

# Regulatory Analysis of Issues Related to the Development of an Alaska Gas Pipeline Project Serving the North American Market



Environmental Science Division  
Argonne National Laboratory

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by

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## NOTATION

The following is a list of acronyms and abbreviations used in this document. Some acronyms used only in tables may be defined only in those tables.

AAO	Agency Authorized Officer
ACHP	Advisory Council on Historic Preservation
ADEC	Alaska Department of Environmental Conservation
AGIA	Alaska Gasline Inducement Act
ANCSA	Alaska Native Claims Settlement Act
ANGPA	Alaska Natural Gas Pipeline Act of 2004
ANGTA	Alaska Natural Gas Transportation Act of 1976
ANGTS	Alaska Natural Gas Transportation System
ANILCA	Alaska National Interest Lands Conservation Act
ANNNGTC	Alaska Northwest Natural Gas Transportation Co.
ANS	Alaska North Slope
APE	Area of Potential Effects
APSC	Alyeska Pipeline Services Company
Argonne	Argonne National Laboratory
BA	biological assessment
BAP	Bridge Administration Program
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BO	biological opinion
CAA	Clean Air Act
CEAA	Canada Environmental Assessment Agency
CEQ	Council on Environmental Quality
CFATS	Chemical Facility Anti-Terrorism Standards
CFR	<i>Code of Federal Regulations</i>
CPCN	Certificate of Public Convenience and Necessity
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DEIS	draft EIS
DHS	Department of Homeland Security
CMP	coastal management plan
DNR	Alaska Department of Natural Resources
DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOL	Department of Labor
DOS	Department of State
DOT	U.S. Department of Transportation
DOT&PF	Alaska Department of Transportation and Public Facilities



EFH	essential fish habitat
E.O.	Executive Order
EIS	environmental impact statement
EPA	Environmental Protection Agency
EPAct	Energy Policy Act of 2005
ESA	Endangered Species Act
FAA	Federal Aviation Administration
FACA	Federal Advisory Committee Act
FCC	Federal Communications Commission
FCMA	Magnuson-Stevens Fishery Conservation and Management Act
FEIS	final EIS
FERC	Federal Energy Regulatory Commission
FHWA	Federal Highway Administration
FR	<i>Federal Register</i>
FS	Forest Service
FTE(s)	full-time employee(s)
FWCA	Fish and Wildlife Coordination Act
FWS	Fish and Wildlife Service
FY	fiscal year
GCC	Government Coordinating Council
IHA	incidental harassment authorization
IP	Implementation Plan
JPO	Joint Pipeline Office
LNG	liquefied natural gas
LWCF	Land and Water Conservation Fund
MBTA	Migratory bird Treaty Act
MFP	Management Framework Plan
MMPA	Marine Mammal Protection Act
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NEB	National Energy Board
NEPA	National Environmental Policy Act
NGA	Natural Gas Act
NHL	National Historic Landmarks (Program)
NHPA	National Historic Preservation Act
NIPP	National Infrastructure Protection Plan
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOS	National Ocean Service
NPA	Northern Pipeline Agency
NPDES	National Pollutant Discharge Elimination System

NPS	National Park Service
NRCan	Natural Resources Canada
NWR	National Wildlife Refuge
NWRS	National Wildlife Refuge System
OFC	Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects
OFI	Office of the Federal Inspector
OIP	Office of Infrastructure Protection
OMB	Office of Management and Budget
PA	Programmatic Agreement
P.L.	Public Law
PHMSA	Pipeline and Hazardous Materials Safety Administration
POC	point of contact
PSA	(Alaska) Protective Security Advisor
PSD	prevention of significant deterioration
R&D	research and development
RMP	resource management plan
ROD	Record of Decision
ROW(s)	right(s)-of-way
SCC	Sector Coordinating Council
SHPO	State Historic Preservation Office(r)
SPC	State Pipeline Coordinator
SPCO	State Pipeline Coordinator's Office
SSA	Sector-Specific Agency
TAPS	Trans-Alaska Pipeline System
TCC	Tanana Chiefs Conference
THPO	Tribal Historic Preservation Officer
TSA	Transportation Security Administration
TSNM	TSA Office of Transportation Sector Network Management
USACE	United States Army Corps of Engineers
USC	<i>United States Code</i>
USCG	U.S. Coast Guard, Office of Bridge Administration
USDA	U.S. Department of Agriculture
USGS	U.S. geological Survey
WIA	Workforce Investment Act

## SUMMARY

A pipeline to deliver natural gas from the North Slope of Alaska, through Canada, to the central United States is closer to reality after decades of anticipation. In fact, two proposals are viewed as sufficiently credible to stimulate significant activity within the United States and Canada, in the expectation that at least one will produce viable applications and therefore will result in a gas pipeline being built. In the United States, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects (OFC), which dates back to the 1970s, has been reactivated to implement its authority to ensure that federal agencies act in a manner that leads to expedited pipeline construction and operation. This report analyzes the regulatory and legal issues that could affect key milestones needed to achieve expeditious completion of the pipeline.

### **S.1 OFFICE OF THE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS**

The OFC manages federal participation in the permitting, development, and construction of Alaska natural gas projects that would provide gas to U.S. markets. Section 106 of the Alaska Natural Gas Pipeline Act of 2004 (ANGPA) established the OFC as an independent office within the executive branch of the federal government and described its responsibilities and limitations.

To carry out its statutory obligations, the OFC is developing a program plan that will, in part, identify potential issues in the planning and development of an Alaska natural gas transportation project (Alaska gasline project) and develop strategies to overcome potential regulatory bottlenecks. It is expected that at least 20 federal agencies will participate in the planning and approval process for an Alaska gasline project. In addition to its role as

coordinator and integrator of actions undertaken by the federal agencies, the OFC must manage and facilitate federal–state and federal–Canadian government interactions and authorities with respect to the Alaska gasline project. Alaska Native entities will also be heavily involved in all planning and development phases, and Alaska Native concerns will need to be addressed in government-to-government consultations and interactions.

A significant challenge facing the OFC involves implementing federal coordination by systematically integrating key actions, milestones, schedules, critical paths, authorities, and regulations of the state, federal, Alaska Native, and Canadian entities that will participate in the planning process, engineering and environmental pre-construction studies and activities, and construction of any potential Alaska gasline project. The aggressive project schedule requires rapid, but well coordinated, decision making to ensure that project milestones are successfully achieved. Coordination needs to address the regulatory actions assigned to each of the federal agencies, legal and regulatory frameworks within the State of Alaska and Canada, and how the authorities assigned to the OFC will be implemented during all phases of the project.

### **S.2 SCOPE AND CONTENTS OF THIS REPORT**

Technical assistance was provided to the OFC by Argonne National Laboratory to support the development of an OFC program plan and provide unbiased studies and evaluations of environmental, engineering, and regulatory issues that could arise from an Alaska gasline project.

This report supports the development of an OFC program plan and can be used as a basis for further OFC planning, communication, and

agency coordination for an Alaska gas pipeline project. The report contains:

- The roots and details of the authorities of the OFC as they relate to federal agency coordination and authorization enforcement;
- Potential regulatory and legal conditions that could impact the development and construction phases of any gas transportation project;
- Long lead-time critical-path items that cross individual agencies and governments;
- An evaluation of the interacting components of ANGPA and the Alaska Natural Gas Transportation Act (ANGTA); and
- A series of recommendations for OFC consideration.

### S.3 METHODOLOGY

To develop the information used in this report, Argonne staff reviewed all laws, presidential activities, and agency regulations relevant to an Alaska gasline project. For example, the contents of the three competing pipeline right-of-way (ROW) applications considered by the President under ANGTA were reviewed to identify relevant issues. The resulting Presidential Decision and Report to Congress and subsequent documents, such as Reorganization Plan No. 1 of 1979 and Executive Orders, were reviewed in detail and compared with ANGPA and the Alaska Gasline Inducement Act passed by the Alaska legislature in 2007. The authorities of the OFC were a focus of this review and were used for comparison. Canadian National Energy Board hearings in the late 1970s on four proposed pipeline projects were reviewed to screen for common issues and arguments about Canadian-specific issues.

A separate review of agency regulations as they pertain to an Alaska gasline project was conducted at a level sufficient to obtain an understanding of agency roles and responsibilities. The review of laws, decisions, and regulations also helped to determine required actions within the larger project schedule. Special attention was given to Federal Energy Regulatory Commission (FERC) rules, at Title 18 of the *Code of Federal Regulations* (CFR), especially related to the authority of FERC to set agency authorization deadlines under the Energy Policy Act of 2005 (EPA). Significantly, all involved federal agencies must comply with the schedule FERC establishes to meet National Environmental Policy Act (NEPA) requirements for the entire project.

After a review of the available information, Argonne conducted extensive interviews and discussions with federal officials and staff who are knowledgeable or have responsibility to work with the OFC and FERC. The primary purpose of meeting with agency staff and management was to obtain their views on issues that could be critical to the successful implementation of a project schedule. A standard set of questions was developed to ensure that discussions with agency representatives captured comparable information from all of the contacted agencies. Emphasis in the interviews was on “casting a wide net,” particularly seeking to capture long lead-time requirements and issues that would need to be captured in the FERC environmental impact statement (EIS) or that would require action and/or coordination with another agency before final approvals or decisions could occur. The Argonne team also queried agency representatives about potential unresolved issues or studies that could affect the project schedule or interactions with other agencies, or required the attention of the OFC or FERC.

Argonne team members conducted 26 federal meetings (some agencies were contacted in both Washington and Alaska). In addition, four meetings were held with State of Alaska agencies. A meeting was also held with

Canadian counterparts at Natural Resources Canada (NRCan) to identify overarching issues of possible joint concern between the OFC and Canadian entities that will be involved in an Alaska gasline project. All agency representatives were helpful and receptive to playing an active role (as appropriate) and cooperating with other federal agencies, the State of Alaska, other government entities, and applicants in an Alaska gasline project. All agencies and government officials had given at least some consideration to their mode of participation in an Alaska gasline project, and some agencies had very specific issues, comments, or suggestions to offer to the Argonne team members. The agency representatives looked forward to forming a government team that assists and supports the OFC.

#### **S.4 MAJOR FINDINGS**

An analysis of available information and discussions with the federal and state agencies did not uncover any insurmountable technical, regulatory, or legal issues. However, to meet required schedules, project applicants need to initiate action on items requiring permit or authorization approvals at the earliest practicable date consistent with the level of project design.

FERC and the OFC need to engage early and closely to address potential ambiguities in responsibilities that could occur during the NEPA phase of the project and establish operational relationships to address potential NEPA issues. Both entities have the same general mission (to efficiently and rapidly apply their respective authorities to advance an applicant's proposal to construct an Alaska gasline project), and both have a proactive approach to project management.

Certain long lead-time issues related to field data collection and analysis should receive priority attention by applicant(s). Indeed, uncertainties as to when applicant(s) should initiate action to seek permit or authorization

approvals should default to the earliest practicable date consistent with project design. Agency–applicant coordination (monitored by the OFC) should be initiated at even the most elemental stages of design.

As interviews were conducted and information was gathered from the various federal agencies, it became clear that agencies' understanding of their role in the NEPA process is not always clear and may not be correct. For example, the Advisory Council on Historic Preservation (ACHP) states that FERC must decide and then notify ACHP, if FERC wants ACHP to be a cooperating agency in the NEPA process. The Department of Energy says it will determine the nature of its role, if any, in the NEPA process. While the Department of the Interior will submit a consolidated set of comments from its Services and Bureaus, it is not clear how all departments will vet internal comments and address conflicting comments from multiple reviewers, staff, and managers.

Agency discussions and data gathering also noted that a potentially larger number of cooperating agencies may attach to the EIS than FERC anticipates. For example, both the National Park Service and the Environmental Protection Agency say they will participate as cooperating agencies on the FERC EIS, with a possible outcome that there could be a larger than anticipated number of cooperating agencies on the FERC EIS. Agencies need to ensure that they have sufficient time and resources to carry out the required tasks. Even if the resources come from the operational agency budget, agency staff indicated a need for dedicated funding codes for work on an Alaska gasline project.

The Council on Environmental Quality stated that there is a need to determine if the government-to-government relationship with Alaska Natives will be conducted through a single federal government spokesperson who will work with Alaska Native entities, or if several federal government representatives, each representing different agencies, will be in

communication with Alaska Native entities. ACHP expects a significant consultative process for an Alaska gasline project because of the concerns of Alaskan Native groups.

Alaska Native groups are keenly interested in jobs, material sales, and summer internships for students, and they want to be included from the very beginning of an application process. Because of these very early concerns, federal agencies need to be in close communication with project applicants and Alaska Native entities at the earliest possible date.

For issues involving design review, commissioning versus operations, and pre- and post-construction, the roles of the Bureau of Land Management (BLM), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the State of Alaska need to be clearly defined early in the application process. Because BLM played a major role in the Trans-Alaska Pipeline System (TAPS) (PHMSA and its predecessor agency barely existed at that time, and BLM issued the guidance that affected integrity management of TAPS), issues regarding the relative roles of these two agencies with respect to an Alaska gas pipeline could surface. PHMSA notes that the permits that BLM will issue for the Grant of Right-of-Way may affect future operation of the Alaska gasline project. For example, to repair a pipeline in a federal ROW requires a permit. State regulations also might affect pipeline operations.

While the Canadian federal government is fully committed to meeting the FERC schedule for completion of all environmental reviews and processes needed for a Certificate of Need in Canada, NRCan sees the need for early and close coordination between the OFC, FERC, and the National Energy Board (NEB) and/or the Northern Pipeline Agency (NPA). Importantly, NEB now considers an application to be complete when the proponent clearly identifies the source of the gas that would be transported in the pipeline. Because a complete application may only be available upon completion of the FERC pre-filing process, developing a

coordinated schedule for Canadian and U.S. environmental and permitting activities is viewed as a high priority by NRCan. In addition, while the United States has two major entities (FERC and the OFC) playing key roles in an Alaska gasline project, a desired condition noted by NRCan is to have a single point of contact to ensure Canadian and U.S. coordination.

The Canadian government is preparing to address the possibility of receiving two applications. An application from Denali — the Alaska Gas Pipeline — would be processed under NEB, while the TransCanada and State of Alaska application would be processed by the NPA. It is expected that NEB would assist the NPA in processing the TransCanada and State of Alaska application. NRCan stated that a Canadian interdepartmental committee is developing processes that would apply to either or both pipeline applications.

The engineering design review by government agencies will occur throughout the time period of the project. Importantly, engineering design will drive the impact analysis conducted under the EIS. Coordinating the feedback and communication links between the project engineering design team and teams involved in environmental, regulatory, and agency authorizations are recognized by many agency staff as critical processes that will be conducted by the OFC. Agency staff noted that engineering design changes (which could happen with some frequency) will need to be quickly passed to the appropriate organizations and staff who are conducting environmental analyses. Engineering design changes that occur late in a schedule period could affect environmental-impact or authorization analyses. Environmental, regulatory, or authorization task schedules could then be affected as design changes are rolled into these dependent task areas.

It is known by many of the agencies (state and federal) that significant infrastructure upgrades must be undertaken to support any pipeline construction operations. For example,

the Alaska Railroad will likely need to add siding and track upgrades to accommodate the hauling of pipe. Although the Yukon River Bridge was designed and constructed to handle both the TAPS pipeline and an Alaska Natural Gas Transportation System (ANGTS) pipeline, some agency staff have raised concerns that the bridge may not be able to handle the load of both pipelines, as well as the equipment needed for hanging the gas pipeline.

## **S.5 MAJOR RECOMMENDATIONS**

### **OFC Lifecycle Authority**

A basic issue that needs to be fully clarified is that of the OFC authority to manage an Alaska gas pipeline project. In the past, Office of the Federal Inspector (OFI) authorities were oriented toward construction, since the OFI did not become active until after an EIS was completed. However, the OFC authorities must be exercised from the beginning of the project to 1 year after completion of the project. The OFC has significant statutory authority pursuant to ANGPA to ensure the compliance of all federal agencies with all of the law's provisions. If necessary, the OFC's enforcement authority to ensure other agencies' compliance with ANGPA would likely be implemented through the Department of Justice. It may be advisable for the OFC and Department of Justice representatives to discuss enforcement issues and then notify all of the federal agencies of a possible enforcement process.

### **OFC and FERC Coordination**

FERC's role in conducting the required NEPA process is straightforward. However, the OFC needs to be closely aligned with FERC during the pre-filing and filing stages of the NEPA process to facilitate and ensure that cooperating federal agencies are fully aware of the requirements, roles, and responsibilities

associated with working under the FERC guidelines. For example, the OFC must develop explicit mechanisms to track "ancillary" but required infrastructure development associated with a gas pipeline project. These projects must be incorporated into a master project schedule; each item must be tracked for permit or authorization requirements; and, importantly, a determination must be made as to how these projects fit into the scope of the FERC EIS. Because of their interrelated operations, it is strongly recommended that the OFC and FERC develop a Memorandum of Understanding (MOU) or written agreement that clearly outlines how the two organizations will cooperate and function on an Alaska gasline project.

### **Agency Authorized Officers**

The Argonne authors of this report recommend that the OFC select Agency Authorized Officers (AAOs) with the responsibility and authority to assist the OFC in the expeditious permitting and construction of the pipeline. The OFC should seek the authority to select AAOs from the federal agencies under a Presidential Order. These officers should have the authority and responsibility to sign the FERC-developed EIS and ensure that actions taken by their agencies and all bureaus or services in their agencies comply with the schedules established by ANGPA and by the OFC in consultation with these officers.

An Executive Order would be the preferred mechanism to effectuate the AAO (or similar term). An Executive Order is preferred over legislation for reasons of timeliness and specificity of purpose. The President can quickly issue an order and tailor it to specific purposes; the legislative process could be lengthy and laden with provisions not anticipated by the President or the OFC. The Executive Order could also clarify the OFC's authority to ensure agency compliance with ANGPA.

## Funding

A key element for schedule compliance on a gasline project will be timely provision of adequate funding to the federal agencies to enable their *active* participation. Many agency staff and management expressed concern over the need for increased staffing, particularly in Alaska, where the labor pool with needed experience is limited. Funding issues need to be addressed by the OFC at the earliest possible date to ensure that agencies cannot use funding as a limiting factor in meeting deadlines or milestones. Reimbursement mechanisms should be investigated and developed to ensure that the agencies can devote needed manpower to the pipeline while not neglecting their other responsibilities.

## Implementation Plans

The OFC will require each affected federal agency to develop an Implementation Plan (IP) for an Alaska gasline project. It is recommended that agencies be given 90 days to prepare an IP. The minimum items for each agency to include in its IP would be those identified in the 2006 FERC MOU and the following additional elements:

- Explicit identification of the decision maker, noting that the decision maker should not refer to a person's name, but to the person's office/title (to provide for continuity). Also, the IP should identify who can sign or make a decision if the decision maker is unavailable. If approved through an Executive Order, each AAO should be assigned decision-making authority.
- The IP should state how the agency will ensure that draft authorizations will be completed by the time the draft EIS (DEIS) is issued.
- The IP should contain detailed staffing and budget projections (by year). The

agency should note the location of staff (e.g., District of Columbia or Alaska) and whether they will be federal employees or contractors. If staffing is unknown, each agency should provide ranges and assumptions used in making the projections.

- The IP should clearly show how each agency's funding will be obtained. If a reimbursable agreement through BLM or the OFC is envisioned, the agency should make sure the plan identifies the entity expected to provide the funds (e.g., BLM or OFC) and whether the agency has the authority to be reimbursed by BLM or the OFC, and, if not, how and when the agency will obtain that authority.
- For all schedules developed by the agency, the IP must include specific information on timing relative to the completion of the draft and final EIS, especially how much time each agency believes it may need for each specific authorization. Also, each agency should provide any statutory requirements, limits, and allowances regarding the timing/scheduling of authorization approvals.
- Each agency should identify all items needed from all other agencies and other entities (state, applicant, Alaska Native entities, etc.) and when these items are needed.
- Each agency should identify all public participation and comment process requirements and include timing/scheduling information for these, to determine how these reconcile with the FERC EIS.
- Each agency should identify the trigger for the start date of each approval/authorization for which the agency is



responsible. That is, at what point will the authorization process start?

- Each agency should identify unknowns that could affect schedule (speeding it up or slowing it down) and by how much.
- Each agency should identify the relative roles of any suborganization (state, regional, and Headquarters offices) in the authorization process.
- All agencies must provide information *for each authorization required*, if the agency has responsibility for more than one authorization.
- The agency decision maker must sign the IP, without exception.

### **Government-to-Government Consultation**

FERC has indicated that it will conduct government-to-government consultations as the federal lead during the NEPA process. Because government-to-government consultations will proceed before, during, and after the NEPA process, it appears necessary that the OFC should take a leadership role after the NEPA process is complete and continue consultations between project proponents, federal government agencies, and Alaska Native entities as a project enters the construction phase. In addition, the OFC has an excellent opportunity to provide overall program leadership by developing and then implementing a single mechanism (with integrated agency protocols) for government-to-government consultations. The OFC should work directly with FERC and the other federal agency MOU signatories to develop explicit federal communication and decision-making roles and inform Alaska Natives and other affected entities as to who will speak for the federal government and lead government-to-government and other required consultations.

It is recommended that the OFC and FERC immediately undertake two key tasks: (1) FERC should determine what Alaska Native entities meet the regulatory definition of an Indian Tribe and will be affected parties in the context of an Alaska gasline project, as part of the pre-filing activities, and (2) the OFC and FERC should jointly determine how government-to-government consultation will be conducted *during the duration of the entire project* (e.g., whether there will be a single federal government spokesperson to work with Alaska Natives, or whether several federal government representatives, representing different agencies, would be contacting and conducting discussions with individual Alaska Native entities).

### **Project Website**

The OFC should not assume that all agencies will be aware of the status of the pipeline activity and the need for and nature of their participation in the NEPA process. Through explicit notification by the OFC, the agencies should clearly understand the roles and responsibilities each agency places on the project schedule and the milestone dates for any agency decision. All of the permitting, authorizing, and related actions need to be tracked in real time, and staff and management (leadership) must have access to all of the project information each needs to conduct required tasks. It is recommended that the OFC operate a secure project Web site that is capable of rapid and effective dissemination of information.

### **Communication Plan**

As an operational management control issue, considering all of the state, federal, and Canadian administrations and agencies, stakeholders, and industry entities involved, the OFC must achieve a high level of coordinated communications. It is recommended that the

OFC produce a communications plan. The plan must address both *external and internal* communication processes, and the plan must be adaptable to changing conditions. As operations intensify, control and coordination become increasingly important and challenging, as additional entities participate in the project. The lack of a clearly defined plan could result in a major operational gap, given the diverse missions of the applicant, agencies, and interest groups and their natural tendencies to go it alone.

### **Salary Gap**

There is a significant gap between government salaries for engineers and inspectors and industry salaries for these same professions. Industry is already paying premium wages for these professionals, and to attract needed staff, government salaries will need to be competitive. For example, much of the Pipeline and Hazardous Materials Safety Administration (PHMSA) work (as well as that of other agencies) will occur in Alaska, where the qualified labor force and the population base are both small. In addition, the number of experienced individuals familiar with the NEPA process is relatively small in Alaska, and all agencies (federal and state) may be stretched very thin, given the possibilities of other large projects requiring environmental impact statements. Even including consultants currently working on other NEPA projects, there will likely not be enough experienced staff, particularly when considering potential conflicts of interest.

### **BLM-PHMSA Pipeline Roles and Responsibilities**

An analysis of roles and responsibilities indicates that the OFC may have to clarify how the responsibilities of BLM, PHMSA, and the State of Alaska interrelate for the design review, commissioning vs. operations, and pre- and post-construction. Because BLM played a major

role in TAPS, issues regarding the relative roles of these two agencies with respect to a gasline project are likely to surface. For example, BLM issued the guidance that affects the integrity management of TAPS, and the Alyeska Pipeline Services Company is still carrying out these procedures. PHMSA notes that the permits that BLM issues may affect future operation of a gas pipeline project. For example, to repair a pipeline in a federal ROW requires a permit. State regulations also might affect pipeline operations. If there is an ANGTS project, these questions are magnified, because BLM has already issued the Term and Conditions of Right-of-Way Grant.

