JOINT AGENCY MEETING

DISCUSSIONS REGARDING DESIGN REVIEW

FOR

MAJOR GAS PIPELINES ACROSS ALASKA

DENVER COLORADO
11 FEBRUARY 2009

PHMSA/BLM Meeting on Alaska Gas Pipeline

PHMSA Pipeline Safety
Western Region Office
12300 W. Dakota Ave
Suite 110
Lakewood, CO 80228
720-963-3160

February 11, 2009

Attendees:

Chris Hoidal	PHMSA Regional Director	Chris.Hoidal@dot.gov
Dennis Hinnah	PHMSA Deputy Director	Dennis.Hinnah@dot.gov
Steve Nanney	PHMSA Project Manager	Steve.Nanney@dot.gov
Tom Johnson	PHMSA Project Manager	Tom.Johnson@dot.gov
Jim Curry	PHMSA Attorney-Advisor	Jim.Curry@dot.gov
Jerry Brossia	BLM Authorized Officer	JBROSSIA@jpo.doi.gov
Nolan Heath	BLM Deputy Authorized Officer	NHEATH@jpo.doi.gov
Mike Gieryic	DOI Attorney-Advisor, Office of the Regional Solicitor, Alaska Region	Mike.Gieryic@sol.doi.gov
Joe Correa	BLM Supervisor, Technical and Design Review Group	JCORREA@jpo.doi.gov
Joe Oglander	OFC General Counsel	joglander@arcticgas.gov

Goals:

- To begin designing a process for developing the Federal and State government's oversight plan for the Alaska Natural Gas Pipeline.
- Obtain a better understanding of each agency's perspective of their statutory and regulatory obligations, and respective program goals and concerns, regarding the Alaska gas pipeline project.

Agenda:

0900 - Introductions

0910 – Discussion on meeting goals and agenda

0945 – Break

1000 - Begin outlining of process (who, what, when, where, how, why)

Noon – break for lunch

1300 – Continue discussion. Discuss vehicles for memorializing eventual agreement.

1400 – 15 minute break

1500 – Next steps

- Developing agreement framework & tackling the issues list
- Next meeting – when, where
- When should we bring State of Alaska, FERC, COE, others into discussion?
- Coordination on intrastate gas line proposals?

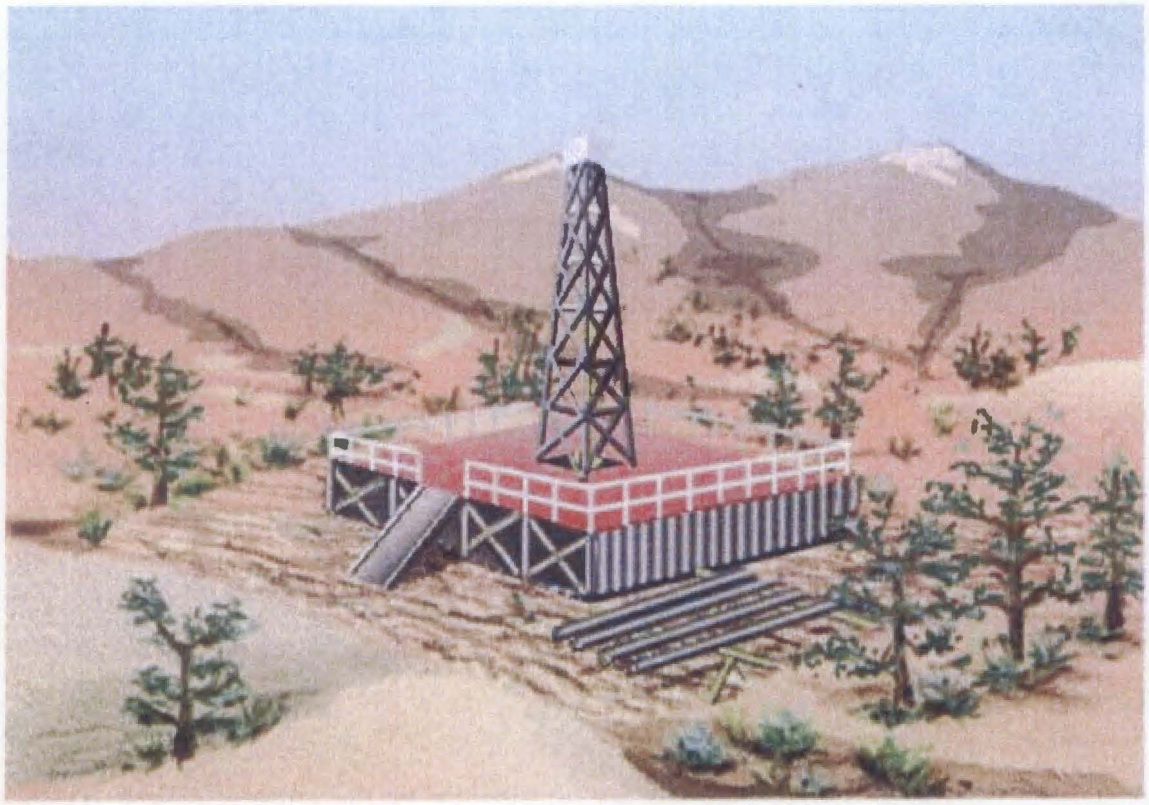
Attachment:

Draft Issues List (for future discussion)

INDEX OF TABS

Mineral Leasing Act of 1920 as Amended

re-transcribed 8/9/07



BLM

Act of February 25, 1920

As Act To promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain.

Federally Owned Mineral Lands
Sec. 1: See footnotes 1-4 for amendments

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled. That deposits of coal, phosphate, sodium, oil, oil shale or gas, ands lands containing such deposits owned by the Unites States, including those in national forests, but excluding lands acquired under the Act known as the Appalachian Forest Act; approved March 1, 1991 (Thirty-sixth Statues, page 961); and those in national parks, and in lands withdrawn or reserved form military or naval uses or purposes, except as herein after provided, shall be subject to disposition in the form and manner provided by this Act or citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, and in the case of coal, oil, oil shale, or gas, to municipalities: *Provided,* That the Unites States reserves the right to extract helium from all gas produced of this Act, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further,* That in the extraction of helium from gas produced from such lands, it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof : And *provided further,* That citizens of another country, the laws, customs, or regulations of which, deny similar or life privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this Act.

Coal

COAL
COAL LEASES: LEASING TRACTS. ACREAGE. COMPETIVE BIDDING
Sec. 2: See footnotes 5-12 for amendments

Sec. 2. That the Secretary of the Interior is authorized to, and upon the petition of any qualified applicant shall, divide any of the coal lands or the deposits of coal, classified and un classified owned by the United States, outside the *Territory* of Alaska, into leasing tracts of forty acres each, or multiples thereof, and in such form as, in the opinion of the Secretary of the Interior, will permit the most economical mining of the coal in such tracts, but in no case exceeding two thousand five hundred and sixty acres in any one leasing tract, and thereafter the Secreatry of the Interior shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands or deposits of coal for leasing, and shall award leases thereon by competitive bidding or by such other methods as he may by general regulations adopt, to any qualified applicant: *Provided,* That the Secretary is hereby authorized, in awarding leases for coal lands heretofore improved and occupied or claimed in good faith, to consider recognized equitable rights of such occupants or claimant: *Provided further,* that where prospecting or exploratory work is necessary to determine the existence or workability of coal deposits in any

form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas or sodium entered into by the lessee, or any agreement or understanding, written, verbal or otherwise to which such lessee shall be party, of which his its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control, in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate court proceedings.

PIPELINE RIGHTS-OF-WAY
Sec.28 : See footnotes 63-65 for amendments.

Sec.28. That rights of way through the public lands, including the forest reserves, of the United States are hereby granted for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of this Act, to the extent of the ground occupied by the said pipeline and twenty-five feet on each side of the same under such regulations as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipelines shall be constructed, operated, and maintained as common carriers: *Provided,* That the Government shall in express terms reserve and shall provide in every lease of oil lands hereunder that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipeline or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the government or of any citizen or company not the owner of any pipeline, operating a lease or purchasing gas or oil under the provision of his Act: *Provided further,* That no right of way shall hereafter be granted over said lands for the transportation of oil or natural gas except under the subject to the provision, limitations, and conditions of this section. Failure to comply with the provisions of this section or regulations prescribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in a appropriate proceeding.

EASEMENTS AND RIGHT-OF-WAY

Sec.29. That any permit, lease, occupation, or use permitted under this Act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or right of way, including casements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposed: *Provided,* That said Secretary , in his discretion, in making any lease under this Act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraces within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided further,* That if such reservation is made it shall be so determined before the offering of

production economically impracticable the Secretary of Interior, for the purpose of encouraging the greatest ultimate recovery of oil and in the interest of conservation of natural resources, is authorized to reduce the royalty on future production when in his judgment the wells cannot be successfully operated upon the royalty fixed in the lease. The provision of this paragraph shall apply to all oil and gas leases issued under this Act, including those within an approved cooperative or unit plan of development and operation.

"Any lease issued after the effective date of this amendatory Act under the provisions of his section, except those earned as a preference right as provided in section 14 hereof, shall be subject to cancellation by the Secretary of the Interior after thirty days; notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States Land Office for the district in which the land covered by such lease is situated, or in the event that there is no district land office of such leased land, then in the post office nearest such land. Leases covering lands known to contain valuable deposits of oil or gas shall be canceled only in the manner provided in section 31 of this Act.

"Sec.28. That right-of-way through the public lands, including the forest reserves of the United States, may be granted by the Secretary of the Interior for pipe-line purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of this Act, to the extent of the ground occupied by the said pipe line and twenty-five feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers and shall accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipe line in such proportionate amounts as the Secretary of the Interior may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine to be reasonable: *Provided,* That the Government shall in expires terms reserve and shall provide in every lease of oil lands hereunder that lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of this Act: *Provided further,* That no right-of-way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and

Sec. 28

RIGHTS-OF-WAY

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

conditions of this section. Failure to comply with the provisions of this section or the regulations and conditions prescribed by the Secretary of the Interior shall b ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in an appropriate proceedings."

Sec. 2

Sec.2. (a) That the Secretary of the Interior is authorized to issue new lease to lessee holding oil or gas lease under any of the provisions of this Act at the time this amendatory Act becomes effective, such new leases to be in lieu of the lease then held by such lessees and to be at a royalty rate of not less than 12 ½ per centum in amount or value of the production and upon such other terms and conditions as the Secretary of the Interior shall be general rule prescribe: *Provided,* That no limitation of acreage not provided for under the law or regulations under which any such old lease was issued shall be applicable to any such new lease.

ROYALTY

(b) Nothing contained in this amendatory Act shall be construed to affect the validity of oil and gas prospecting permits of lease previously issued under the authority of said Act of February 25, 1920, as amended, and in existence at the time this amendatory Act becomes effective, or impair any rights or privileges which have accrued under such permits or leases.

Sec. 3

Sec.3. That nothing in this amendatory Act shall be construed as affecting any lands within the borders of the naval petroleum reserves and naval oil-shale reserves or agreements concerning operations thereunder or in relations to the same, but the Secretary of the Navy is hereby authorized, with the consent of the President, to enter into agreements such as those provided for under the Act of March 4, 1931 (46 Stat. 1526), which agreement shall not, unless expressed therein, operate to extend the terms of any lease affected thereby.

NAVAL PETROLEUM RESERVES

NAVAL OIL-SHALE RESERVES

Approved, August 21, 1935.

NOTE: Section 2 was REPEALED by the Act of 8/8/46.

NOTE: Regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

ACT OF AUGUST 3, 1950

To provide that payment to States under the Oil Land Leasing Act of 1920 shall be made biannually.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U.S.C., sec. 191), is hereby amended by striking out "after the expiration of each fiscal year" and inserting in lieu thereof " as soon as practicable after December 31 and June 30 of each year".

Approved August 3, 1950.

Sec. 35

DATES

ACT OF AUGUST 12, 1953

To amend the mineral leasing laws with respect to their application in the case of pipelines passing through the public domain

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That section 28 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U.S.C., sec. 185), is amended by inserting after "*Provided,*" the following: "That the common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rate and charges for the sale of natural to consumer within the State or municipality: *Provided further,* ".

Approved August 12, 1953.

Sec. 28

COMMON CARRIER PROVISIONS

NOTE: regarding all Mineral Leasing Act sections noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section

TRANS-ALASKA PIPELINE AUTHORIZATION ACT

November 16, 1973

To amend section 28 of the Mineral Leasing Act of 1920, and to authorize a trans-Alaska oil pipeline, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

Sec.101. Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), is further amended to read as follows:

Sec. 28

"Grant of Authority

GRANT OF AUTHORITY

"Sec.28. (a) Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 1 of this Act, as amended, in accordance with the provisions of this section.

"Definitions

DEFINITIONS

"(b) (1) For the purposes of this section 'Federal lands' means all lands owned by the United States except lands in the National Park System, lands held in trust for the Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

"(2) 'Secretary' means the Secretary of the Interior.

"(3) 'Agency head' means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

"Inter-Agency Coordination

INTER-AGENCY COORDINATION

"(c) (1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

"(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplications, assigning responsibility, expediting

NOTE: Regarding all Mineral Leasing Act section noted on this page: SEE footnotes listed under the section number to locate subsequent amendments to each section.

review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon the comprehensive review of all factors involved in any right-of-way or permit applications. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

WIDTH LIMITATIONS

"Width Limitations

"(d) the width of right-of-ways shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds and records the reason for his finding, that in his judgment a wider right-of-way is necessary for operations and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites, and they need not necessarily be connected or contiguous to the pipe and may be the subject of separate rights-of-way.

"Temporary Permits

TEMPORARY PERMITS

"(e) A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operations, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

"Regulatory Authority

REGULATORY AUTHORITY

"(f) Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operations, maintenance, use, and termination.

"Pipeline Safety

PIPELINE SAFETY

"(g) The Secretary or agency head shall impose requirements for the operations of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.

"Environmental Protection

ENVIRONMENTAL PROTECTION

"(h) (1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102 (2) (c) of any other provision of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat, 852).

RIGHT-OF-WAY OR PERMIT

SUBMISSION OF PLAN

"(2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

"Disclosure

DISCLOSURE

"(i) If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclose shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with, the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

"Technical and Financial Capability

TECHNICAL AND FINANCIAL CAPABILITY

"(j) The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant had the technical and financial capability to construct, operate, maintain, and terminate the project for which the right-of-way of permit is requested in accordance with the requirements of this section.

PUBLIC HEARINGS

"Public Hearings

"(k) The Secretary or agency head by regulation shall establish procedures, including public hearing where appropriate, to give Federal, States, and local government agencies the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.

REIMBURSMENT OF COSTS

"Reimbursement of Costs

"(l) The applicant for a right-of-way or permit shall reimburse the United States for administrative and other cost incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit as determined by the Secretary or agency head.

BONDING

"Bonding

"(m) Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation of the Secretary or agency head.

DURATION OF GRANT

"Duration of Grant

"(n) Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life, and any public purposes it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

"Suspension or Termination of Right-of-Way

SUSPENSION OR TERMINATION OF RIGHT-OF-WAY

"(o) (1) Abandonment of a right-of-way or noncompliance with any provision of this section me be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceedings pursuant to title 5, United States Code, section 554, the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provided that it terminates on the occurrence of a fixed or agreed upon conditions, event, or time,

"(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

"(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided,* That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not esquires to commence proceedings to suspend or terminate the right-of-way.

"Joint Use of Right-of-Way

JOINT USE OF RIGHT-OF-WAYS

"(p) In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be requires to the extend practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights0ofway or permit area granted pursuant to this section.

"Statutes

STATUTES

"(q) No rights-of-way for the purposes provided for in section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under shit section. The Secretary or agency head any require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

"Common Carriers

COMMON CARRIERS

"(r) (1) Pipeline and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

"(2) (A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchases without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

"(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.

"(3) (A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulations under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

"(B) Where natural gas not subject to State regulatory or conservation laws governing its purchases by pipelines is offered for sale, each such pipeline shall purchases, without discrimination, any such natural gas produced in the vicinity of the pipeline.

"(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this Act that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this Act.

"(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Interstate Commerce Commission or Federal Power Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefore, or the Secretary may, by proceeding as provided in this section, suspend, or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

"(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may included, but it not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughout capacity in repose to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points for facilities; and (C) minimum shipment or purchases tenders.

RIGHT-OF-WAY CORRIDORS

"Right-of-Way Corridors

"(s) In order to minimize adverse environmental impact and to prevent the proliferation of separate rights-of-way across Federal lands, the Secretary shall, in consultation with other Federal and State agencies, review the need for a national system of transportation and utility corridors across Federal lands and submit a report of his finding and recommendations to the Congress and the President by July 1, 1975.

EXISTING RIGHTS-OF-WAY

"Existing Rights-of-Way

"(t) The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to

the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1970 (Public Law 90-190; 42 U.S.C. 4321).

LIMITATIONS ON EXPORTS

"Limitations on Export

"(u) Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28 of the Mineral Leasing Act of 1920, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1969 (Act of December 30, 1960; 83 Stat, 841) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the export Administration Act of 1969 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the untied States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1969: *Provided,* That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar day, thirty days of which Congress must have a been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential finding shall cease.

STATE STANDARDS

"State Standards

"(v) The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

REPORTS

"Reports

"(w) (1) The secretary and other appropriate agency heads shall report to the House and Senate Committees on Interior and Insular Affairs annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

"(2) The Secretary or agency head shall notify the House and Senate Committees on Interior and Insular Affairs promptly upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty days (not counting days on which the

House or Representatives of the Senate has adjourned fro more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, had been submitted to such committees, unless each committee by resolution waives the waiting period.

"(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

"(4) The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Interstate Commerce Commission any potential dangers of or actual explosions, or potential or actual spillage of Federal lands and shall include in such report a statement of corrective action take to prevent such explosion or spillage.

"Liability

LIABILITY

"(x) (1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this Act shall be liable to the United States for damage or injury incurred by the united States in connection with the right-of-way or permit. Where the right-of-way or permit involved lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to their parties for injuries incurred in connection with the right-of-way or permit.

"(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

"(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act or war, or (B) negligence of the Untied States.

"(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foresable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

"(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the Untied States for liability, damage, or claims arising in connection with the right-of-way or permit.

"(6) Any regulation or stipulation promulgated or impose pursuant to this section shall provide that all owners of any interest in, and affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

"(7) in any case where liability without fault is impose pursuant to this subsection and the damage involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

"Antitrust Laws

ANTITRUST LAWS

"(y) The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws."

NOTE: Subsequent Titles are not included.

(4) to order testimony to be taken by disposition before nay person who is designated by the Secretary and who has the power to administer others, and to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; and

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the Untied States.

(b) In the case of refusal to obey a subpoena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary. Any failure to obey such order of the court may be punished by such court as contempt thereof and subject to a penalty of up to $10,000 a day.

INSPECTIONS

INSPECTIONS

Sec.108. (a)(1) On any lease site on Federal or Indian lands, any authorized and properly identified representative of the Secretary may stop and inspect any motor vehicle that he has probable cause to believe is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site, for the purpose of determining whether the drive or such vehicle has documentation related to such oil as required by law.

(2) Any authorized and properly identified representative of the Secretary, accompanied by any appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any vehicle is not on a lease site if he has probable cause to believe the vehicle is carrying oil from a leas site on Federal or Indian lands or allocated to such a lease site. Such inspection shall be for the purpose of determining whether the driver of such vehicle has the documentation required by law.

