

MEMORANDUM

State of Alaska

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TO: Richard Logan
Director
Sport Fish Division - Juneau

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FROM: Thomas W. Trent
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SUBJECT: Observations On The Alaska
Power Authority - Alaska
Department Of Fish And Game
Meeting In Juneau of
December 15, 1983.

As you suggested I am communicating several concerns and observations regarding the meeting held in Juneau between the Alaska Power Authority (APA) and Alaska Department of Fish and Game (ADF&G) on December 15, 1983.

TERROR LAKE PROJECT

The discussion by APA provided a picture of the Terror Lake negotiation process between the Federal Energy Regulatory (FERC) applicant and U.S. Fish and Wildlife Service (USFWS), which seemed to give credit to them for the way in which the settlement was reached. Some clarification regarding these negotiations is important to make.

These are:

1. Negotiations were carried out between Kodiak Electric Association (KEA) and the USFWS, not between the APA and USFWS.
2. USFWS had a major influence on the applicant because the hydro project was constructed in a federal refuge, the first project of this type in a federal refuge anywhere.
3. Keith Bayha of USFWS at a recent meeting has conceded that one deficiency of their negotiations was the lack of documentation. As a result some points they thought they'd gained were lost because of the lack of written documentary evidence of agreement.
4. In the report "Conducting FERC Environmental Assessment: A Case study and recommendations from the Terror Lake Project" prepared by Stewart Olive and Berton Lamb of the USFWS under a cooperative agreement with the U.S. Department of Energy, APA, ADF&G, and Region 7, USFWS, it is stated in the section on "A Summary of Strategies":

"Alaska Power Authority

The role of APA can be characterized as "interested observer." APA was evolving from a funding agency to a construction and management agency. The legislature was in the process of passing the statutes necessary to complete this transformation. APA anticipated responsibility for constructing projects similar to Terror Lake.

APA's motivation in the negotiations was to limit the concessions that KEA had to make, while providing support for the project. At the base of APA's strategy was establishing the precedent of limiting the number of concessions and extent of mitigation necessary to have projects approved in Alaska. Despite this interest, APA was not actively involved. The fact that APA observed this process is important because APA now administers the Terror Lake Project and is negotiating for a FERC license on the Susitna River Project." (The underlining is mine).

Susitna Hydro Issues

At the time I started this memorandum, I had not received the December 23 memorandum from John Clark transmitting the summary of the meeting between APA and ADF&G in Juneau on December 15, 1984, which just came. My comments hereafter relate to those minutes.

Item 6.

The proposed deadline of the end of the settlement process practically insures administrative hearings in my view. A competent assessment of impacts and a satisfactory mitigation plan will not be available by that time, is my opinion. Studies to define instream flow needs below Talkeetna are just beginning in FY85. Will instream flows be negotiated without the information from that program? Also, more than one year of work may be needed for that areas before satisfactory conclusions can be drawn.

Item 9.

While in Juneau for the December 15 meeting I expressed some reservation regarding the submission of a list of issues at the meeting that might be constructed as being "blessed" or "embraced" by ADF&G. John Clark did, however, in the meeting provide some qualification to the use of the list, I do not recall his exact words but believe qualification is necessary for the following reasons:

1. The list of issues transmitted by Habitat Division are a compilation or reorganization of an APA developed list of issues and a "brainstorm" list by USFWS staff.
2. The APA list of issues is historically incomplete and largely ignores a large volume of written documentation on issues and questions emanating from the ADF&G Commissioner's office. The APA list relies more on ADF&G staff level correspondence or information retrieved in interviews with ADF&G staff that can be termed "brainstorming" of potential issues or impacts.

I think it is as important to document not only the how, why or what of the issues but also the who or source of this issue commentary. ADF&G should develop a list of issues based on policy or position statements (at a minimum from 1977 on) from the Commissioner's office or from delegated spokesman not from the APA list. While we are not intervenors, I believe it is incumbent on ADF&G to formalize and document its own list of issues based on the highest administrative level of their presentation to the APA and with an accurate chronology of presentation. The APA list and consequently ADF&G's

are particularly weak on the subject of mitigation, for which ADF&G has had much more to say at the policy and position level in prior correspondence.

Our Commissioner should not be in the position of explaining how a staff member's informal comments became issue positions which may contradict correspondence from his office about the same issue. Adopting APA's list without thorough development or our own list and comparison against that list may lead to this. The potential for litigation requires that our formal record on issues, policies and positions is complete.

The Habitat position funded by APA has an excellent task ahead of it, that is to compile and document ADF&G issue, position, and policy statements from the original sources.

Regarding the identification of impact mechanisms. I think, this is a good idea. The problems is that the project engineers have not yet decided what the project is going to be like or the general operating scenerio. Identification of impact mechanisms in the aquatic environment is quite dependent on their deciding how the project will be generally operated, e.g., base load or peaking operation.

Item 10.

The representatives of ADF&G should be fully aware of ADF&G's prior policy, position, and issue documentation as indicated under Item 9. This is an ADF&G list that is accurate, historically, and chronologically complete.

Item 11.

If APA had done their homework, it would be evident that they largely have this information from former policy, position or issue documents from ADF&G. Lowenfels, for example, prepared a report a couple of years ago which incorporated material on agency mandates.

Item 12.

I believe APA is still intent on maintaining the "gag rule" on communications. You heard the discussion at the meeting suggesting they were trying to determine if our reports are public documents and also the discussion about making material available to intervenors under the "rule of discovery". Short and sweet, this means to me, if you don't know about it we are not making it available, and consequently your analytical and decision making process will not be as informed. This would be a cumbersome and aggravating process, and I predict would serve only to cause delays in the settlement process.

One question I have which was not asked at the meeting is: Since ADF&G is not an intervenor will it be afforded the same privileges of obtaining information as other agencies that are? Also, because ADF&G is not an intervenor why are they so concerned about information that is transmitted from ADF&G Su Hydro to the management divisions? We have information that is quite useful for in-season management of commercial fisheries, for example.