus, P.L. 96-514 contemplates that the NPRA revenues received by the State of Alaska only be used for three categories of spending: (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service. Moreover, P.L. 96-514 gives funding priority to those communities that are most directly impacted by oil and gas development in the NPRA.

As discussed below, the issue of whether deposit of NPRA receipts into the Permanent Fund falls into one of the three expenditure categories of P.L. 96-514, was raised both in the litigation between the State and the North Slope Borough and in various opinions issued by the Department of Law. Review of the

legislative history reveals that this particular issue does not appear to have been raised during the hearings and debates on the bill.[1]

The lack of legislative history on the precise scope of the three expenditure categories may result from the fact that this language appears to have been taken from previous legislation: the Federal Land Policy and Management Act of 1976 ("FLPMA"). FLPMA amended the revenue sharing provision Mineral Leasing Act of 1920 to read as follows:

> [S]aid moneys paid to any of such States . . . to be used by such States and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service.

See FLPMA, Pub. L. No. 94-579, § 317(a), 90 Stat. 2743, 2770 (1976) (amending § 35 of the Mineral Leasing Act of 1920 (30 U.S.C. § 191)). The FLPMA legislative history suggests that the intention of this provision was to permit the States "to use all the funds they receive for **any purpose** the State legislatures directed, provided priority was given to subdivisions impacted by development of leased minerals." H.R. Rep. No. 1724, 94th Cong., 2d Sess. 62 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6228, 6234 (emphasis added).

Even though this legislative history supports the notion that Congress intended to give states free rein to spend the revenue shared under the auspices of FLPMA as they wished, there are differences, perhaps significant, between the FLPMA revenue sharing provision and the P.L. 96-514 revenue sharing provision. Where FLPMA permitted state use of the money for construction and maintenance of public facilities, P.L. 96-514 permitted State use of the money for construction, maintenance and operation of "**essential**" public facilities. Where FLPMA

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[1] The debate recorded in the Congressional Record reflects only that the mere fact of federal revenue sharing with Alaska was controversial. Congressman Seiberling of Ohio objected to the 50-50 sharing of revenues because in his view Alaska was becoming the "OPEC of America." 126 Cong. Rec. 20532 (1980). But nothing in the debate illuminates precisely what Congress intended when it limited the use of the NPRA funds to planning, construction, maintenance, and operation of essential public facilities, and other necessary provisions of public service.

permitted state use of the money for "provision of public service," P.L. 96-514 permitted state use of the money for "other **necessary** provisions of public service." The introduction of the words "essential" and "necessary" into the P.L. 96-514 revenue sharing provision could suggest that Congress intended it to be narrower than the FLPMA revenue sharing provision.

In any event, this legislative history does not bring us any closer to decisively answering the question of whether deposit of NPRA receipts into the Permanent Fund falls into one of the three expenditure categories of P.L. 96-514. As discussed below, valid arguments can and have been made on both sides of the issue.

B. State of Alaska NPRA Legislation, 1982 and 1984

Subsequent to the enactment of P.L. 96-514, the Department of Interior conducted an NPRA lease sale in 1982. In accordance with P.L. 96-514, the federal government distributed approximately $48,643,000 to the State of Alaska. *See* 1986 Inf. Op. Att'y Gen. at 1 (Aug. 8; 663-87-0003). Since there was no state law which governed the distribution of the NPRA receipts, the legislature passed a bill that created a "special revenue fund" into which all NPRA receipts would be deposited and thereafter distributed in accordance with the requirements of P.L. 96-514. *See* CSSB 835(Fin) am H, Twelfth Leg., 2d Sess. (1982).

This bill made no provision for deposit of any of the NPRA receipts into the Permanent Fund. At the time, the Department of Law opined as follows:

> Because the federal legislation specifies the purposes for which these federal revenue sharing payments may be spent, and because deposit in the permanent fund is not among those purposes, we believe that the better view is that federal mineral revenue sharing payments from federal oil and gas leasing in the National Petroleum Reserve, Alaska, under P.L. 96-514 are not subject to the requirement in art. IV, sec. 15 that at least twenty-five percent be deposited in the permanent fund. While resolution of the issue is not entirely clear, we believe that this result makes better sense in that it avoids the anomalous situation in which compulsory deposit in the permanent fund under art. IX, sec. 15 could entirely defeat state participation in the federal program because that deposit would be an expenditure contrary to the federal

> legislation authorizing their transmittal to the state in the first place.

