

16.5/84 J. Red
Office of the Federal Inspector Thurs.

Alaska Natural Gas Transportation System

A-0000224

Federal Building, Suite 107
605 4th Avenue
Anchorage, Alaska 99501

Permitting
(new)
16.5/D4

23 JUN 1981

MEMORANDUM

To: Ned Hengerer, General Counsel, OFI, Washington, D.C.
From: Cheri Jacobus, Attorney Advisor, OFI, Anchorage 9
Subject: Office of Federal Inspector (OFI) Authority to Enforce Bureau
of Land Management (BLM) Permits

It has come to my attention that April 28-30, 1981, BLM held an in-house meeting and among other things discussed OFI's authority to administer and enforce BLM permits. Attached is a copy of the minutes for that meeting. On the second page of those minutes it is indicated that OFI has no authority to waive stipulations in either the Grant of Right-of-Way or temporary use permits. It was also decided by BLM at that meeting that the existing generic permits would not be extended and that no new generic permits would be issued. This memorandum demonstrates the problem that OFI has with BLM and the need for OFI to develop a coherent policy regarding permit enforcement and generic permits.

As we discussed on Friday, I recommend that someone from Permits and Compliance in Washington, D.C., come with you in July to meet with Jim Sizemore, Lew Pamplin, the Fairbanks Field Office, and I to discuss and generate OFI policy on these matters. It is imperative that OFI generate a policy before initiating discussions with BLM. BLM reactions are part of an overall trend attempting to limit OFI enforcement activities and, in my opinion, to subvert the Reorganization Plan. It is important in generating this policy that the Field Office be intimately involved, because these people have actual knowledge about the way any policy will affect the Federal role in Alaska. Most of these people have extensive background in construction of the Trans-Alaska Pipeline System and the construction techniques that were invented for Arctic construction. They are well aware of any environmental effects and their input would be invaluable.

Let us know when and where a meeting could be scheduled.

Enclosure

Potpourri

- McHale to send PM-G the backup information he has from discussions with NWA that authorizes us to send copies to NWA of material transmitted to FI.

- Roads to material sites could be construed to be constructed pursuant to FLPMA. It was decided to do all road TUPs pursuant to Mineral Leasing Act and code time to 5100.

- Jurisdiction of North Slope Borough. Zoning power of Borough does not override federal authority on federal land.

- Role of OSP in design review. None. Arlan Kohl is watchdog of Alyeska not a sponsor or proponent. We are not obligated to protect TAPS. Once Secretary Martin signed the June 13, 1979 letter, any review responsibility of OSP ended. OSP may be called as a consultant (by TAPS or OFI) but FI has the only federal responsibility to certify adequacy of the design.] ✓

- NWA is entitled to TUPs pursuant to Grant. But: not necessarily where and to do what they want to do. We must perform our responsibility to protect the public interest, public lands, and the environment and have strong authority to manage the issuance of TUPs.

- We should give NWA survey criteria NOW so they are not misled as to our requirements and waste time and money surveying under standards that are not acceptable to BLM.

We need to establish working agreements with the OFI covering certifications they make regarding the enforcement of Grant stip and de-briefing at the completion of their responsibility.] ✓

- MOU with State - Keep TUP timeframes short across selected land. Language should be such that upon TA by BLM, TUP will terminate. Try to build a procedure to escrow funds where TUPs and gravel sales are authorized on navigable rivers. BLM and State can not adjudicate navigability simply by employees agreeing or disagreeing. /Must be done by either a statute or the courts. Proposed MOU properly doesn't try to do this and the procedure as proposed was judged to be acceptable.

Gaps in the Right-of-Way

- Issue: The 500-foot withdrawn boundary at border with Canada) is an unknown. Question as to whether President's Decision "took care of" this gap. McHale to check with State Department legal department and Boundary Commission in D.C.] ?
- Issue: Interim management lands under ANCSA and Allotments are complicated entities. BLM encouraged to convey land as quickly as possible. When NWA is ready to construct and requests an NTP upon any land that is still interim managed by BLM, and for which Natives request a Grant of Right-of-Way; State Director could grant such a right-of-way across those lands. Grant to be very similar to Grant Dated December 1, 1980. Allotments (pending) to be treated the same with BIA approval.
- Issue: BLM-BIA MOU discussed. McHale requested it be sent to him for review before signature.
- Issue: HAUL ROAD RIGHT-OF-WAY - Designated as the DALTON HIGHWAY April 30, 1981. Potential problems with adjustment of boundaries were explained. District is making resource commitments along this right-of-way. ADOT/PF is identifying turn-outs, on a continuing basis, rest areas, maintenance and police patrol needs. By the time the OFI approves the alignment, which is the first step to boundary adjustment, much of the areas immediately adjacent to the existing 200-foot right-of-way may be committed. Any additional imposition of a highway right-of-way as a result of boundary adjustment may very well cause legal problems for those involved.