## **S.6 CONCLUSION**

Under the ANGPA project application and development scenarios, the available information suggests that there is sufficient time available to properly plan and execute the Alaska portion of an Alaska gasline project. This finding is based upon Argonne's analysis of the information provided by the federal and state agencies and consideration of the projected schedules for the two applicant proposals that have been publicly announced. An analysis of the available information and detailed discussions with key agency staff did not uncover any insurmountable technical, regulatory, or legal issues that would require major new legislative or long-term engineering or field data collection and analysis tasks. The most significant issues requiring follow-up and continuous oversight by the OFC are listed below.

1. With passage of ANGPA and EPAct, the statutory authority required by the OFC and FERC to enforce the expeditious completion of federal project authorizations is in place. Agencies are generally aware of the authority of the OFC and the challenges of the project, and have stated their willingness to meet schedules. However, it was discovered that FERC authority

as the lead federal agency for an 18-month EIS, as well as its authority to set agency schedules during the NEPA phase of the project, may not be as clear to some of the federal agencies.

2. All federal agencies have Alaska Native consultation requirements; however, some agencies must address more issues of possible interest to Alaska Natives than other agencies. The OFC can improve the efficiency, and enhance effective communication with Alaska Native entities, by providing a single mechanism or an overarching agreement (containing protocols agreed to by all of the federal agencies and FERC) for coordinating government-to-government consultations.
3. The FERC role in conducting the required NEPA process is straightforward. However, the OFC needs to be closely aligned with FERC during the pre-filing and filing stages of the NEPA process to facilitate and ensure that cooperating federal agencies are fully aware of the requirements, roles, and responsibilities associated with working under the FERC guidelines.
4. The Canadian federal government is fully committed to meeting the FERC schedule for completion of all environmental reviews and processes

needed for a Certificate of Need in Canada. To meet the FERC schedule, NRCan sees the need for early and close coordination between the OFC, FERC, and the NEB and/or the NPA. It will be especially important to develop coordination procedures during the FERC pre-filing process because Canada lacks a similar process for meeting critical environmental and permitting schedules. Importantly, the NEB now considers an application when the application is complete — that is, the application must clearly identify the source of the gas that would be transported in the pipeline. Because a complete application may only be available upon completion of the FERC pre-filing process, developing a coordinated schedule for Canadian and U.S. environmental and permitting activities is viewed as a high priority by NRCan.

5. The OFC must develop explicit mechanisms to track “ancillary” but required infrastructure development associated with a gas pipeline project. These projects must be incorporated into a master project schedule; each item must be tracked for permit or authorization requirements; and, importantly, a determination must be made as to how these projects fit into the scope of the FERC EIS.

## 1 INTRODUCTION

The nation's interest in delivering natural gas from the North Slope of Alaska to U.S. markets in the mid-1970s led to passage of the Alaska Natural Gas Transportation Act of 1976 (ANGTA), which may be found at Title 15, Section 719, of the *United States Code* (15 USC 719). The continuing public interest in bringing this gas to market was further addressed by enactment of the Alaska Natural Gas Pipeline Act of 2004 (ANGPA) (15 USC 720). Both federal laws provided for expedited development of an Alaska natural gas transportation project (Alaska gasline project). The Office of the Federal Inspector, established under ANGTA, and the Office of the Federal Coordinator, formed pursuant to ANGPA, were given the authority to ensure that federal agencies act in a manner that leads to expedited pipeline construction and operation.

### 1.1 OFFICE OF THE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS

The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects (OFC) manages federal participation in the permitting, development, and construction of Alaska gasline projects that would provide natural gas to U.S. markets. Section 106 of ANGPA established the OFC as an independent office within the executive branch of the federal government headed by a Federal Coordinator who is 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 an Alaska gasline project. A description of the responsibilities and limitations of the OFC is provided in Section 106 of ANGPA and includes:

- Coordinate the expeditious discharge of all activities by federal agencies with respect to the gasline project.
- Ensure the compliance of federal agencies with the provisions of ANGPA and ANGTA.
- Monitor the reviews and actions of other federal agencies concerning the pipeline project to ensure that these reviews and actions are being accomplished in a manner consistent with the deadlines established by this law.
- Ensure that no federal agency attaches to a pipeline project a term or condition to any certificate or other authorization that may be permitted, but not required, by applicable law, if the OFC determines that the term or condition would prevent or impair the expeditious construction, operation, or expansion of the project.
- Ensure that no federal agency takes any kind of action to add to, amend, or rescind any certificate or other authorization that would prevent or impair in any significant respect the expeditious construction, operation, or expansion of the project.
- The Federal Coordinator cannot override the actions taken by the Federal Energy Regulatory Commission (FERC) in its implementation and enforcement of this law, or impose any additional terms, conditions, or requirements than those already imposed by FERC or any other federal agency.
- The Federal Coordinator and the State of Alaska will enter into a joint surveillance and monitoring agreement, to be approved by the President and the Governor of Alaska, for the purpose of monitoring construction of the project.

- The federal government will have primary responsibility where the gasline project crosses federal and private lands, and the state will have primary responsibility where the gasline project crosses state lands.

Significantly, all of the functions and authority of the prior Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System vested in the Secretary of Energy under the Energy Policy Act of 1992 have been transferred to the Federal Coordinator, including all functions and authority described and enumerated in the Reorganization Plan No. 1 of 1979 (Executive Order No. 12142 of June 21, 1979).

To carry out its statutory obligations, the OFC is developing a program plan to identify and reduce potential planning and development delays and to assist in overcoming any regulatory bottlenecks. It is expected that at least 20 federal agencies will participate in the planning and approval process for an Alaska gasline project. In addition to its role as coordinator and integrator of actions undertaken by the federal agencies, the OFC must manage and facilitate federal–state and federal–Canadian government interactions and authorities with respect to Alaska gas facilities. Alaska Native entities will also be heavily involved in all phases, and Alaska Native concerns will need to be addressed in government-to-government consultations and interactions.

A project the size, complexity, cost, and geographic scope of an Alaska natural gas pipeline will require coordination and operational alignment among applicants, government agencies, and affected stakeholders to maximize operational efficiency, deliver high-quality information to the public and federal agency decision makers, and minimize regulatory delays. Personnel assigned to the project from the various federal agencies, each

with its own mission and culture, will bring varied agendas that must be aligned to achieve a functioning team that promotes efficiency, integration, and effective communication.

Federal agency agreements to work within a coordinated process managed by the OFC during all phases of the project, and at all levels in the agency management hierarchy, will be essential to achieving an expedited project approval and construction process. To achieve agency alignment will require an explicit recognition and understanding among decision makers and involved staff from all agencies that the goal of the Alaska gasline project is to maintain an efficient and effective regulatory approval process based on rapid decision making. The “Memorandum of Understanding [MOU] Related to an Alaska Natural Gas Transportation Project,” signed in June 2006, provides a foundational understanding among involved agencies as to the nature, purpose, and extent of the extraordinary authorities vested in the OFC and is a key first step in developing agency alignment.

A significant challenge facing the OFC is to implement federal coordination by systematically integrating key actions, milestones, schedules, critical paths, authorities, and regulations of the state, federal, Alaska Native, and Canadian entities that will participate in the planning process, engineering and environmental pre-construction studies and activities, and construction of any potential gasline project. The aggressive project schedule requires rapid, but well coordinated, decision making to ensure that project milestones are successfully achieved. Coordination needs to address the regulatory actions assigned to each of the federal agencies, legal and regulatory frameworks within the State of Alaska and Canada, and how the authorities assigned to the OFC will be implemented during all phases of the project.

## 1.2 SCOPE AND CONTENTS OF THIS REPORT

The OFC has requested that Argonne National Laboratory (Argonne) provide technical assistance to support the development of an OFC program plan and provide unbiased studies and evaluations of environmental, engineering, and regulatory issues that could arise from gas transportation projects. In the near-term, the OFC requires technical support in:

- Determining potential regulatory and legal issues that could potentially impact key milestones or actions (especially when these bottlenecks or gaps involve multiple agencies and/or governments);
- Determining areas that connect federal–federal, state–federal, and federal–Canadian regulatory and/or legal interactions;
- Identifying important environmental and engineering issues that must be addressed in the planning, development, and construction phases of any gas transportation project;
- Identifying potential critical path items that involve interactions among individual agencies and governments; and
- Evaluating the interacting components of ANGPA and ANGTA.

This report supports the development of an OFC program plan and can be used as a basis for further OFC planning, communication, and agency coordination for an Alaska gasline project. This report contains:

- The roots and details of the authorities of the OFC as they relate to federal agency coordination and authorization enforcement;

- Potential regulatory and legal conditions that could impact the development and construction phases of any gasline project;
- Long lead-time critical-path items that cross individual agencies and governments;
- An evaluation of the interacting components of ANGPA and ANGTA; and
- A series of recommendations for OFC consideration.

It was not the mission of the study to prepare an exhaustive list of federal, state, and local permits, authorizations, stipulations, required contingency plans, etc. (although research uncovered a number of such listings). Rather, the focus of this study is on highlighting for the OFC:

- Long lead-time items, particularly acquisition of needed research or data;
- Complex regulatory issues needing attention early in planning;
- Interrelationships among agency actions and agency roles; and
- Coordination issues, such as federal Alaska Native consultation, which need early attention.

## 1.3 METHODOLOGY

To develop the information used in this report, the authors analyzed laws, regulations, and other published literature to establish the current set of conditions that apply to the transport of natural gas from Alaska's North Slope to the lower 48 states, with special attention to the authorities and responsibilities assigned to the OFC. Of particular importance in

reviewing the available published information were issues related to the schedules, responsibilities, and requirements of the federal agencies that will be working with the OFC and FERC. After a review of the available information, Argonne conducted extensive interviews and discussions with federal officials and staff who are knowledgeable or have the responsibility to work with the OFC and FERC. The discussions and interviews used a set of standard questions that helped ensure that comparable information was obtained from all contacted agencies. The primary purpose of meeting with agency staff and management was to obtain their views on issues that could be critical to the successful implementation of a project schedule.

### **1.3.1 Review of Applicable Laws and Regulations**

In addition to meeting with agency representatives, the Argonne team also reviewed all laws, presidential activities, and agency regulations relevant to an Alaska gasline project. For example, the contents of the three competing pipeline right-of-way (ROW) applications considered by the President under ANGTA were reviewed to identify relevant issues. The resulting Presidential Decision and Report to Congress and subsequent documents, such as the Reorganization Plan No. 1 of 1979 and Executive Orders, were reviewed in detail and compared with ANGPA and the Alaska Gasline Inducement Act passed by the Alaska legislature in 2007. The authorities of the OFC were a focus of this review and comparison. Canadian National Energy Board hearings in the late 1970s on four proposed pipeline projects were reviewed to screen for common issues and arguments about Canadian-specific issues.

A separate review of agency regulations as they pertain to an Alaska gas transportation project was conducted at a level sufficient to obtain an understanding of agency roles and responsibilities. The review of laws, decisions, and regulations also helped to determine

required actions within the larger project schedule. Special attention was given to FERC rules at Title 18 of the *Code of Federal Regulations* (CFR), especially related to the authority of FERC to set agency authorization deadlines under the Energy Policy Act of 2005 (EPAAct).

### **1.3.2 Agency Interviews**

The Argonne team used the MOU of June 2006 as the basis for identifying involved agencies for a series of interviews. A standard set of questions was developed to ensure that discussions with agency representatives captured comparable information. Prior to each discussion with agency representatives, Argonne team members acquainted themselves with the agency's mission and how that mission was carried out. Special attention was given to specific agency programs, regulations, and activities that would play a significant role in an Alaska gasline project. Emphasis in the interviews was on "casting a wide net," particularly seeking to capture long lead-time requirements, issues that would need to be captured in the FERC environmental impact statement (EIS) or that would require action and/or coordination with another agency before final approvals or decisions could occur. The Argonne team also queried agency representatives about potential unresolved issues or studies that could affect the project schedule and interactions with other agencies, or require the attention of the OFC or FERC.

Argonne team members conducted 26 federal meetings (some agencies were contacted in both Washington and Alaska). In addition, four meetings were held with State of Alaska agencies. If required, team members conducted follow-up discussions, via the telephone or e-mails, to clarify points. The initial meetings established consistent staff-level contact points within the agencies. All agency representatives were helpful and receptive to playing an active role (as appropriate) and cooperating with other federal agencies, the State of Alaska, other

government entities, and applicants in an Alaska gasline project. All agencies had given some consideration to their mode of participation in an Alaska gasline project, and some agencies had very specific issues, comments, or suggestions to offer to Argonne team members. The agency representatives looked forward to forming a government team that assists and supports the OFC.

#### 1.4 MASTER SCHEDULE AND KEY ASSUMPTIONS

To assist in organizing the information collected during the meetings and in the review of laws, regulations, and the agency's decision-making process, a master schedule was initially developed that provided the opportunity to evaluate subtasks, interdependences, and potential scheduling issues. The scheduling process was broken into three primary phases:

- *Planning and Pre-filing.* From a regulatory analysis standpoint, the first important milestone is pre-filing with FERC. A successful pre-filing will be built upon a very thorough environmental review and analysis, involving stakeholder groups, and the development of all the necessary information to ensure that the EIS process can be accomplished on schedule.
- *EIS Preparation.* FERC requires a very significant amount of information in an applicant's environmental report before the application is deemed complete. At that point, a legislated FERC-led 18-month EIS process will begin (20 months, if the authorizations after the final EIS [FEIS] are included). The Secretary of Energy has the authority to require updating of the EIS previously completed for the Alaska natural gas transportation system.
- *Design Review.* The applicant(s) will work up a preliminary design, beginning

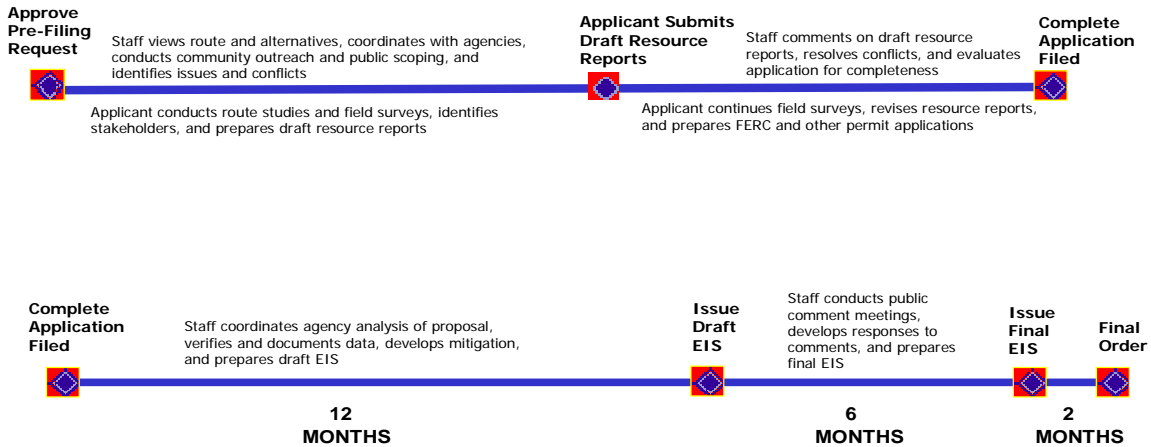
within a year of initial project start. Design and engineering information feeds directly into the environmental survey and analysis work. The design and engineering review will continue, to some degree, throughout the life of the project, including construction, operation, and maintenance.

The following assumptions were used to address regulatory and scheduling interdependences:

- Critical regulatory processes that agencies need to implement during the process could be gleaned from interviews Argonne conducted with principals at relevant federal and state agencies.
- Although no assumption was made as to which federal law a proposal might be filed under with FERC, an applicant seeking a FERC certificate will most likely follow the pre-filing schedule used for the FERC National Environmental Policy Act (NEPA) process.
- Pre-construction issues are emphasized. (First things first.)
- FERC will make scheduling assignments for all federal agencies for EIS-related authorizations (EPAct) (see Figure 1-1).
- After FERC makes scheduling plans for the NEPA process, the OFC will make scheduling assignments for all federal agencies for permits, authorizations, or operational needs that are additional to NEPA requirements. While FERC has continuing project responsibilities after the NEPA process (e.g., to ensure that the certificate is in compliance during the construction activities, as well as addressing tariff issues and rate approvals), it is assumed for scheduling purposes that the OFC is overall project



# FERC's Environmental Review Process for an Alaska Natural Gas Pipeline Act Project



*Office of Energy Projects*

**FIGURE 1-1 Timeline for FERC's Environmental Review Process**

- coordinator, with FERC critical-path responsibilities primarily involving NEPA and the Certificate of Need.
- Adequate funding and resourcing for scheduled task completion will be available, as needed.
- Due diligence in meeting all scheduled milestones would be exercised by all participants.
- Agencies agree to follow the directions provided in the MOU, as well as any additional directions provided by the OFC and FERC.
- All tasks will be started at the earliest practicable date.
- The engineering and design review will be a major component of government activity and will run through project completion.
- Complete preliminary engineering and environmental information will be available at the end of the FERC pre-filing point in the schedule.

## **2 ALASKA NATURAL GAS PIPELINE: LAWS, THE ROLE OF THE OFC, AND THE SCHEDULE**

The nation's interest in delivering natural gas from the North Slope of Alaska to U.S. markets led to passage of ANGTA in 1976 and ANGPA in 2004. Both federal laws provide for expedited development of an Alaska gasline project. The Office of the Federal Inspector, established under ANGTA, and the OFC, formed pursuant to ANGPA, are given the authority to ensure that federal agencies act in a manner that leads to expedited pipeline construction and operation. ANGPA allows FERC to consider and act on an application filed under the Natural Gas Act (NGA) for a certificate to construct and operate an Alaska gasline project. It also mandates that FERC prepare a single EIS that consolidates the environmental reviews of all federal agencies considering any aspect of the gasline project.

### **2.1 ANGTA**

ANGTA was enacted in response to the energy shortages of the 1970s. Although three Alaska natural gas transportation projects were filed with the Federal Power Commission (later renamed the Federal Energy Regulatory Commission), Congress determined that the authorization of such a system involved "questions of the utmost importance respecting national energy policy, international relations, national security, and economic and environmental impact"<sup>1</sup> that necessitated the participation of the President and the Congress in the certification and construction process.

#### **2.1.1 ANGTA Provisions**

Accordingly, ANGTA contains provisions that allow the President to decide, based on the Federal Power Commission's recommendation of a specific transportation system, whether a

specific system should be approved. The law requires that the Congress expeditiously consider the President's decision for approval by joint resolution.<sup>2</sup>

The law also allows the President, with the approval of Congress, to waive provisions of laws that would interfere with the expeditious construction and initial operation of the selected transportation system.<sup>3</sup> Similarly, the joint resolution of Congress approving the President's selection of a pipeline system and applicant was to be "conclusive as to the legal and factual sufficiency of the environmental impact statements submitted" by the President. No court has the jurisdiction to consider the sufficiency of such statements prepared under NEPA.<sup>4</sup>

ANGTA also includes the federal agencies involved in the natural gas transportation system. The agencies are required to issue or grant, at the "earliest practicable date," the certificates, permits, ROWs, leases, and other authorizations (hereafter, referred to as authorizations) related to the construction and initial operation of the approved transportation system. Further, agencies cannot attach to those authorizations any terms or conditions that are permitted, but not required by law, if the terms or conditions would compel a change of the approved transportation system or would significantly prevent or impair the expeditious construction or initial operation of the system.<sup>5</sup>

ANGTA authorizes the President to appoint, with the advice and consent of Congress, an officer of the United States to serve as the Federal Inspector of the natural gas transportation system. The Federal Inspector is

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<sup>1</sup> 15 USC 719.

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<sup>2</sup> 15 USC 719c, e, and f.

<sup>3</sup> 15 USC 719e(a)(4)(D).

<sup>4</sup> 15 USC 719h(c)(3).

<sup>5</sup> 15 USC 719g.

required to establish a joint surveillance and monitoring agreement with the State of Alaska and monitor compliance with applicable laws, as well as the terms and conditions of applicable authorizations. The Federal Inspector must also monitor actions taken to ensure timely completion of the transportation system and to achieve quality construction, safety, and environmental protection. The Federal Inspector has the power, including subpoena authority, to compel the provision of necessary information and must keep the President and the Congress informed on the system's construction status.<sup>6</sup>

Reorganization Plan No. 1 of 1979, *Office of the Federal Inspector for Construction of the Alaska Natural Gas Transportation System*, makes the Federal Inspector responsible for coordinating agencies' compliance with ANGTA's provision that they issue authorizations at the "earliest practicable date." This responsibility includes requiring that agencies submit scheduling plans for all necessary authorizations and coordinating the scheduling of agency activities related to the system.<sup>7</sup> The Reorganization Plan also vests in the Federal Inspector "exclusive responsibility for enforcement of all federal statutes relevant in any manner to pre-construction, construction, and initial operation" of an approved transportation system.<sup>8</sup> Executive Order (E.O.) 12142, "The Alaska Natural Gas Transportation System, and Section 5 of the President's Decision and Report to Congress on

the Alaska Natural Gas Transportation System," further describe the Federal Inspector's enforcement authority.

The E.O. creates an Executive Policy Board that advises the Federal Inspector and Agency Authorized Officers (AAOs) on matters concerning enforcement actions.<sup>9</sup> Section 5 of the President's decision states that the Federal Inspector has "necessary field-level supervisory authority to overrule the enforcement action of an Agency Authorized Officer" and that the Executive Policy Board will act as "an appellate body" to resolve differences that may arise over enforcement actions.<sup>10</sup>

### 2.1.2 ANGTA Status

Pursuant to ANGTA, the Federal Power Commission (predecessor to FERC) prepared a "Recommendation to the President," recommending two overland gas pipeline proposals that would travel, via different routes, through Alaska and Canada to the contiguous United States. It also submitted an EIS. The President selected one of the two pipelines, which became known as the Alaska Natural Gas Transportation System (ANGTS). The President's decision, and consequently the EIS, were approved by Congress on November 8, 1977.

The Federal Power Commission issued a conditional Certificate of Public Convenience and Necessity (CPCN) under ANGTA and the

<sup>6</sup> 15 USC 719e(a)(5). The provision establishing the Office of the Federal Inspector was repealed by Section 3012 of the Energy Policy Act of 1992, Public Law (P.L.) 102-486; the powers of the Federal Inspector were transferred to the Secretary of the Department of Energy. Section 106(f) of the Alaska Natural Gas Pipeline Act, P.L. 108-324, transferred the authorities vested in the Secretary of Energy by Section 3012 of P.L. 102-486 to the Office of the Federal Coordinator.

<sup>7</sup> Reorganization Plan No. 1 of 1979, Section 202.

<sup>8</sup> Ibid. at Section 102.

<sup>9</sup> The Executive Policy Board consists of the Secretaries of the Departments of Agriculture, Energy, Labor, Transportation, and the Interior; the Administrator of the Environmental Protection Agency; Chief of Engineers of the U.S. Army; and the Chairman of FERC. The AAOs are appointed by each federal agency having statutory responsibilities over any aspect of ANGTS.

<sup>10</sup> Decision and Report to Congress on the Alaska Natural Gas Transportation System, Executive Office of the President, September 1977, pages 42-43.

NGA on December 16, 1977. The conditional certificate was the initial step in the process of issuing a more detailed final certificate; it was followed by extensive procedures to establish further conditions for the project, including the design specifications. The project was divided into two phases, with the first phase to be completed in 1982. Because the circumstances of the natural gas market changed significantly while Phase 1 was being constructed, the project sponsors announced in April 1982 that Phase 2, the Alaska portion of the pipeline, would be delayed; a final certificate for that phase has not yet been requested.<sup>11</sup>

ANGTA is still in force. ANGPA contains a savings clause (Section 110) that protects the decisions made and assets obtained pursuant to ANGTA, but allows federal agencies to amend authorizations to meet current project requirements. The Secretary of the Department of Energy will determine the need for updated ANGTS environmental data, reports, permits, and impact analyses.