1982 Inf. Op. Att'y Gen. at 3 (June 22; 388-140-82). Nevertheless, Governor Hammond vetoed the bill because in his view the NPRA special fund was contrary to the policy against dedicated funds and the policy requiring deposit of mineral revenues in the Permanent Fund. *See* Gov. Hammond's Veto Message on CSSB 835(Fin) am H (June 24, 1982).

Later that year, the Department of Law reaffirmed its view that the Permanent Fund had no entitlement to NPRA receipts. *See* 1982 Inf. Op. Att'y Gen. (Sept. 8; 366-027-83). Moreover, the Department observed that under the Supremacy Clause of the U.S. Constitution (Art. VI, cl. 2), federal law arguably preempted the Alaska Constitution's requirement that twenty-five percent of mineral revenues be deposited in the Permanent Fund. *Id.* at 1-2.

Without the aid of any specific statutory guidance regarding distribution of NPRA receipts, in 1982 the Alaska Department of Revenue began to distribute the receipts consistent with the statutes for all other state mineral receipts: 50 percent to the permanent fund, .5 percent to the Public School Fund, and the remainder to the General Fund. *See* AS 37.13.010; AS 37.14.150. Thus, about $24 million was deposited in the Permanent Fund, $182,000 to the Public School Fund, and about $18 million was deposited in the General Fund. *See* Sec. 1, ch. 53, SLA 1986. Only about $3.7 million was directly appropriated for grants to impacted communities under P.L. 96-514. *Id.*

In 1984, legislation was again introduced to provide guidance for distribution of NPRA receipts. The 1984 legislation was virtually identical to the vetoed 1982 legislation but this time it passed. ch. 94, SLA 1984. The critical difference for the 1984 legislation, however, was that during the legislative hearings on the bill, the legislature apparently made quite clear that it intended that NPRA receipts be subject to the constitutional requirement of deposit in the Permanent Fund. *See* 1984 Inf. Op. Att'y Gen. at 3 (June 7; 388-106-84).

In its bill review letter, the Department of Law shifted its position and accommodated the legislature's apparent intent: "Since these are 'federal mineral revenue sharing payments' a minimum of 25 percent of those revenues must be placed in the permanent fund under the plain language of art. IX, sec. 15." The Department explained its change in position as follows:

> However, we [now] believe the better view is that deposit in the permanent fund would fall under item "(c) other necessary provisions of public service," [of P.L. 96-514] since the basic purpose of the permanent fund is to preserve a portion of non-renewable resource revenue received today for the necessary provision of public services in the future. In addition, as discussed below, there is no question that the Thirteenth Alaska Legislature intended that a portion of the funds received from the federal government be placed automatically in the permanent fund.

1984 Inf. Op. Att'y Gen. at 3 (June 7; 388-106-84). The State's decision to automatically deposit a percentage of NPRA receipts into the Permanent Fund triggered immediate litigation by the North Slope Borough.

C. NPRA Receipts Litigation

In 1985, the North Slope Borough, and the cities of Barrow and Wainwright filed a lawsuit against the State alleging that the State had violated the revenue sharing provisions of P.L. 96-514. Superior Court Judge (now Supreme Court Justice) Carpeneti agreed:

> The State cannot, consistent with its obligations under P.L. 96-514, automatically deposit 50% (or any amount) of all NPR-A revenues into the Alaska Permanent Fund. Such action clearly contravenes the mandatory duty placed on the State by the very law which authorizes payments to the State (since such payments are made on the condition that the State "give priority to use [of such funds] by subdivisions of the state most directly or severely impacted" by the developments of leased lands).

City of Barrow v. State of Alaska, Summary Order at 4, No. 1JU-85-2634 CI. (Alaska Super., March 18, 1986). Before any deposit to the Permanent Fund can be made, Judge Carpeneti directed the State to first "examine the claimed needs of subdivisions arising from oil and gas development impacts, to evaluate them and, if the claimed needs are found to exist, to rank them in order of priority, and to meet or satisfy them out of NPR-A revenues." *Id.* at 3-4.

With respect to the issue of whether any NPRA receipts could be deposited into the Permanent Fund, Judge Carpeneti was less conclusive:

> Because the language of the federal act is so broad concerning the allowable objects of state expenditure of NPR-A funds ("other necessary provisions of public service"), it is conceivable that an allocation of NPR-A revenues to the permanent fund might be allowable after the State complies with the mandatory duty imposed on it to evaluate needs and establish priorities. But this difficult question need not be resolved now, for on the undisputed facts before the court the State has made no effort at all to meet the duty imposed upon it.