A "map of definite location" of the Haul Road was filed with BLM for approval in July, 1980. The drawings show a uniform 100 feet on either side of the centerline of the right-of-way (centerline of the haul road) plus additional width where ADOT/PF feels physical conditions necessitate more width. The Agreement and Grant of Right-of-Way to TAPS and the easement grant to the State provide for these additional widths where justified. The State Director may approve these as appropriate. However, it was agreed that no approval would be made of the map of definite location and discussions would be initiated with OFI and ADOT/PF to delay any further action until the FI furnished an approved alignment. At that time we would approve the location of the "Dalton" Highway and the adjustments in the right-of-way boundary from the centerline that are required to accommodate the pipeline. This means the adjustments are made at the request of ADOT/PF. All re-description of boundaries are to be made from the centerline of the easement which also is the centerline of the Dalton Highway.

- Issue: NWA must pay for land rented in all TUPs, Program Descriptions, and Letters of Finding. If an activity is conducted on the 54-foot wide right-of-way granted by F-24538, land rental is paid via the annual rental for the Grant. However, an NTP must be issued for that activity and all requirements of the Grant must be met.
- Issue: McHale to see that letter to NWA prepared by Gary Bauer pertaining to issuance of TUPs and LOFs is cleared for signature.
- Issue: EXTRA CONSTRUCTION WIDTH will be authorized by a TUP issued by BLM.
- Issue: OFI cannot waive stipulations of either the Grant of Right-of-Way or a Temporary Use Permit. OFI can advise but cannot issue permits. To waive stip is tantamount to issuing, amending or terminating (IAT).
- Issue: Funding - Key to much discussion is that NWA is refusing to pay reimbursement for any activity that is not connected with (IAT) land use authorizations.
- Issue: NWA claims our billing is not specific enough for them to determine which of our charges fall in the above categories. NWA wants DOI to specify activities.

Can get reimbursed for IAT under Section 1.1.17.1. We will not be reimbursed for our activities under section 1.1.17, except when required to do something by the Grant such as (1) amend grant, (2) extra width, (3) locate right-of-way, (4) letter of finding. Interior considering deleting the reimbursement features of the 43 CFR 2802 regulations.

It is clear that we are to charge the Company for time we spend preparing (IATS). but not material sales and timber sales. They will be charged to BLM's appropriated funds.

Issue: Material Sales

Zamber and Richardson will get with Grayson (w.o. Solicitor) regarding when we get a letter of non-objection (before or after sales contract issuance) from affected Natives.

It was suggested that we can proceed well within the regulations by following 43 CFR 3610 regulations as changed November 24, 1980, Circular No. 2479. Also, to negate any valid complaint later it was suggested that BLM publish a NOTICE that a negotiated sale is to be held pursuant to 43 CFR 3610, Circular No. 2479. The publication in itself to constitute public notice and if anyone objects to the non-competitive sale we may be forced into a competitive sale. If this situation arises, and nuisance bids result, we may have to go back to D.C. to get regulations changed.

Meeting on Alaska Natural Gas
Transportation Project
April 28 - 30, 1981
Federal Building, Anchorage, Alaska

Attendees:

Jack McHale
Bob Mothershed
Earl Boone
Don Keyes

Larry Montross
Gerald Zamber
Lowell Russell

Miriam Lindmeier
Jim Richardson
Arlan Kohl

Temporary Use Permits (TUPs) were discussed at length. Generic Permits were construed to divest BLM and Interior from any role beyond the issuance of the permit. Could FI approve the Program Descriptions and not consult BLM by merely enforcing the stipulations?

It was decided:

1. We will not extend existing generic permits F-72734, F-72735, F-72736, and F-72737.
2. We will not issue any more new generic permits as of this time.
3. We will change the title of "Program Description" and call the approval of activities conducted under generic permits "Amendments". New titles of PD's and Letters of Finding will be:

PROGRAM DESCRIPTION
AMENDING TEMPORARY USE PERMIT

LETTER OF FINDING
AMENDING RIGHT-OF-WAY GRANT
F-24538

A single PD has been issued to date. The terminology of the document has been approved generally by the FI and this change (from SUPPLEMENTING to AMENDING) can be explained as a clarification of legal intent.

Issue: General Discussion of the Grant of Right-of-Way F-24538

Where "Secretary" is used, it means "Secretary".

Where Authorized Officer (AO) is used it means the Federal Inspector (FI).

This means the Secretary Issues, Amends, and Terminates. (IAT)