The Alaska Northwest Natural Gas Transportation Co. (ANNGTC) was formed in 1978 to construct and operate ANGTS and holds the conditional certificate and other authorizations issued by federal agencies. The only two remaining partners in ANNGTC are TransCanada Pipeline USA Ltd. and United Alaska Fuels Corporation — both are indirect, wholly owned subsidiaries of TransCanada Corporation. TransCanada Alaska Company, LLC, a wholly owned subsidiary of TransCanada Corporation and a potential applicant for a certificate for an Alaska gasline project, has rejected use of any ANNGTC

assets<sup>12</sup> and has declared that it will file for a certificate under ANGPA.<sup>13</sup>

## 2.2 ANGPA

In addition to the ANGTA savings provision referenced earlier, ANGPA Section 103 confirms that FERC may consider and act on an application filed under the NGA for a certificate to construct and operate an Alaska gasline project other than ANGTS.<sup>14</sup> It also mandates expedited environmental reviews and a determination by FERC to issue a CPCN.

Under Section 104 of ANGPA, FERC, within 1 year of determining that an application for an Alaska gasline project is complete, must issue a DEIS, with the final version being due within six months of the draft.<sup>15</sup> The decision to grant or deny the certificate must be made within 60 days after issuance of the FEIS.<sup>16</sup>

Section 104 further states that FERC must prepare a single EIS that shall consolidate the environmental reviews of all federal agencies considering any aspect of the gasline project, and those agencies shall adopt the FERC-prepared EIS.<sup>17</sup> To facilitate development of the EIS, ANGPA requires all federal agencies considering any aspect of the proposed project to cooperate with FERC and comply with the deadlines it establishes.<sup>18</sup>

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<sup>11</sup> Testimony of Pat Wood, III, Chairman, Federal Energy Regulatory Commission. Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, May 5, 2004.

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<sup>12</sup> “TransCanada Response to January 16, 2008, Request for Information,” page 2, January 24, 2008.

<sup>13</sup> “TransCanada Application for License, Alaska Gasline Inducement Act,” Section 2.2.4.1, November 30, 2007.

<sup>14</sup> 15 USC 720a.

<sup>15</sup> 15 USC 720b(d).

<sup>16</sup> 15 USC 720a(c).

<sup>17</sup> 15 USC 720b(b) and (c)(2).

<sup>18</sup> 15 USC 720b(c)(1).

Similar to ANGTA, ANGPA Section 106 establishes an entity, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects, to “coordinate the expeditious discharge of all activities by federal agencies” with respect to a project authorized under ANGTA or the NGA and ensure agencies’ compliance with ANGPA.<sup>19</sup> This OFC authority extends until 1 year following completion of the project, and the authority includes the federal agencies with responsibilities for ANGPA’s provisions for a pipeline construction training program, a loan guarantee program, and updating of ANGTS.<sup>20</sup>

The OFC has the authority to prevent federal agencies (other than FERC) from including in their authorizations any terms or conditions that are permitted but not required under law, and from amending or abrogating their authorizations, unless required by law, if those actions have the effect of significantly preventing or impairing the expeditious construction and operation of the project.<sup>21</sup>

ANGPA, like ANGTA, requires the OFC to enter into a joint surveillance and monitoring agreement with the State of Alaska for the purpose of monitoring the construction of the Alaska gasline project. The federal government has primary surveillance and monitoring responsibility for the portions of the project that cross federal or private land.<sup>22</sup>

In addition to the authorities and responsibilities of the OFC enumerated in the law, ANGPA transfers to the OFC the functions and authorities of the Federal Inspector as described in Section 7(a)(5) of ANGTA (15 USC 719e(5)), Reorganization Plan No. 1,

E.O. 12142, and Section 5 of the President’s decision, which designated the ANGTS.<sup>23</sup>

The OFC is an independent office in the executive branch that reports directly to the President. The Federal Coordinator is appointed by the President, with the consent of Congress.

### **2.3 AUTHORITIES OF THE OFFICE OF THE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS**

Under ANGPA, and its transfer of the functions and authorities of the ANGTA Office of the Federal Inspector, the OFC has the authority to expedite the construction and initial operation of an Alaska gasline project through oversight of all federal agency reviews and actions related to the project. ANGPA and the June 2006 MOU provide the framework for the OFC to exercise its authorities in the pre-NEPA, NEPA, and post-NEPA phases of an Alaska gasline project. The discussion below summarizes the OFC’s role pursuant to the June 2006 MOU. It is followed by a description of the OFC’s involvement in the pre-NEPA, NEPA, and post-NEPA phases of the project.

#### **2.3.1 OFC and the MOU**

The “Memorandum of Understanding Related to an Alaska Natural Gas Transportation Project” (MOU), dated June 2006, provides a management framework whereby the OFC will carry out its responsibilities. The federal agency signatories — those agencies that have a statutory interest in the Alaska gasline project — agree to work with the OFC and FERC to ensure

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<sup>19</sup> 15 USC 720d(a) and (c).

<sup>20</sup> 15 USC 720k, 720n, and 720h.

<sup>21</sup> 15 USC 720d(d)(2), (3), and (4).

<sup>22</sup> 15 USC 720d(e).

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<sup>23</sup> 15 USC 720d(f).

timely decision making.<sup>24</sup> These Participating Agencies also agree to submit draft agency implementation plans to the OFC.

The implementation plans include the agencies' anticipated schedule milestones, as well as a description of the process they will use to ensure they take the appropriate actions within the time frames established by ANGPA. One of these time frames is the deadline that FERC will establish for the agencies in order to ensure FERC's timely completion of the EIS.<sup>25</sup> The draft agency implementation plans are to include the following items:

- Roles and responsibilities,
- Legal authority,
- Scheduling and timing of specific actions,
- Data and other information requirements from other appropriate entities to meet regulatory responsibilities,
- Permit execution processes, and
- Project transition activities.

The timetable for preparation of the draft agency implementation plans is established by the OFC in consultation with the Participating Agencies. Based on the draft agency implementation plans, the OFC then develops a single draft federal implementation plan. The MOU anticipates that the OFC's federal

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<sup>24</sup> "Memorandum of Understanding Related to an Alaska Natural Gas Transportation Project," June 2006, Section IV.B.2 and B.3. MOU Participating Agencies are the Departments of Agriculture, Commerce, Defense, Energy, Homeland Security, the Interior, Labor, State, Transportation, and Treasury; the Advisory Council on Historic Preservation; the Council on Environmental Quality; the Environmental Protection Agency; and the Federal Energy Regulatory Commission.

<sup>25</sup> 15 USC 720b(c).

implementation plan will inform the OFC and the Participating Agencies of conflicting schedules and processes that could interfere with expeditious construction and initial operation of the project. In regard to the post-NEPA activity of the relevant Participating Agencies, the OFC agrees to consult with them before coordinating project authorization and implementation schedules.

The MOU also establishes a framework for coordination with FERC. Similar to the FERC pre-filing process, the MOU contains provisions in which FERC agrees to consult with the Participating Agencies as it establishes a schedule for reviewing the project, and the Participating Agencies agree to review the project application for completeness and provide FERC with the results of their review. FERC further agrees to consult with the OFC when establishing the review schedule, and the Participating Agencies agree to share their application review results with the OFC. Although the MOU describes a cooperative framework for the OFC, FERC, and the Participating Agencies, it is only an agreement to agree. The OFC's authority to ensure expedited action as an Alaska gasline project moves through the pre-NEPA to the post-NEPA phase is derived from ANGPA.

### 2.3.2 OFC and the ANGPA NEPA Process

Federal agencies are required to expedite their reviews and actions in regard to the project, and the OFC is responsible for "coordinating the expeditious discharge" of those agency activities.<sup>26</sup> Thus, OFC oversight and enforcement authorities under ANGPA Section 106 span the pre-NEPA, NEPA, and post-NEPA phases of an Alaska gasline project other than ANGTS and the post-NEPA phase of ANGTS.

ANGPA does not address the pre-filing process that is associated with FERC's

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<sup>26</sup> 15 USC 720d.

pre-NEPA activity, although the MOU does address pre-filing. However, the OFC has Section 106 authority to expedite federal agencies' reviews of the project applicant's agency authorization requests and schedules, if the applicant elects the pre-filing route. In the event that the applicant chooses not to use the pre-filing process, ANGPA requires each federal agency to comply with the deadlines FERC establishes for the preparation of the EIS.<sup>27</sup> ANGPA Section 104 states that FERC will make a determination that an application is complete before beginning the 1 year period to prepare and issue a DEIS. FERC could conceivably require the types and timelines of agency review that are part of the pre-filing process. The OFC, under its ANGPA Section 106 authority to ensure the compliance of agencies with the ANGPA provisions, has the authority to ensure that agencies comply with FERC timelines.

ANGPA Section 104 controls the NEPA process for the project. It establishes FERC as the lead for NEPA compliance, requires preparation of one EIS that consolidates federal agency environmental reviews, and states that agencies will comply with FERC's EIS-related deadlines. The section also dictates the timelines within which FERC must issue a draft and final EIS. The OFC's Section 106 powers extend to ensuring that federal agencies comply with FERC deadlines and that FERC adheres to the draft and final EIS deadlines assigned to it.

The post-NEPA phase of the project includes issuance of a final FERC order granting or denying the application for a CPCN and federal agencies' approvals of the authorizations necessary for the construction and operation of the project. Final decisions on federal agency authorizations are due no later than 90 days after FERC issues the FEIS.<sup>28</sup>

Although the OFC does not have the authority to impose any terms, conditions, or

requirements in addition to those imposed on the applicant by FERC or a federal agency,<sup>29</sup> the office has the authority to deny inclusion of terms or conditions in an authorization, if they are discretionary to the agency (i.e., inclusion is permissible but not required by law) and would significantly prevent or impair the expeditious construction or operation of the project. Furthermore, the OFC can also prevent an agency from revising an approved authorization, if the revision would significantly prevent or impair project construction and operation.<sup>30</sup> ANGPA does not define what constitutes a "significant" prevention or impairment.

## **2.4 ALASKA GASLINE INDUCEMENT ACT (AGIA)**

The Alaska Gasline Inducement Act (AGIA) was enacted in 2007 by the State of Alaska to move forward expeditiously with development of a natural gas pipeline. The Act creates a state pipeline coordinator with the authority to coordinate state regulatory processes and offers the successful AGIA applicant up to \$500 million toward the costs of obtaining a FERC CPCN. In many respects, AGIA is not a regulatory law, but rather develops the basis for a business/equity partnership between the State of Alaska and a project applicant. It should be noted that potential project applicants seeking to transport North Slope natural gas can bypass, or choose to ignore, AGIA and independently seek a FERC certificate.

Applications that clear the completeness review to ensure they comply with the requirements of AGIA are evaluated to determine whether they sufficiently maximize benefits to Alaska citizens. The application that emerges from that evaluation is then forwarded to the legislature, which has 60 days to pass legislation that approves issuing an AGIA license. In the event that legislation approving a

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<sup>27</sup> 15 USC 720b.

<sup>28</sup> 18 CFR 157.22.

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<sup>29</sup> 15 USC 720d(d)(4).

<sup>30</sup> 15 USC 720(d)(2) and (3).

license does not pass, new AGIA applications can be sought, and the process is reinitiated.

## 2.5 OFC AND ANGTA

If the two remaining ANNGTC partners would revive the partnership in order to use its ANGTA-derived assets to build ANGTS, ANGPA Section 110 requires the Secretary of the Department of Energy to determine what is necessary to update ANGTS environmental data, reports, permits, and impact analyses. The section also allows federal agencies that have issued authorizations pursuant to ANGTA to add to, amend, or rescind them in order to meet current project requirements. However, the modifications cannot affect the basic nature and general route of ANGTS, nor can they significantly impair or prevent ANGTS construction and initial operation.

It is unlikely that a new applicant would apply for a certificate under ANGTA. In addition to ANNGTC still holding its ANGTA-derived assets, the terms of the President's decision are legally binding, and challenges could be raised to the ability of FERC to modify them, if another company submitted an ANGTA-based application.

If ANGTS is revived or if an Alaska gasline project is approved pursuant to ANGTA, the OFC is able to exert the authorities associated with ANGTA and ANGPA. This includes requiring agencies to submit their scheduling plans for authorizations, coordinating the scheduling of project-related agency activities, and exercising veto authority over agency discretionary terms and conditions in authorizations or authorization modifications. If ANGTA becomes an active vehicle to move a project forward by an applicant, it would likely trigger reactivation of the Executive Policy Board, the reappointment of AAOs, and reactivation of the OFC's working relationship with those entities.

## 2.6 ADOPTED CONSOLIDATED EIS

FERC will have 6 months to respond to comments on the DEIS and ensure that all agencies adopt the FEIS — presumably this means that each action agency that will issue a Record of Decision (ROD) would also have to sign the FEIS. This may require that a single person from each agency be delegated with the authority to resolve comments on the DEIS and state that the FEIS is acceptable to the agency.

## 2.7 STATUTORY SCHEDULE

The recent activities by Congress and the President reflect renewed interest in promoting an Alaska natural gas pipeline and ensuring an expedited permitting and construction effort. Among its provisions to expedite that effort, ANGPA:

- Sets a mandatory 18-month time limit on issuing a pipeline EIS;
- Sets a mandatory 60-day, post-EIS issuance time frame in which FERC must grant or deny an application for a certificate;
- Reasserts the existing prohibition on certain routes;
- Requires expedited processes by all agencies involved;
- Limits judicial review of the EIS;
- Names FERC as the lead agency for the EIS and requires other agencies to cooperate;
- Requires other federal agencies to adopt FERC's EIS;
- Establishes the Office of the Federal Coordinator, clarifies certain authorities,



and transfers to it all of the authorities, duties, and functions of the previous Office of the Federal Inspector (OFI) as these functions apply to an ANGTA-derived project.

### **2.7.1 Environmental Impact Statement Required**

Section 104 of ANGPA states in part, “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 environment,” and therefore requires an EIS under NEPA. FERC is also directed to be the lead federal agency for the EIS effort (ANGPA Section 104(b)).

From a plain reading of Section 104(a), noting that Section 103 above excluded the ANGTS project, it appears that Congress intended that no EIS would be required for the ANGTS project, even though the approval was given more than 30 years ago. However, Section 110(c) of ANGPA does require updated environmental information, as determined by the Secretary of Energy, for an ANGTS project.

### **2.7.2 Agencies Required to Consolidate and Cooperate with FERC**

Section 104 of ANGPA goes on to specify that the EIS prepared by FERC “shall consolidate the environmental reviews of all federal agencies considering any aspect of the Alaska natural gas transportation project covered by the environmental impact statements.” Paragraph 104(c)(1) specifically requires these agencies to:

- “(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.”

### **2.7.3 FERC Order No. 687**

On December 26, 2006, FERC issued a Final Rule (Order 687) and regulations establishing the process by which FERC will exercise its new responsibilities under Section 313 of EPAct. Specifically, FERC is now required to:

- Act as the lead agency for purposes of complying with NEPA for appropriate projects;
- Set an expeditious schedule for all federal and state agencies acting under federal delegated authority, to reach a final decision on requests for federal authorizations necessary for proposed natural gas infrastructure projects; and
- Maintain a consolidated record of all decisions and actions FERC and other agencies take with respect to such authorizations.

### **2.7.4 FERC Pre-filing and EIS**

Pre-filing with FERC has, in recent years, proven to be a very successful way of providing an early avenue for involvement by the public and affected agencies. Through this means, all parties have the opportunity to preview major aspects of a pending application. The FERC pre-filing process procedures are stipulated in 18 CFR 157.21. Prospective applicants for FERC authorizations are required to use the pre-filing process for planned liquefied natural gas (LNG) terminal facilities and the related FERC-jurisdictional natural gas facilities. Pre-filing for processing a NGA Section 7 natural gas pipeline application is an open-ended voluntary process. The voluntary pre-filing officially begins on the date FERC issues a notice approving the pre-filing (18 CFR 157.21(e)(3)). Pre-filing is then followed by a formal filing, triggering the formal EIS process, led by FERC (see Figure 1-1).

There are many advantages for an applicant of an Alaska gasline project to pursue the earliest possible informal or formal pre-filing with FERC. Indeed, the MOU contemplates the use of the pre-filing process for an Alaska gasline project. The early, proactive, and continuous coordination with authorizing agencies and other affected stakeholders will uncover virtually all of the concerns or requirements at an early enough point that they can be either accommodated or otherwise accounted for. The engineering design can be altered when design or routing issues are uncovered early. Potentially fatal flaws in permitting or NEPA processes can be illuminated and fixed, and planning to address stakeholder concerns can be conducted in an orderly way. Having early FERC staff involvement is particularly beneficial to identifying and resolving issues. To an applicant, this comprehensive upfront approach may seem overly expensive and more than necessary. However, recovering from a misstep later in a project can easily cost many multiples of the extra expense incurred.

## **2.8 ISSUES NEEDING EARLY WORK TO MINIMIZE SCHEDULE RISKS**

The 18-month EIS timeline set by Congress in ANGPA (plus two months for FERC's final decision on the certificate application) basically allows for no major design changes, redoing or adding alternatives, redoing studies, or similar actions in the course of this expedited EIS. In layman's terms, the issues will need to have been 98% resolved at the DEIS stage. Performing major rewrites or new analyses to accommodate legitimate concerns or commentary on the DEIS would be very difficult to achieve in the remaining six-month period allowed by ANGPA.

### **2.8.1 Government-to-Government Consultations**

An issue related to the ANGPA time frame for FERC completion of the EIS is FERC's government-to-government consultation policy.<sup>31</sup> As the lead agency for the EIS, it is reasonable that FERC should undertake the government-to-government consultations associated with the EIS. Accordingly, and to avoid duplicative processes, FERC and the agencies considering any aspect of the Alaska natural gas pipeline should reach agreement that the agencies' government-to-government consultations related to the EIS are satisfied through FERC's consultations.

Post-NEPA government-to government consultations should be undertaken by the OFC on behalf of the agencies.

### **2.8.2 OFC Process of Reviewing Authorizations and Authorization Modifications**

ANGPA Sections 106(d)(2) and (3) give the OFC the authority to veto agency discretionary terms or conditions in or modifications to authorizations, if the agency action would "prevent or impair in any significant respect the expeditious construction and operation" of the project. In order to exercise this veto authority as intended, the OFC must be able to review proposed authorizations and proposed authorization modifications.

The authority of the OFC to "coordinate the expeditious discharge of all activities by federal agencies" (ANGPA Section 106(c)(1)) could be used to establish a schedule of when federal agencies will make drafts of their authorizations available to the OFC. For example, if draft

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<sup>31</sup> 18 CFR 2.1c, "Policy Statement on Consultation with Indian Tribes in Commission Proceedings."

authorizations are issued prior to the DEIS, the OFC could review them and excise any objectionable terms or comments before the DEIS goes public. The OFC could also develop a process requiring that any proposed modifications to authorizations be routed through the OFC for review and possible action.

### 2.8.3 OFC Review of Authorizations: NEPA

If authorizations and permits (other than the FERC certificate) are reviewed — and their terms or conditions are rejected — by the OFC after the FEIS, but are based on the information in it, as would normally be the case, the OFC has expansive authority to still veto the measures after determining they could negatively affect the expeditious construction and operation of the project. Such action might require the development of a supplement to the FERC EIS, but a supplement would be highly unlikely because of potential adverse impacts to the construction schedule. Nevertheless, as the ANGPA-appointed lead for the EIS, FERC would have the responsibility to prepare the supplement, if it is needed.

### 2.8.4 Agency Authorized Officers

Under ANGTA, each federal agency with statutory responsibility over any aspect of the system is required to appoint an AAO to “represent that authority on all matters pertaining to pre-construction, construction, and initial operation of the system.”

### 2.8.5 Key Regulatory Issues

For natural gas pipeline projects, certain regulatory approval issues have historically required longer lead times and more intensive agency–applicant cooperation, and therefore should be attended to early in pre-planning (at least 2 years before the start of an EIS is recommended) by the applicant. For an Alaska

gasline project, major issues needing earliest coordination include:

- State, federal, and private ROW acquisitions (Alaska Department of Natural Resources [DNR] and the Bureau of Land Management [BLM]).
- Endangered Species Act consultations (FERC, Fish and Wildlife Service [FWS]), and National Marine Fisheries Service [NMFS]).
- Essential fish habitat and marine mammals (NMFS).
- Section 106, “Historic Preservation” (Advisory Council on Historic Preservation and Alaska State Historic Preservation Office).
- Water quality, water use, water crossings, and wetlands (Environmental Protection Agency [EPA], United States Army Corps of Engineers [USACE], and Alaska Department of Environmental Conservation [ADEC]).
- Coastal Zone Management Plan (DNR and National Oceanic and Atmospheric Administration [NOAA]).
- Air Quality monitoring and permitting (ADEC and EPA).
- Pipe safety and design (U.S. Department of Transportation [DOT] Pipeline and Hazardous Materials Safety Administration [PHMSA]).
- Engineering and design basis review (BLM, PHMSA, FERC, ADEC, DNR, U.S. Coast Guard [USCG]).
- Bridges (USCG, Federal Highway Administration [FHWA], Alaska Department of Transportation and Public Facilities [DOT&PF]).

- Infrastructure upgrades (DOT&PF, Federal Aviation Administration, FHWA).
- Canadian interface.

### 3 FEDERAL, STATE, AND CANADIAN ROLES

This chapter identifies the agencies with responsibilities for federal authorizations pertaining to the Alaska gasline project. It also describes those responsibilities and identifies potential issues and gaps that should be addressed to expedite the permitting process. There are three distinct phases involved in obtaining federal agency authorizations. A simplistic description of the phases is as follows:

- *Pre-EIS*. This phase involves early identification of and coordination with agencies that will be involved in the approval process of the project. Information is exchanged, and applicants are given directions as to what information agencies want and when they need it. Using FERC's pre-filing process, the applicant assembles the required design and studies and performs outreach to meet FERC requirements. OFC has a strong coordinating role to play in this phase to ensure coordinated, efficient, and complete agency participation.
- *EIS/ROD*. This phase begins once an application is deemed "complete" by FERC. An Alaska gasline project EIS will be led by FERC, will be adopted by all agencies involved as satisfying its NEPA compliance requirements, and will have a legislated 18-month time frame. Major agency authorizations will likely be tied to the EIS and its consolidated ROD. Although FERC is the designated lead agency for the EIS, the OFC will have the same strong role in agency coordination to ensure timely and efficient agency participation in the NEPA process.
- *Post-EIS*. After agency authorizations have been granted, the OFC will exercise an even stronger coordinating role. The OFC will be the "one window"

for all applicant–agency interactions. The OFC will oversee the efficient and coordinated application of all federal agency terms, conditions, stipulations, permits, implementations of the provisions of the ROD, and other authorizations in all activities leading up to and including construction of the pipeline system. The OFC's authority extends to 1 year after system check and startup. At that point, the OFC will turn over its records, requirement statements, and monitoring systems to a federal–state monitoring office.

An important point is the fact that the OFC is charged with an oversight/coordination role in all phases of an Alaska gasline project, from start to finish.

#### 3.1 FEDERAL AGENCIES WITH ALASKA GASLINE PROJECT AUTHORITIES

Agencies with responsibilities for federal authorizations pertaining to the Alaska gasline project include signatories to the June 2006 MOU and other agencies (Table 3-1). Federal authorizations involve any certificates, ROWs, permits, leases, opinions, or other authorizations or approvals required, issued, or granted by a federal officer or agency action that are necessary or related to the application for a CPCN under Section 7 of the NGA, the construction, and the initial operation of the Alaska gasline project. Thus, the authorizations include not only those related to NEPA, but those for the construction and initial operations. This section describes the roles and responsibilities and potential interagency interactions and dependencies regarding the federal authorizations required for the Alaska gasline project. Because FERC is responsible for the overall coordination of NEPA-related Alaska gasline project authorizations, its roles and responsibilities are described first, followed by

**TABLE 3-1 Federal Agencies with the Alaska Gasline Project<sup>a</sup>**


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Advisory Council on Historic Preservation
Council on Environmental Quality
Department of Agriculture Forest Service
Department of Defense Army Corps of Engineers
Department of Commerce
• National Oceanic and Atmospheric Administration
• National Marine Fisheries Service
• National Ocean Service
Department of Energy
Department of Homeland Security
• U.S. Coast Guard, Office of Bridge Administration
• Transportation Security Administration, Office of Pipeline Security
• Customs and Border Patrol
• Office of Infrastructure Protection
Department of the Interior
• Bureau of Indian Affairs
• Bureau of Land Management
• Fish and Wildlife Service
• National Park Service
• U.S. Geological Survey
Department of Labor
Department of State
Department of Transportation
• Pipeline and Hazardous Materials Safety Administration
• Federal Highway Administration
• Federal Aviation Administration
Environmental Protection Agency
Federal Communications Commission
Federal Energy Regulatory Commission
Department of Treasury

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<sup>a</sup> Includes both signatories to the MOU and other agencies that have Alaska gasline project authorization responsibilities.

those of the remaining agencies, in alphabetical order. Table 3-2 summarizes the federal agencies and their required authorizations.