(b) Authorized and properly identified representatives of the Secretary may without advance notice, enter upon, travel across and inspect lease site on Federal or Indian lands and may obtain from the operate immediate access to secured facilities on such lease sites, for the purpose of making any inspection or investigation for determining whether there is compliance with the requirements of the mineral leasing laws and this Act. The Secretary shall develop guidelines setting forth the coverage and the frequency of such inspections.

(c) for the purpose of making any inspection or investigation under this Act, the Secretayr shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.

FOOTNOTES FOR SECTION 21: MINERAL LEASING ACT OF 1920

43. Sec. 21 is amended and secs. 21(a) and (b) are added by the Act of 9/2/60, at p. 77 this text. NOTE: There are two references to Sec. 21 on this page.
44. Sec. 21(a) and (c) are amended by the Act of 11/16/81, at p. 114 this text.
45. Sec. 21 is amended by the Act of 12/30/82, at p. 117-118 this text.

FOOTNOTES FOR SECTION 22: MINERAL LEASING ACT OF 1920

46. Sec. 22 is amended by the Act of 7/3/58, at p. 62 this text.

FOOTNOTES FOR SECTION 23: MINERAL LEASING ACT OF 1920

47. Sec. 23 is amended by the Act of 12/11/28, at p. 20 this text.

FOOTNOTES FOR SECTION 24: MINERAL LEASING ACT OF 1920

48. Sec. 24 is amended by the Act of 12/11/28, at p. 20-21 this text.

FOOTNOTES FOR SECTION 27: MINERAL LEASING ACT OF 1920

49. Sec. 27 is amended by the Act of 4/30/26, at p. 18-19 this text.
50. Sec. 27 is amended by the Act of 7/3/30, at p. 22-24 this text.
NOTE: This amendment EXPIRES 1/31/31. See p. 24 this text.
51. Sec. 27 is amended by the Act of 8/8/46, at p. 44-46 this text.
52. Sec. 27 is amended by the Act of 6/3/48, at p. 55 this text.
53. Sec. 27 is amended by the Act of 8/2/54, at p. 60 this text.
54. Sec. 27 is amended by the Act of 8/21/58, at p. 63 this text.
55. Sec. 27 is amended by the Act of 3/18/60, at p. 65 this text.
56. Sec. 27 is amended by the Act of 9/2/60, at p. 71-75 this text.
57. Sec. 27 is amended by the Act of 8/31/64, at p. 79 this text.
58. Sec. 27(a) (1) is amended by the Act of 4/21/76, at p. 107 this text.
59. Sec. 27(a) (2) was REPEALED by the Act of 4/21/76, at p. 107 this text.
60. Sec. 27 is amended by the Act of 4/21/76, at p. 108 this text.
61. Sec. 27(k) is amended by the Act of 11/16/81, see p. 114 this text.
62. Sec. 27(d) (1) is amended by the Act of 11/16/81, see p. 114 this text.

FOOTNOTES FOR SECTION 28: MINERAL LEASING ACT OF 1920

63. Sec. 28 is amended by the Act of 8/21/35, at p. 35-36 this text.
64. Sec. 28 is amended by the Act of 8/12/53, at p. 57 this text.
65. Sec. 28 is amended by the Act of 11/16/73, at p. 91-99 this text.

DIVISION C--ALASKA <<NOTE: Alaska Natural Gas Pipeline Act.>> NATURAL GAS PIPELINE

SEC. 101. <<NOTE: 15 USC 720 note.>> SHORT TITLE.

This division may be cited as the ``Alaska Natural Gas Pipeline Act''.

SEC. 102. <<NOTE: 15 USC 720.>> DEFINITIONS.

In this division:

(1) Alaska natural gas.--The term ``Alaska natural gas'' means natural gas derived from the area of the State of Alaska lying north of 64 degrees north latitude.

(2) Alaska natural gas transportation project.--The term ``Alaska natural gas transportation project'' means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under--

(A) the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.); or

(B) section 103.

(3) Alaska natural gas transportation system.--The term ``Alaska natural gas transportation system'' means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.) and designated and described in section 2 of the President's decision.

(4) Commission.--The term ``Commission'' means the Federal Energy Regulatory Commission.

(5) Federal coordinator.--The term ``Federal Coordinator'' means the head of the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects established by section 106(a).

(6) President's decision.--The term ``President's decision'' means the decision and report to Congress on the Alaska natural gas transportation system--

(A) issued by the President on September 22, 1977, in accordance with section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719e); and

(B) approved by Public Law 95-158 (15 U.S.C. 719f note; 91 Stat. 1268).

(7) Secretary.--The term ``Secretary'' means the Secretary of Energy.

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(8) State.--The term ``State'' means the State of Alaska.

SEC. 103. <<NOTE: 15 USC 720a.>> ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(a) Authority of the Commission.--Notwithstanding the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), the Commission may, in accordance with section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska natural gas transportation system.

(b) Issuance of Certificate.--

(1) In general.--The Commission shall issue a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) Considerations.--In considering an application under this section, the Commission shall presume that--

(A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and

(B) sufficient downstream capacity will exist to transport the Alaska natural gas moving through the project to markets in the contiguous United States.

(c) Expedited Approval Process.--Not <<NOTE: Deadline.>> later than 60 days after the date of issuance of the final environmental impact statement under section 104 for an Alaska natural gas transportation project, the Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity for the project under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section.

(d) Prohibition of Certain Pipeline Route.--No license, permit, lease, right-of-way, authorization, or other approval required under Federal law for the construction of any pipeline to transport natural gas from land within the Prudhoe Bay oil and gas lease area may be granted for any pipeline that follows a route that--

(1) traverses land beneath navigable waters (as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301)) beneath, or the adjacent shoreline of, the Beaufort Sea; and

(2) enters Canada at any point north of 68 degrees north latitude.

(e) Open Season.--

(1) In general.--Not <<NOTE: Deadline. Regulations.>> later than 120 days after the date of enactment of this Act, the Commission shall issue regulations governing the conduct of open seasons for Alaska natural gas transportation projects (including procedures for the allocation of capacity).

(2) Regulations.--The regulations referred to in paragraph (1) shall--

(A) include the criteria for and timing of any open seasons;

(B) promote competition in the exploration, development, and production of Alaska natural gas; and

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(C) for any open season for capacity exceeding the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

(3) Applicability.--Except in a case in which an expansion is ordered in accordance with section 105, initial or expansion capacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations issued under paragraph (1).

(f) Projects in the Contiguous United States.--

(1) In general.--An application for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made in accordance with the Natural Gas Act (15 U.S.C. 717a et seq.).

(2) Expansion.--To the extent that a pipeline facility described in paragraph (1) includes the expansion of any facility constructed in accordance with the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), that Act shall continue to apply.

(g) Study of In-State Needs.--The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that the holder has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

(h) Alaska Royalty Gas.--

(1) In general.--Except as provided in paragraph (2), the Commission, on a request by the State and after a hearing, may provide for reasonable access to the Alaska natural gas transportation project by the State (or State designee) for the transportation of royalty gas of the State for the purpose of meeting local consumption needs within the State.

(2) Exception.--The rates of shippers of subscribed capacity on an Alaska natural gas transportation project described in paragraph (1), as in effect as of the date on which access under that paragraph is granted, shall not be increased as a result of such access.

(i) Regulations.--The Commission may issue such regulations as are necessary to carry out this section.

SEC. 104. <<NOTE: 15 USC 720b.>> ENVIRONMENTAL REVIEWS.

(a) Compliance With NEPA.--The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 103 shall be treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) Designation of Lead Agency.--

(1) In general.--The Commission--

(A) shall be the lead agency for purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) shall be responsible for preparing the environmental impact statement required by section 102(2)(c) of

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that Act (42 U.S.C. 4332(2)(c)) with respect to an Alaska natural gas transportation project under section 103.

(2) Consolidation of statements.--In carrying out paragraph (1), the Commission shall prepare a single environmental impact statement, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the Alaska

natural gas transportation project covered by the environmental impact statement.

(c) Other Agencies.--

(1) In general.--Each Federal agency considering an aspect of the construction and operation of an Alaska natural gas transportation project under section 103 shall--

(A) cooperate with the Commission; and

(B) comply with deadlines established by the Commission in the preparation of the environmental impact statement under this section.

(2) Satisfaction of nepa requirements.--The environmental impact statement prepared under this section shall be adopted by each Federal agency described in paragraph (1) in satisfaction of the responsibilities of the Federal agency under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to the Alaska natural gas transportation project covered by the environmental impact statement.

(d) Expedited Process.--The <<NOTE: Deadlines.>> Commission shall--

(1) not later than 1 year after the Commission determines that the application under section 103 with respect to an Alaska natural gas transportation project is complete, issue a draft environmental impact statement under this section; and

(2) not later than 180 days after the date of issuance of the draft environmental impact statement, issue a final environmental impact statement, unless the Commission for good cause determines that additional time is needed.

SEC. 105. <<NOTE: 15 USC 720c.>> PIPELINE EXPANSION.

(a) Authority.--With respect to any Alaska natural gas transportation project, on a request by 1 or more persons and after giving notice and an opportunity for a hearing, the Commission may order the expansion of the Alaska natural gas project if the Commission determines that such an expansion is required by the present and future public convenience and necessity.

(b) Responsibilities of Commission.--Before ordering an expansion under subsection (a), the Commission shall--

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that a proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the tariff of the Alaska natural gas transportation project in effect as of the date of the expansion;

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(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely

affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

(8) find that adequate downstream facilities exist or are expected to exist to deliver incremental Alaska natural gas to market.

(c) Requirement for a Firm Transportation Agreement.--Any order of the Commission issued in accordance with this section shall be void unless the person requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within such reasonable period of time as the order may specify.

(d) Limitation.--Nothing in this section expands or otherwise affects any authority of the Commission with respect to any natural gas pipeline located outside the State.

(e) Regulations.--The Commission may issue such regulations as are necessary to carry out this section.

SEC. 106. <<NOTE: 15 USC 720d.>> FEDERAL COORDINATOR.

(a) Establishment.--There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) Federal Coordinator.--

(1) Appointment.--The <<NOTE: President. Congress.>> Office shall be headed by a Federal Coordinator for Alaska Natural Gas Transportation Projects, who shall be appointed by the President, by and with the advice and consent of the Senate, to serve a term to last until 1 year following the completion of the project referred to in section 103.

(2) Compensation.--The Federal Coordinator shall be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314).

(c) Duties.--The Federal Coordinator shall be responsible for--

(1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and

(2) ensuring the compliance of Federal agencies with the provisions of this division.

(d) Reviews and Actions of Other Federal Agencies.--

(1) Expedited reviews and actions.--All reviews conducted and actions taken by any Federal agency relating to an Alaska natural gas transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines under this division.

(2) Prohibition of certain terms and conditions.--No Federal agency may include in any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project any term or condition that may be

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permitted, but is not required, by any applicable law if the

Federal Coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(3) Prohibition of certain actions.--Unless required by law, no Federal agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the action would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(4) Limitation.--The Federal Coordinator shall not have authority to--

(A) override--

(i) the implementation or enforcement of regulations issued by the Commission under section 103; or

(ii) an order by the Commission to expand the project under section 105; or

(B) impose any terms, conditions, or requirements in addition to those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

(e) State Coordination.--

(1) In general.--The Federal Coordinator and the State shall enter into a joint surveillance and monitoring agreement similar to the agreement in effect during construction of the Trans-Alaska Pipeline, to be approved by the President and the Governor of the State, for the purpose of monitoring the construction of the Alaska natural gas transportation project.

(2) Primary responsibility.--With respect to an Alaska natural gas transportation project--

(A) the Federal Government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses Federal land or private land; and

(B) the State government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses State land.

(f) Transfer of Federal Inspector Functions and Authority.--On appointment of the Federal Coordinator by the President, all of the functions and authority of the Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System vested in the Secretary under section 3012(b) of the Energy Policy Act of 1992 (15 U.S.C. 719e note; Public Law 102-486), including all functions and authority described and enumerated in the Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33663), Executive Order No. 12142 of June 21, 1979 (44 Fed. Reg. 36927), and section 5 of the President's decision, shall be transferred to the Federal Coordinator.

(g) Temporary Authority.--The <<NOTE: Expiration date.>> functions, authorities, duties, and responsibilities of the Federal Coordinator shall be vested in the Secretary until the later of the appointment of the Federal

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Coordinator by the President, or 18 months after the date of enactment of this Act.

SEC. 107. <<NOTE: 15 USC 720e.>> JUDICIAL REVIEW.

(a) Exclusive Jurisdiction.--Except for review by the Supreme Court on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine--

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this division;

(2) the constitutionality of any provision of this division, or any decision made or action taken under this division; or

(3) the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this division.

(b) Deadline for Filing Claim.--A claim arising under this division may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) Expedited Consideration.--The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) for expedited consideration, taking into account the national interest of enhancing national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(d) Amendment of the Alaska Natural Gas Transportation Act of 1976.--Section 10(c) of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719h) is amended--

(1) by striking ``(c)(1) A claim'' and inserting the following:

``(c) Jurisdiction.--

``(1) Special courts.--

``(A) In general.--A claim'';

(2) by striking ``Such court shall have'' and inserting the following:

``(B) Exclusive jurisdiction.--The Special Court shall have'';

(3) by inserting after paragraph (1) the following:

``(2) Expedited consideration.--The Special Court shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 2.''; and

(4) in paragraph (3), by striking ``(3) The enactment'' and inserting the following:

``(3) Environmental impact statements.--The enactment''.

SEC. 108. <<NOTE: 15 USC 720f.>> STATE JURISDICTION OVER IN-STATE DELIVERY OF NATURAL GAS.

(a) Local Distribution.--Any facility receiving natural gas from an Alaska natural gas transportation project for delivery to consumers within the State--

(1) shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)); and

(2) shall not be subject to the jurisdiction of the

Commission.

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(b) Additional Pipelines.--Except as provided in section 103(d), nothing in this division shall preclude or otherwise affect a future natural gas pipeline that may be constructed to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State for consumption within or distribution outside the State.

(c) Rate Coordination.--

(1) In general.--In accordance with the Natural Gas Act (15 U.S.C. 717a et seq.), the Commission shall establish rates for the transportation of natural gas on any Alaska natural gas transportation project.

(2) Consultation.--In carrying out paragraph (1), the Commission, in accordance with section 17(b) of the Natural Gas Act (15 U.S.C. 717p(b)), shall consult with the State regarding rates (including rate settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State.

SEC. 109. <<NOTE: 15 USC 720g.>> STUDY OF ALTERNATIVE MEANS OF CONSTRUCTION.

(a) Requirement of Study.--If <<NOTE: Deadline.>> no application for the issuance of a certificate or amended certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project has been filed with the Commission by the date that is 18 months after the date of enactment of this Act, the Secretary shall conduct a study of alternative approaches to the construction and operation of such an Alaska natural gas transportation project.

(b) Scope of Study.--The study under subsection (a) shall take into consideration the feasibility of--

(1) establishing a Federal Government corporation to construct an Alaska natural gas transportation project; and

(2) securing alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the Alaska natural gas transportation project.

(c) Consultation.--In conducting the study under subsection (a), the Secretary shall consult with the Secretary of the Treasury and the Secretary of the Army (acting through the Chief of Engineers).

(d) Report.--On completion of any study under subsection (a), the Secretary shall submit to Congress a report that describes--

(1) the results of the study; and

(2) any recommendations of the Secretary (including proposals for legislation to implement the recommendations).

SEC. 110. <<NOTE: 15 USC 720h.>> CLARIFICATION OF ANGTA STATUS AND AUTHORITIES.

(a) Savings Clause.--Nothing in this division affects--

(1) any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g); or

(2) any Presidential finding or waiver issued in accordance

with that Act.

(b) Clarification of Authority to Amend Terms and Conditions to Meet Current Project Requirements.--Any Federal agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or rescind any term or condition included

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in the certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), if the addition, amendment, or rescission--

(1) would not compel any change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision; or

(2) would not otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska natural gas transportation system.

(c) Updated Environmental Reviews.--The Secretary shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.

SEC. 111. <<NOTE: 15 USC 720i.>> SENSE OF CONGRESS CONCERNING USE OF STEEL MANUFACTURED IN NORTH AMERICA NEGOTIATION OF A PROJECT LABOR AGREEMENT.

It is the sense of Congress that--

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should make every effort to--

(A) use steel that is manufactured in North America; and

(B) negotiate a project labor agreement to expedite construction of the pipeline.

SEC. 112. <<NOTE: 15 USC 720j.>> SENSE OF CONGRESS AND STUDY CONCERNING PARTICIPATION BY SMALL BUSINESS CONCERNS.

(a) Definition of Small Business Concern.--In this section, the term ``small business concern'' has the meaning given the term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(b) Sense of Congress.--It is the sense of Congress that--

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(c) Study.--

(1) In general.--The Comptroller General of the United States shall conduct a study to determine the extent to which small business concerns participate in the construction of oil and gas pipelines in the United States.

(2) Report.--Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report that describes results of the study under paragraph (1).

(3) Updates.--The Comptroller General shall--

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(A) update the study at least once every 5 years until construction of an Alaska natural gas transportation project is completed; and

(B) <<NOTE: Reports.>> on completion of each update, submit to Congress a report containing the results of the update.

SEC. 113. <<NOTE: 15 USC 720k.>> ALASKA PIPELINE CONSTRUCTION TRAINING PROGRAM.

(a) Program.--

(1) Establishment.--The <<NOTE: Grants.>> Secretary of Labor (in this section referred to as the ``Secretary'') shall make grants to the Alaska Workforce Investment Board--

(A) to recruit and train adult and dislocated workers in Alaska, including Alaska Natives, in the skills required to construct and operate an Alaska gas pipeline system; and

(B) for the design and construction of a training facility to be located in Fairbanks, Alaska, to support an Alaska gas pipeline training program.

(2) Coordination with existing programs.--The training program established with the grants authorized under paragraph (1) shall be consistent with the vision and goals set forth in the State of Alaska Unified Plan, as developed pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(b) Requirements for Grants.--The Secretary shall make a grant under subsection (a) only if--

(1) the Governor of the State of Alaska requests the grant funds and certifies in writing to the Secretary that there is a reasonable expectation that the construction of the Alaska natural gas pipeline system will commence by the date that is 2 years after the date of the certification; and

(2) the Secretary of Energy concurs in writing to the Secretary with the certification made under paragraph (1) after considering--

(A) the status of necessary Federal and State permits;

(B) the availability of financing for the Alaska natural gas pipeline project; and

(C) other relevant factors.

(c) Authorization of Appropriations.--There are authorized to be appropriated to the Secretary to carry out this section $20,000,000. Not more than 15 percent of the funds may be used for the facility described in subsection (a)(1)(B).

SEC. 114. <<NOTE: 15 USC 7201.>> SENSE OF CONGRESS CONCERNING NATURAL GAS DEMAND.

It is the sense of Congress that--

(1) North American demand for natural gas will increase dramatically over the course of the next several decades;

(2) both the Alaska Natural Gas Pipeline and the Mackenzie Delta Natural Gas project in Canada will be necessary to help meet the increased demand for natural gas in North America;

(3) Federal and State officials should work together with officials in Canada to ensure both projects can move forward in a mutually beneficial fashion;

(4) Federal and State officials should acknowledge that the smaller scope, fewer permitting requirements, and lower cost of the Mackenzie Delta project means it will most likely be completed before the Alaska Natural Gas Pipeline;

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(5) natural gas production in the 48 contiguous States and Canada will not be able to meet all domestic demand in the coming decades; and

(6) as a result, natural gas delivered from Alaskan North Slope will not displace or reduce the commercial viability of Canadian natural gas produced from the Mackenzie Delta or production from the 48 contiguous States.

SEC. 115. <<NOTE: 15 USC 720m.>> SENSE OF CONGRESS CONCERNING ALASKAN OWNERSHIP.