Id. at 4. Thus, according to Judge Carpeneti, NPRA money cannot be automatically deposited into the Permanent Fund. The State must distribute NPRA money to impacted communities first.

D. State of Alaska NPRA Legislation, 1986

The State elected not to appeal Judge Carpeneti's decision. Instead, legislation intended to resolve Judge Carpeneti's concerns was enacted by the legislature in 1986. ch. 53, SLA 1986. This legislation amended the 1984 legislation (ch. 94, SLA 1984), to provide that **all** NPRA receipts would be "made available for appropriation by the legislature to municipalities" that demonstrate impact from NPRA development. Sec. 2, ch. 53, SLA 1986 (codified at AS 37.05.530(d)).

The legislature recognized that even though all the NPRA receipts would be made available for appropriation to impacted communities, not all of the money would actually be appropriated. Consequently, the legislature additionally provided that money not appropriated for grants to impacted communities would "lapse" as follows: 50 percent to the permanent fund, .5 percent to the public school fund, and 45.5 percent to the general fund. Sec. 3, ch. 53, SLA 1986.

Subsequent to the 1986 legislation, the Department of Law issued a series of informal opinions addressing various questions associated with implementation of the legislation and distribution of the NPRA receipts. The first of these confirmed that the statute requires that the Permanent Fund's share of the NPRA receipts be calculated only after the grants to impacted communities are made. 1986 Inf. Op. Att'y Gen. at 3 (Aug. 8; 663-87-0003). The Department of Law set forth the rationale for this conclusion the following year:

> Our conclusion that the Alaska Permanent Fund and the Public School Fund are entitled to these amounts is the result of the following analysis. Under article IX, section 15, of the Alaska Constitution, the Alaska Permanent Fund is entitled to a minimum of 25 percent of all federal mineral revenue-sharing payments. Implementing that constitutional provision is AS 37.13.010(a)(2), which provides that the Alaska Permanent Fund is entitled to 50 percent of all federal mineral revenue sharing payments. The court's decision in *Barrow* [Judge Carpeneti's decision], however, established that the state may deposit NPRA revenues in the Alaska Permanent Fund only after the federal condition on the state's receipt of those revenues – i.e., giving priority to use by impacted political subdivisions – has been satisfied.
> AS 37.13.010(a)(2) can apply only to those remaining, unrestricted federal mineral revenue-sharing payments because state law cannot supersede a federal restriction on the use of shared revenues.

1987 Inf. Op. Att'y Gen. at 3 (June 22; 663-87-0003).

In 1990, the Department of Law again re-affirmed its view that the Permanent Fund's share of NPRA receipts is calculated only after grants to impacted communities are made. "The only funds that should be netted from the state's NPRA receipts in determining the entitlements of the Permanent Fund and the Public School Fund are those that qualify as grants under P.L. 96-514." 1990 Inf. Op. Att'y Gen. at 4 (Sept. 6; 663-90-0175).

E. State of Alaska NPRA Legislation, 1999 (Current Law)

In 1999, the legislature revisited the distribution of the NPRA receipts remaining after grants to impacted communities are made and enacted legislation which required deposit of the left-over amounts as follows: 25 percent to the Permanent Fund and .5 percent to the public school trust fund. The remaining 74.5 percent would be available for appropriation to the power cost equalization and rural electric capitalization fund. Any amounts remaining after power cost equalization appropriation would then lapse into the general fund. Sec. 2, ch. 93, SLA 1999 (codified at AS 37.05.530(g)). This is the law that is currently on the books.

DISCUSSION

As the result of an inquiry by Legislative Audit, the Alaska Permanent Fund Corporation requests an opinion regarding how the amount of NPRA receipts due the Permanent Fund should be calculated. The Alaska Permanent Fund Corporation has correctly pointed out the apparent incongruity between the constitutional requirement that twenty-five percent of "all . . . federal mineral revenue sharing payments . . . received by the State" be placed in the permanent fund (Article IX, Section 15) and the statutory requirement that requires deposit into the Permanent Fund of only twenty-five percent of the net NPRA receipts after grants are made to impacted communities. AS 37.05.530(g).