### **3.1.1 Federal Energy Regulatory Commission**

FERC is an independent agency that regulates the interstate transmission of electricity, natural gas, and oil. FERC approves the siting and abandonment of interstate natural gas pipelines and storage facilities, and ensures the safe operation and reliability of proposed and operating LNG terminals. It also licenses

hydropower projects, regulates the sale of natural gas for resale in interstate commerce, monitors and investigates energy markets, oversees environmental matters related to natural gas and hydroelectricity projects and major electricity policy initiatives, and administers accounting and financial reporting regulations and conduct of regulated companies.

#### **3.1.1.1 FERC Responsibilities for the Alaska Gasline Project**

FERC is responsible for issuing the CPCN authorizing the construction and operation of an

**TABLE 3-2 Agencies and Required Authorizations**

Agency <sup>a</sup>	Authorization <sup>b</sup> /Responsibility
FERC	Establish schedule of agency review of authorization requests.
FERC	Issue schedule for environmental review.
FERC	Notify participating agencies of receipt of a project application.
FERC	Set time for pre-filing and coordinate pre-filing activities.
FERC	Prepare DEIS.
FERC	Prepare FEIS.
FERC	Make final determination to grant or deny application.
FERC	Lead the NHPA Section 106 review process.
FERC	Grant authorization to export/import natural gas.
FERC	Grant Presidential Permits for cross-border natural gas pipelines.
ACHP	Review and comment on federal-agency undertakings that may affect properties listed or eligible for listing on the <i>National Register of Historic Places</i> .
CEQ	Issue regulations applicable to federal agencies implementing NEPA.
USDA-FS	Approval of ROWs that cross FS or improvement to FS lands.
DOD-USACE	Authorize the discharge of dredged or fill material into waters of the U.S. (Section 404 permits).
DOC-NOAA-NOS	Review federal consistency requirements under the Coastal Zone Management Act.
DOC-NOAA-NMFS	Make conservation recommendations, if action would adversely affect essential fish habitat; consult with agencies, if action may affect and endangered species or critical habitat; issue incidental take authorization if project has adverse effect on marine mammals.
DOE	Enter into federal loan guarantee agreements.
DOE	License the export of natural gas.
DHS-USCG Office of Bridge Administration	Approve the location and clearances of bridges and causeways in or across the navigable waters of the U.S., and/or connecting the U.S. with any foreign country.
DHS-Office of Infrastructure Protection	Conduct vulnerability assessment.
DHS-TSA	Ensure that security is built into the design of the system.
DOI-BIA	Administer federal Alaska Native policy; help Alaska Native populations take advantage of economic benefits to be derived from the construction of the pipeline.
DOI-BIA	Grants ROWs, with the consent of Alaska Native owners, across trust lands.
DOI-BLM	Authorize temporary use permits for access to ROWs.
DOI-BLM	Issue ROW permits that cross federal lands (except NPS, Alaska Native trust, and outer continental shelf lands).
DOI-FWS	Consult with or grant approvals on projects affecting FWS resources.
DOI-NPS	Participate in NHPA Section 106 reviews; comment on Section 4(f) evaluations prepared by DOT.
DOI-USGS	Comment on EIS.
DOL	Establish a grant program to train Alaska workers in the skills required to construct and operate a natural gas pipeline.
DOS	Address foreign policy aspects of any agreements with the government of Canada concerning the Alaska gasline project.
DOT-FHWA	Approve certain highway projects and uses of federal highway ROWs.
DOT-PHMSA	Establish and enforce minimum safety standards.
DOT-PHMSA	Issue special permits, if necessary.
DOT-FAA	Permit airstrips for planes that carry more than 30 passengers.
DOT-FAA	Approve construction or alteration notices.

**TABLE 3-2 (Cont.)**

Agency <sup>a</sup>	Authorization <sup>b</sup> /Responsibility
EPA	Comments on the EIS.
EPA	Participates in CWA Section 404 permit process.
EPA	Issues and/or reviews state-issued National Pollutant Discharge Elimination System permits.
EPA	Issue storm water permits.
FAA	Approve construction or alteration notices.
FCC	Issue radio and wire communications permits and licenses.
Treasury	Provide technical assistance to DOE for implementing loan guarantee; review loan guarantee provisions.

<sup>a</sup> ACHP = Advisory Council on Historic Preservation; BIA = Bureau of Indian Affairs; BLM = Bureau of Land Management; CEQ = Council on Environmental Quality; DHS = Department of Homeland Security; DOC = Department of Commerce; DOD = Department of Defense; DOE = Department of Energy; DOI = Department of the Interior; DOL = Department of Labor; DOS = Department of State; DOT = Department of Transportation; EPA = Environmental Protection Agency; FAA = Federal Aviation Administration; FCC = Federal Communications Commission; FHWA = Federal Highway Administration; FS = Forest Service; FWS = Fish and Wildlife Service; NMFS = National Marine Fisheries Service; NOAA = National Oceanic and Atmospheric Administration; NOS = National Ocean Service; NPS = National Park Service; PHMSA = Pipeline and Hazardous Materials Safety Administration; TSA = Transportation Security Administration; USACE = U.S. Corps of Engineers; USCG = U.S. Coast Guard; USDA = U.S. Department of Agriculture; USGS = U.S. Geological Survey.

<sup>b</sup> Any authorization required under federal law with respect to an application for a CPCN under Section 7 of the Natural Gas Act, including any permits, special use authorizations, certifications, opinions, or other approvals as may be required under federal law with respect to an application for CPCN under Section 7.

Alaska gasline project (under Section 7 of the NGA). Before EPAct, FERC had jurisdiction over only some aspects of each natural gas project. Thus, for a natural gas project to move forward, in addition to FERC approval, several other agencies needed to reach favorable findings regarding other aspects of the project. To improve the coordination of the activities of separate agencies with varying responsibilities over proposed natural gas projects, EPAct expanded FERC's role by making it the lead agency for coordinating all applicable federal authorizations. To reduce redundancy and sequential processing, FERC, in its newly expanded lead agency role, is responsible for conducting the following actions:

- *Establish Schedule.* Section 313 of EPAct directs FERC to establish a schedule for agencies to review requests

for all federal authorizations required for a project, which ensures "expeditious completion of all such proceedings" and complies with applicable schedules established by federal law. Other federal and state agencies considering an aspect of an application for federal authorization are to comply with the deadlines established by FERC. According to the June 2006 MOU, FERC is to consult with the OFC and relevant participating agencies in establishing a schedule for the project review process. The schedule to be established by FERC is to be as expeditious as possible and consistent with periods for response and analysis required by law and applicable to an Alaska gasline project.



- *Maintain Consolidated Record.* Section 313 of EPCRA also requires FERC to maintain, with the cooperation of federal and state administrative agencies and officials, a complete consolidated record of all decisions made or actions taken by FERC and by agencies (or state administrative agencies or officers acting under delegated federal authority) responsible for any federal authorization.

Other FERC responsibilities include the following:

- *Issue Schedule for Environmental Review.* In accordance with the regulations (18 CFR Parts 153, 157, 375, and 385, October 19, 2006) that FERC has promulgated governing its exercise of the additional authorities granted by EPCRA (i.e., to coordinate the processing of authorizations and to maintain the consolidated record), FERC commits to issuing a “Notice of Schedule for Environmental Review” within 90 days of an application and to publishing such notice in the *Federal Register*. The Notice of Schedule for Environmental Review must state, among other milestones, the anticipated date for FERC’s completion of its FEIS. This NEPA notice informs those agencies that do not have a schedule established by federal law governing the time frame by which they must approve their authorizations that the date by which they are to reach a decision on requested authorizations is within 90 days after the anticipated issuance of

FERC’s FEIS).<sup>1</sup> (The objective is to have all agency reviews and decisions completed no later than 90 days after FERC issues the FEIS.)

- *Issue Environmental Impact Statements.* FERC is also the lead agency for complying with the requirements of NEPA. As such, it is responsible for issuing the draft and final EISs for the project. These EISs are to consolidate the environmental reviews of all federal agencies considering any aspect of the project covered by the EISs. Each federal agency is to adopt the FERC-prepared EISs. FERC has expressed concern regarding how infrastructure improvement (e.g., a new dock at Anchorage) will be addressed in the EISs. FERC believes the OFC should address this issue soon to avoid unnecessary complications about what should and should not be included in the EISs.
- *Coordinate Pre-filing Activities.* In the traditional filing process, FERC involvement begins when the project sponsor (company) files its application for a CPCN. With the pre-filing process, FERC and other stakeholders are involved prior to the time the company

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<sup>1</sup> FERC recognizes that the anticipated EIS issuance date is subject to change, because during the course of considering an application or a request for a federal authorization, unanticipated issues and circumstances can arise and affect the time needed to complete the review. FERC will monitor such changed circumstances, and may revise the milestones set in the initial schedule for environmental review. If it revises those milestones, FERC will issue a notice updating the milestones associated with its environmental review process. Any revision that alters the date that FERC anticipates issuing the FEIS will correspondingly shift the projected 90-day deadline for agencies without a schedule established by federal law to reach a final decision (preamble to rule, item 12).

files its CPCN application. The pre-filing process is a means for meeting NEPA requirements and optimizing scheduling. It is designed to facilitate the development of a FERC application that is complete and that identifies all stakeholders and issues. FERC sets the schedule for pre-filing. The FERC pre-filing process is initiated by a letter from a FERC director approving a request from the project sponsor that includes the following information:

- Description of the desired schedule for the project, including the expected application filing date and the desired date for FERC approval;
- Detailed description of the project, including location maps and plot plans to scale showing all major plant components, which will serve as the initial discussion point for stakeholder review;
- List of the relevant federal and state agencies in the project area with permitting requirements;
- Description of the interests of other persons and organizations who have been contacted about the project; a description of what work has already been done (e.g., contacting stakeholders, agency consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental surveys/studies, and open houses);
- Description of a public participation plan that identifies specific tools and actions to facilitate stakeholder communications and public information, including a project website and a single point of contact; and
- Description of how the applicant intends to respond to requests for information from federal and state permitting agencies.

- *Serve as Federal Government Contact with Alaska Natives.* Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” which covers government-to-government consultations, exempts independent regulatory agencies (e.g., FERC) from the requirements. Nonetheless, it is assumed that FERC will comply with the requirements as other federal agencies do. Thus, FERC will likely take the lead role in consultations and other government-to-government relationships with Alaska Natives.<sup>2</sup>
- *Lead the Section 106 Review Process for Historic Properties.* FERC is responsible for conducting the Section 106 review process, which is a consultative process required by the National Historic Preservation Act (NHPA) that involves several agencies, state organizations, and Alaska Natives. (See Section 3.1.2 for more detail on the Section 106 process.) Although separate undertakings, FERC will coordinate the NEPA and Section 106 review processes so that there will be shared information and cooperation.
- *Issue Presidential Permits, if Required.* FERC is responsible for authorizing the siting and construction of border crossing facilities that are needed for the import and export of natural gas (under Section 3 of the NGA) and for issuance of any Presidential Permits required for natural gas pipelines that cross international borders.

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<sup>2</sup> In this report, unless otherwise specified, the term Alaska Native is used in the broadest sense to include all Alaska Native groups, organizations, and trust lands, including, but not limited to, Indian Tribes, Bands, Nations, or other organized groups or communities, including Native Villages, Regional Corporations, or Village Corporations.

- *Coordinate with the Canadian Government.* FERC and its Canadian and Mexican counterparts meet three times a year to discuss matters of common interest, to identify potential issues and to coordinate their efforts on common projects. FERC plans to include the Alaska gasline project in upcoming meetings. (The Department of State [DOS] is not represented at these meetings.) The OFC should be apprised of and participate in any meetings with the FERC's Canadian counterparts.

During the pre-filing process, FERC works with participating agencies and other stakeholders to identify and resolve issues at the earliest stages of project development. Because only one EIS will be prepared and that EIS must satisfy all of the requirements of the cooperating federal agencies, it is anticipated that a great deal of design specificity will be developed by an applicant during the pre-filing phase of a gasline project. FERC additional pre-filing activities also include some or all of the following:

- Assisting the applicant in developing initial information about the proposal and identifying the affected parties (e.g., landowners, agencies, other interested parties);
- Issuing an environmental scoping notice and conducting such scoping for the proposal;
- Facilitating issue identification and resolution;
- Conducting site visits, examining alternatives, meeting with agencies and stakeholders, and participating in the applicant's public information meetings;
- Reviewing and commenting on draft resource reports; and
- Initiating the preparation of a DEIS.

Completion of the Alaska gasline project will require extensive coordination by the OFC, FERC, and all other participating agencies throughout the life of the project. An MOU between FERC and USACE addresses coordination between the two agencies for conducting their respective NEPA responsibilities.

### **3.1.1.2 Issues Identified during Communications with FERC**

Significant issues identified by FERC include the following:

- Whether Canada will be able to match the U.S. approval schedule.
- Construction material requirements (particularly steel) will tax the world supply and could delay project startup or completion.
- Ascertaining the usefulness and availability of data.
- How well federal and state coordination for approvals will mesh.

There exists some uncertainty regarding FERC's role with respect to consultations and other government-to-government relationships with Alaska Natives. The role that FERC will play and the degree to which FERC will participate in government-to-government consultations with Alaska Natives (given that it is technically exempt from such consultations) must be determined. Options include FERC's taking the lead in these consultations and assuming this responsibility for all participating agencies, and coordinating the consultations of one or more agencies. The process that FERC will use to prepare for, conduct, and track this coordination should be identified early in the process.

### 3.1.2 Advisory Council for Historic Preservation

The Advisory Council for Historic Preservation (ACHP, the Council) reviews and provides comments on actions by federal agencies that may affect properties that are listed in and eligible for listing in the *National Register of Historic Places (National Register)*. This review is carried out pursuant to Section 106 of the NHPA, which requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The Section 106 review process is intended to accommodate historic preservation concerns with the needs of federal undertakings (or undertakings that require federal assistance, approval, or permitting, such as the Alaska gasline project, in this case) through consultations among agency officials and other stakeholders with interests in historic properties and historic preservation and related issues.

The Section 106 process is implemented in accordance with regulations promulgated by the ACHP's "Protection of Historic Properties" (36 CFR Part 800). It is a four-step process that involves the following basic actions by the agency prior to the initiation of project activities:

- *Initiation of Section 106.* It is during the initial step in the Section 106 review that the undertaking, including all related activities, is defined by the agency (FERC). In addition to identifying all federal agencies involved in the undertaking, the agency (FERC) must identify the State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs) who FERC will consult with during the Section 106 review process. Since Section 106 is a consultative process, additional stakeholders (other consulting parties) must be identified and invited to participate in consultation. Finally, it is during this

step that FERC will begin to plan for public involvement in the Section 106 review.

- *Identification and Evaluation.* The identification and evaluation of historic properties is done in consultation with the SHPO, THPO, and other consulting parties, including Alaska Natives. In consultation with the SHPO/THPO as appropriate, the agency determines the Area of Potential Effects (APE) and the scope of identification efforts. The agency then proceeds to make a reasonable and good faith effort to identify historic properties within the APE, including those listed on the *National Register* and properties listed on state and local surveys that may be eligible for listing. Further, it is at this point that the agency determines whether there is a need for additional field survey work within the project's APE to identify and evaluate previously unidentified properties that may be eligible for listing.
- *Assessment of Effects.* If historic properties are identified, the agency (FERC) assesses the effects the undertaking (Alaska gasline project) will have on each property and seeks the concurrence of the SHPO, THPO, and other consulting parties in making determinations of no historic properties affected, no adverse effect, or adverse effect. Typically, a combination of effect determinations will be made for an undertaking.
- *Resolution of Adverse Effects.* If a determination of adverse effect is made by FERC, the agency is required to continue consultation with the consulting parties to explore alternatives that will avoid, minimize, and/or mitigate adverse effects on historic properties. As part of consultation, FERC is required to solicit the views of

the public, as well. When agreement is reached on measures that resolve adverse effects, FERC negotiates a Memorandum of Agreement (MOA) or Programmatic Agreement (PA) that outlines measures agreed upon by the consulting parties that allow FERC to avoid, minimize, and/or mitigate the adverse effects. An MOA is used when all historic properties have been identified, effects determined, and specific steps to resolve adverse effects agreed upon. PAs are used to specify a process to be followed for identification and evaluation of historic properties, assessment of effects, and resolution of effects, when all historic properties have not been identified and all effects have not been determined. The execution of an MOA or PA concludes the Section 106 review, and the agency may proceed with project activities. On occasion, consulting parties may not agree that there are feasible measures to resolve adverse effects. In cases where the SHPO, the THPO (for undertakings occurring on or affecting historic properties on Tribal lands), or the ACHP (if formally involved in the consultation) cannot agree with the agency on measures to resolve adverse effects, the ACHP may provide formal comments, prepared by its membership, to the head of FERC. In such a case, the Section 106 review process is concluded when the head of FERC advises the ACHP how it will address its formal comments in accordance with Section 110(l) of NHPA. If an MOA or PA is executed, FERC proceeds with its undertaking under the terms of the MOA or PA. Absent an MOA or PA, FERC must consider the Council's written comments in deciding whether and how to proceed.

### **3.1.2.1 ACHP and Other Agency Section 106 Responsibilities for the Alaska Gasline Project**

Once FERC has a filed CPCN application for the proposed undertaking and has notified the ACHP of the potential for adverse effects to historic properties, the ACHP will write a formal letter to FERC saying that the Council is participating in a consultation for one or more of the following reasons: (1) potential effect to important historical properties, (2) procedural problems, (3) controversial issues, or (4) issues of concern to Alaska Natives (which includes Alaska Native Villages and Regional Corporations or Village Corporations).

Typically, ACHP does not participate in projects "from cradle to grave," but becomes involved later in the process when it is determined that historic properties will be adversely affected. However, because of the enormity of the Alaska gasline project, ACHP will become involved early in the process and remain so for its duration.

The Section 106 review should begin at the early stages of project planning so that a broad range of alternatives may be considered during the planning process of the Alaska gasline project. As the lead agency, FERC is responsible for complying with Section 106 regulations. If there are other federal agencies involved, FERC will coordinate with them to determine whether it will act as lead federal agency. The following parties have consultative roles in the Section 106 process: the SHPO, Alaska Native Villages, Regional and Village Corporations, representatives of local governments, the applicant, and other individuals and organizations with a demonstrated legal or economic interest in the undertaking or affected properties or a concern with the undertaking's effects on historic properties.

The SHPO will work with FERC as it prepares required documentation and otherwise complies with the regulations. ACHP will review the documentation related to the assessment of effects and resolution of adverse effects. In addition, the ACHP will assist in resolving any disputes that may arise with regard to the application of its regulations. FERC will make decisions that are informed by the consultation process. Although the Section 106 process is designed to identify potential conflicts and help resolve such conflicts in the public interest, it is possible that if all historic preservation issues cannot be resolved, FERC, the SHPO, ACHP, or the Alaska Native Village or Regional and Village Corporation may conclude that it made a good-faith effort to resolve differences but was not completely successful during consultation.

Consultation is defined in the Section 106 regulations as “the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.” In contrast to the NEPA process, which entails a limited number of public meetings, solicitation and addressing of comments, and preparation of a FEIS, the Section 106 process often includes a number of meetings among various organizations, in which participants work out differences before moving forward. The consultative groups can become large, and it is FERC’s responsibility to manage them.

The Section 106 review should be coordinated with the preparation of the DEIS for a project of this magnitude and scope. Based upon preliminary discussions with the SHPO and THPO, identification and assessment of effects should be conducted during the analysis leading to the DEIS and the results presented in the DEIS. Consultation to resolve adverse effects should be coordinated with public comment on the DEIS, and the results should be reported in the FEIS. If an MOA or PA is developed, it should be addressed in the FERC Consolidated Record (CPCN), along with the

final comments of ACHP. The Section 106 MOA should be fully executed before the CPCN is issued, and the CPCN should provide for the implementation of the MOA’s or PA’s terms.

### **3.1.2.2 ACHP Discussion Results and Potential Issues**

The following information comes from communications between the ACHP and Argonne.

*Agency Review Process.* In addition to FERC conducting a Section 106 review for the overall Alaska gasline project, all agencies issuing permits or approvals typically need to conduct their own Section 106 processes for the actions they are reviewing, unless otherwise agreed to in writing. For example, the USACE permitting requirement for water crossings triggers a Section 106 review. Potential jurisdictional conflicts and overlaps may arise as a consequence of the requirement that each permitting agency comply with Section 106 rules. If the application must “answer to a lot of different masters,” the process may become inefficient. Thus, FERC may want to consider becoming the lead agency for the Section 106 consultations as well as the lead agency for NEPA. If FERC decides this approach is more efficient, it should begin to do so well ahead of time, and there should be a formal written record as to which agencies are responsible for the various Section 106 processes and decisions. The formality of these and related interagency activities should not be overlooked.

*Consultations.* ACHP expects a significant consultative process for the Alaska gasline project because of the concerns of Alaska Native Villages and Regional and Village Corporations. Of particular importance with respect to the Alaska gasline project is the role of Alaska Native Villages and Regional and Village Corporations. The regulations (36 CFR Part 800) require that the agency, in this case FERC, consult with any federally recognized Alaska Native Village or Regional or Village

Corporation that attaches religious and cultural significance to historic properties that may be affected by an undertaking, regardless of whether the historic property is on Tribal lands. The regulations also require that Alaska Native Villages and Regional and Village Corporations be given a reasonable opportunity to identify their concerns about historic properties; assist in the identification and evaluation of historic properties, including those of traditional religious and cultural importance; articulate their views on the undertaking's effects on such properties; and participate in the resolution of adverse effects. FERC, therefore, must make a reasonable and good faith effort to identify the Alaska Natives to be consulted in the Section 106 process. Consultations with federally recognized Alaska Native Villages and Regional and Village Corporations must recognize the government-to-government relationship between the federal government and these Indian Tribes, and FERC is to consult with representatives designated or identified by the Tribal government. Such consultation must be conducted in a manner sensitive to the concerns and needs of the Alaska Native Villages and Regional and Village Corporations.

ACHP suggests that to help ensure participation in the Section 106 process, FERC should announce at the NEPA public meetings that it is seeking the views of the public under Section 106 as well as NEPA. The agency should also explain how people or organizations can request to be consulting parties. ACHP notes that it is important for outside parties to have clarity in the process, and for the inside parties to coordinate appropriately and effectively and ensure that the decision-making process is transparent.

ACHP also emphasized the importance of the consulting parties receiving the information they need in a form they can use. An anecdote from a recent pipeline consultation illustrates the point: The responsible federal agency for the Section 106 process had sent summary information to the consulting Indian Tribes. However, the Tribes said they wanted the full

reports. When they received the full reports, the Tribes said the full reports were much too detailed to be useful. An important lesson is that the information needs to be provided in a form that can be used by the parties so that they can comment appropriately and intelligently.

*ACHP Role in the NEPA Process.* With proper notification to the SHPO, ACHP, and Alaskan Native Villages and Regional and Village Corporations, ACHP indicated that if information about historic properties is included in NEPA documentation, ACHP will provide comments on the EIS. ACHP also says that FERC must notify ACHP if it wants ACHP to be a cooperating agency in the NEPA process. The ACHP has been a NEPA cooperating agency only once or twice in the past. FERC will coordinate the NEPA and Section 106 review processes so there will be shared information and cooperation. The executive director of the ACHP is prepared to make the Alaska gasline project a priority for ACHP upon receipt of adequate background documentation. Funding for ACHP involvement in the Alaska gasline project will come from regular budgetary sources, and may include a partnership arrangement between the agencies if the Alaska gasline places excessive demands on staff resources. As long as the meetings remain in the Washington, D.C., area, this should pose no problems. However, if they are moved to Alaska, the Council would need to participate via teleconference or video conference, unless a travel budget is provided. ACHP has done no pre-planning specific to the Alaska gasline project. Nevertheless, the opportunity exists to negotiate with ACHP regarding the feasibility of having a designated liaison.

*Scheduling.* The length of time needed for the Alaska gasline project Section 106 consultation process cannot be predicted at this time. The lengthiest step is expected to be gathering the information about the affected resources. ACHP suggested that the applicant would likely require a couple of field seasons to collect the needed data.