It is the sense of Congress that--

(1) Alaska Native Regional Corporations, companies owned and operated by Alaskans, and individual Alaskans should have the opportunity to own shares of the Alaska natural gas pipeline in a way that promotes economic development for the State; and

(2) to facilitate economic development in the State, all project sponsors should negotiate in good faith with any willing Alaskan person that desires to be involved in the project.

SEC. 116. <<NOTE: 15 USC 720n.>> LOAN GUARANTEES.

(a) Authority.--(1) The Secretary may enter into agreements with 1 or more holders of a certificate of public convenience and necessity issued under section 103(b) of this division or section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project.

(2) Subject to the requirements of this section, the Secretary may also enter into agreements with 1 or more owners of the Canadian portion of a qualified infrastructure project to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project as though such owner were a holder described in paragraph (1).

(3) <<NOTE: Expiration date.>> The authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project. A final certificate shall be

considered to have been issued when all certificates of public convenience and necessity have been issued that are required for the initial transportation of commercially economic quantities of natural gas from Alaska to the continental United States.

(b) Conditions.--(1) The Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity under section 103(b) of this division or an amended certificate under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) has been issued for the project.

(2) The Secretary may issue a Federal guarantee instrument under this section for a qualified infrastructure project only if the loan or other debt obligation guaranteed by the instrument has been issued by an eligible lender.

(3) The Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees), or any throughput or other guarantee from prospective shippers

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greater than such guarantees as shall be required by the project owners.

(c) Limitations on Amounts.--(1) The amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.

(2) The principal amount of loans and other debt obligations guaranteed under this section shall not exceed, in the aggregate, $18,000,000,000, which amount shall be indexed for United States dollar inflation from the date of enactment of this Act, as measured by the Consumer Price Index.

(d) Loan Terms and Fees.--(1) The Secretary may issue Federal guarantee instruments under this section that take into account repayment profiles and grace periods justified by project cash flows and project-specific considerations. The term of any loan guaranteed under this section shall not exceed 30 years.

(2) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan or other debt obligation as are reasonable and customary for a project finance transaction in the oil and gas sector.

(e) Regulations.--The Secretary may issue regulations to carry out this section.

(f) Authorization of Appropriations.--There are authorized to be appropriated such sums as may be necessary to cover the cost of loan guarantees under this section, as defined by section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)). Such sums shall remain available until expended.

(g) Definitions.--In this section:

(1) Consumer price index.--The term ``Consumer Price Index'' means the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics, or if such index shall cease to be published, any successor index or reasonable substitute thereof.

(2) Eligible lender.--The term ``eligible lender'' means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of

1933), including--

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986 (26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. 414(d)) that is a qualified institutional buyer.

(3) Federal guarantee instrument.--The term ``Federal guarantee instrument'' means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.

(4) Qualified infrastructure project.--The term ``qualified infrastructure project'' means an Alaskan natural gas transportation project consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment

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plants), and appurtenances thereto, that are used to transport natural gas from the Alaska North Slope to the continental United States.

Approved October 13, 2004.

-CITE-

30 USC Sec. ***185*** 01/03/2007

-EXPCITE-

TITLE 30 - MINERAL LANDS AND MINING

CHAPTER 3A - LEASES AND PROSPECTING PERMITS

SUBCHAPTER I - GENERAL PROVISIONS

-HEAD-

Sec. 185. Rights-of-way for pipelines through Federal lands

-STATUTE-

(a) Grant of authority

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

(b) Definitions

(1) For the purposes of this section "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) "Secretary" means the Secretary of the Interior.

(3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

(c) Inter-agency coordination

(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

(d) Width limitations

The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-

way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

(e) Temporary permits

A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

(f) Regulatory authority

Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination.

(g) Pipeline safety

The Secretary or agency head shall impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.

(h) Environmental protection

(1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102(2)(C) [42 U.S.C. 4332(2)(C)] or any other provision of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

(i) Disclosure

If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3 per centum or more of the shares, together

with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(j) Technical and financial capability

The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for which the right-of-way or permit is requested in accordance with the requirements of this section.

(k) Public hearings

The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.

(l) Reimbursement of costs

The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair

market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

(m) Bonding

Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation of the Secretary or agency head.

(n) Duration of grant

Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

(o) Suspension or termination of right-of-way

(1) Abandonment of a right-of-way or noncompliance with any provision of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceeding pursuant to section 554 of title 5, the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be

required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: Provided, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

(p) Joint use of rights-of-way

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

(q) Statutes

No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this

section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

(r) Common carriers

(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

(2)(A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.

(3)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act [15 U.S.C. 717 et seq.] or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(B) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this chapter that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this chapter.

(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping,

or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

(s) Exports of Alaskan North Slope oil

(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this chapter or any other provision of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 1652 of title 43, such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of November 28, 1995. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider -

(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of November 28, 1995; and

(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other

than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 1652 of title 43 shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 50501 of title 46).

(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271-76) to prohibit exports.

(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the

Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5.

(t) Existing rights-of-way

The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1970 (Public Law 90-190; 42 U.S.C. 4321).(!1)

(u) Limitations on export

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of

the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: Provided, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

(v) State standards

The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

(w) Reports

(1) The Secretary and other appropriate agency heads shall report to the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

(2) The Secretary or agency head shall promptly notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate upon receipt of an application for a

right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to the terms and conditions he proposes to impose, has been submitted to such committees.

(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

(x) Liability

(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this chapter shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(y) Antitrust laws

The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws.

-SOURCE-

(Feb. 25, 1920, ch. 85, Sec. 28, 41 Stat. 449; Aug. 21, 1935, ch. 599, Sec. 1, 49 Stat. 678; Aug. 12, 1953, ch. 408, 67 Stat. 557; Pub. L. 93-153, title I, Sec. 101, Nov. 16, 1973, 87 Stat. 576; Pub. L. 95-91, title III, Secs. 301(b), 306, title IV, Sec. 402(a), (b), title VII, Secs. 703, 707, Aug. 4, 1977, 91 Stat. 578, 581, 583, 584, 606, 607; Pub. L. 99-64, title I, Sec. 123(b), July 12,

1985, 99 Stat. 156; Pub. L. 101-475, Sec. 1, Oct. 30, 1990, 104 Stat. 1102; Pub. L. 103-437, Sec. 11(a)(1), Nov. 2, 1994, 108 Stat. 4589; Pub. L. 104-58, title II, Sec. 201, Nov. 28, 1995, 109 Stat. 560; Pub. L. 104-66, title I, Sec. 1121(k), Dec. 21, 1995, 109 Stat. 724.)

-REFTEXT-

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (h)(1), is Pub. L. 91-190, Jan 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (Sec. 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date of enactment of this subsection, referred to in subsec. (k), the effective date of this provision, referred to in subsec. (q), and the effective date of this subsection, referred to in subsec. (t), probably mean the date of approval of Pub. L. 93-153, which was Nov. 16, 1973.

The Natural Gas Act, referred to in subsec. (r)(3)(A), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (Sec. 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

The International Emergency Economic Powers Act, referred to in subsec. (s)(3), is title II of Pub. L. 95-223, Dec. 28, 1977, 91 Stat. 1626, as amended, which is classified generally to chapter 35 (Sec. 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The National Emergencies Act, referred to in subsec. (s)(3), is

Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (Sec. 1601 et seq.) of Title 50. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (s)(3), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended. Part B of title II of the Act is classified generally to part B (Sec. 6271 et seq.) of subchapter II of chapter 77 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of Title 42 and Tables.

The Export Administration Act of 1979, referred to in subsec. (u), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

-COD-

CODIFICATION

In subsec. (s)(2), "section 50501 of title 46" substituted for "section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)" on authority of Pub. L. 109-304, Sec. 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 50501 of Title 46, Shipping.

-MISC1-

AMENDMENTS

1995 - Subsec. (s). Pub. L. 104-58 amended heading and text of subsec. (s) generally. Prior to amendment, subsec. (s) provided that the Secretary of Interior, in consultation with Federal and State agencies, review need for national system of transportation and utility corridors across Federal lands and report to Congress

and the President by July 1, 1975.

Subsec. (w)(4). Pub. L. 104-66 struck out par. (4) which read as follows: "The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Secretary of Energy any potential dangers of or actual explosions, or potential or actual spillage on Federal lands and shall include in such report a statement of corrective action taken to prevent such explosion or spillage."

1994 - Subsec. (w)(1), (2). Pub. L. 103-437 substituted "Natural Resources" for "Interior and Insular Affairs" before "of the United States House".

1990 - Subsec. (w)(1). Pub. L. 101-475, Sec. 1(a), substituted "Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate" for "House and Senate Committees on Interior and Insular Affairs".

Subsec. (w)(2). Pub. L. 101-475, Sec. 1(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The Secretary or agency head shall notify the House and Senate Committees on Interior and Insular Affairs promptly upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty days (not counting days on which the House of Representatives or the Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period."

1985 - Subsec. (u). Pub. L. 99-64 substituted "Export

Administration Act of 1979 (50 U.S.C. App. 2401 and following)" for "Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841)" and "Export Administration Act of 1979" for "Export Administration Act of 1969" in two places.

1973 - Pub. L. 93-153 completely rewrote the section substituting 25 subsecs. lettered (a) through (y) covering all aspects of the granting of rights-of-way for pipelines through Federal lands for the former single unlettered paragraph under which rights-of-way of 25 feet on each side of the pipeline could be granted and under which the pipeline was to be operated as a common carrier.

1953 - Act Aug. 12, 1953, permitted companies subject to Federal regulation, or public utilities subject to State regulations, to pass through the public domain without incurring the obligation to become a common carrier.

1935 - Act Aug. 21, 1935, substituted "may be granted by the Secretary of the Interior" for "are granted" and inserted "and conditions" after "regulations" in two places, and "and shall accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipe line in such proportionate amounts as the Secretary of the Interior may, after a full hearing with notice thereof to the interested parties and a proper finding of facts, determine to be reasonable:" after "and maintained as common carriers.".

-CHANGE-

CHANGE OF NAME

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

-TRANS-

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior related to compliance with grants of rights-of-way and temporary use permits for Federal land and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of Department of Agriculture, related to compliance with associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Secs. 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

"Secretary of Energy or Federal Energy Regulatory Commission" substituted for "Interstate Commerce Commission or Federal Power Commission" in subsec. (r)(5) pursuant to sections 301(b), 306, 402(a), (b), 703, and 707 of Pub. L. 95-91, which are classified to

sections 7151(b), 7155, 7172(a), (b), 7293, and 7297 of Title 42, The Public Health and Welfare, and which transferred functions vested in Interstate Commerce Commission, and Chairman and members thereof, relating to transportation of oil by pipeline to Secretary of Energy (except for certain functions which were transferred to Federal Energy Regulatory Commission within Department of Energy), and terminated Federal Power Commission and transferred its functions to Secretary of Energy (except for certain functions which were transferred to Federal Energy Regulatory Commission).

-MISC2-

REIMBURSEMENT OF ADMINISTRATIVE AND OTHER COSTS

Pub. L. 105-277, div. A, Sec. 101(e) [title II], Oct. 21, 1998, 112 Stat. 2681-231, 2681-272, provided that: "Notwithstanding any other provision of law, hereafter money collected, in advance or otherwise, by the Forest Service under authority of section 101 of Public Law 93-153 (30 U.S.C. 185(1)[(l)]) as reimbursement of administrative and other costs incurred in processing pipeline right-of-way or permit applications and for costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities, may be used to reimburse the applicable appropriation to which such costs were originally charged."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105-83, title II, Nov. 14, 1997, 111 Stat. 1576.

Pub. L. 104-208, div. A, title I, Sec. 101(d) [title II], Sept. 30, 1996, 110 Stat. 3009-181, 3009-208.

Pub. L. 104-134, title I, Sec. 101(c) [title II], Apr. 26, 1996, 110 Stat. 1321-156, 1321-184; renumbered title I, Pub. L. 104-140, Sec. 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103-332, title II, Sept. 30, 1994, 108 Stat. 2524.

Pub. L. 103-138, title II, Nov. 11, 1993, 107 Stat. 1403.

Pub. L. 102-381, title II, Oct. 5, 1992, 106 Stat. 1401.

Pub. L. 102-154, title II, Nov. 13, 1991, 105 Stat. 1017.

GAO REPORT

Section 202 of Pub. L. 104-58 directed the Comptroller General of the United States to commence, three years after Nov. 28, 1995, a review of energy production in California and Alaska and the effects of Alaskan North Slope oil exports, if any, on consumers, independent refiners, and shipbuilding and ship repair yards on the West Coast and in Hawaii, and to submit to Congress, within twelve months after commencing the review, a report containing recommendations for Congress and the President to address job loss in the shipbuilding and ship repair industry on the West Coast, as well as adverse impacts on consumers and refiners on the West Coast and in Hawaii, that are attributed to Alaska North Slope oil exports.

OUTER CONTINENTAL SHELF; PIPELINE RIGHTS-OF-WAY

Pipeline rights-of-way in connection with oil, gas, and other leases on submerged lands of outer Continental Shelf, see section 1334 of Title 43, Public Lands.

-EXEC-

EXPORTS OF ALASKAN NORTH SLOPE (ANS) CRUDE OIL

Memorandum of President of the United States, Apr. 28, 1996, 61 F.R. 19507, provided:

Memorandum for the Secretary of Commerce [and] the Secretary of Energy

Pursuant to section 28(s) of the Mineral Leasing Act, as amended, 30 U.S.C. 185, I hereby determine that exports of crude oil transported over right-of-way granted pursuant to section 203 of

the Trans-Alaska Pipeline Authorization Act [43 U.S.C. 1652] are in the national interest. In making this determination, I have taken into account the conclusions of an interagency working group, which found that such oil exports:

- will not diminish the total quantity or quality of petroleum available to the United States; and

- are not likely to cause sustained material oil supply shortages or sustained oil price increases significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including those located in noncontiguous States and Pacific Territories.

I have also considered the interagency group's conclusions regarding potential environmental impacts of lifting the ban. Based on their findings and recommendations, I have concluded that exports of such crude oil will not pose significant risks to the environment if certain terms and conditions are met.

Therefore, pursuant to section 28(s) of the Mineral Leasing Act I direct the Secretary of Commerce to promulgate immediately a general license, or a license exception, authorizing exports of such crude oil, subject to appropriate documentation requirements, and consistent with the following conditions:

- tankers exporting ANS exports must use the same route that they do for shipments to Hawaii until they reach a point 300 miles due south of Cape Hinchinbrook Light and then turn toward Asian destinations. After reaching that point, tankers in the ANS oil trade must remain outside of the 200 nautical-miles Exclusive Economic Zone of the United States as defined in the Fisheries Conservation and Management Act (16 U.S.C. 1811) [probably means the Magnuson-Stevens Fishery Conservation and Management Act]. This

condition also applies to tankers returning from foreign ports to Valdez, Alaska. Exceptions can be made at the discretion of the vessel master only to ensure the safety of the vessel;

- that export tankers be equipped with satellite-based communications systems that will enable the Coast Guard independently to determine their location. The Coast Guard will conduct appropriate monitoring of the tankers, a measure that will ensure compliance with the 200-mile condition, and help the Coast Guard respond quickly to any emergencies;

- the owner or operator of an Alaskan North Slope crude oil export tankship shall maintain a Critical Area Inspection Plan for each tankship in the trade in accordance with the U.S. Coast Guard's Navigation and Inspection Circular No. 15-91 as amended, which shall include an annual internal survey of the vessel's cargo block tanks; and

- the owner or operator of an Alaskan North Slope crude oil export tankship shall adopt a mandatory program of deep water ballast exchange (i.e., in 2,000 meters water depth). Exceptions can be made at the discretion of the captain only in order to ensure the safety of the vessel. Recordkeeping subject to Coast Guard audit will be required as part of this regime.

The Secretary of Commerce is authorized and directed to inform the appropriate committees of the Congress of this determination and to publish it in the Federal Register.

William J. Clinton.

-FOOTNOTE-

(!1) So in original. Probably should be "National Environmental Policy Act of 1969 (Public Law 91-190; 42 U.S.C. 4332(2)(C))".

(The following citations are taken from Code of Regulations 43 Part 2880, latest revision; Public Lands: Interior)

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

§ 2881.2 What is the objective of BLM's right-of-way program?

It is BLM's objective to grant rights-of-way under the regulations in this part to any qualified individual, business, or government entity and to direct and control the use of rights-of-way on public lands in a manner that:

(a) Protects the natural resources associated with Federal lands and adjacent lands, whether private or administered by a government entity;

(b) Prevents unnecessary or undue degradation to public lands;

(c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans; and

(d) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with state and local governments, interested individuals, and appropriate quasi-public entities.

§ 2881.5 What acronyms and terms are used in the regulations in this part?

Facility means an improvement or structure, whether existing or planned, that is, or would be, owned and controlled by the grant or TUP holder within the right-of-way or TUP area.

Grant means any authorization or instrument BLM issues under section 28 of the Mineral Leasing Act, 30 U.S.C. 185, authorizing a non-possessory, nonexclusive right to use Federal lands to construct, operate, maintain, or terminate a pipeline. The term includes those authorizations and instruments BLM and its predecessors issued for like purposes before November 16, 1973, under then existing statutory authority. It does not include authorizations issued under FLPMA (43 U.S.C. 1761 *et seq.*).

Monitoring means those actions, subject to §2886.11 of this part, that the Federal government performs to ensure compliance with the terms, conditions, and stipulations of a grant or TUP.

(1) For Monitoring Categories 1 through 4, the actions include inspecting construction, operation, maintenance, and termination of permanent or temporary facilities and

protection and rehabilitation activities until the holder completes rehabilitation of the right-of-way or TUP area and BLM approves it;

(2) For Monitoring Category 5 (Master Agreements), those actions agreed to in the Master Agreement; and

(3) For Monitoring Category 6, those actions agreed to between BLM and the applicant before BLM issues the grant or TUP.

Oil or gas means oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from them.

Pipeline means a line crossing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on its oil and gas lease.

Pipeline system means all facilities, whether or not located on Federal lands, used by a grant holder in connection with the construction, operation, maintenance, or termination of a pipeline.

§ 2881.11 When do I need a grant from BLM for an oil and gas pipeline?

You must have a BLM grant under 30 U.S.C. 185 for an oil or gas pipeline or related facility to cross Federal lands under:

(a) BLM's jurisdiction; or

(b) The jurisdiction of two or more Federal agencies.

§ 2884.27 What additional requirement is necessary for grants or TUPs for pipelines 24 or more inches in diameter?

If an application is for a grant or TUP for a pipeline 24 inches or more in diameter, BLM will not issue or renew the grant or TUP until after we notify the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

§ 2885.11 What terms and conditions must I comply with?

(21) Not use or construct on the land in the right-of-way or TUP area until:

(i) BLM approves your detailed plan for construction, operation, and termination of the pipeline, including provisions for rehabilitation of the right-of-way or TUP area and environmental protection; and

(ii) You receive a Notice to Proceed for all or any part of the right-of-way or TUP area. In certain situations BLM may waive this requirement in writing; and

(22) Comply with all other stipulations that BLM may require.

§ 2885.24 If I hold a grant or TUP, what monitoring fees must I pay?