The fairly complex legislative history set forth above demonstrates that the creation of this apparent incongruity was not inadvertent, but quite intentional. Specifically:

(a) Judge Carpeneti's order held that the State "cannot, consistent with its obligations under P.L. 96-514, automatically deposit 50% (**or any amount**) of all NPR-A revenues into the Alaska Permanent Fund." The State remains bound by this order. *City of Barrow v. State of Alaska*, Summary Order at 4, No. 1JU-85-2634 Ci. (Alaska Super., March 18, 1986) (emphasis added).

(b) The 1986 legislation (SLA 1986, ch. 53) resolved Judge Carpeneti's concerns and brought the State back into compliance with P.L. 96-514 by calculating the Permanent Fund's share of NPRA receipts only after grants to impacted communities were made.

(c) The Department of Law confirmed in a series of opinions that the Permanent Fund is only entitled to twenty-five percent of the net amount of NPRA receipts after grants to impacted communities are made. *See* 1986 Inf. Op. Att'y Gen. at 3 (Aug. 8; 663-87-0003); 1987 Inf. Op. Att'y Gen. at 3 (June 22; 663-87-0003); 1990 Inf. Op. Att'y Gen. at 4 (Sept. 6; 663-90-0175).

Fundamentally, P.L. 96-514 requires that impacted communities be given priority to use of NPRA receipts. As described below, we believe that this federal law preempts the Alaska Constitution's directive that twenty-five percent of all federal mineral revenue sharing payments be deposited in the Permanent Fund.

The Alaska Supreme Court recently discussed the law of federal preemption in *Tlingit-Haida Regional Elec. Auth. v. State*, 15 P.3d 754 (Alaska 2001). There, the court observed that the doctrine of federal preemption derives from the Supremacy Clause of the U.S. Constitution which declares that federal law shall be "the supreme law of the Land; and the Judges in every State shall be bound thereby, any Thing in the **Constitution or Laws of any State to the Contrary notwithstanding**." Id. at 766 (quoting U.S. Const. art. IV, cl. 2) (emphasis added). Because the U.S. Constitution explicitly provides for preemption of state constitutions, there is no question that the Alaska Constitution is subject to preemption.

In *Tlingit-Haida*, the court set forth the process by which it evaluates whether federal law has preemptive effect:

> Generally, we apply a two-step analysis to preemption questions. First, we look to see whether Congress has overtly preempted the subject matter the state wishes to regulate, either explicitly, by declaring its intent to preempt all state authority, or implicitly, by occupying the entire field of regulation on the subject in question. Second, if neither kind of direct preemption is found, we look to whether federal and state law conflict in this particular instance. If state and federal regulations openly conflict or if state regulations obstruct the purpose of federal regulations then the supremacy clause blocks the state regulation.

Id. at 766-67. If either step is satisfied, then the federal law preempts the state law.

With respect to the first step, the Alaska Supreme Court has held that "Congressional intent to occupy the field will not be lightly inferred." *Webster v. Bechtel, Inc.*, 621 P.2d 890, 898 (Alaska 1980). Moreover, the courts will look for a "clear and manifest purpose of Congress" to occupy the field of regulation. *Id.* Accordingly, the standard for demonstrating overt preemption is fairly rigorous. With respect to the second step (frustration of purpose preemption), courts determine whether compliance with both federal and state law is impossible or whether the "state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* at 900-901.

The first step in determining whether P.L. 96-514 preempts Art. IX, sec. 15 of the Alaska Constitution is to examine whether Congress has overtly preempted

the subject matter regulated by the state, either explicitly or implicitly. *Tlingit-Haida*, 15 P.3d at 766. In this case, the subject matter of state regulation is the distribution of NPRA receipts. Because P.L. 96-514 does not explicitly set forth a Congressional intent to preempt state authority on this subject matter, there does not appear to be explicit overt preemption. Likewise, it is difficult to conclude that Congress has occupied the entire field of regulation of distribution of NPRA receipts, and thus implicitly preempted state law, because even though P.L. 96-514 enumerates the purposes for which such money must be spent, it leaves the specific distribution decisions up to the State. Thus, there does not appear to be overt preemption.

The second step in the preemption analysis determines whether the state regulation of the subject matter obstructs or conflicts with the purpose of federal regulation. *Tlingit-Haida*, 15 P.3d at 766. In this case, the Alaska Constitution requires an automatic deposit of twenty-five percent of the total NPRA receipts into the Permanent Fund. But P.L. 96-514 requires that funding priority for all of the NPRA receipts must be given to impacted communities. It is altogether foreseeable that grants to impacted communities could exceed seventy-five percent of the total NPRA receipts. In such case, it would be impossible to comply with both federal and state law regarding distribution of the remaining twenty-five percent of the NPRA receipts. Thus, there is a direct conflict between federal and state law.