*Potential Legal Issues.* As of February 2008, ACHP saw no unidentified legal issues. However, ACHP cited a potential issue relating to the sequencing of actions. ACHP explained that often FERC will certificate a pipeline prior to the conclusion of the Section 106 process. However, the Section 106 regulations require that the federal agency must complete the Section 106 process prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license. Although FERC has always completed the Section 106 process, the fact that a project is certificated before all requirements have been met opens the door to litigation. Given the prominence of the Alaska gasline and the widespread public interest, ACHP encourages FERC to more closely follow the steps in the process. ACHP also pointed out that it is an advisory council and that Section 106 is enforced through litigation.

*Potential Gaps.* ACHP noted that it saw no explicit mention in TransCanada's AGIA application of the Section 106 process. TransCanada and Denali know they need to work with the state and saw references to the Alaska Department of Natural Resources, which is the umbrella agency for the SHPO. However, neither the SHPO nor the Section 106 process were spelled out in the application submitted by TransCanada. While such a gap could lead to a scheduling issue, ACHP noted that the schedule as presented in the AGIA application did not appear to be "out of kilter."

ACHP identified the following two issues as needing early and regular attention:

- *Continual Communication among Agencies.* The amount of information collected for authorizing the Alaska gasline project will be vast, and someone needs to track and coordinate all of the permitting, authorizing, and related actions to ensure that the right people get the right information. It will be important that all MOU agencies

regularly share information on the issues. ACHP shared an anecdote from a recent case that illustrates the importance of this: The responsible federal agency had held meetings initially with the other agencies, but it later made some changes without sharing the changes with the other agencies. This generated ill will and delayed the process.

- *Identification of Native Organizations Meeting the Definition of Indian Tribe.* ACHP uses the term "Indian Tribe" per the definition in NHPA. NHPA defines "Indian Tribe" to mean an Indian Tribe, Band, Nation, or other organized group or community, including a Native Village, Regional Corporation, or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 USC 1602). Such an organized group or community must also be recognized as eligible for the special programs and services provided by the United States due to their status as Indians. Such recognized Tribes are listed on the *Federal Register* (FR) at 72 FR 13648–13652 (March 22, 2007). Alaska Native Villages and Regional and Village Corporations must meet the two-part definition in order to be considered federally recognized Indian Tribes under NHPA. According to the Section 106 rules, consultation with an Indian Tribe must "recognize the government-to-government relationship between the federal government and Indian Tribes." Thus, the agency official is to consult with representatives designated or identified by the Tribal government. Unless the Tribal organization agrees to consult directly with the applicant, the federal agency must be the entity (not the applicant) that works with the Tribes.



### 3.1.3 Council on Environmental Quality

The Council on Environmental Quality (CEQ) serves as the principal environmental policy adviser to the President, oversees the federal agency implementation of the NEPA process, and acts as a referee when agencies disagree over the adequacy of such assessments.

#### 3.1.3.1 CEQ Responsibilities for the Alaska Gasline Project

CEQ has no specific permitting or authorization duties regarding the Alaska gasline project. Its actions regarding the project would likely include (1) helping move the process along until FERC makes its certification decision and (2) being called in to help facilitate the resolution of problems that might arise during the NEPA or environmental permitting process. Such facilitation would be coordinated with the OFC (or not, if there were a conflict between the OFC and an agency [or agencies]).

CEQ will participate in the NEPA process by providing review and oversight. The Alaska gasline project will be one of CEQ's top priorities, if not its top priority.

#### 3.1.3.2 Potential Alaska Gasline Project Issues Identified by CEQ

CEQ said that the following two issues needed early and regular attention:

- *Resources.* All agencies need to ensure that they have sufficient time and resources to carry out their Alaska gasline project-related duties. CEQ says that even if the resources come from the normal budget, there should be a “dedicated pot” for Alaska gasline project work. CEQ noted that its funding for Alaska gasline project work would come from its normal budget, but that if travel to Alaska were required, it would look to an agency or to the OFC for

financial assistance. Depending on the level of CEQ involvement, there could be some in-house staffing issues.

- *Government-to-Government Relationship with Alaska Natives.* CEQ asked whether there will be a single federal government spokesperson to work with an Alaska Native entity, or whether several federal government representatives, representing different agencies, would be contacting and trying to work with a single Alaska Native official. CEQ had received calls regarding the project from Alaska Native entities, and they have been referred to FERC.

CEQ said that it is too early to identify specific regulatory overlaps or potential jurisdictional conflicts. However, it noted that on the basis of past experience, it is possible that some individuals in some agencies may create overlaps or conflicts by reading more into their statutory responsibilities than exists. CEQ could not speculate on particular agencies where this could be an issue; it would depend on the specific individuals within the agencies.

While CEQ sees no existing or potential scheduling issues at this time, a potential gap may occur during the transition from the current administration to the next. If the incoming administration does not have senior leadership buy-in early on, staff could lose interest. Things could also change if the new administration has a different energy focus.

#### 3.1.4 Department of Agriculture Forest Service

The Forest Service (FS) is responsible for managing National Forest System lands. Most natural gas pipelines crossing National Forest System lands are permitted by a BLM ROW grant issued under Section 28 of the Mineral Leasing Act of 1920, as amended.

### **3.1.4.1 Forest Service Responsibilities for the Alaska Gasline Project**

Although the currently envisioned route for the pipeline is close to the Chugach and Tongass National Forests, it does not intersect the boundaries of either. However, the applicant may need to ship equipment and materials from Alaska ports to various staging areas for pipeline construction. To the extent that these areas are proposed at Haynes, Skagway, or Valdez, roads across National Forest System lands could require upgrading. Such upgrades could require realignment, structural reinforcement, or other improvements. Additional ROW widths may also need to be granted, land use plans may need to be amended, and appropriate NEPA documentation may be necessary. The FS intends to remain current with Alaska gasline project activities and progress to ensure that it meets its responsibilities for timely project authorization.

### **3.1.4.2 Forest Service Issues**

As of February 2008, the FS had not identified any issues pertinent to the Alaska gasline project.

### **3.1.5 Department of Defense**

U.S. Army Alaska has NEPA compliance responsibilities for all U.S. Army lands in Alaska. The same is true for Eielson Air Force Base for Air Force lands. It will be involved in all phases of participation and NEPA document review, if the pipeline ROW alignment crosses its lands, as it is expected to do. It will also need to adopt the EIS and contribute to the CPCN.

USACE is responsible for administering laws protecting and preserving waters of the United States, including wetlands. Pursuant to the requirements of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (CWA), USACE may issue authorizations

for the discharge of dredged or fill material into waters of the United States, including wetlands. USACE can authorize activities by a standard individual permit, letter of permission, nationwide permit, or regional permit.

Section 404 permit applications must be reviewed for the potential impact of the undertaking on threatened and endangered species pursuant to Section 7 of the Endangered Species Act (ESA). If the project might affect threatened or endangered species or their designated critical habitat, USACE must consult with the FWS before it makes a permit decision. The processing time for individual permits can range from 6 to 24 months, depending on the complexity of the impacts on aquatic resources or endangered species, archaeological or Alaska Native concerns, and on workload.

USACE Section 404 permits are conditional on receipt of necessary approvals for the project from the state.

### **3.1.5.1 USACE Responsibilities for the Alaska Gasline Project**

USACE frequently works on projects with FERC and understands FERC's lead-agency role on the Alaska gasline project. It is not unusual for the USACE to piggyback its NEPA and related requirements on a lead agency.

USACE has very specific NEPA requirements for processing Section 404 permits and is expecting the upfront pre-filing and other work performed by the applicant to help keep the permitting process on schedule.

The processing of Section 404 permits in Alaska takes about 10 to 12 months (because of limited resources and some uncertainty regarding changing wetland guidance). USACE believes that one permit could cover the length of the Alaska gasline project, but the final decision on the type of permit needed would come from the district USACE office.

USACE anticipates receiving no additional funds for its role in the Alaska gasline project, but to keep it on schedule, additional resources may be assigned as the project becomes more imminent.

### **3.1.5.2 USACE-Identified Issue**

USACE indicated that the biggest potential issue would be if FERC's consultation, especially with Alaska Natives, and public involvement activities do not meet USACE's requirements.

### **3.1.6 Department of Commerce National Oceanic and Atmospheric Administration**

Through offices such as the NMFS and the National Ocean Service, NOAA 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.

#### **3.1.6.1 NOAA Responsibilities for the Alaska Gasline Project**

*Coastal Zone Management Act (CZMA).* The National Ocean Service (NOS), within the Department of Commerce's (DOC's) NOAA, is responsible for various coastal and ocean programs that may be relevant to pipelines passing through the State of Alaska's coastal zone. NOS administers the CZMA, approves and works with states to implement comprehensive Coastal Management Programs (CMPs) and National Estuarine Research Reserves, and mediates disputes regarding CZMA issues. Federal consistency requirements of the CZMA apply with respect to either (a) federal agency activities that have a

reasonably foreseeable effect on any land or water use or natural resource of Alaska's coastal zone; (b) private activities that have a reasonably foreseeable effect on any land or water use or natural resource of Alaska's coastal zone for which a federal license or permit is required; or (c) activities by state agencies or local governments that have a reasonably foreseeable effect on any land or water use of Alaska's coastal zone and that would be funded by a federal agency. Reasonably foreseeable effects include both direct effects and indirect (cumulative and secondary) effects, which are later in time or farther removed in distance, but are still reasonably foreseeable. Some state CMPs, including Alaska's, have local government components, including the North Slope Borough. The state's coastal zone on the North Slope covers a band roughly 100 miles wide inland from the coast and also includes the watersheds of the major rivers flowing into the Beaufort Sea. It is likely that the CZMA federal consistency provisions will apply to ANGTP authorizations.

The determination as to whether the proposed action is consistent with its CMP is made by the state. For ANGTP, the state would determine consistency with state CMP enforceable policies, including applicable policies in the North Slope Borough's CMP district plan. The North Slope Borough would provide input to the state in the federal consistency decision-making process. The process begins when the applicant (the project proponent, not FERC) submits a consistency certification and necessary data and information document to the approval agency (FERC) and the state. The state then has six months to review the consistency certification and necessary data and information document (unless the state notifies the applicant within 30 days that the consistency certification and necessary data and information document are not complete). If the applicant receives no response from the state by the end of the six-month consistency review period, state concurrence is presumed. If the state objects, then FERC cannot issue its ANGTP certification. If that occurs, the project

proponent can appeal the state's objection to the Secretary of Commerce. The Secretary reviews the application *de novo* and makes a decision as to whether to override the state's objection. The Office of Ocean and Coastal Resource Management, within NOAA's National Ocean Service, is available to mediate disputes among states, federal agencies, and other parties. The Secretary has 265 days (325 days, if a 60-day stay is granted) to make a decision. If the Secretary overrides the state's objection, FERC can authorize the project; if the Secretary does not override the state's objection, FERC cannot authorize the project.

*Essential Fish Habitat Consultations.* The NMFS designates essential fish habitat (EFH) to conserve fishery resources managed under federal fishery management plans. EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (FCMA) requires federal agencies to consult with NMFS on all actions it undertakes that may adversely affect EFH. The trigger for EFH consultation is a federal action agency's determination that an action may adversely affect EFH. If a federal action agency determines that an action will not adversely affect EFH, no consultation is required. Should FERC determine that any action needed to construct or operate the pipeline would adversely affect EFH, then FERC must provide NMFS with a written assessment of the effects of that action on EFH. The assessment must contain (1) a description of the action; (2) an analysis of the potential adverse effects of the action on EFH and the managed species; (3) FERC's conclusions regarding the effects of the action on EFH; and (4) proposed mitigation, if applicable.

In addition, if appropriate, the assessment should also include (1) the results of an onsite inspection to evaluate the habitat and the site-specific effects of the project; (2) the views of recognized experts on the habitat or species that may be affected; (3) a review of pertinent

literature and related information; (4) an analysis of alternatives to the action (such analysis should include alternatives that could avoid or minimize adverse effects on EFH); and (5) other relevant information. If adverse effects are found, NMFS is required to make conservation recommendations that may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects. NMFS has 60 days to make its recommendations, and as required by Section 305(b)(4)(B) of the Magnuson-Stevens Act, FERC must provide a detailed response in writing to NMFS and to any Regional Fishery Management Council commenting on the action under Section 305(b)(3) of the Magnuson-Stevens Act within 30 days after receiving an EFH Conservation Recommendation from NMFS. Such a response must be provided at least 10 days prior to final approval of the action, if the response is inconsistent with any of the EFH Conservation Recommendations. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with the EFH Conservation Recommendations (e.g., if FERC does not accept the recommendations), FERC must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects. NMFS regional offices conduct the EFH consultations.

*ESA Consultations.* Section 7(a)(2) of ESA requires that each federal agency, in consultation with the Secretaries of Commerce (through NMFS) and the Interior (through the FWS), ensure that any action undertaken, authorized, or funded by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat. If FERC determined that its action would not affect any listed species or critical habitat under the jurisdiction of one of the Services, FERC would not need to consult with that Service. To assist

in this determination, FERC may first prepare a biological assessment that includes information such as the action description, area included, species covered, and impacts. If the biological assessment found that any ESA-listed species or designated critical habitat under NMFS or FWS jurisdiction might be affected, but not adversely affected, by pipeline-related activities, FERC would initiate informal consultation by providing NMFS or FWS adequate information to support that conclusion.

If the appropriate Service agrees with FERC's conclusion, consultation would be concluded through a letter of concurrence from the appropriate Service. If one or both of the Services disagrees with FERC's conclusion that its action would not adversely affect listed species or their critical habitat, or if FERC concludes that its action would adversely affect listed species or critical habitat, FERC would then enter into formal ESA consultation with NMFS and/or the FWS. In the formal consultation process, NMFS/FWS has 30 days to review the FERC-submitted information to determine if it has all the information it needs to conduct the consultation. NMFS/FWS then has 90 days to conduct its evaluation and 45 days to write its biological opinion. If NMFS/FWS determines that the action is likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat, NMFS coordinates with FERC to develop reasonable and prudent alternatives to the proposed action that would allow the action to proceed without jeopardizing listed species or destroying or adversely modifying critical habitat. If NMFS/FWS concludes that the action is not likely to jeopardize any species or destroy or adversely modify critical habitat, or reasonable and prudent alternatives are developed, NMFS/FWS may authorize take of listed species associated with the effects of FERC's action through an incidental take statement. The incidental take statement would estimate the amount or extent of take anticipated and specify those reasonable and prudent measures that NMFS/FWS considers necessary

or appropriate to minimize the impact of that take.

ESA consultation on actions related to the ANGTP will be conducted by the NMFS and/or the FWS Alaska Regional Office.

*Incidental "Take" Authorization.* Under the Marine Mammal Protection Act (MMPA), it is generally illegal to "take" a marine mammal without prior authorization from NMFS. "Taking" is defined as harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture, or kill any marine mammal. Harassment is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal in the wild, or has the potential to disturb a marine mammal in the wild, causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering. The incidental take authorization under MMPA is similar to that under ESA, except that MMPA pertains to all marine mammals. If the pipeline construction or operation would result in the take of a marine mammal, FERC would need to get an exemption from the take prohibitions of the MMPA.

Under MMPA, NMFS may authorize the take of small numbers of marine mammals incidental to otherwise lawful activities, provided that the takings would have not more than negligible impact on the availability of those species for subsistence uses. An activity has a "negligible impact" on a species or stock when it is determined that the total taking by the activity is not reasonably likely to reduce annual rates of survival or annual offspring survival and birth rates. Most incidental take authorizations to date have involved the incidental harassment of marine mammals by sound. In the event that any aspect of the proposed pipeline project would result in a take, the project applicant would be required to obtain an incidental take authorization, or incidental harassment authorization (IHA), in advance from NMFS. The IHA states the amount of the take that can be authorized and the terms and conditions that

the pipeline project must meet to satisfy the authorization. NMFS has 120 days to issue an IHA, and an IHA only lasts for 1 year from the date of issuance. Therefore, actions that are expected to last longer than 1 year will require multiple IHAs. An alternative to the IHA route would be to obtain a letter of authorization, which effectively results in a 5-year incidental take permit under MMPA. Obtaining a letter of authorization is more difficult and time-consuming than an IHA, because it requires a rulemaking. Letters of authorization usually take about 2 years to develop, but they have been used for activities such as military training operations and explosive removal of offshore oil and gas platforms, both of which are long-term or ongoing activities.

It is possible that a given species (e.g., the bowhead whale, which could be affected by increased marine traffic or seismic activities from construction or dredging) could be subject to the requirements of both ESA and the MMPA. Generally, the project proponent, not FERC, works directly with the Alaska Native communities to develop conflict avoidance agreements, which are designed to mitigate any impacts on subsistence activities. If the project proponent and the Alaska Native communities cannot agree on measures to avoid conflicts and mitigate potential impacts, NMFS will enter the discussion and, if necessary, conduct government-to-government consultations with the trusts and/or the corporations, as necessary. As the bowhead whale is likely to be a species of concern under both MMPA and ESA, NOAA recommends that the applicant work directly with the Alaska Eskimo Whaling Commission in Barrow, the central group working on mitigating potential impacts on whales in the area.

Unlike the EFH and ESA consultations, which are both conducted by NMFS or the FWS regional offices, the IHA and letter of acceptance under MMPA are prepared at NMFS headquarters. Consultations need to be completed before the ROD is signed. Agencies generally try to have completed them between the draft and final EISs so that they can be published as part of the FEIS.

### 3.1.6.2 NOAA-Identified Issues

NOAA identified the following potential issues regarding its authorization for ANGTP:

*Resources.* Funding for consultations and related authorization activities come from existing sources, which are limited and subject to competing interests. NOAA's priorities are national security and energy reliability. Thus, although energy projects have a high priority, the ANGTP authorizations could be trumped by a military mission. NOAA noted that it currently has significant Navy obligations.

*Scheduling.* NOAA advocates early meetings among the applicant, FERC, and NOAA, but notes that it is "in a holding pattern" until it receives requests for consultation or further discussion.

*Potential Jurisdictional Issues.* It is possible that FWS and NOAA could have ESA jurisdiction over portions of the same watershed. For example, a watershed could house a species regulated under NMFS jurisdiction and another species regulated under FWS jurisdiction.

*Potential Legal Issues.* Citizen groups and nongovernmental organizations, particularly the Center for Biological Diversity, often sue over IHAs, challenging NMFS data and/or evaluations. These lawsuits can result in injunctions against projects. It is also possible that challenges to the EIS could be raised after NOAA's opinions have been issued.

*Bowhead Whale.* NOAA expects that there will be significant interest in protecting the bowhead whale, as it is both an endangered species under ESA and is used for subsistence purposes by Alaska Native populations.

*Humpback Whales and Fin Whales.* There have been recent sightings of humpback and fin whales in the high Arctic; these sightings may mean that these species, which are listed as endangered under the ESA, seem to be

extending their range to the north. There will be significant interest in protecting these species from anthropogenic impacts.

*Ice Seals.* Four species of ice seals — spotted, bearded, ringed, and ribbon — are found in the Alaskan Arctic. These species have been petitioned for listing under the ESA, and the agency is currently considering the petition. In addition, these species are used extensively for subsistence purposes. Should any or all of these species be listed as threatened or endangered, there will be significant interest in protecting the species.

*CZMA.* The coastal zone in the North Slope area is quite large. If the state finds that the project is not consistent with its CMP, FERC cannot issue a permit until the Secretary overrides the state's objection.

*Project Alternatives.* NOAA notes that many agencies expect it to comment and consult on all of the alternatives proposed in the EIS. Because significant resources are required for such consultations, NOAA requests that FERC choose one preferred alternative to evaluate.

NOAA recommends that the applicant and FERC think about the required NOAA authorizations and FERC obligations early in the process and “front load” these in the NEPA document. It also recommends that FERC and the applicant reach out to and meet with NMFS and local organizations that have interests in fisheries and wildlife and provide as much information as early as possible. These early actions will facilitate the identification of concerns and potential solutions in a timely manner to help avoid potential conflicts down the road and ensure against potential schedule delays.

### **3.1.7 Department of Energy**

The DOE is responsible for developing and coordinating national energy policy.

#### **3.1.7.1 DOE Responsibilities for the ANGTP**

Public Law 108-324 authorizes the Secretary of the DOE to enter into federal loan guarantees for up to \$18 billion for a pipeline project or up to \$2 billion for a qualified LNG project, indexed for inflation from October 13, 2004, to facilitate construction of an Alaska gasline project. The loan guarantees may cover up to 80% of the total capital costs of the project. To be eligible, a pipeline project must be used to transport natural gas from the Alaska North Slope (ANS) to the continental United States or, in the case of LNG projects, from Southcentral Alaska to West Coast states.

DOE also regulates the export and import of natural gas under Section 3 of the NGA.

Actions by other agencies that DOE would depend on to carry out its Alaska gasline project responsibilities include the following:

- FERC must choose a “qualified project”; only a qualified project is eligible to receive a loan guarantee.
- The Office of Management and Budget (OMB) must review the credit subsidy model (the approach for determining the risk premium or cost of the loan guarantee).
- Congress must provide an appropriation for the credit subsidy/risk premium for the loan guarantee (i.e., the cost of the guarantee, which is based on its risk).

DOE's Alaska gasline project involvement will be funded through budget appropriations. DOE's current budget provides for Alaska gasline project work, but this will need to increase once an application for the loan guarantee has been received, so DOE can issue the loan guarantee and cover the significant cost of the risk premium. DOE's loan guarantee-issuing efforts will require a ramp-up in

manpower in the out years. DOE will assign a high priority to its Alaska gasline project work.

Issuing a loan guarantee triggers a NEPA review process. DOE representatives assume that the overall Alaska gasline project EIS, for which FERC is the lead, will satisfy any NEPA requirements associated with the loan guarantee. DOE will review the FERC EIS. At this time, it is not known whether DOE will play any other NEPA roles (e.g., as a cooperating or participating agency), but DOE says that it will determine the nature of any such roles.

ANGPA authorizes, but does not require, DOE to issue regulations to implement the loan guarantee. DOE issued a Notice of Public Inquiry regarding the need for a rulemaking (versus proceeding on a case-specific basis). No decision has been made, and, to date, DOE has proposed no rulemaking for the Alaska gasline project loan guarantee. If it were to propose such a rulemaking, DOE would need to obtain public input.

Because DOE representatives expect the applicant to come to DOE early in the process to discuss the loan guarantee, DOE can be expected to be involved early in the project. Once DOE has these discussions with a potential applicant, the processes of identifying the cost of the loan guarantee and seeking an appropriation can begin.

### **3.1.7.2 Potential Alaska Gasline Project Issues Identified by DOE**

It will be DOE's role to determine whether the use of a portion of the loan guarantee to cover cost overruns (as mentioned in the TransCanada AGIA application) would be allowed. The issue, which could have implications for the amount of credit subsidy required, is technically not ready for a decision at this point. The "bridge shipper" option (also mentioned in the TransCanada AGIA

application) is not authorized by any agency, and more specific information would be needed before a legal decision regarding its legality could be made. One issue is whether the term "bridge shipper" requires an agency (the bridge shipper) to own natural gas that could be offered during open season (and no agencies have gas), or whether the term means bridge loan, which would require the pledging of dollars and not necessarily gas. The TransCanada application is vague on this point.

The DOE representatives have identified no gaps or scheduling issues, but they noted that it is very early in the process, and they need to work with an applicant to understand the specifics of the project, corporate structure, and the credit of the applicant before they can anticipate issues.

## **3.1.8 Department of Homeland Security**

Three DHS organizations have responsibilities for the Alaska gasline project: the USCG, Office of Bridge Administration; the DHS Office of Infrastructure Protection; and the DHS Transportation Security Administration (TSA), Pipeline Security Division.

### **3.1.8.1 USCG Bridge Administration Program**

The Bridge Administration Program (BAP) is responsible for approving the locations and plans for bridges and causeways constructed across navigable waters of the United States and the locations and plans for international bridges. BAP is also responsible for approving drawbridge operations and the alteration of bridges found to be unreasonable obstructions to navigation. The BAP issues permits for the construction and modification of bridges and causeways that cross navigable waters of the United States.