(a) *Monitoring fees.* Subject to §2886.11 of this part, you must pay a fee to BLM for any costs the Federal Government incurs in monitoring the construction, operation, maintenance, and termination of the pipeline and protection and rehabilitation of the affected Federal lands your grant or TUP covers. BLM categorizes the monitoring fees based on the estimated number of work hours necessary to monitor your grant or TUP. Category 1 through 4 monitoring fees are one-time fees and are not refundable. The work hours and fees for 2005 are as follows:

2005 Monitoring Fee Schedule

Monitoring category	Federal work hours involved	Monitoring fee as of June 21, 2005. To be adjusted annually for changes in the IPD-GDP. See paragraph (b) of this section for update information
(1) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs	Estimated Federal work hours are >1 ≤8	$97.
(2) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs	Estimated Federal work hours are >8 ≤24	$343.
(3) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs	Estimated Federal work hours are >24 ≤36	$644.
(4) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPS	Estimated Federal work hours are >36 ≤50	$923.
(5) Master Agreements	Varies	As specified in the Agreement.
(6) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs	Estimated Federal work hours >50.	Actual costs.

§ 2886.11 Who regulates activities within my right-of-way or TUP area?

After BLM has issued the grant or TUP, the head of the agency having administrative jurisdiction over the Federal lands involved will regulate your grant or TUP activities in conformance with the Act, appropriate regulations, and the terms and conditions of the grant or TUP. BLM and the other agency head may reach another agreement under 30 U.S.C. 185(c).

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

Section Contents

Subpart A—General

Subpart B—Materials

Subpart C—Pipe Design

Subpart D—Design of Pipeline Components

Subpart E—Welding of Steel in Pipelines

Subpart F—Joining of Materials Other Than by Welding

Subpart G—General Construction Requirements for Transmission Lines and Mains

Subpart H—Customer Meters, Service Regulators, and Service Lines

Subpart I—Requirements for Corrosion Control

Subpart J—Test Requirements

Subpart K—Uprating

Subpart L—Operations

Subpart M—Maintenance

Subpart N—Qualification of Pipeline Personnel

Subpart O—Gas Transmission Pipeline Integrity Management

MEMORANDUM OF UNDERSTANDING
RELATED TO AN
ALASKA NATURAL GAS TRANSPORTATION PROJECT

June 2006

Department of Agriculture
Department of Commerce
Department of Defense
Department of Energy
Department of Homeland Security
Department of the Interior
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Advisory Council on Historic Preservation
Council on Environmental Quality
Environmental Protection Agency
Federal Coordinator for Alaska Natural Gas
Transportation Projects
Federal Energy Regulatory Commission

I. BACKGROUND

Executive Order 13212 ("Actions to Expedite Energy-Related Projects"), signed by President Bush on May 18, 2001 (66 FR 28357) (Attachment A), sets forth Administration policy that executive departments and other agencies must take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy. Executive Order 13212 directs Federal agencies to expedite their review of permits for energy-related projects and to take other action necessary to accelerate the completion of such projects, while protecting public health, safety, and the environment.

The Alaska Natural Gas Pipeline Act, enacted on October 13, 2004, as part of the Military Construction Appropriations Act, 2005 (Public Law 108-324 or the Act) (Attachment B), is designed to expedite Federal review of a natural gas transportation project that would carry Alaska natural gas to the border between Alaska and Canada. Public Law 108-324 also provides financial incentives for the construction of this pipeline in the form of Federal loan guarantees. Public Law 108-324 authorizes the Federal Energy Regulatory Commission (FERC) to consider an application for a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska Natural Gas Transportation System (ANGTS) designated by President Carter in 1977 pursuant to the Alaska Natural Gas Transportation Act of 1976 (ANGTA). More specifically, Public Law 108-324:

- Requires an expedited process for compliance with the National Environmental Policy Act of 1969 (NEPA) that identifies FERC as the lead agency for purposes of complying with NEPA;

- With respect to an application for a project not authorized under ANGTA, requires FERC to issue a draft environmental impact statement (EIS) consolidating the project-related environmental reviews of all Federal agencies considering any aspect of the Alaska natural gas transportation project covered by the EIS not later than one year after a certificate application is complete, to issue a final EIS not more than 180 days later, and to issue a final determination to grant or deny the application within 60 days after issuance of the final EIS;

- Establishes a Federal Coordinator for Alaska Natural Gas Transportation Projects and vests the Federal Coordinator authority in the Secretary of Energy until the later of the appointment of the Federal Coordinator by the President or April 13, 2006 (18 months after enactment);

- Authorizes the Department of Labor (DOL) to establish a grant program to train Alaska workers in the skills required to construct and operate a natural gas pipeline; and

- Authorizes the Secretary of Energy to enter into Federal loan guarantee agreements (1) with one or more entities holding a FERC certificate of public convenience and necessity issued under Public Law 108-324 or ANGTA for an Alaska natural gas transportation project, and (2) with owners of the Canadian portion of the project certificated by FERC, for up to $18 billion total, but no more than 80% of the total capital costs, including interest costs during construction, of a qualified infrastructure project. The Secretary's loan guarantee authority expires two (2) years after the final certificate of public convenience and necessity is issued for the project. The Consolidated Appropriations Act, 2005 (Public Law 108-447) amended Public Law 108-324 to add authority for the Secretary to enter into loan guarantee agreements with an entity the Secretary determines is qualified to construct and operate a liquefied natural gas (LNG) project from "Southcentral Alaska to West Coast States." Loan guarantees may be issued for only one project.

Numerous Federal and state agencies have permitting and other responsibilities for an Alaska natural gas transportation project. Coordination among these agencies on issues such as project review and implementation schedules, data and other information requirements, and necessary mitigation measures is critical to enable agencies to discharge their responsibilities expeditiously. A coordinated project management approach will facilitate and expedite completion of an Alaska natural gas transportation project. Because Federal loan guarantees are authorized, the Federal government may bear a significant portion of the financial risk associated with this project. Therefore, it is of critical importance that the project be completed on time and within budget.

II. PURPOSE

Consistent with Executive Order 13212 and Public Law 108-324, the purpose of this Memorandum of Understanding (MOU) is to establish a project management framework, with guidance from the Federal Coordinator, for cooperation among Participating Agencies with responsibilities related to the approval of an Alaska natural gas transportation project. In particular, under this MOU, the Participating Agencies agree to use best efforts to achieve early coordination and compliance with deadlines and procedures established by relevant agencies.

III. PARTICIPATING AGENCIES

The Federal agencies with regulatory and other responsibilities relevant to an Alaska natural gas transportation project include:

Department of Agriculture, Forest Service, is responsible for managing National Forest System (NFS) lands. Most natural gas pipelines crossing NFS lands are permitted by a BLM right-of-way grant issued under section 28 of the Mineral Leasing Act of 1920, as amended.

Department of Commerce, National Oceanic and Atmospheric Administration, through offices such as the National Marine Fisheries Service and the National Ocean Service, is responsible for a variety of activities related to marine and coastal ecosystems. These activities include managing protected species; managing commercial and recreational fisheries; protecting marine and coastal habitats; working with states to develop and implement coastal zone management plans; and protecting and managing designated Marine Sanctuaries. If the pipeline passes through the State of Alaska's coastal zone, or affects any land or water use or natural resource of Alaska's coastal zone, Federal permits required for the pipeline may be subject to the Federal consistency requirements of the Coastal Zone Management Act.

Department of Defense, the Army Corps of Engineers (COE), is responsible for administering laws for the protection and preservation of waters of the United States, pursuant to the requirements of section 10 of the Rivers and Harbors Act (RHA) of 1899, section 404 of the Clean Water Act (CWA) of 1972, and section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972. Under the RHA, the COE may authorize work and or structures in or affecting the course, condition, location, or capacity of navigable waters of the United States or other devices on the Outer Continental Shelf. Under the CWA, the COE may authorize the discharge of dredged or fill material into waters of the United States, where the proposed action is the least environmentally damaging practicable alternative. Under the MPRSA, the COE may authorize the transportation of dredged material excavated from navigable waters of the United States for the purpose of dumping it in ocean waters.

Department of Energy (DOE) is responsible for developing and coordinating national energy policy. Public Law 108-324 authorizes the Secretary of Energy to enter into Federal loan

guarantees to facilitate construction of an Alaska gas pipeline. Public Law 108-324 also vests in the Secretary temporary authority as Federal Coordinator for Alaska Natural Gas Transportation Projects. In addition, the functions and authority of the former Federal Inspector for ANGTS were transferred to the Secretary by the Energy Policy Act of 1992. Furthermore, DOE regulates the export and import of natural gas under section 3 of the Natural Gas Act (NGA).

Department of Homeland Security (DHS), U.S. Coast Guard (USCG), Office of Bridge Administration, pursuant to the several Federal bridge laws (33 U.S.C. 401, 491, 525, 535), exercises regulatory authority with regard to approval of the location and clearances of bridges (including pipeline bridges) and causeways in or across the navigable waters of the United States, and/or connecting the United States with any foreign country. Bridge Administration Program implementing regulations are published at Title 33, Code of Federal Regulations, Parts 114 – 118.

Department of the Interior (DOI)

DOI Bureau of Indian Affairs (BIA) is responsible for administering Federal Indian policy with respect to American Indian tribes, Alaska Native villages and tribal organizations. The BIA also is responsible for granting rights-of-way, with the consent of Indian owners, across lands subject to Federal restrictions against alienation.

DOI Bureau of Land Management (BLM) is responsible for managing public lands. The BLM has principal responsibility, under section 28 of the Mineral Leasing Act of 1920, as amended, for issuing right-of-way permits authorizing natural gas pipelines to cross Federal lands, except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

DOI Fish and Wildlife Service (FWS) is responsible for conserving, protecting, and enhancing fish, wildlife, plants, and their habitats. The FWS has principal trust responsibility to protect and conserve migratory birds, threatened and endangered species, certain marine mammals, and inter-jurisdictional fish. The FWS manages the National Wildlife Refuge System (NWRS). Applicants for new pipeline construction projects are required to consult with or obtain approvals from the FWS on projects potentially affecting any of these resources. The FWS also consults on projects potentially affecting fresh water or marine resources and water quality. In addition, the FWS may authorize use by permit for areas within the NWRS.

DOI National Park Service (NPS) administers the National Historic Landmarks (NHL) Program and section 6(f) of the Land and Water Conservation Fund Act (LWCF), and serves as Interior Department lead on section 4(f) of the Department of the Transportation Act reviews. NPS serves as an official interested party throughout the Section 106 of the National Historic Preservation Act of 1966 (NHPA) consultation process to ensure the integrity of the NHL Program (36 CFR 800.10). NPS generally prepares Interior Department comments on section 4(f) evaluations prepared by the United States

Department of Transportation (DOT), to seek the protection of public (Federal and non-Federal) recreational lands, including parks and wildlife refuges, in the planning of DOT proposals. Finally, NPS approves conversions under section 6(f) of the LWCF.

Department of Labor was authorized by Public Law 108-324 to establish a grant program to train Alaska workers. Department of Labor's Employment and Training Administration is responsible for administering Federal employment and job training programs, including programs authorized under the Workforce Investment Act (WIA). The Workforce Investment Act also establishes the nation's One-Stop Career Center system, which is the service delivery system for a host of Federally-funded employment and training programs.

Department of State has the lead role in issuing Presidential permits for cross-border facilities, including oil and liquids pipelines; this authority was recently updated in April 2004 by Executive Order 13337 to conform to the National Energy Policy. State is also one of the departments that clears FERC permits for cross-border natural gas pipelines. In addition, State will address, in coordination with other relevant agencies, the foreign policy aspects of any agreements with the Government of Canada concerning Alaska natural gas transportation projects, including the manner in which the new post of Federal Coordinator (including the exercise of such authority by the Secretary of Energy) will engage with Canada on that subject. The United States has certain existing international agreements with Canada that need to be considered and possibly modified in connection with an Alaska natural gas transportation project.

Department of Transportation (DOT)

DOT Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for establishing safety standards for the nation's pipeline transportation system. PHMSA establishes and enforces minimum safety standards for the design, construction, operation, and maintenance of pipeline facilities.

DOT Federal Highway Administration (FHWA) is responsible for carrying out the Federal-aid highway program and the Federal Lands Highway Program. The Federal-aid Highway Program provides Federal financial and technical assistance to the States for the planning, construction and improvement of the National Highway System, urban and rural roads, and bridges. FHWA approval is required for certain types of highway projects and uses of the rights-of-way of Federal-aid highways.

Department of the Treasury will provide technical assistance as needed by DOE to implement the loan guarantee provisions of Public Law 108-324, including assistance in developing parameters for the loan guarantee program.

Advisory Council on Historic Preservation reviews and provides comments on actions by Federal agencies that may affect properties listed or eligible to be listed on the National Register of Historic Places pursuant to the National Historic Preservation Act.

Council on Environmental Quality (CEQ) was established within the Executive Office of the President in 1969 by NEPA. Its purpose is to formulate and recommend national policies to promote the improvement of the quality of the environment. CEQ has issued regulations applicable to Federal agencies implementing NEPA at 40 CFR Parts 1500 through 1508.

Environmental Protection Agency (EPA) is responsible for administering a wide range of environmental laws. EPA responsibilities relevant to the pipeline permitting process include, but are not limited to, commenting on an EIS under section 309 of the Clean Air Act (CAA), the authority to participate in the section 404 Clean Water Act (CWA) permit process, and the authority to issue and/or review state-issued permits for pipeline-related activities that involve discharges of pollutants subject to the requirements of the National Pollutant Discharge Elimination System or the CAA.

Federal Coordinator for Alaska Natural Gas Transportation Projects (Federal Coordinator), a position created by Public Law 108-324, is responsible for coordinating the expeditious discharge of Federal agency activities related to an Alaska natural gas transportation project and ensuring compliance by Federal agencies with the Act. The Secretary of Energy will serve as Federal Coordinator until the President appoints a Federal Coordinator or until April 13, 2006 (18 months after enactment), whichever is later.

Federal Energy Regulatory Commission (FERC) is responsible for issuing certificates of public convenience and necessity authorizing the construction and operation of interstate natural gas pipelines under section 7 of the NGA. FERC also authorizes the siting and construction of LNG and border crossing facilities that are needed for the import and export of natural gas under section 3 of the NGA. Accordingly, project sponsors must obtain FERC authorizations under the NGA for the Alaska pipeline portion of an Alaska natural gas transportation project and the necessary export facilities.

IV. RESPONSIBILITIES OF PARTICIPATING AGENCIES

Public Law 108-324 designates FERC the lead agency for complying with NEPA and makes FERC responsible for preparing the EIS required with respect to an Alaska natural gas transportation project under section 103 of the Act. In carrying out this function, FERC is required to prepare a single EIS consolidating the environmental reviews of all Federal agencies considering any aspect of the project covered by the EIS. If a NGA certificate application is submitted for an Alaska natural gas transportation project under section 9 of ANGTA, the Secretary of Energy will determine the level of environmental impact analysis necessary to develop the detailed terms, conditions, and compliance plans consistent with section 5 of the President's Decision and Report to Congress on the Alaskan Natural Gas Transportation System (September 1977).

MCA & 43 CFR 2880

Public Law 108-324 also establishes an independent, executive branch Office of the Federal

Coordinator to coordinate the expeditious discharge of Federal agency activities related to an Alaska natural gas transportation project and to ensure compliance by Federal agencies with Public Law 108-324. As noted above, the authority of the Federal Coordinator is vested temporarily in the Secretary of Energy. The Secretary of Energy also is vested with the similar functions and authority of the former Federal Inspector for the ANGTS. Public Law 108-324 transfers the ANGTS Federal Inspector authority to the Federal Coordinator upon the Federal Coordinator's appointment by the President.

Given the magnitude and scope of this project, its completion will require extensive coordination by the Federal Coordinator, FERC, and all other Participating Agencies throughout the life of the project. Specifically, this MOU commits Participating Agencies to the following actions:

A. General. Participating Agencies agree to adopt a project management approach built on a common understanding and commitment to project requirements, including schedules and costs, with appropriate oversight and guidance from the Federal Coordinator. Participating Agencies agree to work with the Federal Coordinator, as well as with FERC, each other, and other entities as appropriate, to ensure that timely decisions are made and that the responsibilities of each agency are met.

B. Early Involvement

1. FERC Pre-Filing Process. Participating Agencies agree to participate and work within the pre-filing time frame set by FERC to identify and seek to resolve issues at the earliest stages of project development. The FERC Pre-Filing Process, which is initiated by a request of the project sponsor, serves as a mechanism to meet NEPA requirements while optimizing scheduling.

2. Agency Implementation Plans. Participating Agencies agree to submit to the Federal Coordinator draft agency implementation plans. These plans should detail each agency's anticipated schedule milestones and process for implementing appropriate agency actions within agreed upon project time frames, including environmental reviews required by Public Law 108-324 to be consolidated into the FERC EIS.

In particular, draft agency implementation plans should address the following:

- Roles and responsibilities/legal authority
- Schedule and timing of specific actions
- Data and other information requirements from relevant Federal agencies, and other entities as appropriate, to meet regulatory responsibilities
- Permit execution processes
- Project transition (preliminary preparation, NEPA (both before and after the filing of a complete application), project authorization, construction, operation)

The draft agency implementation plans are intended to be planning and coordination tools. Their development by each Participating Agency should result in multiple benefits. First, the plans should cause the agency preparing the plan to carefully consider the roles and responsibilities of that agency relative to an Alaska natural gas transportation project. Second, the plans should cause each agency to critically examine its organizational structure, and staffing needs to achieve its goals within the defined schedule and framework of the FERC EIS process. Finally, agency implementation plans should facilitate coordination with other Participating Agency plans, beginning with environmental review and on through permitting, construction, and post-construction monitoring. Within 30 days of the conclusion of an agreement between commercial sponsors and the State of Alaska on an Alaska natural gas transportation project, the Federal Coordinator will establish, in consultation with the Participating Agencies, a timetable for the preparation of the implementation plans.

If the Federal Coordinator determines it is necessary, the Federal Coordinator may provide additional guidance regarding the preparation of these draft agency implementation plans. Participating Agencies may provide draft implementation plans to one another for comments and coordination.

3. Federal Implementation Plan. Consistent with a project management approach, the Federal Coordinator will consolidate draft agency implementation plans into a single draft Federal implementation plan for the project. This consolidation effort will alert Participating Agencies to the potential for conflicts in processes and timelines and enable early coordination among agencies to resolve these potential pitfalls.

4. Meetings. Participating Agencies agree to meet regularly throughout each stage of project transition upon request by the Federal Coordinator, FERC, an applicant or prospective applicant, another Participating Agency, or on their own initiative, to identify areas of potential concern and to assess available resources to address issues raised by an Alaska natural gas transportation project. For meetings hosted by one Participating Agency with cross-agency implications, Participating Agencies agree to inform and invite other relevant Participating Agencies in advance.

C. Coordination with FERC

1. Schedule. FERC agrees to consult with the Federal Coordinator and relevant Participating Agencies as it establishes a schedule for the project review process. The schedule established by the FERC is intended to be as expeditious as possible and consistent with periods for response and analysis required by law and

applicable to an Alaska natural gas transportation project. To the extent practicable and permitted by law, the relevant Participating Agencies agree to implement, with the assistance of the Federal Coordinator, their related agency review and permitting processes on a concurrent rather than sequential basis to enable completion of the EIS within the time limits required by Public Law 108-324.

2. Cooperating Agency Agreement. Consistent with the coordination mandated by Public Law 108-324, Participating Agencies may use this MOU as a Cooperating Agency Agreement with FERC for the purpose of NEPA compliance.

3. Public Notice. FERC agrees to include in any Notice of Intent to Prepare an EIS, guidance to the public regarding relevant processes set forth in this MOU.

4. Initial Review of Project Application for Completeness. FERC agrees to notify Participating Agencies immediately upon receipt of a project application and ensure that the Participating Agencies receive either a hard copy or access to an electronic copy of the application as soon as possible. Participating Agencies agree to conduct an early initial review of the project application for completeness and accuracy relevant to their respective agency needs, and provide FERC and the Federal Coordinator with the results of this review to assist FERC in determining whether an application is complete for purposes of Public Law 108-324 and other Participating Agency requirements. FERC agrees to provide Participating Agencies, after consultation with them, a specified but reasonable period of time after receipt of the application to complete the required reviews and provide FERC with recommendations about any additional information necessary for the Participating Agencies to exercise their respective authorities.