Further, the state constitutional requirement of automatic deposit of NPRA receipts into the Permanent Fund arguably stands "as an obstacle to the accomplishment and execution of the full purposes and objectives" of P.L. 96-514 in that Congress intended that impacted communities would get priority with respect to use of all of the NPRA receipts. The Alaska Constitution interferes with the Congressional intent by instead giving the Permanent Fund priority to a portion of the NPRA receipts.

In summary, we conclude that P.L. 96-514 does not overtly preempt the Alaska Constitution's requirement that twenty-five percent of all federal mineral revenue sharing payments be deposited in the Permanent Fund. Nevertheless, we believe that the Alaska Constitution's requirement of automatic deposit of federal mineral revenue sharing receipts into the Permanent Fund both obstructs and conflicts with the federal requirement that priority for use of NPRA receipts be given to impacted communities. Priority for the same money cannot be given for two different purposes. Accordingly, P.L. 96-514 preempts the Alaska Constitution, and its requirement that 25 percent of NPRA receipts must be

deposited in the Permanent Fund must give way to the federal funding priority for impacted communities.

In light of this federal preemption, the apparent incongruity between the Art. IX, sec. 15 of the Alaska Constitution and AS 37.05.530(g) fades away. Fundamentally, one of the basic purposes of AS 37.05.530(g) was to conform Alaska state law to federal law in light of the recognized federal preemption yet still provide for a deposit of a portion of the net NPRA receipts to the Permanent Fund. Accordingly, the calculation set forth by AS 37.05.530(g) is correct and the Permanent Fund is only entitled to twenty-five percent of the net amount of NPRA receipts after grants to impacted communities are made.[2]

Finally, we anticipate that a question may be raised regarding whether federal preemption of the Alaska Constitution is even triggered when the grants to impacted communities total less than seventy-five percent of the NPRA receipts. For instance, we understand that recently the State received approximately $40 million in NPRA receipts from the federal government. Of that, only $28 million (seventy percent) was used for grants to impacted communities. In other words, there was enough money to deposit twenty-five percent of the total NPRA receipts into the Permanent Fund and still fully fund all of the grants to impacted communities. In our view, any deposit into the Permanent Fund of a fixed percentage of the total NPRA receipts is tantamount to an "automatic" deposit which was expressly forbidden by Judge Carpeneti's order. Moreover, in our view, under the frustration of purpose doctrine set forth above, federal law preempts the Alaska Constitution even when there is enough NPRA receipts to go around. This is because federal law requires a priority be given to impacted communities. This priority is not mirrored in the Alaska Constitution and therefore the Alaska Constitution arguably obstructs the purpose of and conflicts with federal law.

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[2] We note that the Alaska Permanent Fund Corporation has not asked us to address the issue of whether deposit of NPRA receipts into the Permanent Fund constitutes a "necessary provision of public service" under P.L. 96-514. Because of the closeness of this issue, as set forth above, we have made arguments on both sides of it in the past. Compare 1982 Inf. Op. Att'y Gen. at 3 (June 22; 388-140-82); 1982 Inf. Op. Att'y Gen. at 1-2 (Sept. 8; 366-027-83), with 1984 Inf. Op. Att'y Gen. at 2-3 (June 7; 388-106-84). While we continue to adhere to the view set forth in our 1984 informal opinion that the "better view" is that deposit of NPRA receipts into the Permanent Fund can constitute a "necessary provision of public service," we decline to exhaustively revisit this issue here. In any event, Judge Carpeneti was undoubtedly correct that this is indeed a "difficult question."

Thus, in light of the preemption, the NPRA receipts are not actually "received by the State" for purposes of deposit in the Permanent Fund pursuant to Art. IX, sec. 15 of the Alaska Constitution, until the State's obligations under P.L. 96-514 have been fully discharged.[3] Once the State makes the federally required distribution of NPRA receipts to impacted communities, only then can the remainder of the NPRA receipts be viewed as being "received by the State" and therefore subject to the constitutional 25 percent deposit requirement. In sum, the Permanent Fund is only entitled to a maximum of 25 percent of the net NPRA receipts, after grants to impacted communities are made.

[3] Indeed, the Department of Revenue treats NPRA receipts differently than all other mineral receipts. NPRA receipts are accounted for as "restricted receipts." All other mineral receipts are accounted for as "unrestricted receipts."