*Bridge Administration Program Responsibilities for the Alaska Gasline Project*

The BAP responsibility regarding the Alaska gasline project is to ensure that navigation would not be unnecessarily obstructed by bridges or causeways that could alter navigability as a result of the construction or operation of the Alaska gasline project. In Alaska, navigability is a concern for vessels that can range from very small boats used for subsistence hunting and fishing, to tankers that might be carrying fuel or materials.

Structures potentially requiring permits could be for any conveyance needed for the pipeline, including rail and highway crossings for transporting materials, as well as for the pipeline itself. Each structure will require its own permit; there would be no overall bridge permit that would cover all of the crossings required for ANGPT. Buried crossings would not require a USCG permit.

In addition to issuing permits for bridge crossings, the BAP would also work with others in DHS and USCG to issue permits required for any LNG facilities (but the BAP does not issue these permits).

Resource requirements for issuing permits for the Alaska gasline project will be met as part of the normal budget process, but depending on the number of structures requiring permits (bridges or causeways that cross waters determined to be navigable), USCG manpower requirements could increase. The field office in Alaska will be responsible for collecting the data and providing it to the USCG legal department to determine each waterway's navigability. Currently, the BAP has one person working in Alaska, and navigability determinations require significant onsite field work. (The USCG Headquarters office in Washington will issue the permits.) The Alaska gasline project is a top priority of the BAP.

Bridge permit applications will be reviewed by the BAP for the Alaska gasline project as

they are received. However, the BAP will not consider issuing any permits until FERC has issued its CPCN. In addition, before issuing or denying any permits, the BAP must have water quality certifications from the state, with concurrence from the EPA, and coastal zone management certifications for each proposed crossing, when applicable. USCG must also issue a public notice with a 30-day comment period and coordinate with various federal, state, and local agencies before issuing or denying permits. On average, it takes about 10 months to issue a permit after the BAP receives a complete application. The BAP Permit Application Guide, available online, contains a more comprehensive list of application requirements.

For international bridge crossings, the process would be similar, but first, DOS would have to issue a Presidential Permit. The BAP would then go through the permitting process in the same way it would for a non-international bridge permit. The BAP issues international bridge permits whether or not the waterway is navigable.

The BAP will rely on the FERC EIS to address each of the bridge crossings. It will participate in the NEPA process by providing review and comment.

While the BAP can do some pre-planning (e.g., it can begin conducting the navigability determinations for known waterway crossings based on the DEIS), it needs a complete application before beginning the permitting process.

*Issues Raised by the Bridge Administration Program*

Other than a shortage of manpower and an already large workload, the BAP has identified no gaps or scheduling issues to date, but notes that it cannot consider issuing bridge permits until the CPCN has been issued. It does not anticipate any regulatory overlaps or potential jurisdictional conflicts, nor does it anticipate any unresolved legal issues.

### 3.1.8.2 Office of Infrastructure Protection

The DHS Office of Infrastructure Protection (OIP) has the overall national responsibility for infrastructure security; response to security events; and rapid recovery in the event of an attack, natural disaster, or other emergency. This responsibility derives from the requirements of the Homeland Security Act of 2002; Homeland Security Presidential Directive-7, “Critical Infrastructure Identification, Prioritization, and Protection”; additional Executive Orders; and Presidential Directives. The OIP is also responsible for ensuring that the provisions of the National Infrastructure Protection Plan (NIPP) are carried out. The office works closely with the following two agencies, which have specific pipeline security responsibilities:

- *DHS TSA, Pipeline Security Division* (see Section 3.1.8.3). Under NIPP, some sectors are assigned to specific agencies, and the Pipeline Security Division is the Sector-Specific Agency (SSA) for pipelines. Thus, while the OIP has the responsibility for overseeing all critical infrastructure protection in the country, it works with the SSAs to help them implement their individual responsibilities. The TSA’s Pipeline Security Division has the authority to issue security standards for pipelines, but so far, the standards it employs are voluntary (and are expected to remain so through the duration of the current administration).
- *DOT PHMSA*. Most of PHMSA’s responsibilities are safety-related, but it has some security roles as well (see Section 3.1.12.1).

Communication and information sharing among the agencies are facilitated through the Sector Coordinating Council (SCC), which is made up of industry representatives (e.g., pipeline owners and operators, relevant trade associations) and the Government

Coordinating Council (GCC). For pipelines, GCC is the Energy GCC, which is chaired by DOE and includes representation from the TSA Pipeline Security Division, PHMSA, FERC, USCG, and other federal agencies with an interest in pipeline security. A Pipeline Working Group of the Energy SCC also serves as the Pipeline SCC under the Transportation Sector-Specific Plan, with TSA serving as the Transportation Sector-Specific Agency. The GCC and SCC meet jointly and separately and are not subject to Federal Advisory Committee Act (FACA) requirements, so their meetings are not public.

#### *OIP Alaska Gasline Project Responsibilities*

With one possible exception, OIP is not responsible for any Alaska gas project authorizations. The one exception would occur if any parts of the pipeline would be subject to the Chemical Facility Anti-Terrorism Standards (CFATS). These newly issued regulations (72 CFR Part 17687, April 9, 2007) require a permit for high-risk chemicals facilities. There is a slight chance that CFATS could be determined to apply to parts of the pipeline system, in particular, an LNG peak-shaving facility or temporary gas storage facility (should these become part of the system). The reason they could apply is that the methane in the gas could be considered a chemical that would be used or stored in a facility. (Transport through the line would not be subject to CFATS.) CFATS are being implemented for both new and existing facilities; how they might apply to the Alaska gasline project is still to be determined. If and when the TSA Pipeline Security Division issues pipeline security regulations, they could supersede the CFATS (for pipelines). OIP believes there will be more clarity on this issue in a year.

OIP has also assigned a Protective Security Advisor (PSA) to Alaska. PSAs are highly experienced security specialists assigned to states throughout the country by DHS to assist local efforts to protect critical assets and to

provide a local perspective on the national risk picture. Among other things, they assist with ongoing local and state critical infrastructure security efforts, which are coordinated by the State Homeland Security Advisors, and identify, assess, monitor, and minimize risk to critical assets at the local or district level. (There are about 60 to 70 PSAs across the country.) The Alaska PSA, headquartered in Anchorage, works with Alaska State Homeland Security Advisors in conducting vulnerability assessments. The Alaska PSA is aware of the Alaska gasline project, has attended Alaska gasline project meetings, and is on the e-mail list to receive Alaska gasline project clippings from the OFC.

An Alaska gasline project vulnerability assessment would be conducted after the centerline of the pipe is determined, and it would take at least 2 weeks. With TSA as the SSA for pipelines, OIP and the Alaska PSA will work together with TSA to coordinate responsibilities for the conduct of the federal government involvement in a security assessment for the project.

Regarding participation in the NEPA process, OIP will likely provide a courtesy review. Funding of any OIP activities for the Alaska gasline project will come from its normal budget.

#### *Infrastructure Protection Issues*

The main issue needing early and regular attention, from the perspective of OIP, is that the OFC is “thinking about security from day one” and works with the TSA Pipeline Security Division to ensure that security is part of the design and operation of the pipeline.

As noted above, there is a possibility of an overlap between what parts of the pipeline system are considered pipeline and what are considered chemical facilities for the purpose of the CFATS. Those parts determined to be pipeline would be under TSA jurisdiction. Those parts determined to be a facility handling

chemicals of interest regulated by OIP under CFATS may have to comply with the new regulations.

#### **3.1.8.3 TSA Pipeline Security Division**

The role of the Pipeline Security Division within the Transportation Security Administration Office of Transportation Sector Network Management (TSNM) is to enhance the security preparedness of the nation’s hazardous liquid and natural gas pipeline systems. The division conducts analyses to maintain pipeline industry domain awareness; develops security programs; identifies industry best practices and lessons learned; and seeks to maintain effective communications with pipeline industry and government stakeholders.

#### *Pipeline Security Division Responsibilities for the Alaska Gasline Project*

Because pipelines are regularly targeted for terrorist action around the world, TSA is focused on the measures taken to ensure security of the entire pipeline system. The line pipe itself, which travels for hundreds of miles, can be vulnerable due to its length and often isolated location. However, mitigating this vulnerability is the fact that it generally can be readily repaired. Of particular concern are the key facilities/components of pipeline systems that are more difficult to repair or replace in the event of attack. Typically this would include such assets as valves, pipe bridges, compressor stations, and so forth. Once the builder of the pipeline has been determined and design work begins, the Pipeline Security Division will meet with the applicant to review how security features will be incorporated into the design of the system.

The TSA Pipeline Security Division notes that it has worked with Canadian government and industry partners on a variety of pipeline security issues. It has participated with Natural Resources Canada on several security

assessments of cross-border pipeline systems. TSA and Natural Resources Canada also cosponsor an annual International Pipeline Security Forum. Additionally, the TSA Pipeline Security Division participates with National Energy Board staff and Canadian pipeline industry representatives on the Canadian Standards Association Technical Committee on Security Management for Petroleum and Natural Gas Industry Systems.

The TSA Pipeline Security Division will ensure all necessary agency attention is provided to the Alaska gasline project in order to prevent any delay to the project. Funding for TSA involvement in the Alaska gasline project will come from the division's own budget.

At this time, there has been limited information regarding the gasline system security program. As the system planning progresses to the design phase, the Pipeline Security Division will coordinate with the pipeline company to discuss security measures.

#### *Pipeline Security Division Alaska Gasline Project Issues*

The TSA Pipeline Security Division says that ensuring effective system security is considered in the design, and construction of the gasline will require early and regular attention. The division has identified no gaps or scheduling issues and is not aware of any regulatory overlaps or potential jurisdictional conflicts. By law, the Pipeline Security Division is the lead federal agency for pipeline security.

### **3.1.9 Department of the Interior**

DOI bureaus with Alaska gasline project responsibilities include BIA, BLM, FWS, and NPS.

#### **3.1.9.1 Bureau of Indian Affairs**

The BIA is responsible for administering federal Indian policy and for discharging the federal trust for American Indian Tribes, Alaska Native Villages, and Tribal organizations. The BIA must approve anything that might cross trust property, such as a ROW.

#### *BIA Alaska Gasline Project Responsibilities*

The BIA plays a small but important role in determining where the Alaska gas pipeline can go, because of the requirement to obtain consent for ROWs crossing trust properties. The BIA stresses the importance of paying attention to the trust properties. In Alaska, obtaining ROWs is not akin to eminent domain in the lower 48 states, where land can be condemned relatively easily for public purposes. (BIA notes that while Congress could theoretically override this requirement, it would "set an amazing precedent.")

To complete its ROW reviews, the BIA would depend on ACHP Section 106 consultations, which would be conducted by the SHPO, and on Section 7 consultations, which would be conducted by the FWS and contained in the NEPA analysis.

BIA believes its role in the NEPA process will be to provide comments from the perspective of the lands that are its responsibility within DOI, which would submit to FERC an integrated set of comments from the various bureaus within the department. BIA will assign high priority to its role in the Alaska gasline project. Funding for BIA involvement in the Alaska gasline project is covered as part of its daily work activities.

The BIA Energy and Minerals Group (in Denver) has been working with the allottees on

construction aggregate (sand and gravel) issues. The group is reviewing sand and gravel resources to determine whether they can be provided economically to the project. Also, the Office of Workforce Development has been providing mentoring and training for Alaska Native businesses that construct highways, with the goal of providing opportunities for participating as subcontractors in road building for the pipeline. This mentoring is being funded by a grant from the FHWA. The State of Alaska, FHWA, and non-Native companies are part of the program (the mentors are non-Native.)

The Alaska gasline project is expected to have two major impacts on BIA, both of which pertain to the workforce.

First, BIA may experience a drawdown of its own employees as a consequence of pipeline construction. (When the Trans-Alaska Pipeline System [TAPS] was built, there was a major drawdown of federal employees in the area because TAPS paid higher salaries than the government.) Thus, DOI needs to be wary of the potential impact on its organization's ability to deliver services, especially in Alaska. (There are about 40 to 50 BIA employees in Alaska.)

Second, BIA will need to marshal resources to provide adequate workforce training so that the Alaska Native population has an opportunity to participate in the construction, and possibly the planning phases, of the project. From the perspective of the BIA, it is important that rural Alaskan Natives have an opportunity to benefit economically from the construction of the pipeline. BIA wants Native populations to take advantage of the economic benefits to be derived from the construction of the pipeline. The BIA perceives a significant opportunity for Alaska Native populations to supply sand and gravel for road building and pipeline beds. To ensure a ready Alaska Native workforce that can benefit economically by supporting pipeline construction, early training is critical.

### *BIA Issues Regarding the Alaska Gasline Project*

Until the exact route is known, BIA cannot determine which, if any, trust lands will be affected. Once it has a detailed map of the pipeline route, DOI will check the records and overlay trust lands with the pipeline route to determine the extent of trust lands that could be impacted by the pipeline. Although there would be no public involvement in the identification of the trust properties that might be affected, this identification could be complicated because of "fractionation." Fractionation refers to the divvying up of lands initially granted to one individual. Because most of the lands had been allotted by the late 1960s, it is possible that the original allottee may have since subdivided his land. Because no deeds are involved (they remain trust lands), it may be difficult to identify the current allottee. For lands held in trust, the individual allottee has the right to refuse access. Consent needs to be obtained from all allottees affected by the ROW.

Even if the allottee agrees to provide access, the Secretary must approve and sign any ROW agreement between an allottee and the applicant or any other party. This approval authority has been delegated to the Regional Director for the BIA in Alaska.

Under the Native Claims Settlement Act, lands transferred to Native Regional or Village Corporations were transferred in fee simple. Therefore, access to Native Corporation lands requires approval from the corporation and not from the Secretary. There may be a few situations for which the transfer process has not been completed (e.g., due to unresolved boundary disputes). These cases would require secretarial approval, or the process could be held up until the settlement has been completed.

Also, many of the Native Corporation lands are split estates, and the subsurface interest

has priority over the surface interest. About 44 million acres have been transferred to Native Corporations. For about one-half of the 44 million acres transferred, the subsurface rights remain with the Regional Corporation. For the 22 million acres of Native Corporation lands that are split estates (where the Village Corporation owns the surface rights and the Regional Corporation owns the subsurface rights), ROW access approval must be obtained from the Native Village Corporation for the surface rights and from the Native Regional Corporation for the subsurface rights.

According to BIA, the main issues regarding early and regular attention involve determining the trust lands that could be affected by the pipeline (and the need to have the legal description of the centerline as soon as possible), obtaining approval for the ROW crossings of trust lands, and providing early training to Alaska Native populations so they can participate in the economic benefits of the construction of the pipeline. BIA suggested the following two methods for informing Alaska Native populations about the pipeline:

- Contact the head of the Alaska Federation of Natives in Anchorage. This organization has a network of contacts with the Native Corporations and Villages.
- Once the affected areas have been identified, use local radio stations to broadcast public service announcements. (The BIA can do this.)

Other issues include the need for the legal description of the centerline; the identification of the entities responsible for analyzing potential non-ROW pipeline impacts on Alaska Native groups; the need to ensure that agencies understand their respective roles and responsibilities in the NEPA process; and legal issues that could arise if allottees do not grant access for the ROW. These are discussed below.

- BIA needs to have the legal description of the centerline of the pipeline so that it can determine which lands under its jurisdiction might be affected. Once BIA has the description of the centerline, determining the trust properties that might be affected would take an estimated 30 to 45 days. BIA's understanding is that while it needs to obtain ROW consent, the identification and analysis of other impacts on Alaska Native lands are the responsibilities of other entities. For example, subsistence issues would be addressed by the state, and environmental impacts would be identified in the EIS, once the BIA determines and provides the geographic extent of the lands that could be affected.
- The BIA representative assumes that the Federal Coordinator will ensure that all agencies with NEPA responsibilities are notified of their responsibilities far in advance. He said that the Federal Coordinator should not assume that all agencies will be aware of the status of the pipeline activity and the need and nature of their participation in the NEPA process. Through such advance notification by the Federal Coordinator, the agencies will know ahead of time what they need to do and will be ready to provide their input.
- It is possible that some allottees or Native Corporations may not grant consent for the ROW and that DOI will not sign off unless the allottee signs off. Potential legal issues could arise regarding restrictions that could affect moving the route so that the allotted lands are not affected. Generally, however, the allotted lands are not huge tracts. Also, the identification of allotted lands that could be affected by the Alaska gasline project could be complicated by fractionation (as described above).

### 3.1.9.2 BLM

BLM is responsible for managing public lands with respect to the Alaska gasline project, that is, for issuing ROW permits authorizing natural gas pipelines to cross federal lands. Under Section 28 of the Mineral Leasing Act of 1920, BLM has the principal responsibility for issuing ROW permits authorizing natural gas pipelines through lands held 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. When issuing a ROW permit, BLM considers whether the proposed use is consistent with existing land use plans and is in assured compliance with other laws.

Laws with which the issuance of the ROW permit must comply include NEPA, ESA (threatened and endangered species), NHPA, the Archeological Resource Protection Act (cultural resources), Executive Orders concerning floodplains and wetlands, provisions of the Clean Air Act (CAA) and the CWA, and applicable state and local laws, regulations, and procedures. Processing steps include scoping, data collection, study preparation, analysis, documentation, and decision making.

#### *BLM Responsibilities for the Alaska Gasline Project*

BLM is responsible for issuing ROW permits authorizing the gas pipeline to cross federal lands in Alaska. The ROW grant for the Alaska gasline project will include the terms and conditions identified in the FEIS, monitoring plans, construction stipulations, and operating and maintenance plans, and it will identify compliance with all other applicable federal, state, and local laws and regulations. It is expected that the studies and analysis required for compliance with laws such as ESA, NHPA, CAA, and CWA would be conducted as part of the DEIS to be prepared by FERC.

The BLM representative indicated that the existing land use plans in Alaska provide for oil and gas pipelines. The Utility Corridor Plan, which covers the area from the North Slope to Fairbanks, clearly provides for oil and gas pipelines within the corridor. The 40-mile Management Framework Plan (MFP)<sup>3</sup> covers the area from Fairbanks to the Canadian border. A replacement resource management plan (RMP) (the Eastern Interior Planning Area Resource Management Plan) is being initiated for this MFP. BLM indicates that, if necessary, the MFP could be easily amended before the RMP is completed. (There is a 60-day state review associated with the development of the MFP.)

Alaska state offices have suggested that any issues regarding placement of the ROW through state lands (about 50% of the currently envisioned ROW is through state lands) could be easily remedied.

#### *Issues Raised by BLM Regarding the Alaska Gasline Project*

Because existing land use plans provide for gas pipelines, the only likely potential difficulty would be if an applicant wanted to construct something outside of the established corridor. In this context, BLM notes that because base camp and other pads used during TAPS construction are closed, opening them for reuse would not be easy. The closed sites have been surveyed by the State of Alaska and would require additional health and safety analysis before they could be considered available for use. As a result, other spread sites many need to be located. Similarly, the Alaska Railroad will likely need to add siding and track upgrades to accommodate pipe hauling. Determining areas outside the established corridor will require a careful review of the applicant's proposed alignment in comparison with the corridor boundaries on the BLM Master Title Plats. The Utility Corridor

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<sup>3</sup> The MFP is an old land use planning format used by BLM, which has been replaced by the RMP.

Plan postdates the Alaska Natives Claims Settlement Act (ANCSA), ANGTA, TAPS, and the Alaska National Interest Lands Conservation Act (ANILCA). Because of the potential need to go beyond the established ROW (e.g., for spread areas and transportation of materials and equipment) and to ensure conformance with environmental and related laws, BLM should be working on land status early on.

While roughly 36% of the lands crossed by the currently envisioned ROW are federally owned and about 50% are state-owned, approximately 15% are owned by a combination of Alaska Native entities and individuals, private entities, or are trust lands managed by the BIA on behalf of allottees. A concern is that because Alaska Native allotments and other Native ownerships have changed over the years, they need to be researched and verified.

To the extent that access to lands under control of DOD will be required, early coordination with DOD is critical to getting approvals from both the Army and from the USACE land manager.

BLM has identified a variety of other potential issue gaps that should be addressed to facilitate efficient permitting. These include the following:

- *Data Sharing.* Given the number of agencies involved with the pipeline in general and the BLM ROW in particular, BLM says that databases and data management for all involved agencies should be interagency-compatible. By establishing a common data management platform early on, agencies will be able to easily share detailed information in all phases. Although not all information needs to be shared, the more compatible the systems, the more interoperability they will have, particularly later on during pipeline operations and oversight. In this context, an issue may be data restrictions on DOI agencies resulting

from the *Cobelle vs. Kempthorne* lawsuit.

- *Infrastructure Issues.* Atigun Pass (the highest year-round road pass in Alaska and the farthest-north road pass in the world) is a pinch point, and special engineering will be required to avoid conflicting with TAPS. The state has assessed the base camp and other pads used during TAPS construction, but there is uncertainty regarding the liability for any cleanup and the amount of cleanup that the state may require. The state owns the Yukon Bridge, but the Alyeska Pipeline Services Company (APSC) owns the hangers.
- *Need for Additional Studies.* The amount of drilling conducted to date on soils and surface geology along the non-TAPS portion of the alignment may be insufficient to provide needed data on permafrost issues.
- *Alaska Native Groups.* In addition to the identification of Alaska Native allotments and obtaining access, Alaska Native groups are keenly interested in jobs, material sales, and summer internships for students, and they want to be included from day one.

### 3.1.9.3 Fish and Wildlife Service

FWS is responsible for conserving, protecting, and enhancing fish, wildlife, plants, and their habitats. FWS has principal trust responsibility for protecting and conserving migratory birds, threatened and endangered species, certain marine mammals, and interjurisdictional fish. FWS manages the National Wildlife Refuge System (NWRS). Applicants for new pipeline construction projects are required to consult with or obtain approvals from FWS on projects potentially affecting any of these resources. FWS also consults on projects potentially affecting



freshwater or marine resources and water quality. In addition, FWS may authorize activities by special-permits for areas within the NWRS.

*Roles and Responsibilities of FWS with Respect to the Alaska Gasline Project*

The responsibilities of FWS regarding Alaska gasline project focus on wildlife and wildlife habitat, including fishery habitat effects. FWS concerns pertain more to secondary aspects (infrastructure requirements, construction camps, roads, bridges, gravel sources, etc.) than on actual pipeline construction and operation. In accordance with CWA, ESA, the Fish and Wildlife Coordination Act (FWCA), Migratory Bird Treaty Act (MBTA), MMPA, and NEPA, the FWS provides technical data, review and advice on fish, wildlife, and habitats and works with applicants and agencies to identify opportunities for mitigating potential impacts and enhancing public trust resources.

The existing TransCanada ROW intersects the 730,000-acre Tetlin National Wildlife Refuge (NWR) along its northeastern boundary near the Alaska-Yukon border. The narrow BLM-administered ROW is probably only wide enough for operation and maintenance of a completed pipeline.

FWS believes that any pipeline-related construction activities on refuge lands outside the BLM-administered ROW would require special-use permits from the FWS. (Pipeline construction activities are expected to require more land than is needed for operation and maintenance.)

Regarding the Section 7 consultations required by ESA, FWS expects that FERC or its contractor would initiate the process, conduct the biological assessment (BA, the document that assesses the effects of projects on threatened and endangered species and critical habitat), and request a biological opinion (BO, the document

that includes the opinion of FWS as to whether the action is likely to jeopardize the continued existence of listed species or result in the destruction or modification of designated critical habitat) in a timely manner for project authorization. FWS expects that few listed species would be involved and that it would be able to complete a BO. FWS assumes that the FERC EIS would address all project activities requiring Section 7 consultations and that the BA would be prepared as a parallel document and included as an appendix to the EIS. FWS would then use the BA to prepare a single BO, which would cover all candidate and listed species and all aspects and components of the project requiring Section 7 consultation.

*Issues Raised by FWS*

For FWS, the two most important issues are funding and scheduling.

*Funding.* FWS indicates that unless there is a provision for FERC, BLM, or another agency to secure funding from the applicant and share it with all involved agencies, FWS would participate to the extent possible but may not be able to meet all of its regulatory obligations in a timely manner.

*Scheduling.* Citing the demanding schedule that will be required for timely authorization of the Alaska gasline project, FWS says that the key elements to meeting that schedule will be:

- Early pre-planning by the applicant and FERC to identify what will be involved to undertake the project;
- Timely provision of adequate funding to involved agencies to enable their participation; and
- Coordination among all involved federal agencies.