5. Purpose and Need. As directed by section 103(b)(2) of Public Law 108-324, FERC must presume that there is a need to construct and operate a proposed project. Section 104(b)(2) of the Act provides for a single environmental impact statement that consolidates the environmental reviews of all Federal agencies. FERC agrees to provide to other Participating Agencies for their review a draft copy of the proposed project purpose and need statement to ensure that the EIS has a uniform statement of purpose and need that can also be used in permit filings with agencies other than the FERC. Other Participating Agencies agree to expeditiously provide comments to FERC with any suggested changes.

6. Project Alternatives. To foster interagency agreement on the range of alternatives to be considered for the project, FERC agrees to provide to other Participating Agencies for their review a draft copy of the proposed scope of project alternatives. While each Participating Agency must exercise its independent judgment in carrying out its statutory and regulatory responsibilities,

Participating Agencies agree to work toward a common scope of project alternatives. Other Participating Agencies agree to expeditiously provide comments to FERC with any suggested changes needed to ensure that the project alternatives sufficiently cover the full range of alternatives, and that such alternatives could be used in other required permit filings with agencies other than the FERC.

D. Coordination of Post-NEPA Schedules. The Federal Coordinator will consult with relevant Participating Agencies before coordinating any post-NEPA project authorization and implementation schedules. Schedules should be as expeditious as possible and consistent with laws applicable to an Alaska natural gas transportation project. To the extent practicable and permitted by law, the relevant Participating Agencies agree to implement their related permitting processes on a concurrent rather than sequential basis, with the objective of avoiding delays in the process and schedule coordinated by the Federal Coordinator.

E. Sharing of Data and Other Information

1. General. Participating Agencies agree to share the information gathered, considered, and relied upon by each of them with all other relevant Participating Agencies.

2. Information Development. Participating Agencies agree to cooperate in identifying and developing information at the level of detail required to complete environmental and other project reviews.

3. Requests for Information. Participating Agencies agree to cooperate in the preparation of requests for initial and additional studies or data, to avoid duplicative requests, and to compile consistent data and other information on which all Participating Agencies can rely.

4. Mitigation measures. Participating Agencies agree to cooperate in developing effective mitigation measures to avoid, minimize, and compensate for adverse environmental impacts associated with the project.

F. Informal Communication. Participating Agencies agree to informally communicate with the Federal Coordinator and with other Participating Agencies early and throughout the process to ensure that issues are raised as soon as possible and shared among all Participating Agencies.

G. Maintaining Regulatory Coordination. The concepts and processes outlined above provide a model for creating regulatory coordination among the various Federal and state agencies while providing a foundation and structure for the review and regulation of an

Alaska natural gas transportation project. Because the projected regulatory and construction schedule spans 10 years, coordination among agencies should be maintained throughout the entire project, and mechanisms that provide flexibility in addressing new issues as they arise may be needed to sustain coordination for a project of this duration and magnitude.

Although each Participating Agency will be involved throughout the life of the project, the scope of involvement for each agency will vary depending on the phase of the project. Regardless, each Federal entity has specific actions and responsibilities that will need to occur at specific times throughout the course of the project. These individual actions should fit together to support a cohesive and successful project.

V. DISPUTE RESOLUTION

A. Disputes regarding existing statutory and other legal requirements will be resolved by the relevant Participating Agencies using existing dispute resolution methods and in accordance with existing statutory authorities. With respect to disputes concerning provisions and procedures of this MOU, Participating Agencies will confer informally with the Federal Coordinator. If a dispute concerns schedules established by FERC, Participating Agencies will also consult with FERC.

B. If a dispute relates to applicable NEPA requirements, FERC and the Participating Agencies will attempt to resolve the issue and, if necessary, may informally consult with the CEQ. If the dispute is not resolved within 30 days of notification of the dispute to the relevant Participating Agencies, any of the relevant Participating Agencies may forward the dispute to the CEQ. The CEQ will make a written recommendation on resolution of the dispute within 30 days of receiving documentation from Participating Agencies, unless there is agreement among Participating Agencies that the period should be extended. Disputes will be resolved within sufficient time to enable completion of the EIS by the deadline established by Public Law 108-324.

C. Recommendations received from the CEQ will be taken into account by FERC, in consultation with relevant Participating Agencies, when determining further actions regarding the subject of the dispute. CEQ recommendations not accepted by FERC or other Participating Agencies will be explained in writing to the Chairman of the CEQ.

D. This opportunity to consult with the CEQ and receive recommendations is separate and apart from the opportunity to do so provided for in the CEQ's regulations at 40 C.F.R. Part 1504.

VI. GENERAL PROVISIONS

A. This MOU cannot be used to obligate or commit funds or as the basis for the transfer

of funds. Nothing in this MOU, in and of itself, requires any signatory agency to enter into any contract, grant, or interagency agreement. All provisions in this MOU are subject to the availability of funds.

B. This MOU focuses on the initial phase of the project. It may be modified or amended upon written request to the Federal Coordinator by any Participating Agency, and the subsequent written concurrence of all other Participating Agencies. Participating Agencies may terminate their participation in this MOU by providing 90 days notice to the Federal Coordinator.

C. This MOU, consistent with Public Law 108-324, is intended to improve cooperation among the Participating Agencies to expedite decisions on an Alaska natural gas pipeline project. It is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person.

D. This MOU neither expands nor is in derogation of those powers and authorities vested in the Participating Agencies by applicable law, including Public Law 108-324.

E. This MOU does not supersede existing agreements among any of the Participating Agencies except to the extent such agreements are inconsistent with this MOU or Public Law 108-324.

VII. Principal Agency Contacts

Each Participating Agency designates a principal agency contact identified in Attachment C to this MOU. Principal agency contacts are crucial to successful coordination under this MOU but may be changed at the discretion of a Participating Agency upon notice to the Federal Coordinator and other Participating Agencies. Principal agency contacts will be responsible for communications and coordination with the Federal Coordinator and other Participating Agencies, and will assist in determining any necessary regional, local, or project specific contacts.

VIII. Duration of MOU

This MOU is effective upon final signature of the Participating Agencies and will remain in effect until one (1) year after construction of an Alaska natural gas transportation project is completed, a term coextensive with the term of the Federal Coordinator under Public Law 108-324.

[Signature blocks]

Department of Agriculture:

MAY - 9 2006

Mark Rey,
Under Secretary, Natural Resources and Environment.

Department of Commerce:

Vice Admiral Conrad C. Lautenbacher
Undersecretary for Oceans and Atmosphere

Department of Defense;

John Paul Woodley, Jr.
Assistant Secretary of the Army (Civil Works)

Department of Energy:

Jeffrey D. Jarrett
Assistant Secretary
Office of Fossil Energy

Department of Homeland Security:

N.E. Mpras
Chief, Office of Bridge Administration
U.S. Coast Guard
By direction of the Commandant

Department of the Interior:

Drue Pearce
Senior Advisor to the Secretary for Alaska Affairs

Department of Labor:

Emily Stover DeRocco
Assistant Secretary
Employment and Training Administration

Department of State:

E. Anthony Wayne
Assistant Secretary for Economic and Business Affairs

Department of Transportation:

J. Richard Capka
Acting Administrator
Federal Highway Administration

Brigham McCown
Acting Administrator
Pipeline and Hazardous Materials Safety Administration

Department of Treasury:

Roger E. Kodat
Deputy Assistant Secretary (Government Financial Policy)

Advisory Council on Historic Preservation:

John L. Nau, III
Chairman

Council on Environmental Quality:

James Connaughton
Chairman

Environmental Protection Agency:

William L. Wehrum,
Acting Assistant Administrator for Air and Radiation

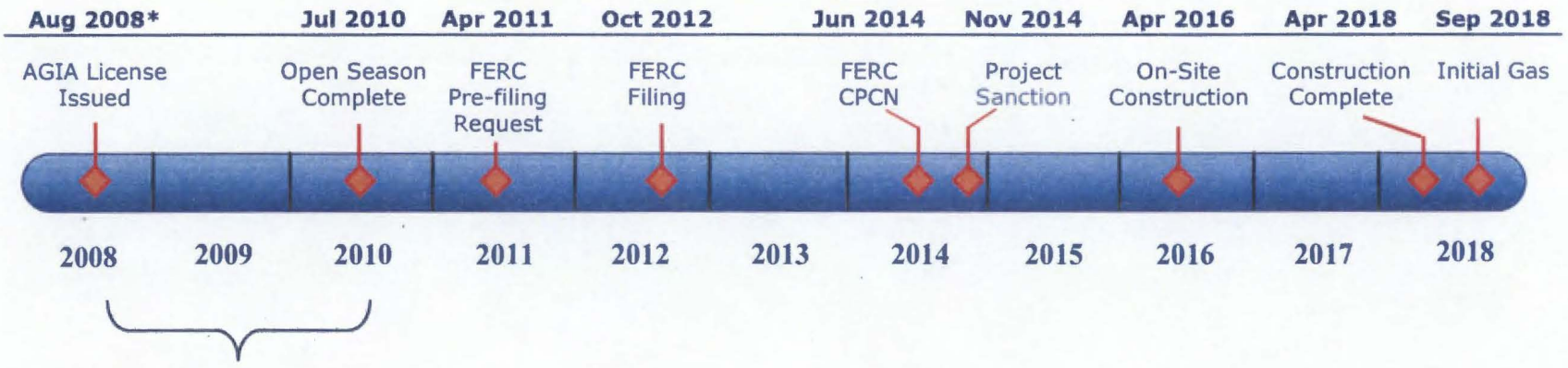
Federal Coordinator for Alaska Natural Gas Transportation Projects:

Jeffrey D. Jarrett
Assistant Secretary
Office of Fossil Energy

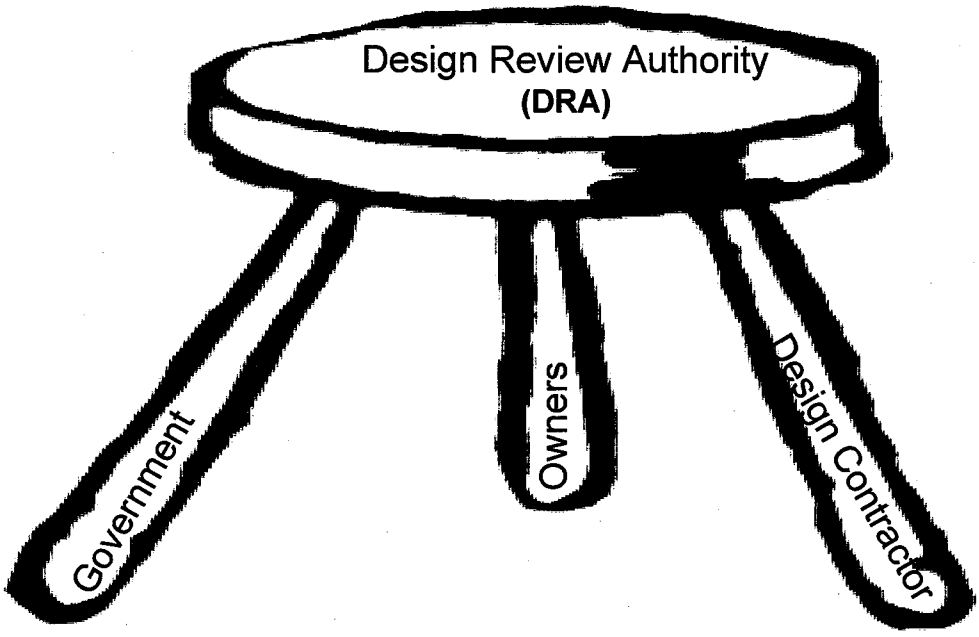
Federal Energy Regulatory Commission:

Joseph T. Kelliher,
Chairman

Project Schedule



* AGIA license assumed to be issued in August 2008 – **note: License effective date; November 25, 2008**



General. The DRA is a term used to describe collectively the persons assigned by their parent organizations to take required approval actions for all aspects of the project. The DRA would be the high level recognized entity responsible for coordination, collaboration, and commitments. The DRA would facilitate approval of documents for administration, oversight, performance, and acceptance of the project. DRA decisions would be documented and concurred in by all members of the DRA.

Members. (Permanent)

- US Federal Government (one individual designated in writing) speaking on behalf of the President
- State of Alaska (one individual designated in writing) speaking on behalf of the Governor
- Owner Representative (one individual designated in writing) speaking on behalf of all owners
- Design Contractor (one individual designated in writing) speaking on behalf of all design contractors

Members. (Ad Hoc)

- Other organizations determined significant, relative, and important may have a member assigned only on the unanimous agreement of the DRA and only for the duration determined prudent by the DRA.

Authority. The members of the DRA representing government will perform in accordance with their particular regulatory statutes.

(Inputs)

(Deliverables)

FERC RESOURCE REPORTS *

- #1 General Project Description
- #2 Water Use & Quality
- #3 Fish, Wildlife & Vegetation
- #4 Cultural Resources
- #5 Socioeconomics And Health
- #6 Geologic Resources
- #7 Soils
- #8 Land Use, Recreation & Aesthetics
- #9 Air & Noise Quality
- #10 Alternatives
- #11 Reliability & Safety
- #12 PCB Contamination
- #13 Engineering & Design Material

TEAMS

- BLM P/L PROJECT MANAGER
- Environmental Analysis Team
- Lands & Realty Team
- Geotechnical & Engineering Team
- Support Team

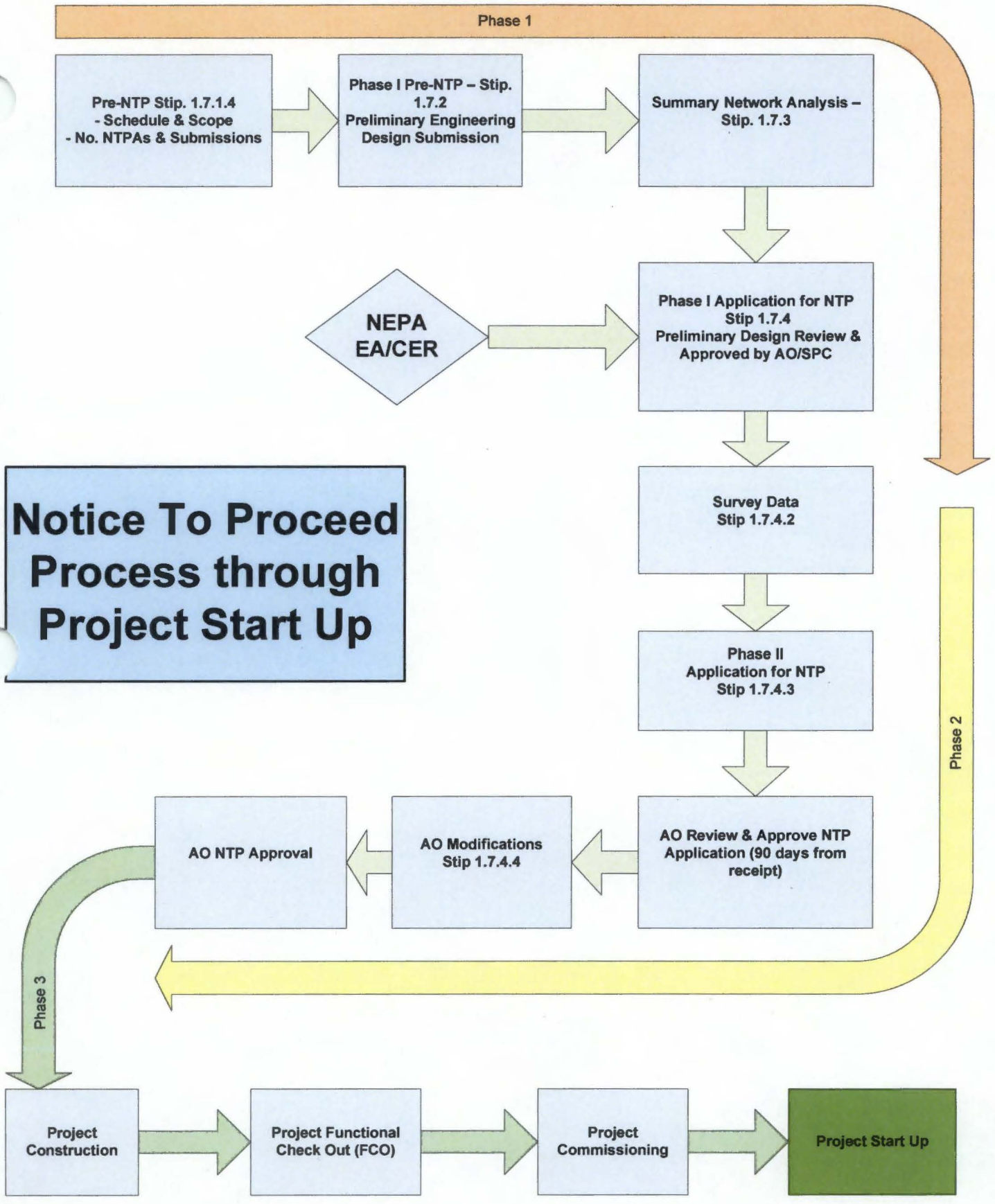
BLM Products for ROW & NTP Processes

- ROW Category Determination
- Authorized Officer Delegation
- Cost Recovery Agreement
- Identify Project Right of Way Alignment
- Agree to Project Schedule
- Conduct Fit, Willing & Able Determination
- Congressional Notice
- Geotechnical & Arctic Engineering Pinch Point Analysis
- Sufficiency Review of ROW Application
- GIS Database & Records Mgmt for ROW/FERC & NEPA Processes
- Right of Way Adjudication
- **Conduct NEPA Process**
- State/Federal ROW & TAPS Coordination
- Issue Grant of Right of Way
- Notice to Proceed Review & Approval

NEPA PROCESS

* Resource Reports include Climate Change & Special Arctic Conditions

FERC/NEPA/ROW Review Process & Products



Notice To Proceed Process through Project Start Up

Design Review Key Elements

Performance
The project design can have a very important impact on its performance: excessive complexity, the use of the incorrect algorithms or design patterns, the use of the wrong communication protocols, etc. can all negatively impact performance. It is therefore certainly pertinent to include performance in the points to focus on in design review.

Reliability
"Downtime affects the productive capability of physical assets by reducing output, increasing operating costs and affecting service. More and more failures have serious safety or environmental consequences, at a time when standards in these areas are rising rapidly. From the engineering viewpoint, there are two elements to the management of any physical asset. It must be maintained and from time to time it may also need to be modified."

Maintenance: Ensuring that physical assets continue to do what their users want them to do.

Constructability
The feasibility of construction should be analyzed and assessed. In performing these constructability reviews, the following should be examined: physical limitations of the work site; laydown and storage area requirements; seasonal influences on the work; physical limitations of construction equipment; physical limitations and 'handle-ability' of construction components; the owner's operational requirements; interfaces and coordination with utility companies; availability of labor and materials; long lead time items; site safety and security; safety and security of the general public; traffic impacts; aesthetics and safety aspects of barriers and buffers; noise mitigation; job site cleanliness and maintenance requirements; Quality Control, Quality Assurance, and Testing requirements.

Security
An assessment of projects that are destined to become part of Americas' critical infrastructure should be subject to review by Alaska's Division of Homeland Security and Emergency Management. This organization provides critical services to the State of Alaska to protect lives and property from terrorism and all other hazards, as well as to provide rapid recovery from all disasters.

White Paper

Opinion on;

- **General Project/Engineering 'Design Review' Methodology and its Implementation.**

(Included at the end of this white paper is;

- Protocol considerations for AK Gas Line Project Design Review, and
- a discussion of the role USBLM JPO played in design review with regards to recent significant projects along TAPS. This discussion identified several general issues related to the Strategic Reconfiguration project currently underway on the Trans-Alaska Pipeline System and addresses how JPO implemented the Notice to Proceed (NTP) process (Grant, stipulation 1.7) to the project.)

Dated: January 23, 2009

Table of Contents

Design Review:

This white paper will

a) Provide general thoughts on four areas one should consider in the preparation and implementation for conducting a design review. This paper intends to offer an opinion regarding Design Review methodology at a high level.
b) Discuss the different stages of JPO's role in design basis and criteria, and design review, their different goals, who does them and when they should be done, as its relates to TAPS. The directing document for JPO's BLM efforts on TAPS is the 'Renewal of the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline and Related Facilities, dated 2003' (Grant) which is the legal document of agreement between the United States and the Trans-Alaska Pipeline System (TAPS) owners.

What are generally accepted definitions of Design Basis and Criteria, Design Input, Design, and Design Verification, etc?

In order to understand why design reviews are important and necessary, one needs to fully understand their differences and agree to use a consistent definition for each.

Design Criteria (as shown in stipulation 1.1.7 of the Alaska Natural Gas Transportation Systems Alaska Segment (ANGST) Grant):
Means project criteria (i.e., construction, including design, and operational concepts) necessary to delineate the project to be constructed. As a minimum, it includes the following: criteria to be used for the final design and project concepts, evaluation of data used to establish the design criteria, drawings showing functional and technical requirements, reports of all test data compiled during the data collection and design criteria evaluation, standard drawings (if applicable) or drawings to support structural design concepts of each typical facility or structure, proposed construction modes, outline of project specifications, sample computations to support the design, and concepts and bases for project siting.

Final Design (as shown in stipulation 1.1.10 of the ANGST Grant):
Means completed design documents suitable for bid solicitation, including contract plans and specifications; proposed construction modes; operational requirements necessary to justify designs; design analysis, including calculations for each particular design feature; all functional and engineering criteria; summaries of engineering tests conducted and their results; and other considerations pertinent to design.

Design Criteria (as shown in stipulation 1.1.1.9 of the Yukon Pacific Corporation (YPC) Grant):
Means project criteria, i.e., construction, including design, and operational concepts necessary to delineate the project to be constructed. As a minimum, it includes the following: criteria to be used for the final design and project concepts, evaluation of data used to establish the design criteria, drawings showing functional and technical requirements, reports of all test data compiled during the data collection and design criteria evaluation, standard drawings (if applicable) or drawings to support structural design concepts of each typical facility or structure, proposed construction modes, outline of project specifications, sample computations to support the design, and concepts and bases for project siting.

Final Design (as shown in stipulation 1.1.1.12 of the YPC Grant):
Means completed design documents suitable for bid solicitation, including:

A contract plans and specifications,
B proposed construction modes,
C operational requirements necessary to justify designs,
D design analysis,
E including calculations for each particular design feature,
F all functional and engineering criteria,
G summaries of engineering tests conducted and their results; and
H other considerations pertinent to design.

Final Design (as shown in stipulation 1.1.1.12 of the TAPS Grant):
Comprises completed design documents. It shall include contract plans and specifications; proposed Construction Modes; operational requirements necessary to justify designs; schedules; design analysis (including sample calculations for particularly design feature); all functional and engineering criteria: summaries of tests conducted and their results; and other considerations pertinent to design and project life expectancy.

Preliminary Design (as shown in stipulation 1.1.1.12 of the TAPS Grant):
The establishment of project criteria (i.e., construction, including design an operational concepts) necessary to delineate the project to be constructed. As a minimum it includes the following: design criteria and project concepts; evaluation of field data used to establish the design criteria; drawings showing functional and technical requirements; reports of all test data compiled during the data collection and preliminary design evaluation; standard drawings (if applicable) or drawings to support structural design concepts of each typical facility or structure; proposed Construction Modes; outline project specifications; sample computation to support the design concepts and bases for project siting.

General definition for Design Basis and Criteria:
Government mandated or "professional study" approved criteria and standards used as inputs in developing design modifications. Criteria and standards in a typical design basis include; government-mandated requirements (state and federal stipulations), approved regulations, and standards and codes. The design criteria may also dictate specific computer programs necessary to implement design modifications.

General definition for Design Input:
Those criteria, parameters, basis, or other design requirements upon which final design is based, such as, design criteria and basis, performance requirements, regulatory requirements, codes and standards.

General definition for Design:
The technical and/or management criteria, parameters, and processes in sufficient detail that reports, calculations, drawings, specifications, computer programs reports, etc. can accurately reflect the requirements for structures, systems, and components.

General definition for Design Verification:
The act of confirming the adequacy, technical suitability, and accuracy of the final design. Design verification may include the use of design reviews, alternate calculations, qualification tests and demonstrations, comparison of new design with a similar proven design, or otherwise

determining and documenting that the design is suitable for its intended purpose and is compatible with the interfacing systems, structures, and components. Additionally, design verification should assess the potential that could cause or threaten to cause (a) a hazard to the safety of workers or the public health or safety and (b) serious and irreparable harm or damage to the surrounding environment.

General definition for Design Reviews (various):

- **Functional requirement reviews** serve the purpose of clarifying the functional requirements, finding conflicts between those requirements, and weighing the impact of each requirement and each requirements-related choice on performance, reliability, constructability and security.
- **Functional design reviews** verify that the functional design takes the function requirements into account and verifies the feasibility of the project with the given design. Though it is not its purpose to create a technical design, it can raise some questions that will have to be answered by that technical design.
- **Technical requirement reviews** serve the purpose of clarifying technical requirements, finding conflicts between those requirements, validating certain preliminary technological choices, and weighing the impact of each requirement and each requirements-related choice on usability, maintainability, stability and performance. They are similar to functional requirement reviews in this respect, but go further in the sense that they can also verify that the technical requirements correspond to functional requirements and identify which functional requirements each technical requirement corresponds to. Technical requirements that do not correspond to at least one functional requirement are usually a symptom of over-engineering.
- **Technical design reviews** are separated into sub-categories because the technical design is usually (and should usually be) divided into similar sub-categories.
- **Conceptual design reviews** review the design at a somewhat lower level.
- **Detailed/Critical design reviews** review the design at its lowest level: class definitions are verified, as is conformance to the technical requirements.

What are general thoughts on Design Reviews?

There is no standard method to conduct a design review, however there are attributes that a design review should include. Variations of this review are dependant upon its overall complexity. The pedigree or depth of the review as well as the people that perform the review and are involved in the process may change according to the part of the design that is being reviewed. Some things however do not change, which include the general key elements of **performance, reliability, constructability**. Additionally, due to recent world events, it is considered prudent to also focus on **security** as a key element.

Each of these four key elements can have an enormous impact on the design, the implementation and the success of a project.

Performance

The project design can have a very important impact on its performance: excessive complexity, the use of the incorrect algorithms or design patterns, the use of the wrong communication protocols, etc. can all negatively impact performance. It is therefore certainly pertinent to include performance in the points to focus on in design review.

Reliability

"Downtime affects the productive capability of physical assets by reducing output, increasing operating costs and affecting service. More and more failures have serious safety or environmental consequences, at a time when standards in these areas are rising rapidly. From the engineering viewpoint, there are two elements to the management of any physical asset. It must be maintained and from time to time it may also need to be modified."

Maintenance: Ensuring that physical assets continue to do what their users want them to do.

Constructability

The feasibility of construction should be analyzed and assessed. In performing these constructability reviews, the following should be examined: physical limitations of the work site; laydown and storage area requirements; seasonal influences on the work; physical limitations of construction equipment; physical limitations and 'handle-ability' of construction components; the owner's operational requirements; interfaces and coordination with utility companies; availability of labor and materials; long lead time items; site safety and security; safety and security of the general public; traffic impacts; aesthetics and safety aspects of barriers and buffers; noise mitigation; job site cleanliness and maintenance requirements; Quality Control, Quality Assurance, and Testing requirements.

Security

An assessment of projects that are destined to become part of Americas' critical infrastructure should be subject to review by Alaska's Division of Homeland Security and Emergency Management. This organization provides critical services to the State of Alaska to protect lives and property from terrorism and all other hazards, as well as to provide rapid recovery from all disasters.

What Design Reviews generally call for

A comprehensive design review would focus on the four key elements, i.e., performance, reliability, constructability and security. The applicable requirements, specifications, and standards would be analyzed followed by weighting and prioritizing any subsequent issue(s).

It is good to establish the pedigree of the design review up front. Depending on the depth and level of formality, the review process should result in a formal review document; however lesser levels of review can result in a simple discussion, or something in between. In general, it is a good idea to leave some kind of trace of the review, so it can be referred to later.

General thoughts when to review the Design and by Who

Design development goes through stages. Requirements tend to evolve very quickly and in a very unpredictable fashion. Therefore, reviews could be accomplished through the different stages of the design development:

Conceptual design reviews including peer reviews

Usually informal reviews. They can be performed at any time during the development process. They can be a huge benefit in the long run, as they can help in the detection and remediation of

costly early issues. This review can be performed by a technically competent reviewer that did not participate in the original design and is essentially independent from the preparation of the design. The reviewer may be in the same section or organization, and may be the originator's supervisor. The review may be performed at any point during, or at completion of, final design stages and may be comprehensive or limited in scope.

In-process design development reviews
Any in-process review of major designs should be verified by professionals (i.e., pipeline construction engineering contractor) experienced in the particular area of expertise with all results endorsed by the same. The criteria, parameters, basis, or other design requirements upon which final design is based, such as, design criteria and basis, performance requirements, regulatory requirements, codes and standards should be the bulk of this review.

Final design reviews
The final design reviews vary in complexity, number, and organization. Generally, the more that is at stake, the more detailed and complex the review should be. As with in-process design development reviews, final design reviews should be verified by professionals (i.e., pipeline construction engineering contractor) experienced in the particular area of expertise with all results endorsed by the same. The technical and/or management criteria, parameters, and processes, reports, calculations, drawings, specifications, computer programs reports, etc. that presumably accurately reflect the requirements for structures, systems, and components should be the bulk of this review.

General thoughts on how to implement Design Reviews

This is the most difficult question to answer, as the answer to this question really depends on how far you want to go – which becomes a question of optimizing your return on investment. There are two questions you need to answer to decide how design reviews should be implemented:
1. How much are you willing to invest in this process?
2. How repeatable do you want the process to be?
In the "extremely formal" review process, design reviews test conformance to an existing standard and require the existence of that standard and a set of criteria to test against. Guidelines are necessary to frame the amount of time and resources that can be assigned to design reviews.
Formality has no real impact on cost: an extremely formal review process can also be extremely cheap as all that is needed is a check-list of points to verify. Though even shallow reviews can in some cases find problems, when they do the design itself was problematic to begin with and the problems obvious. Some in-depth review is necessary for the review process to have any success at all.

Protocol Considerations for AK Gas Line Project Design Review

A. Establish a high level Design Review Authority (DRA) responsible for coordination, collaboration, and commitments. This DRA should be comprised of the following four individuals;
   - Government Representatives;
     - US Federal Government (one individual) speaking on behalf of the President.
     - State of Alaska (one individual) speaking on behalf of the Governor.
   - Owner Representative (one individual) speaking on behalf of all owners.
   - Design Contractor (one individual) speaking on behalf of the design contractors.

B. Establish a list of terms and definitions to be used consistently. (Refer to pages 3 and 4).

C. Establish Contracts and Budgets

D. Develop Teams;
   - Pipeline Project Manager
   - Environmental Analyses Team
   - Lands & Reality Team
   - Geotechnical Team
   - Engineering Team
   - Support Team

E. Develop Project Gantt Chart
   - What
   - When
   - How
   - Who

What role in Design Review has USBLM JPO played with regards to recent significant projects along TAPS?

The following discussion identifies several general issues related to Strategic Reconfiguration (SR) project currently underway on TAPS and addresses how JPO implemented the Notice to Proceed (NTP) process (Grant, stipulation 1.7) to the project. The JPO BLM intent for the NTP process was to ensure that (a) the design and construction of the SR project provided a high degree of reliability and maintainability under operational conditions, and (b) that failure modes and effects analysis were effectively implemented throughout design, construction and operation; and in so doing, would preserve and protect the environment and public health and safety as provided for by the Grant. It was agreed amongst the BLM and Alyeska Pipeline Servicing Company (APSC) that the NTP process would be applied to SR as it affects the Pipeline System or the Pipeline, as defined respectively in the Grant, and under the Federal authority of the Grant.

General Issues:

- The project, including contractors/subcontractors, must be in conformance with the Alaska Native Utilization Agreement.
- The scope of the project was still only broadly defined. The NTP process would apply to the project, as it required design basis changes, and as a means of organizing other permits or plan changes associated with the project. Thus the scope of the NTP could only be defined broadly at that time.
- Consider Cold Restart issues, per discussions between Alyeska and JPO managers and executives.
- Documentation for Management of Change would have to meet Alyeska's minimum requirements as determined in response to AAI 1955 issues.
- The design methodology should be appropriate to allow JPO to focus review emphasis on appropriate failure management analyses rather than a detailed review of final and intermediate design products.
- Other State, Federal and local requirements would be appropriately included as items identified as either Preliminary Design Submissions or as parts of the Application for NTP, including those for the US Department of Transportation, Department of Environmental Conservation, Environmental Protection Agency and Regulatory Commission of Alaska. JPO wanted to make every effort to facilitate coordination and communication with the government agencies involved in individual permits or approvals, but it remained Alyeska's responsibility to meet the requirements of each agency.

NTP Process Requirements:

The BLM Authorized Officer required that the Notice to Proceed (NTP) Process - provided for in Stipulation 1.7 of the Grant - be implemented for the TAPS SR Project. As the scope and schedule of the project became more defined and detailed, the elements required for the application for NTP would become more refined and finalized. JPO believed the NTP requirements (as defined in Stipulation 1.7) were compatible with the phases dictated by the project schedule (see attached flow chart depicting federal process). NTPs would be issued addressing the project as a whole, and individual facilities or systems as needed.

PHASE ONE - Preliminary Design Submissions

In the initial phase the entire project was addressed as a whole. During this phase, conceptual proposals were developed into a coherent scope and plan that produced the more-detailed designs required to evaluate the project. The NTP requirements for a schedule, scope, and quantity of submissions and applications (Stipulation 1.7.1.4), and a System Network Analysis Diagram (Stipulation 1.7.3) applied. Because the art of project management, and engineering analysis and design has continued to evolve since the Grant was originally written, the term Summary Network Analysis Diagram (SNAD) was broadly interpreted to those documents that addressed the timing and sequence relationships and systems integration issues of the project, in other words, a master schedule including critical path activities and milestones, to include support requirements and infrastructure systems. This phase included, but was not limited to, the development of each of the following:

1. Design methodology which provided failure management analysis;
2. Design Criteria that was used as the foundation for design development;
3. QA/QC methodology that ensured that Final Design and Construction Systems adhered to Design Criteria and identified failure management elements; and
4. Permitting and compliance matrix for all Grant requirements and other regulatory requirements.

Section 9 of the Grant addresses the Quality Assurance program. Other issues to be addressed during this phase included necessary amendments to the Oil Spill Contingency Plan (OSCP) and human resource plans as applicable to the OSCP and the Alaska Native Utilization Agreement. Other plans, contingency plans or otherwise, that either affected or would be affected by the project was to be identified and scoped, including, for example, housing and sanitation, public safety, worker safety, transportation, and waste disposal (see Stipulation 1.7.3.).

The culmination of the first phase resulted in Preliminary Design Submissions (Stipulation 1.7.2.1). The Preliminary Design Submissions included engineering design work, supporting analysis and any of the requirements of Stipulation 1.7.3.1 (SNAD). The BLM Authorized Officer approved these submissions in writing according to Stipulation 1.7.3.2. JPO's focus was on the development of a mutual understanding of the requirements for acceptable Preliminary Design Submissions, avoiding specialized engineering submittals to the government.

PHASE TWO - Application for NTP

Phase two included the development of site specific, detailed designs and plans as previously identified. After the approval of the Preliminary Design Submissions, the number of individual NTPs required were identified by facility or by system. The elements required for the Applications for NTP (Stipulation 1.7.4.3) were prepared at that time, including engineering submissions, permit applications, ramped down station clean up plans, and general planning requirements. Essentially, all documents and items that had to be approved or reviewed prior to initiation of construction were included here.

As stated above, the specific requirements and scheduled milestones were further defined as the scope of the project was further refined.

As the individual facility and system designs were detailed, the required permit applications identified in the first phase were to be completed. Any issues related to the surface removal of facilities were to be resolved. Coordination and communication with individual agencies was significant. This phase culminated with the issuance of 22 Notices to Proceed that allowed construction to begin.

Stipulation 1.7.4.5 and 1.7.4.6 set the maximum review period of an Application for NTP at 90 days, subject to requests for additional information. Therefore, if an application was submitted by the end of September 2004, and no additional information was required, the review and approval was agreed to be complete by the end of December 2004.

PHASE THREE - NTP Approval and Monitoring

Construction and transition to operation (startup) was considered as one phase, despite the functional differences in activities. Punch list items identified while processing the Application for the NTP were addressed during this phase, as appropriate. JPO monitoring of Phase 3 included project QA/QC review, spot inspections, and verification of implementation of failure management elements. JPO field monitoring generally followed the procedures and protocols that we have used while monitoring other recent projects and activities such as mainline valve replacements and associated pipeline shutdowns. Modified facilities and new facilities were subject to the same reliability centered maintenance requirements contained in the memorandum of agreement between the Alyeska Pipeline Service Company and the Joint Pipeline Office dated June 27, 2002.