FWS also recommended the use of a single point of contact (POC) to represent all of the agencies

in their government-to-government consultation requirements with Alaska Native groups.

### 3.1.9.4 National Park Service

NPS administers the National Historic Landmarks (NHL) Program and Section 6(f) of the Land and Water Conservation Fund Act (LWCF). NPS serves as an official interested party throughout the NHPA Section 106 process to ensure the integrity of the NHL Program. NPS also serves as DOI lead on Section 4(f) of the Department of Transportation Act reviews, which are intended to protect public recreational lands, including parks and wildlife refuges in the planning of DOT proposals. FWS generally prepares DOI comments on Section 4(f) evaluations prepared by DOT.

#### *NPS Responsibilities for the Alaska Gasline Project*

NPS will most likely participate as a cooperating agency in the FERC EIS, but, as noted earlier by BIA, the comments and reviews conducted by individual DOI bureaus and services will be controlled by DOI. NPS has special review responsibilities for national landmarks that are on or eligible for the *National Register of Historic Places*. The only national landmark known to be in the vicinity of the pipeline corridor is the Gallagher Flint Station near the northeast corner of Gates of the Arctic National Park (700 feet from TAPS). NPS believes that consideration will need to be given to more prehistoric sites for the Alaska gasline project than was the case for TAPS. NPS says there is a small possibility that some LWCF lands may be involved.

NPS also has special authority from Section 1318 of ANILCA to give technical assistance regarding cultural resources to BIA-recognized Alaska Native groups. NPS could also be a source of information about cultural resources for an applicant's contractor.

NPS wants to be involved in scoping and any other early meetings.

#### *NPS-Identified Issues*

NPS staff said that the "EIS timeline is scary," but added that the service would not hold it up. NPS said that NPS staff time would be required.

NPS also identified several issues that could impact lands for which it is responsible and that would probably require investigation. NPS noted that it would like to see the entire footprint of the project to be able to make better assessments. Issues likely to be investigated include the following:

- Air quality (e.g., airborne fugitive dust during construction and emissions from compressor stations).
- Construction worker impacts (e.g., surge in use of parks, impacts of increased use of off-road vehicles, hunting that may impinge upon subsistence users).
- Gravel-associated impacts. The great need to produce gravel as a bedding material is a general concern (dust generated, spoil piles, water usage). Also, the need for gravel could cause Alaska Native holdings to become gravel pits. The need for gravel at Coldfoot by the Alaska Department of Transportation & Public Facilities is already requiring some planning to move NPS housing.
- Integrity of the substrates (permafrost).
- Siting of ancillary services (e.g., camps, sewage, water supplies, waste disposal, hazmat, etc.), as these might affect a park.

Although a "Wetland Mitigation Bank" is not necessarily pertinent to NPS roles and

responsibilities, NPS staff suggested that the proponent investigate establishing such a bank with USACE.

### **3.1.9.5 U.S. Geological Survey**

USGS collects, monitors, analyzes, and provides scientific understanding about natural resource conditions, issues, and problems. As a federal agency with special expertise in the earth sciences, USGS is required to evaluate, review, and prepare technical comments on EISs and associated documents prepared by other federal agencies.

### **3.1.10 Department of Labor**

The DOL Employment and Training Administration is responsible for administering federal employment and job training programs, including programs authorized under WIA. DOL was authorized by Public Law 108-324 to establish a grant program to train Alaska workers.

Given the concerns expressed by other agencies regarding the shortage of skilled labor in Alaska, the OFC may want to ensure that early attention is paid to establishing the grant program to train Alaskan workers.

### **3.1.11 Department of State**

DOS is responsible for addressing the foreign policy aspects of agreements with other countries regarding cross-border pipelines. It is also one of the departments that clear FERC permits for cross-border natural gas pipelines.

#### *DOS Roles Regarding the Alaska Gasline Project*

The United States has international agreements with Canada that need to be considered and possibly modified in connection with the Alaska gasline project. DOS will

address the foreign policy aspects of any agreements with the government of Canada concerning Alaska natural gas transportation projects, including the manner in which the OFC will engage with Canada on that subject. TDOS is waiting to become more involved until uncertainties regarding the submitted application (timing, terms) are resolved.

DOS perceives its actions with Canada as independent of the other federal agencies. When more application-related information is known, DOS will work with Canada to determine whether the existing treaty and agreement on principles need modifying and how best to meet both countries' needs.

#### *DOS-Identified Issues*

As of February 2008, DOS had not identified any issues regarding authorization of the Alaska gasline project.

### **3.1.12 Department of Transportation**

Within DOT, the PHMSA, the FHWA, and the FAA have Alaska gasline project roles and responsibilities.

#### **3.1.12.1 PHMSA**

PHMSA is responsible for establishing safety standards for the nation's pipeline transportation system, and it establishes and enforces minimum safety standards for the design, construction, operation, and maintenance of pipeline facilities. It sets the minimum pipeline standards in the United States that builders must meet or exceed.

#### *PHMSA Roles and Responsibilities for the Alaska Gasline Project*

PHMSA says that it is possible for a gas pipeline to be built in Alaska according to

current regulations, in which case PHMSA would not need to issue a special permit. However, if the applicant wants to vary from the current regulations (DOT regulations), it would need one or more special permits from PHMSA. For example, if the applicant wanted to use X100 steel (a thinner, stronger steel, which, because it uses less material, can produce economic savings), or if it wanted to deviate from standard hydrostatic strength testing requirements, it may need a special permit. PHMSA does not yet know whether the applicant will need special permits, because there is no design. However, PHMSA expects that there will be special permits. PHMSA would work closely with the applicant and the state when processing special permits.

Processing any special permit would take no less than 6 months. Once the applicant applies for a special permit, PHMSA publishes a notice in the *Federal Register* stating its intent to review the application, sets up a publicly viewable docket, reviews the application, addresses any comments, and ultimately posts its decision to the docket. If the applicant submits more than one special permit application, PHMSA could process the applications together or separately. In part, the decision would depend on the applicant. For example, permits related to alternative pipe materials might be done first so the applicant could begin ordering the pipe.

PHMSA wants to meet with the applicant as early as possible to understand the permitting needs. For example, the TransCanada AGIA application states that the company plans to use “strain-based” design in some areas and the more conventional “stress-based” design in other areas. There are important technical questions about how different kinds of permafrost would react to these two design types. (PHMSA says that it has worked with TransCanada on other special permits in the past and that dialogue and face-to-face meetings are standard procedure.)

PHMSA is responsible not only for issuing special permits, but also for conducting inspections during construction (e.g., spot-

inspecting to make sure the pipe is what it says it is, inspecting for proper installation, and reviewing how pipe is shipped and stored according to applicable procedures).

In implementing its integrity management regulations (which include regulations during operations) for the Alaska gasline project, PHMSA will use a life-cycle approach to examining how the operating environment will affect the design. If there are any special permits, the life-cycle evaluation will help determine what, if any, additional requirements these permits would place on the pipeline’s integrity management program.

Other agencies/entities on which PHMSA will depend for completing its actions include DOI (coordination of permitting where the pipeline crosses federal lands) and the Alaska Department of Natural Resources.

PHMSA also works with the National Energy Board (NEB), the Canadian counterpart to PHMSA. In some cases, NEB has already addressed what would be special permitting issues, and PHMSA wants to learn from those experiences. PHMSA is meeting with NEB to observe alternative processes for testing pipeline integrity and for understanding issues related to burying a pipeline in the tundra.

#### *The Role of PHMSA in the NEPA Process*

Anything that varies from code requirements (i.e., that could require special permits) could require a NEPA review. PHMSA hopes that the FERC EIS will incorporate special-permit-related NEPA reviews. It is possible that PHMSA may not have all special permits while the EIS is being conducted. PHMSA expects that FERC will come to PHMSA with sections of the DEIS documents and ask for comments. PHMSA notes that FERC’s interests are primarily siting-related, while PHMSA’s are more safety-related. PHMSA will be a reviewing agency for the NEPA process. PHMSA will work closely with FERC throughout the NEPA

process so that FERC can address any siting or environmental implications related to special permits.

PHMSA noted that there is a possible interaction between technical design and NEPA and that as design changes are made, the impacts (particularly risk) could change. For example, the valve or crack arrestor spacing could change the risk profile.

PHMSA has several pre-planning activities under way. These activities include participating in open discussions, meeting with the Canadians to learn about their experiences with Arctic pipelines, and conducting research and development (R&D) to facilitate the permitting of nonstandard design proposals. The PHMSA R&D office is working on numerous projects that will give the standards-setting organizations<sup>4</sup> information to develop standards that PHMSA can adopt for its regulations, thereby minimizing the need for special permits.

PHMSA expects to have much of this research completed so that the standards can be established before the design of the Alaska natural gasline project is complete. PHMSA notes that when standards are not in place, the permitting process can be “arduous.” PHMSA expects to have the R&D information to the standards organizations in 2011–2012; preliminary information may be available in 2009. The standards-setting bodies are working with PHMSA on the R&D efforts. Examples of PHMSA R&D categories (and relevant activities) pertinent to the Alaska gas pipeline include damage prevention (e.g., seismic sensors); pipeline assessment and leak detection (e.g., unmanned air vehicles for pipeline surveillance, novel approaches for weld inspection and repair, fatigue fracture and crack arrest in high-strength pipeline steels); and improved design, construction, and materials

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<sup>4</sup> Safety and specification standards are issued by industry (standards-setting bodies such as the American Petroleum Institute), and DOT incorporates these standards — wholly or in part — into its regulations.

(e.g., corrosion assessment guidance for higher strength pipelines, strain-based design of pipelines, optimized welding solutions for X100 line pipe steel). PHMSA stresses that it does not know what the design will be, including the type or size of pipe, but it wants to be prepared to evaluate different options, including the use of X100 steel, which can produce economic savings, but has other potential issues that need to be addressed.

PHMSA may also set up or participate in small workshops in the Arctic regions, Anchorage, or Fairbanks to identify and anticipate issues needing resolution. (PHMSA is not responsible for right-of-way selection.) There may be some joint funding opportunities here.

#### *PHMSA-Identified Alaska Gasline Project Issues*

The main issues that PHMSA believes will need early and regular attention are the following:

- Understanding the roles of the participating agencies and the State of Alaska and ensuring that they are coordinated.
- Obtaining information on the potential design as soon as possible. Early meetings at the conceptual level with the applicant will help PHMSA guide the applicant regarding any permitting needs. Significant front-end engineering will be required to answer important technical questions before new design types could be approved for use in cold weather climates. BP and Exxon have conducted experiments with pipelines in cold weather climates (e.g., trenching, crack testing, bend testing), but most of the information on these tests is not public and may not be mature enough to allow for immediate approval. Therefore, these technical areas will likely be long-lead-time items.

- Evaluating and addressing material and workforce resource issues early on:
    - *Material resources.* The project will tie up global steel production, and at the same time, it will compete with many other steel-demanding projects that are under way worldwide.
    - *Workforce resources.* A significant gap exists between government salaries for engineers and inspectors and industrial salaries for these same professions. Industry (e.g., TransCanada, BP) is already paying premium wages for these professionals, and to attract needed staff, government salaries will need to be competitive. Much of PHMSA's work will occur in Alaska, where both the qualified labor force and the population base are small. Even in the lower 48 states, many of the experienced old timers are leaving the workforce, and the numbers of qualified individuals in specialized areas (e.g., corrosion protection, welding) are decreasing.
  - Quality assurance and quality control of resources and material logistics:
    - *Resources.* The quality of the steel produced by the numerous steel mills across the globe varies. Monitoring steel quality will be particularly important, if the steel is a new type (e.g., that requires a special permit). (Monitoring foreign steel mills is the responsibility of the pipeline company.)
    - *Material logistics, including transportation of materials to the site.* Materials can be damaged in transit, leading to schedule delays or faulty installation, if the damage is not identified and fixed.
  - Funding of Alaska gasline project work is not in PHMSA's current budget.
- PHMSA is studying its resource requirements and expects they will be met through a combination of additional full-time employees (FTEs) and contractors. PHMSA notes that it is difficult to project resource requirements without knowing whether the pipeline will be built. If the pipeline is built, PHMSA will need significant resources for inspections, particularly in Alaska. Today, PHMSA makes up the difference between the amount of funding Congress authorizes and the amount it appropriates by assessing user fees. PHMSA says it needs a reimbursement mechanism, but no agreements exist for PHMSA's Alaska natural gas transmission pipeline project work. As more is known about pipeline design, it will be easier to identify funding requirements and dedicate/request funds.
- It is too early to predict scheduling issues, but PHMSA hopes that a number of potential gaps (e.g., with respect to technical understanding) will be addressed by its ongoing R&D efforts. PHMSA says that it expects to review various aspects of the pipeline design over a number of years, but notes that it will do what is necessary to ensure that PHMSA's work does not hold up the schedule. Another scheduling issue raised by PHMSA is that often an applicant spends minimal resources on pre-NEPA engineering, holding off on the final design until it clears the NEPA hurdle and is assured of the permits. (PHMSA estimates the cost of the final design and engineering at \$5 billion to \$8 billion.) This could mean delays in approvals, since final designs would not be available until after the EIS is complete. Final engineering must be completed before any pipe is ordered.
  - Potential overlaps/jurisdictional issues are likely to arise as the roles of various

agencies are determined. For example, because BLM played a major role in TAPS (PHMSA and its predecessor agency barely existed at the time), issues regarding the relative roles of these two agencies with respect to the Alaska gasline project are likely to surface. (BLM issued the federal regulations that affect integrity management of TAPS, and Alaska is still carrying out these regulations.) PHMSA notes that the BLM-issued permits may affect future operation of the Alaska gasline project. For example, to repair a pipeline in a federal ROW requires a permit. State regulations also might affect pipeline operations. The roles of BLM, PHMSA, and the state need to be clearly defined, and the issues of commissioning versus operations and pre-and post-construction need to be discussed.

### 3.1.12.2 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 ROWs of federal-aid highways.<sup>5</sup> FHWA can also have responsibilities for roads that are built on FS, NPS, and other federal and Tribal lands.

#### *FHWA Roles and Responsibilities for the Alaska Gasline Project*

FHWA has an interest in both the accommodation of the gasline on highway ROWs and the effects of gasline construction on the roads.

Highway ROWs are often used to provide public services. FHWA would be involved with the Alaska gasline project when the pipeline crosses or is longitudinally aligned with federal-aid highways. FHWA recognizes that joint use of public road ROWs is in the public interest when such use does not adversely affect highway safety, impair the highway or its aesthetic quality, or conflict with other laws or regulations. Joint use avoids the additional costs of acquiring a separate ROW for the exclusive accommodation of utilities. FHWA prefers that gas pipelines not be located under or along the roads. Permits would be needed if the pipeline encroached on highway easements or utility crossings.

Because the Alaska gasline project would be considered a utility, it would be subject to FHWA accommodation of utilities policies. These policies affect roads only when federal funds are involved. Accommodation of utilities is a state-led function — the state decides if it wants the utility (in this case, the pipeline) on highway ROWs, and, if so, to what extent and under what conditions. The state's decision must be documented in an FHWA-approved utility accommodation policy. The state determines the fees charged for utility use and how those fees are used. If a state chooses, it can prohibit any longitudinal utility installations. Alaska's utility accommodation policy is established by statute.

FHWA will also have involvement in preparing the highway infrastructure for pipeline construction. The Alaska Department of Transportation has estimated highway needs approaching \$2 billion in preparation for construction of the gasline. The impacts on the highway infrastructure will be different for this project than for the construction of the Trans-Alaska Pipeline. These differences are related to factors such as:

- Buried construction (more earthwork truck loads),
- Heavier pipe,

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<sup>5</sup> Federal-aid highways are those that receive or have been built with federal funding.

- Greater use of large prefabricated modules,
- Higher background traffic, and
- More pavement at risk.

Major chokepoints are located on the Dalton Highway at Atigun Pass and the Yukon River Bridge; the municipalities of Fairbanks, North Pole, and Delta Junction; the Richardson highway at the Alaska Range; and Thompson Pass, Haines and Haines Highway, and the Parks Highway from Anchorage to Wasilla. Projects are under way at this time to address the most pressing needs.

FHWA understands that FERC ruled in the 1980s that impacts on the highway infrastructure cannot be recouped through the rate-setting process. Accordingly, it is anticipated that the majority of needed funding for highway infrastructure will be from the state's general funds, supplemented by federal-aid highway funding. Additionally, FHWA funds work on the SHAKWAK portion of the AICan Highway by international treaty. Because of the likelihood that pipe, equipment, and other materials will be shipped from the Port of Haines over the SHAKWAK, continued funding will be needed. It is unknown whether the reauthorization of SAFETEA-LU will include U.S. funding for the SHAKWAK Highway.

Because of the length of time it takes to develop a highway project, most, if not all, of the needed highway system improvements must be implemented ahead of the FERC EIS process. Accordingly, FHWA's role in the FERC NEPA process will depend on what FERC requests and its role in the NEPA process as a cooperating agency. FHWA will at a minimum review and provide input to the EIS regarding the impact of the pipeline on federal-aid highways. FHWA has not identified any FHWA NEPA requirements specifically for the FERC EIS.

FHWA will give the Alaska gasline project a high priority and will do whatever is necessary

to facilitate processing of the pipeline application. From a regulatory perspective, FHWA does not expect to have much involvement. Minor exceptions would be permits needed if the pipeline encroached on highway easements or utility crossings. From a practical standpoint, however, FHWA would be heavily involved in the actual construction process, primarily in facilitating movement of pipe, equipment, manpower, and so forth.

#### *FHWA Issues*

FHWA is unaware of any gaps, scheduling issues, regulatory overlaps, or potential jurisdictional issues at this time. However, FHWA is particularly concerned about the price and availability of steel; planning time is needed to engineer substitute materials for FHWA structures. As the alignment of the pipeline becomes more defined, FHWA will be able to look at the locations and determine the effects of the pipeline on the roads and the types of adjustments that may have to be made.

FHWA also recognizes a number of other issues, which must be addressed as they arise:

- Size and weight limitations for trucks.
- Border operations.
- Highway operations and safety, such as truck pullouts and passing lanes, as well as prefabricated module pullouts, and major activity site access (staging yards, material sites, camps).
- Weigh station technology for efficient carrier movement.

#### **3.1.12.3 Federal Aviation Administration**

Among other things, the FAA is responsible for the safe and efficient use of navigable airspace. Generally, airports in any state serving passenger-carrying operations of an air carrier



must hold Airport Operating Certificates, if scheduled passenger-carrying operations are conducted in aircraft designed for more than nine passenger seats and unscheduled passenger-carrying operations are conducted in aircraft designed for at least 31 passenger seats. The authorizing statute exempts Alaskan airports that serve aircraft with less than 30 seats from federal airport certification requirements.

All airport modifications, whether permanent or temporary, are subject to FAA notice requirements, and airport owners and operators should ensure that all such improvements are properly evaluated by the FAA *prior to* commencement of the work. Typical examples of permanent and temporary alterations are antennas, buildings/structures, elevated signs, fences, power and cable lines, construction equipment, haul routes, and staging areas. Individuals/organizations proposing construction or alterations must submit FAA Form 7460-1, “Notice of Proposed Construction or Alteration,” 30 days prior to construction. Given the time required to conduct an aeronautical study, the FAA recommends a 60-day notification to accommodate the review process and issue its determination letter.

#### *FAA Roles and Responsibilities for the Alaska Gasline Project*

Although some of the existing airports along the proposed pipeline route may need physical upgrading and certain other improvements, if no “Part 139” chartered flights (planes that can carry more than 30 passengers) are used, there are likely enough existing and available landing strips. Several airports that exist along the proposed gas pipeline route are privately owned,<sup>6</sup> including Tanacross, owned by an Alaska Native Village Corporation. Prudhoe Bay airport is owned by the producers and is currently closed. All of the airports that would

be along the proposed route are in the Fairbanks region of the DOT&PF.

Approval of a Part 139 airstrip (for planes that carry more than 30 passengers) would require much more effort, take as long as 6 months to approve all of the equipment, and would require procedures and staff training. Part 139 can be avoided by using planes that can carry fewer than 30 passengers.

#### *FAA Issues*

As of April 2008, the FAA identified no issues regarding authorization for the Alaska gasline project.

### **3.1.13 Department of Treasury**

The Department of 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.

#### *Treasury Roles in the Alaska Gasline Project*

Treasury’s primary role with respect to the Alaska gasline project would be to review the financial aspects of the federal loan guarantee and any regulations that may be written by DOE to implement the loan guarantee program. Compared with other federal credit programs, the Alaska gasline project will involve a large loan guarantee.

Treasury’s objective is to ensure that the interests of the federal government are protected in any financial agreements that are signed. For example, Treasury wants to be sure that the risks of default are minimized, that the federal debt is not subordinate to any other debts, and that the provisions of the guarantee will protect the public interest.

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<sup>6</sup> A DOT&PF map that shows airports and ownership is available at <http://www.dot.state.ak.us/airport-portal.shtml>.

Treasury will depend on DOE to draft the guarantee, which has the lead on the loan guarantee and on any outside financial advisors that DOE may hire to assist in the preparation and review of the financial documents.

Treasury does not expect to have much input to the NEPA process, because it believes that financial details will come later. However, it will review the NEPA documents to keep informed.

Treasury's involvement in the Alaska gasline project will be funded through regular appropriations. Treasury has a credit program analytical team and does not believe it will need any additional staff. Treasury does not expect to become involved for at least a year or two (until after FERC has made its decision), and its review function may not occur for several years. Treasury notes that, while the DOE regulatory development process (if it even undertakes a rulemaking) could take 6 months or more (because of public participation and OMB clearance requirements), the actual document review "should not take too long." Treasury has advised DOE that it wants to be involved early on, so there are no surprises when the documents are ready to be reviewed.

#### *Department of Treasury Issues*

To date, Treasury has identified no gaps, scheduling issues, regulatory overlaps, potential jurisdictional conflicts, or legal issues regarding the Alaska gasline project.

#### **3.1.14 Environmental Protection Agency**

The 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, reviewing and commenting on an EIS under NEPA and Section 309 of the CAA, the authority under the CAA to issue and/or review state-issued permits, oversight authority for the Section 404 CWA permit process, and the

authority to issue and/or review state-issued permits for activities that include discharge of pollutants subject to the requirements of the National Pollutant Discharge Elimination System (NPDES) under CWA Section 402.

#### *EPA Responsibilities for the Alaska Gasline Project*

EPA responsibilities and authorizations relevant to the pipeline-permitting process include, but are not limited to, the following:

- Under NEPA and Section 309 of the CAA, EPA reviews and comments on the environmental impacts of proposed actions of other federal agencies, when the actions are subject to NEPA's requirement to prepare an EIS;
- The authority to participate in the Section 404 CWA permit process by providing comments to the USACE regarding compliance with the 404(b)(1) guidelines;
- The authority to issue CWA Section 402 NPDES permits, including applicable stormwater discharge permits; (In May 2008, the State of Alaska submitted an application to EPA seeking authority to administer the NPDES program. EPA may make a decision on the application as soon as November 2008. Depending on status of this application, EPA will serve as the permitting authority and/or in an oversight role for issuance of CWA Section 402 permits.)
- Participation in the Section 106 NHPA consultation with the SHPO;
- Oversight of oil spill prevention and response requirements under CWA and the Oil Pollution Act (OPA);
- Overview of state-issued CAA Title V operating permits; and

- Consultation with Alaska Native entities, as appropriate.

#### *EPA's Role in the NEPA Process*

During the development of the EIS, EPA will act as a cooperating agency with FERC. Thus, in addition to reviewing and commenting on the EIS documents, EPA will play an early role in the scoping process. Issues that will be addressed in the scoping process include an analysis to determine:

- The applicability of permits that were granted previously (whether they still apply or whether they have to be reissued);
- An appropriate range of reasonable alternatives and the extent to which evaluations regarding climate change and greenhouse gas emissions will be included in the NEPA analyses;
- The NEPA compliance responsibilities for decisions regarding issuance of NPDES permits, including any required consultation with the services regarding potential impacts on endangered species and EFH; and
- A process for evaluating alternative stream crossings and routings.

As part of the EIS review process, EPA expects to focus on potential impacts on wetlands and water quality, as well as any potential environmental justice concerns. EPA will also review potential impacts on endangered species, marine mammals, and EFH. EPA expects to be involved in reviewing the technical aspects of the pipeline construction methods.