NTP Process Flow Chart
DRAFT
June 17, 2003

Phase One

No Construction without AO/SPC Approval (Applies to Pipeline System) Grant Section 10, Stip 1.7.1.1

Requires site specific details for project

Step 1, Pre NTP - Stip 1.7.1.4
AO/SPC & APSC must agree to:
- Schedule
- Scope
- Quantity of Submissions
- # of Applications & permits

Step 2, Pre NTP - Stip 1.7.2
Preliminary Design Submissions
- Applies to each segment (piece or PS)
- Preliminary design @ pump stations
- 30 day refview by JPO

(Can ask for more info if needed)

Step 3, Summary Network Analysis or equivalent - Stip 1.7.3
- Complete Project
- All activities anticipated
- Data Collection (Env. & Eng.)
- Submittal and Approval activities
- Pre-construction, construction & Post-construction activities
- Other pertinent data

Update on 30 day intervals or sig. changes

Overall Reconfiguation Project

Step 4, Application for NTP - Stip 1.7.4
Site Specific NTPs
Preliminary design Required and Approved by AO/SPC -
See Preliminary Design detail for:
- Segment,
- Pump Station

Step 5, Survey Data - Stip 1.7.4.2

Step 6, Application for NTP - Stip 1.7.4.3
- Final Design
- Environmental Studies
- G/L Compliance Plan
- Detailed SNAD
- Schedule (state & fed permits)
- Construction sequence
- Maps (Boundary of temp. use areas

Step 7.
AO/SPC Review Application
Approves NTP - Stip 1.7.4.5
90 days from reciept application, or if more information clock starts then

NEPA Analysis (Federal)

Step 8,
Modifications - Stip 1.7.4.4
AO/SPC may modify if environmental conditions or technical developments warrent

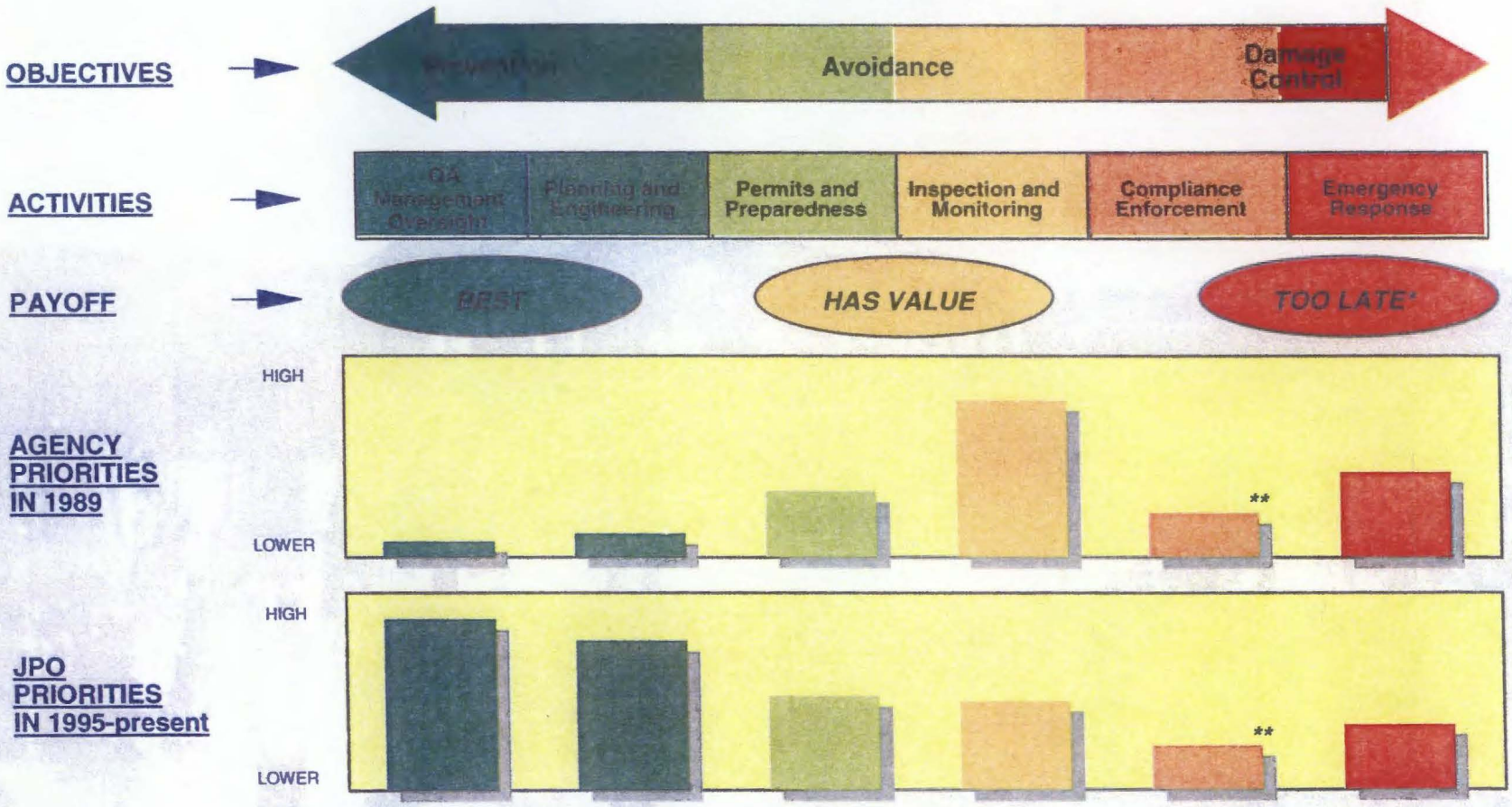
Step 9, Approves NTP - Stip 1.7.4.5
90 days
- from receipt application
- if more information is required, clock starts on receipt

Construction & start-up oversight

Phase 2

Phase 3

JPO REFOCUSED TAPS OBJECTIVES AND PRIORITIES



* Too late to benefit constituencies a great deal, but required to mitigate damages stemming from poor QA

** Priority for all agencies involved. Enforcement has some preventive value

ALL REPORTS

Each Report needs to include the following:

- A detailed description of existing conditions related to the subject matter
- An explanation of the specific impacts under each report topic as they relate to
    - Climate Change
    - Health Impacts
    - Construction activities
    - Operation and maintenance
    - Cumulative Impacts
- Proposed mitigation; both on sight and off sight
- A complete reference list of all source material used and/or referred to

REPORT 1 *General Project Description*

- Provide a description/map of the proposed project facilities including all related facilities that are not in the right-of-way such as
    - Access roads
    - Communication sites
    - Mineral material sites
    - Temporary storage sites
    - Construction camps, etc.
- Any associated non -jurisdictional facilities
- Provide detailed typical construction right-of-way cross-section diagrams showing information such as widths and relative locations of existing rights-of-way, new permanent right-of-way, and temporary construction right-of-way. Also include detailed typical compressor station site plans (see Report 8)
- Summarize the total acreage of land affected by construction and operation of the project including all affected land owners (see Report 8)
- Use the U.S. Geological survey topographic quadrangle maps (7.5-minute quads)
- Aerial photos/alignment sheets
- Provide a web based geographic information system (GIS) to contain all the relevant resource data with access for public and agency users
- Include for each alternative that needs to be considered
    - Routes
    - Road crossings
    - Pipeline crossings
    - TAPS Proximity issues and plans
    - Camp Locations and Operations plan
    - Proposed project and related facilities
    - Fault line crossings
    - Major river crossings
- Construction/restoration methods
    - Design basis and criteria

- Conceptual design
- QA/QC plans
- Equipment storage
- Welding plan
- Construction modes
- Quality plan and procedures
- Re-vegetation plans (see Report 3)

- Labor and Workforce Needs
  - Special skills
  - Training needs
- Required Federal & State permits/approvals in a matrix format
- Fit willing and able data
  - Evidence of capability to finance construction, operation, maintenance and termination of the project
  - Evidence of technical ability to perform the design, construction, operation, maintenance, termination, and restoration activities
  - Proof of financial guarantees for any liability concerning construction, operation, maintenance, termination, and restoration activities
  - Evidence of a complete secured Right-of-Way alignment from the start to the termination of the project including all delivery point(s)
  - Evidence of sufficient gas purchase and sales contracts to support the project

REPORT 2 ***Water use and Quality***

Provide a plan that demonstrates or insures that construction, operation, and maintenance activities will not violate applicable air and water quality or facility siting standards

Groundwater

Describe underlying aquifers including public or private supply wells or springs within 150 feet of construction

- Type
- Depth
- Current and projected uses
- Average yield
- Know or suspected contamination problems
- Water quality

Surface Water

Identify all water bodies crossed and the water quality classification

- Provide beginning and ending milepost and width of water body being affected
- Provide any fisheries type that are present or other species that may be impacted
- Known pollutants (water or sediments)
- Any potable water intakes up to 3 miles downstream

- Planned construction mode(s) for crossing floodplains and water bodies
- Describe typical staging area requirements for waterbody and wetland crossings
- Requirements for river training structures or any bank armament(s)
- Potential or known aufeis locations including beginning and ending milepost and impacts of construction, operation or maintenance of the pipeline system on the environment at these locations
- Identify watershed areas, designated surface water protection areas, and sensitive water-bodies crossed including beginning and ending milepost

Wetlands

Identify all wetlands affected by the project

- Location by beginning and ending milepost
- Length/acreage of disturbance and any compensations for wetland losses
- Wetland classification
- Proposed methods for restoration of all wetlands disturbed

Describe proposed construction and restoration methods.

- Clearing plan
- Blasting plan including effects on wells, springs, and wetlands
- Erosion and sediment control plan on a mile by mile basis (see resource report 3)
- Restoration plan including any mitigation proposed
- Access Road and work pad, includes snow/ice roads

Identify all sources of hydrostatic test water needed

- Provide the quantity of water required
- the methods for withdrawal
- the treatment and location of discharges
- how any waste products generated will be handled

REPORT 3 *Fish, Wildlife, and Vegetation*

Provide a plan to protect the interests of individuals living in the general area of the right-of-way issued related to their uses of fisheries, wildlife, and biotic or other subsistence resources

Fisheries

- Fishery types for each surface water body (anadromous, non-anadromous and special concern)
- Define zones of restricted activities for each species showing the specific restrictions and when they apply
- Fishery impacts and mitigation measures
- Federally listed essential fish habitat (EFH)
    - Consultations with USF&W and NMFS
    - EFH assessment

Wildlife

- Description of Wildlife and their habitats include the typical species with commercial, recreational, and aesthetic values of each
- List sensitive wildlife species and habitats
- Significant biological resources affected on a mile by mile basis
    - Wildlife refuges, state wildlife areas, or preserves
    - All federal/state designated study areas or areas of critical environmental concern (ACECs)
    - Identify impacts and proposed mitigation(s) both on and off sight
    - Human and carnivore interaction plan
    - Complete geophysical survey
    - Any effects of blasting, sedimentation, or changes to substrates and the mitigations of such

Vegetation

- Describe major vegetative cover types and their acreages include any species or habitats of special concern
- Provide a rehabilitation plan for completion of the construction phase of the project
- Define proposed vegetation maintenance practices
- Identify impacts and proposed mitigation(s) both on and off sight
- Provide an avoidance plan from the spread of invasive species on all disturbed areas. Include any plans for pesticide or herbicide use

Threatened/Endangered Species

- List all potentially affected T and E species
- Complete any required species surveys and file result with the application
- Provide habitat surveys if species surveys are impractical
- Provide documentation of all appropriate agency consultations

REPORT 4 *Cultural Resources (stamped confidential)*

- Provide documentation of consultations with
    - Agencies; both state and federal
    - Natives; including tribal, regional, or village
    - Private

- Describe detailed resources survey investigations including project map with mileposts clearly showing boundaries of all areas surveyed (ROW, extra work areas, access roads, etc) with corridor widths surveyed clearly marked
- Identify project area of potential effect (APE) in terms of direct and indirect effect to known cultural resources
- Provide an overview report with narrative summary of results, cultural resource surveys completed, identified cultural resources and any cultural resource issues
- Provide a project specific ethnographic analysis
- Identify all areas where landowners denied access and lands were not surveyed

- Provide all reports generated with comments for all entities consulted
- For all cultural resource surveys include agency comments on eligibility recommendations for the resources identified
- Plans for mitigation(s) both on and off sight
- Accession and curation plans of all artifacts removed
- Provide an unanticipated discoveries and consultation plan for construction, operations, maintenance, and termination phases of the project.

REPORT 5 ***Socioeconomics***

- Describe existing socioeconomic conditions for all project areas
- Identify and discuss impacts on
    - Employment
    - Transportation
    - Local government services
    - Local tax revenues
    - Housing
    - Telecom
    - Other relevant factors within the project areas

- Provide analysis of construction, operation, and maintenance impacts on local communities and existing infrastructure
- Describe on-site manpower requirements, including number of construction personnel
- Estimate total worker payroll and material purchases during the construction and operation phases
- Provide plan for ensuring environmental justice
- Subsistence impacts and mitigation(s) both on and off sight

Provide a plan to control or prevent damage to public and private property as well as hazards to public health and safety

REPORT 6 ***Geological Resources***

- Describe Geologic Conditions and Hazards
    - Earthquake potential, seismic hazard mapping, etc.
    - Faults Crossings
    - Slope Stability
    - Geomorphic Processes related to Soils and Permafrost
    - Glaciers
    - Glacially dammed Lakes
    - Floods
    - Volcanoes
    - Tsunami

- Describe Mineral Resources
    - Identify the location (by milepost) of the mineral resources and any planned or active mines crossed
    - Provide detailed narrative of mineral resource needs for construction and maintenance of the project

- Provide mining and reclamation plans
- Discuss the need for and location where blasting may be necessary

- Describe Paleontological Resources
  - Identify any sensitive paleontological resource areas by mile post
  - Summarize the physiographic and bedrock geology of the project areas
  - Proivde site preservation plans for identified sites
  - Provide any excavation, accession, and curation plans
  - Describe the mitigation plans both on and off site

REPORT 7 *Soils*

- Identify, describe, and group soils types milepost by milepost to a depth 3 feet below the expected freeze zone of the installed pipeline or constructed facilities
- List the soil associations milepost by milepost and describe their characteristics
- Determine the acreage of prime farmland soils that would be affected by the construction, operation, and maintenance of the project
- Describe soil impacts and mitigation(s) both on and off sight
- Identify permafrost areas and types milepost by milepost
  - Including specific temperatures and variations along the alignment
  - Indicate if the soils are thaw stable verses thaw unstable for each area
  - Indicate areas are prone to soil liquefaction, unstable slopes, soil settlement or heaving

REPORT 8 *Land Use, Recreation and Aesthetics*

Land Use

- Classify and quantify land uses affected by
  - Pipeline construction and permanent rights-of-way
  - Extra work and stating areas
  - Access roads
  - Communication sites
  - Pipe and contractor yards
  - Aboveground facilities including acreage affected by construction and operation, acreages permitted or purchased, and use of lands not required for operation

- Identify milepost by milepost all locations where the ROW and permitted areas would partially coincide with existing ROW(s), be adjacent to existing ROW(s), or where it would be outside of existing ROW(s)
- Provide detailed typical construction ROW cross-sections for new permanent and temporary pipelines and facilities
- Summarize the total acreages of land affected by construction and operation including tract number and ownership corresponding to the alignment sheets
- Identify by milepost all residential or commercial/business developments and time frames for construction

- Identify any third party construction projects that are required to support the success of this project such as State road or bridge upgrades. Include mitigation of existing structures as a result of the construction activities of the project
- Identify any special land uses affected by the project
- Identify by milepost any federal, state, local and private conservation lands
- Demonstrate that applications for ROW or other land uses have been filed with the appropriate land managing agencies

Recreation

- Identify by milepost all natural, recreational, or scenic areas and all registered natural landmarks within a quarter mile of the project
- Identify all facilities within coastal zone management areas and evidence of a consistency determination or that a request for determination has been filed
- Identify all Wild and Scenic Rivers crossed or in close proximity to the project
- Provide mitigation plans for impacts to identified recreation facilities

Aesthetics

- Provide a visual resources assessment
- Identify by milepost all residence within 50 feet the outer limits of the construction ROW or extra work areas
- Provide mitigation proposals including both on and off site

REPORT 9 ***Environmental and Solid Waste***

For Compressor Stations and Conditioning Facilities

Air Quality

- Describe existing air quality in the vicinity of the project
- Identify the attainment/non-attainment status for all criteria pollutants
- Quantify proposed emissions of compressors, gas conditioning facilities or other equipment plus any construction equipment emissions including nitrogen oxides and carbon monoxide
- For equipment provide fuel consumption rates and annual hours of operation
- For each compressor or conditioning facility site provide horsepower, type, and energy source for all buildings and major components such as compressors, coolers, chillers, heaters, and controls
- Summarize air quality impacts
- Identify all Federal Class I areas, visual impairment areas and projected vapor explosion zones associated with a maximum potential release of gas and all potential ignition sources
- Include any state air permits that have been issued and accompanying permit requirements

Noise

- Quantify existing noise levels at all noise sensitive areas (NSAs)or regulated noise areas
- Describe existing noise quality in the vicinity of the project

- For proposed compressor station sites, measure or estimate the existing ambient sound environment based on current land uses and activities
- Include a plot plan that identifies the location and duration of noise measurements
- All surveys must identify the time of day, weather conditions, wind speed and direction and noise sources present during each measurement
- Identify NSAs by distance and direction from compressor and conditioning facilities
- Calculate noise impacts to nearby NSAs

Solid Waste Plan

- Waste generation and disposal plan
- Recycle Plan
- Hazardous waste generation and disposal plan
- Human waste and sewage treatment plan
- Overburden and excess material disposal plan
- Include any state solid waste permits have been issued and accompanying permit requirements

REPORT 10 *Alternatives*

- Discuss the no-action alternative and the costs and benefits associated with the alternative
- Address the effects of energy conservation or energy alternatives on large projects
- Identify systems alternatives considered during the identification of the project
    - Provide rationale for rejecting or accepting each alternative
    - Discuss the costs and benefits associated with each alternative
- Identify the major and minor route alternatives considered to avoid impact on sensitive environmental areas and include sufficient comparative data to justify the selection of the proposed route
- Identify alternative sites considered for major new aboveground facilities and provide sufficient comparative data to justify the selection of the proposed site
- Identify alternatives sites considered for temporary/construction facilities and provide sufficient comparative data to justify the selection of the proposed site

REPORT 11 *Reliability and Safety*

- Describe how the project system and related facilities would be designed, constructed, operated, and maintained to minimize potential hazards to the public from the failure of system components.
- Discuss the use of reliability centered design and maintenance methods for the project
- Discuss the factors and assumptions for how the following subsystems play into establishing the overall reliability and safety of the system
    - Pipeline material selection
    - Valve Spacing
    - Crack Arrestors
    - Cathodic Protection

- Provide wildfire and facility fire plans
- Discuss approach to security and access, include approach to crossing or shared facilities with other users
- Describe safety design features and plans for protecting workers and the public from sudden ruptures and slow degradations during construction, operation, and maintenance of the system. Include the following:
    - Strain and stress analysis reports for pipeline materials used including test reports for use in arctic conditions
    - Cold environment conditions and their effects on workers and equipment
    - Any proposed mitigations to enhance safety
- Discuss approach to a communication system for both equipment and workers. Include redundant systems
    - Microwave, fiber optic, and satellite options
    - Tower locations
    - Site plans
    - Connection points
    - Agreements

REPORT 12 ***PCB Contamination***

- Provide a review and survey as needed for all sites used to determine the presence or absence of PCBs
- For projects sites determined to have PCBs provide a statement that activities would comply with an approved EPA disposal permit or with the requirements of the TSCA
- For sites determine to have been contaminated with PCBs, describe the status of remediation efforts completed to date

REPORT 13 ***Engineering & Design Material***

- Provide detailed plot plans showing the location of all major components to be installed, including compression, chilling, cooling, pretreatment, transfer piping, valves, special designs (faults, permafrost, bridges, etc), crack arrestors, metering, delivery points, vent stacks, pumps, power, and auxiliary or appurtenant facilities
- A detailed layout of the fire protection system showing the location of fire water pumps, piping, hydrants, hose reels, dry chemical systems, high expansion foam systems, and auxiliary or appurtenant facilities
- Provide a layout of the hazard detection system showing the location of combustible-gas detectors, fire detectors, heat detectors, smoke or combustion product detectors, and low temperature detectors. Identify those detectors that activate automatic shutdowns and the equipment that would shutdown. Include all safety provisions incorporated in the facility designs, including automatic and manually activated emergency shutdown systems
- Provide a detailed layouts of any spill containment systems showing the locations of impoundments, sumps, subdikes, channels, and water removal systems
- Provide manufacture specifications, drawings, and literature for each major component

- Provide up-to-date piping and instrumentation diagrams of the system and for each site, include milepost locations of major facilities, special design locations, pipeline crossings, Cathodic protection points, major river crossings, etc
- Include a description of the instrumentation and control philosophy, type of instrumentation (pneumatic, electronic), use of computer technology, and control room displays and operation. Also, provide schematic diagrams of the entire process flow system, including mass, material, and energy balances
- Provide a detailed layout of the fuel gas system showing all taps with process components
- Provide copies of the company, engineering firm, or consultant studies that show the engineering planning, or design approach to the new system and facilities
- Provide the engineering information on major process components related to the above bulleted items of this resource report to include as applicable function, capacity, type, manufacturer, drive system (horsepower, voltage), operating pressure, and temperature
- Provide company manuals and procedures to be used during the construction, operation, and maintenance phases of the project
- Provide engineering designs for the electrical power generation systems, distribution systems, emergency power systems, uninterruptible power systems, and battery backup systems
- Identify all codes and standards under which the system will be designed and any special considerations or safety provisions that were applied to the design
- Provide a list of all permits and approvals from local, State, Federal agencies, also, from Private entities and Native American or Indian tribes that are required prior to and during construction and operation of the system. Include the status of each, date filed, date issued, and any known obstacles to approval. Include a description of data records required for submission to such entities and transcripts of any public hearings by such entities. Also provide copies of any correspondence relating to the actions by all or any of the entities regarding their approvals
- Provide specifics as they relate to resource protection, health and safety, fire, security, building codes, and other regulations pertinent to the project
- Provide specific data requirements for seismic, leak detection, and security reviews
- Identify confidentiality and appropriately mark any documents with the appropriate FOIA exclusion for treatment of confidentiality

U.S. Department
of Transportation

Pipeline and Hazardous Materials Safety Administration

1200 New Jersey Avenue, SE
Washington, D.C. 20590

January 26, 2009

Ms. Drue Pearce
Federal Coordinator
Office of the Federal Coordinator
Alaska Natural Gas Transportation Projects
1101 Pennsylvania Avenue, NW, 7th Floor
Washington, DC 20004

Dear Ms. Pearce:

Though relayed to your staff informally just before the holidays, I am writing today to clarify the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) role in oversight of any proposed natural gas pipeline in Alaska. I am requesting that this information be reflected in revisions to the draft "Regulatory Analysis of Issues Related to the Development of an Alaska Gas Pipeline Project Serving the North American Market" prepared for your office by Argonne National Laboratory.

Specifically, my comments today are focused on clarifying the respective roles of PHMSA and the Department of Interior's Bureau of Land Management (BLM) regarding oversight of the design, construction and operation of a prospective Alaska gas pipeline. PHMSA and BLM have an excellent working relationship in Alaska and elsewhere in the United States. This relationship has been developed and repeatedly demonstrated through our work together on many pipeline matters throughout the years. We fully expect that this relationship will continue on any and all Alaska gas pipeline projects, and expect to meet periodically with the BLM to ensure that the public and environmental protections required by our respective authorities are dutifully carried out in a coordinated fashion.

As we would on any major project of mutual interest, PHMSA and BLM will collaborate during the design and construction phase of the project. However, PHMSA will take the lead on safety-related pipeline design and construction issues. Any gas pipeline must be built to the design and construction standards in 49 C.F.R. Part 192. Any deviations from these standards will require a special permit from PHMSA. If any special permits are issued, they would be published in the Federal Register and subject to public comment.

PHMSA and BLM generally agree that once a gas line is operational, PHMSA will take the lead on pipeline safety and integrity oversight and enforcement. PHMSA has broad authority to carry out this responsibility under the Pipeline Safety Laws, 49 U.S.C. § 60101, et seq., and the implementing regulations in 49 C.F.R. Parts 190-199. We stress that the oversight framework will be different than has been the case on the Trans Alaska Pipeline System (TAPS) oil pipeline, which began operation in 1977. Under the authorities in place at that time and in light of a then

much smaller DOT pipeline program, BLM took a larger role in pipeline integrity issues. Since that time, PHMSA's pipeline safety program has been substantially fortified, making it the natural leader on pipeline safety and integrity issues. Identification of PHMSA's lead role in this regard does not in any way suggest an intent to diminish BLM's responsibility as the land managing agency or authority regarding right-of-way issuance.

PHMSA and BLM plan to meet on February 3rd to review the details of PHMSA's design, construction, and operational oversight authorities, and related BLM requirements. Our goal is to establish and memorialize much more detailed expectations on agency roles, as well as to design plans to address any gaps that remain. As part of this review, we will also identify any resource issues and work to develop solutions that best utilize our respective expertise.

I hope this letter helps clarify PHMSA's roles and responsibilities relative to those of the BLM, and is responsive to requests from your office for our views on the perceived overlap. We look forward to working with you on the oversight of this nationally important pipeline project.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

cc: Ron Montagna
William Gute

THE INGAA FOUNDATION, INC.

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MEMORANDUM

TO: INGAA Foundation Members

FROM: Richard R. Hoffmann, Executive Director

DATE: January 15, 2009

SUBJECT: Guidelines for Parallel Construction of Pipelines

In 2007, Foundation members elected to address the challenges posed by parallel construction near existing pipelines by providing guidance to designers, constructors, operators and regulators to prevent personal injury or property damage to either the existing or new pipeline. Workshops were held in July 2007 and November 2007 to identify the means to address the concerns that arise during parallel construction, and again in April 2008, to define a path forward in developing guidelines for parallel construction.

Guidelines were developed during 2008 using a consensus process involving a working group of Foundation members directed by a steering team chaired by Dan Martin of El Paso. The guidelines draw upon the experience of the full breadth of INGAA Foundation members as well as leading practices used throughout the industry. These included the Common Ground Alliance (CGA) Best Practices and API 1166 – Recommended Practice on Excavation Monitoring and Observation.

The guidelines are now complete following review by both the broader Foundation and INGAA membership and our federal partners at the FERC, U.S. DOT-PHMSA, U.S. Army COE, U.S. DOI-BLM and U.S. Forest Service. The guidelines can be found on the INGAA Foundation web site at www.ingaa.org/

The Work Group strongly encourages members to adopt and implement these guidelines, incorporating them into procedures and work practices as well as contract agreements addressing parallel construction of pipelines.

You will notice that the guidelines are designated: 'Version 1'. These guidelines are considered to be a living document, and we expect to evaluate their effectiveness periodically and explore further refinements in the spirit of continuous improvement and our commitment to pipeline safety.

Guidelines for Parallel Construction Of Pipelines

INGAA Foundation

December 2008
Version 1

INGAA Foundation Ad-Hoc Construction Committee

Steering Committee:

El Paso	Dan Martin, Chair
INGAA Foundation	Rich Hoffmann
Willbros	John Allcorn
Willbros	Curt Simpkin
Alliance	Harold Kraft
Williams	Mario DiCocco
Mears	John Fluharty
CenterPoint Energy	Debbie Ristig
Kinder Morgan	Dwayne Burton
Sheehan Pipe Line Construction	David Sheehan

Parallel Construction Guidelines Development Work Group:

Alliance Pipeline	Harold Kraft
INGAA Foundation	Rich Hoffmann
Mears	John Fluharty
Transcanada	Mark Domke
Williams	Mario DiCocco
Williams	Tim Powell
El Paso	Mike Morgan
El Paso	Pat Carey
Bi-Con Services	Denny Patterson
CenterPoint Energy	Erik Dilts
Transcanada	Tracy Schultz
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INGAA Foundation
Guidelines For
Parallel Construction of Pipelines
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Version 1

I. Introduction

We are in a period of increased pipeline construction activity that is expected to continue through 2011, and possibly beyond. The Federal Energy Regulatory Commission (FERC) and other Federal agencies are encouraging and sometimes requiring interstate natural gas pipeline operators to use existing rights-of-way (ROW), where possible, when proposing routes for new construction[1]. This is occurring throughout the country, even in more rural, sparsely populated areas[2]. Recently, there have been a series of incidents where existing pipelines have been damaged during **parallel construction.**

Foundation members have elected to address the challenges of this increased construction and the current regulatory environment by providing guidance to designers, constructors, operators and regulators to prevent personal injury or property damage to either the existing or new pipeline when new construction is undertaken parallel to existing facilities. Workshops were held in July and November 2007 to identify the means to address the concerns that arise during parallel construction, and again in April and June 2008, to define a path forward in developing guidelines for parallel construction.

The guidelines primarily focus on precluding unsafe conditions and reducing the occurrence of incidents of damage or personal injury during parallel construction adjacent to existing energy pipelines. The members recognize this approach can be applied to other linear facilities. The members believe, however, that expanding this effort to other facilities, such as electric transmission, sewer and water facilities, and telecommunication requires a more long-term initiative.

These guidelines were developed using a consensus process by a work group formed by Foundation members. The guidelines draw upon the experience and leading practices of the full breadth of INGAA Foundation members as well as practices used throughout the industry, including the Common Ground Alliance (CGA) Best Practices and API 1166 – Recommended Practice on Excavation Monitoring and Observation. The measures proposed in this document tie to those used as a standard practice in FERC proceedings and

[1] Federal Energy Regulatory Commission regulations (18 CFR §380.15[d][1]) pertaining to pipeline siting and maintenance requirements state that use, widening, or extension of existing rights-of-way must be considered in locating proposed facilities.

[2] The Energy Policy Act of 2005, Section 368, stipulates the need for construction of pipelines in common corridors, the most extensive of which is the West-Wide Corridor Study. This exhaustive study, now undergoing final review, before being issued, will amend federal land use plans across the West.

industry recommended practices. They constitute minimum measures and nothing prevents the parties from agreeing to additional or more stringent measures.

Whether or not construction is considered to be "parallel" is established by the beginning and ending of the **Encroachment Area**. The work group considered and ultimately rejected specifying a paralleling length threshold under which these guidelines will apply. The group arrived at a consensus that application of these guidelines was appropriate regardless of the length the existing and new facilities are in parallel.

While the primary emphasis of these guidelines is on the interaction between existing pipeline operators and those operators planning to construct in a parallel fashion, it is expected that contractors working on behalf of the pipeline operators, including environmental and survey professionals, design engineers, construction contractors, and operators of excavation and earth moving equipment will engage in work practices that are in conformance with these guidelines, and apply vigilance in identifying unanticipated circumstances that may indicate a problem. It is encouraged that these guidelines be referred to in contract documents executed with contractors and subcontractors.

II. Definitions

A. Parallel Construction is construction of new facilities in close proximity to existing facilities. The extent of Parallel Construction is established by the beginning and ending of the Encroachment Area. Application of the guidelines is appropriate regardless of the length the existing and new facilities are in parallel.

B. Encroachment Area is the area where the limits of disturbance are within 50 feet of the centerline of the existing facility, or within the existing facility's right-of-way (ROW) or other easement, whichever is greater. Additional distance may be required for other considerations, such as topography, side-hill lays, cathodic protection, environmental or engineering conditions, size of pipe and operating equipment, and topography.

C. Active Excavation Area is an area where the edge of the disturbance is within 25 feet of the centerline of existing facilities, unless on the ground situations stipulate additional clearance above ground as well as underground.

D. Excavation Tolerance Zone is an area within two feet (24 inches) of the existing facilities, or the distance mandated by state law where applicable, whichever is greater. (More conservative than CGA Practice 5-19 that stipulates 18 inches.)

E. Existing Facility Representative is the person designated by the existing facility's operator to inspect when excavation equipment is operating in the Active Excavation Area. (Consistent with CGA, Excavation Practices, Practice 5-18.)

F. Designated Contact is the single point of contact identified within the existing facility and new pipeline company.

G. Due Diligence Corridor is equal to the width of the proposed survey corridor plus 50 feet on each side. The survey corridor is the corridor width typically used for biological surveys, for example.

III. Guidelines for Consideration:

A. In General

INGAA Foundation Members engaged in parallel pipeline construction including operators of existing pipelines, the new pipeline, designers, constructors, surveyors, locators, environmental professionals, excavators and consultants will embrace the following:

"Damage prevention is a shared responsibility. Whether you are a facility owner/operator, locator, design professional, one-call center employee, excavator/contractor or other stakeholder, ensuring safety of those who work or live in the vicinity of underground facilities and protecting our vital services is everyone's responsibility." (Common Ground Alliance Best Practices, Version 5.0, Inside Cover Page, March 2008)

B. Preconstruction

1. As part of initial route selection, the new pipeline operator will perform due diligence to identify existing underground and adjacent aboveground structures and determine the service (pipeline [oil or gas], electric power line, sewer, water, telecommunication, or cable), size (diameter), materials of construction (steel, plastic, etc.), status of service (active or abandoned), pressure (or voltage) in a **Due Diligence Corridor**. The **Due Diligence Corridor** can be adjusted with respect to the centerline, based on the existence of wetlands, vegetative cover, topography, geology, pipe diameter, and required work area, among other factors.

   The new pipeline operator will contact the operator of the existing facility and arrange for a Planning and Design review meeting. The respective organizations will establish single points of contact (referred to as **"Designated Contacts"**). The intent of the Planning and Design review meeting is for the parties to exchange key information about their existing and proposed new facilities, to work through and agree upon respective work processes and procedures, to establish clear lines of communication, and to discuss any other details needed to assure that the new facility may be constructed safely and efficiently, while simultaneously protecting the existing facility from damage. The meeting will address items such as placement of ROW; location in ROW; types of easements (exclusive, or open and undefined); construction methods and practices; unique landscape, terrain, or environmental situations; separation distances; and ground disturbance timing. The contact should be initiated no later than the filing of the request to begin the Pre-filing Process at FERC, or as early in the routing process as possible. (Refer to Planning and Design Review Meeting Agenda – Attachment A).

2. It is the new pipeline operator's responsibility to gain access for the purpose of conducting a survey. Subsurface Utility Engineering (SUE)[3] Quality Level C will be used for those facilities nearby, that is, making use of records tied to aboveground facilities and indirect locating as needed.

3. For new pipelines within the **Encroachment Area**, the new pipeline operator will enter into an agreement with the existing facility operator in the form of an encroachment agreement, if requested by the existing facility operator. The new pipeline operator will incorporate the relevant terms of the encroachment agreement into all supporting prime and sub- contract agreements.

4. The encroachment agreement will specifically address cathodic protection facilities. Coordination between parties will include the existing and new cathodic protection systems, location of concentrated ground beds, distributed anodes, test stations, potential interference, etc.

5. The new pipeline operator will identify areas where blasting will be used along the route within 300 feet of the existing facilities. A blasting plan must be developed and agreed to by both parties.

6. In preparation of conducting a corridor survey, the new pipeline operator will contact the existing facility operator or use the one-call system where a design ticket is available. The one-call request will include specific starting and ending points using GPS coordinates to ensure that any **Encroachment Areas** are included.

7. In addition to state requirements for one-call center notification, the existing facility **Designated Contact** will notify the new pipeline **Designated Contact** that there is no conflict or that the line will be marked (referred to as "positive response"[4]. (Consistent with CGA, Locating and Marking, Practice 4-9.)

8. The existing facility operator will, or by delegation, cause[5] its facilities to be located and marked using appropriate line location methods that will assure the accurate placement of the markers.

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[3] - ASCE 38-02, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, 2002.

[4] - A one-call request at this stage results in a design ticket in some states. In some states this requires only an exchange of information. It is the intent of this agreement that existing lines be marked if they are within the Due Diligence Corridor.

[5] - The phrase, "will or cause" is used to indicate that the existing operator may elect to locate and mark the line, or through agreement allow the new pipeline or it's agent to locate and mark the line.

9. Markers will be placed in the **Due Diligence Corridor** at a maximum spacing not to exceed 200-foot intervals or line-of-sight, whichever is closer, and all points of inflection ("PIs").

10. The new pipeline operator will regularly communicate and coordinate with the operators of the existing facilities concerning the status of the project for the duration of the project. (Consistent with CGA, Planning and Design, Practice 2-4.)

C. Construction

1. The new pipeline operator will contact the existing facility operator at least 30 days prior to initial ground disturbance.

2. The new pipeline operator will provide the existing facility operator with a proposed schedule for construction. The new pipeline operator will provide weekly updates during the construction process until such time that the new pipeline's activities are no longer in the **Encroachment Area**. The end of the process will be specified as the completion of final restoration and any associated follow-up.

3. The new pipeline operator will use the one-call system in advance of beginning ground disturbing activity.

4. The existing facility operator will, or by delegation, cause its facilities to have marks adjusted to a maximum spacing not exceeding 50-feet, including all PIs. This can be adjusted at the discretion and agreement of both parties. Existing facilities will be continuously located, marked and there will be positive identification at PIs. The marks will be maintained for the duration of work planned in the **Encroachment Area**.

5. In general, the existing facility operator has the option to have an inspector on site during any ground disturbance in the active excavation area even if the activities follow the plans established in the Design Review and subsequent meetings. The existing facility operator will have an inspector on site during any ground disturbance when changes in prior plans within the **Active Excavation Area** have not been evaluated by the existing operator. (Consistent with API 1166).

6. The new pipeline operator will notify the existing facility operator's **Designated Contact** to provide ample time to respond. Notification will take place no less than 24 hours prior to beginning ground disturbance in an Active **Excavation Area**. There may be circumstances where a spread crew may want to move to an area for which notification has not been provided. Excavation will not commence until the existing pipeline operator has been notified and agrees to provide an observer or authorizes the new pipeline operator in writing to commence with work.

7. The new pipeline operator will ensure that only agreed to techniques are used within the **Excavation Tolerance Zone** and for excavations that may expose the existing facility.

8. The existing facility's representative has the authority to stop work at any time he/she believes the safety of personnel or existing facilities are endangered.

9. The new pipeline operator will ensure that excavation equipment with teeth, such as on a backhoe bucket, will be barred and side cutters removed when working in an **Active Excavation Area**, except where a site specific plan has been approved by the existing facility.

10. The new pipeline operator or pipeline constructor will not excavate unless they have visual confirmation of the existing pipeline's location. This means that no excavation will be conducted within the **Active Excavation Area** of an existing pipeline unless there are marks indicating the placement of the pipeline, (until such a point where the marks extend off the ROW indicating that the existing pipeline is no longer within the **Active Excavation Area**).

11. If the existing pipeline operator observes excavation equipment in an **Encroachment Area** and is unaware of planned activities, a contact card on a string, or other comparable method, will be placed on the door handle, or steering wheel, of the subject equipment. For example the card might state, "Natural gas facility in the vicinity, danger, call before you dig, Call 811".

12. The new pipeline operator will identify any new areas where blasting will be used along the route within 300 feet of the existing facilities.

13. The new pipeline operator will identify and propose plans for all crossings of the existing pipeline(s), and such plans will be agreed upon by both parties. Discrete crossings will be addressed in the encroachment agreement.

14. The new pipeline operator will be responsible for all damages, repairs and rehabilitation caused by its construction activities, as well as restoration of disturbed portions of the existing facility right-of-way, to the satisfaction of all parties, including the existing facility and any authorizing agencies.

D. Post Construction

1. The new pipeline and existing facility operators will hold a post-construction review meeting to identify problems and issues, as well as define remedies or corrective actions. The new pipeline operator will document the meeting including a review of the effectiveness of the guidelines and areas of improvement. (Refer to Recommended Agenda – Post Construction Review and Lessons Learned– Attachment B).

2. The new pipeline and existing facility operators will jointly share any lessons learned in the process of project execution or in the post-construction project review through the INGAA Foundation, Executive Director.

3. As-built centerline survey data for the new pipeline will be provided to the existing facility operator to assist them in identifying the location of the new pipeline during future maintenance and expansion activities.

Attachment A
Planning and Design Review Meeting(s) Agenda

Overview of Project
Identify **Designated Contact**
Identify parallel segment begin-end points – such as alignment drawings and GPS coordinates
Identify locations where working in close proximity – such as crossings
Availability and accuracy of as-built alignment documentation
Location of existing and proposed appurtenances
Anticipated route
Placement of ROW
Location in ROW (nominal and known exceptions)
Type of easement, exclusive, or open and undefined,
Separation
Anticipated crossings (including directional drills)
Construction methods and practices, including blasting
Identification of potential hazards and emergency response
Existing facility's encroachment and crossing agreements
Existing facility's policy on hand excavation or other excavation techniques around underground facilities
Schedule
Updating process

Attachment B
Post-Construction Review and Lessons Learned Agenda

What worked?

What didn't?
Did the guidelines make the project safer?
Did the guidelines make communication more effective?
What improvements or additions would you make to the process?