According to Region 10 staff, the gas pipeline is, and will continue to be, a very high priority with the EPA. They emphasized that they have senior staff with large-project EIS experience, and they are ready to “hit the ground running.”

An EPA Alaska gasline project coordinating workgroup at headquarters has been established and includes representation from the following offices: (1) Solid Waste and Emergency Response, (2) Water, (3) Air and Radiation, (4) Federal Activities (the NEPA office), (5) General Counsel, (6) the EPA Region 10 office in Seattle, and (7) the Region 10 office in Anchorage (Region 10 participation is through the Alaska Oil and Gas Sector). The EPA headquarters official responsible for coordinating the Alaska gasline project work of the different program and regional EPA offices began working on the Alaska gasline project in early 2008.

EPA does not have a direct budget line item for the project. EPA involvement in the Alaska gasline project will be funded through existing appropriations and staffing levels. While travel money may be needed at some point early on, it is not expected that EPA will need contractual support to assist in the NEPA review. EPA did note that the number of EPA staff in Alaska is limited and that, in addition to the Alaska gasline, other large projects in the area (e.g., projects in the Beaufort and Chukcki Seas and two of the largest open-pit mines in North America) will require environmental analyses and staff resources.

EPA indicated that the agencies will need additional direction from the OFC on how to develop the implementation plans called for in the MOU. Region 10 staff emphasized that they want to be involved as early as possible in all gas pipeline activities.

#### *EPA-Identified Alaska Gasline Project Issues*

EPA Region 10 staff noted that meeting the expedited schedule for the preparation of the NEPA analyses for the Alaska gasline project will depend, in large part, on open and iterative communication among the agencies. EPA Region 10 anticipates allocating significant resources to the Alaska gasline project and

requests open communication as early as possible.

EPA Region 10 suggested that the public needs very clear information about the expedited schedule for the development of the EIS, that is, 18 months.

EPA identified several other specific issues, many related to the uniqueness of the project, that will need early attention:

- The environmental impacts, as well as the feasibility and safety considerations, associated with using a buried chilled pipeline (particularly with regard to permafrost areas and stream crossings);
- Safety considerations of the processing and handling at both ends and at transfer points;
- Analysis of the effects of climate change on a buried pipeline, especially in light of limited geotechnical data in permafrost areas; and
- Assurance that environmental mitigation measures are integrated with the overall project design.

### **3.1.15 Federal Communications Commission**

The FCC was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. Responsibilities of the Commission's seven bureaus include processing applications for licenses and other filings, analyzing complaints, conducting investigations, developing and implementing regulatory programs, and participating in hearings.

### *FCC Roles with Respect the Alaska Gasline Project*

The construction and operation of systems that will enable communication for field operations in staging and other areas and along the pipeline during construction and for monitoring and safety during operations will require FCC licenses and compliance with environmental rules prior to construction. Although each individual system will require its own FCC license, the FCC considers the granting of these licenses to be ancillary to pipeline construction and ministerial, for the most part.

Before granting a license, a "no hazard for air navigation clearance" approval must be obtained from the FAA for any tower taller than 200 feet. For this, routine environmental investigations would be conducted. Only if significant environmental effects (e.g., endangered species in the area of the system) are identified will there be a requirement for an environmental assessment and possibly a Section 7 consultation.

The license-granting process generally takes a few months, and it is expected to be routine in Alaska because of limited population and interferences. The FCC also suggests that applicants will have an easy time obtaining spectrum frequencies in Alaska, because there is little if any competition. There are no public notification requirements.

### *FCC Issues Regarding the Alaska Gasline Project*

The licensing process could be delayed if Alaska Native sacred sites were found to exist near the proposed towers. The environmental review includes NHPA requirements to identify

historic properties. Under an agreement between the ACHP and the FCC, the SHPO informs the FCC if the proposed action will have an effect on historic properties. The FCC has an electronic notification system whereby the applicant provides the coordinates of the proposed tower(s) for entry into the FCC database. The Tribal Construction Notification System identifies the Alaska Native entities in Alaska that have expressed an interest in knowing about tower construction in their particular areas. If a tower is to be constructed in their area, a notice (via both e-mail and paper) is sent to the entity. The entity can respond, if it has an interest in knowing more about the projects. If no response is received within 60 days, it is considered to be cleared by the Alaska Native entity. If the entity says it has an interest, the applicant initiates a discussion with the Alaska Native entity. In many cases, the entity just wants more information and approves the tower. However, in a worst-case scenario, where a sacred religious site is near the proposed construction, the applicant must notify the FCC, which then initiates a government-to-government consultation with the entity. These consultations can be lengthy and not always successful. Such situations are rare, but they have occurred.

### **3.2 STATE COORDINATION**

Many federal agencies delegate some or all of their regulatory responsibilities to relevant state agencies. For example, some of the environmental permitting responsibilities (e.g., air) have been delegated to the ADEC. Often, the federal agency retains an oversight or approval role. This oversight is to ensure that the state permitting authority administers and enforces the permitting program in accordance with CAA requirements. CAA requires that when a state issues a permit, it must provide a copy of that permit to the EPA administrator. If the administrator finds that the permit provisions are not in compliance with the requirements of the law, the administrator can object to its issuance.

#### **3.2.1 State Roles and Responsibilities for the Alaska Gasline Project**

It is expected that at least one or, more likely, a series of prevention of significant deterioration (PSD) permits will be needed. Unless a suitable data set exists, meteorological and pollution baseline data will need to be collected.

Also, the OFC and the state are to enter into a joint surveillance and monitoring agreement, to be approved by the President and the governor of the state, for the purpose of monitoring the construction of the Alaska gasline project. (The federal government is to have primary surveillance and monitoring responsibility in areas where the Alaska gasline project crosses federal or private land, and the state shall have primary surveillance and monitoring responsibility in areas where the Alaska gasline project crosses state land.)

#### **3.2.2 State-Identified Alaska Gasline Project Issues**

Issues raised by the state pertain to coordination and communication with Alaska Native groups, communication with the federal government, details of the monitoring program, stipulations, common data standards, infrastructure, and potential air emissions problems.

The State Pipeline Coordinator (SPC) has expressed several concerns related to coordination and communication with Alaska Native groups:

- In early January, the SPC asked why the federal government has not initiated community/public/Alaska Native outreach. The SPC noted that Alaska Native communities, particularly the Tanana Chiefs Conference (TCC), have asked for this to begin as soon as possible.

- The state expects FERC will be the lead agency in federal outreach and government-to-government relationships. The state believes that the federal government needs to implement an Alaska Native coordination effort. State Pipeline Coordinator Office (SPCO) representatives note that ROWs through Canadian sovereign First Nation Lands were not settled, and as a result, the MacKenzie pipeline has been delayed.
- The state emphasized that Alaska Native Corporations (entirely separate from Tribal governments) want to maximize “value added” in their land selections along the alignment — material sales, pads, camps, facility sites, and so forth.

The state would like to have very early, staff-level coordination with the federal government (recognizing FERC as the lead EIS mitigation stipulations writer) to reach agreement on issues such as sampling, monitoring techniques, navigability impact criteria, and the like. The SPC suggests that federal and state ROW staffs meet to coordinate and resolve the details of the monitoring programs. The state says that standard stipulations become particularly critical during construction. The state wants to avoid different state and federal stipulations for the surveillance and monitoring process. The immediate problem is how to update and standardize stipulations for ANGTS — current BLM ROW grant stipulations are very aged.

Infrastructure issues raised by the SPCO and the Alaska Department of Transportation include the following:

- The state Division of Geological and Geophysical Surveys has conducted pre-construction studies of geology along the existing TransCanada alignment, looking for appropriate borrow sites.

- The state believes that it should not be assumed that any TAPS-era campsites and pads are automatically available for reuse. These sites need to be studied and cleared through the ADEC before they can be authorized. This can be a long-lead-time issue.
- Several upgrades, each of which, with the exception of the Yukon River Crossing (which is a longer lead-time issue), would take 2 years to complete. DOT&PF identified a number of potential infrastructure issues:
  - Significant bridge upgrades for two rivers between Delta and Tok, Alaska, will be required.
  - Highways will need to incorporate upgrades that include new passing lanes, new turning lanes, and truck bypass routes in Fairbanks and new truck way stations.
  - In contrast to TAPS, which was built off dirt roads, paved roads exist along the entire route of the gas pipeline. However, the traffic will destroy the pavement, raising the question as to whether the pavement should be repaired or used as is or whether repairs should be delayed until construction is completed.
  - Turnout or waiting lanes on both sides of bridges so that background traffic can be out of the way of modules weighing 400,000 pounds being transported by push-pull tractors.
  - The Yukon River Bridge may not be strong enough to support the segment of the pipeline that would need to be hung from it. The bridge is “too tender” and has a seven-degree slope. Solutions such as boring tunneling and trenching will be expensive. There is a question as to whether the DHS would allow the use of the bridge for the gasline

(Alaska DOT representatives said that DHS indicated it would not forbid the use of the bridge for the gasline; this issue needs to be resolved).

SPCO also identified several long-lead-time issues:

- The state emphasizes that the Section 106 consultation is a long-lead-time issue.
- Air quality studies have long lead-time requirements; baseline monitoring studies for 5 years are usually required. (The Alaska DOT says that superfine dust consisting of airborne particulates sized 2.5 microns and below and the associated permitting may be a potentially significant issue.)
- Clearing the use of TAPS-era campsites and pads for the Alaska gasline project through the ADEC.
- Addressing the Yukon River Bridge issue.
- The need to pre-plan activities in great detail in the Brooks Range Atigun Pass Area to avoid damage to the TAPS pipeline or facilities.

### 3.3 CANADIAN GOVERNMENT

The federal government in Canada has several key entities that will participate in the approval and policy tasks associated with an Alaska gasline project. The NEB is an independent Canadian federal agency established in 1959 by the Parliament of Canada to regulate international and interprovincial oil, gas, and electric utility industries and projects. The NEB resides under the Minister of Natural Resources Canada (NRCan). The NEB, which can be viewed as the functional equivalent to FERC, considers the public need and necessity for a project, ensures that the necessary

environmental reviews are conducted, and recommends whether to issue a certificate of need for a pipeline project.

NRCan develops policies and programs designed to enhance the contribution of the natural resources sector to the Canadian economy and improve the quality of life for all Canadians. NRCan addresses energy policy concerns, but does not issue permits. NRCan does conduct upfront planning and coordination on key energy issues and, after the NEB makes its decision and recommendation, prepares the necessary cabinet documentation.

The Canada Environmental Assessment Agency (CEAA), established under the Canadian Environmental Assessment Act, would conduct the environmental assessment for an Alaska gasline project, in full coordination with the NEB. However, CEAA does not have any decision-making authority — that authority rests with the NEB. There is another federal authority for environmental assessments conducted in the Yukon Territory, which is similar to the CEAA but which is specific to the Yukon Territory. The Yukon Territory environmental assessment would likely be coordinated with the CEAA assessment.

In addition to NEB as the primary regulator, there are a number of secondary regulatory agencies in Canada that address single issues or permits associated with a project. For example, the Department of Fisheries and Oceans is responsible for issuing specific permits (e.g., stream-crossing permits) applicable to individual projects. Many of the permits or requirements developed by these secondary agencies are issued during the construction process after the NEB decisions have been issued. While these agencies can be considered secondary to the overall role played by the NEB, the NEB has no authority to overrule or veto individual permitting decisions.

Importantly for an Alaska gasline project, the Northern Pipeline Agency (NPA), which was established under the Northern Pipeline Act,

would need to be reconstituted to serve as the primary regulatory body for a project submitted by TransCanada and the State of Alaska. TransCanada holds the original approvals granted to the Foothills Pipeline in the 1970s. Currently, the NPA exists only on paper because no pipeline project has been developed. An application submitted by TransCanada in partnership with the State of Alaska would undergo an environmental review, but the environmental assessment would be consistent with — not performed under — the CEAA. Rather, the NPA would determine the additional environmental review documents that would be needed for a project.

An Alaska gasline project would be under federal regulation, and the role of the provinces in a pipeline project would be limited to coordination with either the NEB or the NPA. If there are issues of interest to the provinces, they would be highlighted in the NEB or NPA process, but the provinces have no superior regulatory authority and no veto power over a project.

### 3.3.1 Relationship to U.S. Entities

As noted above, the NEB is functionally equivalent to the FERC. The two organizations have worked together in the past, and they conduct regular and routine meetings to discuss the issues, about twice a year. The two organizations have spoken about an Alaska gasline project and intend to continue discussions. Currently, the NEB and FERC have a general MOU that provides overarching agreement on conducting coordinated reviews and scheduling. The MOU is not specific to the Alaska gasline project.

NRCan has no relationship with the FERC, as the NRCan role is policy-related, not regulatory. In Canada, there is no office comparable to the OFC in the United States.

There is currently no process in the Canadian system similar to the pre-filing process

used by FERC to facilitate the meeting of statutory deadlines. There has been discussion at various levels in the federal government on initiating a similar pre-filing process, but currently no final decisions have been made.

As the NPA exists only on paper, there has been no formal or informal process established to coordinate with U.S. entities on applications that may be submitted to the NPA.

### 3.3.2 Potential Issues

The Canadian federal government is fully committed to meeting the FERC schedule for completion of all environmental reviews and processes needed for a certificate of need in Canada. To meet the FERC schedule, NRCan sees the need for early and close coordination between the OFC, FERC, and the NEB and/or the NPA. It will be especially important to develop coordination procedures during the FERC pre-filing process because Canada lacks a similar process to meet critical environmental and permitting schedules. Importantly, the NEB now considers an application when the application is complete; that is, the application must clearly identify the source of the gas that would be transported in the pipeline. Because a complete application may be available only upon completion of the FERC pre-filing process, developing a coordinated schedule for Canadian and U.S. environmental and permitting activities is viewed as a high priority by NRCan.

NRCan believes the respective roles of the OFC and FERC are not well understood in Canada, especially in terms of how the Canadian government should communicate with the U.S. agencies. A desired condition noted by NRCan is to have a single point of contact to ensure Canadian and U.S. coordination.

The Canadian government is preparing to address the possibility of receiving two applications. The Denali application would be processed under the NEB, while the TransCanada and State of Alaska application



would be processed by the NPA. It is expected that the NEB would assist the NPA in processing the TransCanada and State of Alaska application. However, NRCan noted that there would likely be only one final application because only one proponent would likely acquire enough committed gas for the project. Nonetheless, NRCan stated that there is a Canadian interdepartmental committee that is developing processes that would apply to either or both pipeline applications.

The pipeline approval process will require Canadian agencies and departments to add human resources. The NEB and NPA are cost-recovery agencies and have established mechanisms to seek reimbursement from project applicants. However, the secondary regulatory agencies are not cost-recovery agencies. Once there is more certainty regarding the pipeline, agencies and departments will request funding from the Canadian federal government. NRCan is not sure whether there was a process for sharing NEB or NPA cost-recovery funds with other agencies, but it said that such sharing has not occurred in the past.

When queried about possible scheduling and resource conflicts between an Alaska gasline project and the McKenzie Pipeline Project, NRCan stated that the McKenzie project would be far enough along toward completion (in the construction phase) that resource and scheduling conflicts would not be an issue during the regulatory review of the Alaska gasline project.

### **3.4 MAJOR ISSUES SUMMARY**

Twenty-two agencies (including bureaus and divisions within agencies) have been identified with Alaska gasline project authorization roles and responsibilities. Many of these agencies have multiple roles. Of the 22 identified agencies, representatives from all but one met with Argonne staff to discuss Alaska gasline project-specific roles and responsibilities and potential issues that should be addressed to help

ensure an expedited permitting process. The findings from those meetings have been reported in this chapter. DOL staff declined to meet with us; therefore, the discussion lacks detailed information on the establishment of a grant program to train Alaskan workers. This section summarizes major agency-reported findings needing immediate or near-term attention that were brought to our attention by agency staff.

#### **3.4.1 Alaska Natives**

Many agency authorizations (e.g., ACHP, USACE, FCC) require contact or consultation with Alaska Native entities. At issue is whether there will be a single federal spokesperson to work with a given entity, or whether the entity would have to meet separately with representatives of a variety of federal agencies. The identification of Alaska Native entities that may be affected by various agency authorizations is another issue needing immediate attention.

Alaska Native groups are keenly interested in jobs, material sales, and summer internships for students, and they want to be included in discussions from the beginning.

ROWs crossing Alaska Native trust lands require the consent of the allottee and the approval of the Secretary of the DOI. Determining which trust property could be affected by the pipeline needs to occur as soon as possible so that the ROW access can be obtained. Alaska Native allotments and ownerships have changed over the years and will require research and verification. The identification of trust properties could be complicated because of fractionation — the divvying up of lands that were initially granted to one individual. Because no deeds are involved, identification of current allottees may be difficult. In cases in which land transfers under the Native Claims Settlement Act are not complete, secretarial approval would be required. For the Native Corporation lands that

are split estates (about one-half of the total 44 million acres that were transferred are split estates), ROW access approval must be obtained from the Village Corporation for the surface rights and from the Regional Corporation for the subsurface rights.

The State of Alaska noted that approvals for ROWs crossing Canadian sovereign First Nations Lands have not been settled, contributing to the delay of the Mackenzie pipeline. To avoid similar delays for the Alaska gasline project, the state urges the federal government implement an Alaska Native coordination effort. The SPCO has asked why the federal government has not initiated community/public/Alaska Native outreach, noting that Alaska Native communities have asked for this to begin as soon as possible.

### 3.4.2 Resources

Resource issues include federal agency manpower and funding resources, nonagency labor resources, material and other resources, and quality assurance and quality control of materials.

#### 3.4.2.1 Agency Resources

The following agencies expressed concern over the resource requirements to meet their Alaska gasline project responsibilities:

- Unless there is some provision for FERC, BLM, or another agency to secure funding from the applicant and share it with all involved agencies, FWS will play a very minor role and may not be able to meet its regulatory obligations.
- Funding for Alaska gasline project work is not in PHMSA's current budget. PHMSA is responsible not only for issuing special permits but also for conducting inspections during

construction. PHMSA says it needs a reimbursement mechanism.

- BIA may experience a drawdown of its own employees as a consequence of pipeline construction. DOI needs to be wary of the potential impact on its organization's ability to deliver services, especially in Alaska.
- EPA noted that the number of EPA staff in Alaska is limited and that, in addition to the Alaska gasline, other large projects in the area (e.g., projects in the Beaufort and Chukcki Seas and two of the largest open-pit mines in North America) will require environmental analyses and staff resources.
- USCG manpower requirements could increase depending on the number of structures requiring permits.
- USACE may need an additional position to meet the schedule.
- DOE's loan guarantee-issuing efforts will require a ramp-up in manpower in the out years.
- Depending on the level of CEQ involvement, there could be some in-house staffing issues, and if travel to Alaska were required, CEQ would need financial assistance from the OFC or another agency.

Industry is already paying premium wages to the limited number of skilled professionals in Alaska with the needed engineering and analytical skills. To attract needed staff, the gap between industry and government salaries will need to narrow.

The number of experienced EIS players in Alaska is also limited, and all agencies (federal and state) may be stretched thin, given the possibilities of other large projects in Alaska requiring EISs.

Some agencies may need additional funding, if travel to Alaska is required. FERC has asked whether most federal agencies can work on a cost-reimbursable basis.

#### **3.4.2.2 Nonagency Labor Resources**

The labor pool for skilled engineers and inspectors in Alaska is small, and other competing projects and employers will exacerbate the shortage. Even in the lower 48 states, the number of experienced welders, corrosion experts, and other skilled professionals is decreasing as workers in these professions approach retirement. Many of the same workforce issues facing federal agencies in Alaska will apply to state agencies and industry and could lead to schedule and cost increases.

Given the importance that rural Alaska Natives have an opportunity to benefit economically from the construction of the pipeline, early Alaska Native workforce training will be critical.

#### **3.4.2.3 Material and Other Resources**

The Alaska gasline project will tie up global steel production, possibly delaying project startup or completion. Steel is needed not only for the pipeline, but also for highway infrastructure. Base camp and other pads used during TAPS construction are largely polluted and cannot be reopened easily for use in Alaska gasline project construction. Additional spread sites may be required.

#### **3.4.2.4 Quality Assurance and Quality Control of Materials**

Because the quality of the steel produced by the numerous steel mills across the globe varies, monitoring steel quality will be important, particularly if a new type of steel is used. Materials can be damaged in transit, leading to schedule delays or faulty installation, if the damage is not identified and fixed.

### **3.4.3 NEPA**

Not all agencies are aware of the status of Alaska gasline project pipeline activity and the need and nature of their participation in the NEPA process. At least some agencies will need direction from the OFC on how to develop the implementation plans required by the MOU.

Agencies have raised issues regarding the scope of the EIS (e.g., commissioning versus operations, pre- versus post-construction, treatment of infrastructure improvements). FERC has suggested that the OFC address at least the issue of how infrastructure requirements will be addressed as soon as possible. Other potential scoping issues include the treatment of previously granted permits and the role of strategic issues such as climate change and greenhouse gas evaluations.

The amount of information collected for authorizing the Alaska gasline project will be vast, and sharing that information needs to be coordinated to ensure that all agencies get the information they need. Databases and data management for all involved agencies should be interagency-compatible. A common data management platform established early on would allow agencies to easily share detailed information in all phases. BLM notes that because of data restrictions on DOI agencies resulting from the *Cobelle vs. Kempthorne* lawsuit, some data will not be releasable.

### **3.4.4 Schedule**

Because of the number of agencies involved and authorizations required, the Alaska gasline project schedule will be demanding. FWS says that the key elements to meeting that schedule will be early pre-planning by the applicant and FERC to identify what will be involved to undertake the project, timely provision of adequate funding to involved agencies to enable their participation, and coordination among all involved federal agencies.

The NHPA Section 106 process can be protracted and cumbersome. Because all agencies issuing permits or approvals typically need to conduct their own NHPA Section 106 review, unless otherwise agreed to in writing, there is the potential for significant duplication of effort.

To implement their authorization responsibilities, agencies such as PHMSA and DHS will need to obtain information on the pipeline design soon as possible. PHMSA noted that the R&D necessary to approve certain technical aspects of the final pipeline design may take considerable time and that often applicants spend minimal resources on pre-NEPA engineering, holding off on the final design until they are assured of the permits. This could generate approval delays, since final designs would not be available until after the EIS is complete.

Planning time would be needed to engineer substitute materials for FHWA structures, if the availability of steel is limited.

The likely need to go beyond the established ROW (e.g., for spread areas and transportation of materials and equipment) means that BLM should be working on land status issues early on.

To the extent that access to lands under the control of DOD will be required, early coordination with DOD will be critical.

The change in administration in Washington could change the dynamics of the pipeline approval process, if the new administration does not have senior leadership commitment or if it has a different energy focus than the current administration.

### **3.4.5 Potential Jurisdictional Issues**

Potential jurisdictional issues include both federal interagency and state-federal coordination.

#### **3.4.5.1 Federal Interagency Coordination**

Overlaps may occur as individual agencies comply with the NHPA Section 106 process.

On the basis of past experience, some individuals in some agencies may create overlaps or conflicts by reading more into their statutory responsibilities than actually exists.

The relative roles of BLM, PHMSA, and the State of Alaska are not clearly defined. (BLM played some roles in TAPS that may now be within the purview of PHMSA.)

There is a potential conflict with USACE and FERC on whether the FERC EIS will meet USACE requirements.

#### **3.4.5.2 State–Federal Coordination**

For authorizations that require both state and federal approval, there is a potential for overlaps, gaps, and scheduling issues. Concern was expressed about understanding and coordinating the roles of the participating agencies and the State of Alaska.

The State of Alaska expects that FERC will be the lead agency in federal government-to-state government relationships. The state believes that the federal government needs to implement an Alaska Native coordination effort.

BIA stressed that its role is to obtain ROW access across trust lands, while the State of Alaska would be responsible for identifying and analyzing other impacts (e.g., subsistence issues), and that the EIS would identify environmental impacts, including ANILCA 810 subsistence impacts.

The state notes that because current BLM ROW grant stipulations are old, they will need to be updated and standardized. The state wants to avoid conflicting state and federal stipulations for the surveillance and monitoring process and

recommended very early, staff-level coordination with the federal government to reach agreement on sampling, monitoring techniques, navigability impact criteria, and so forth.

Federal and state staffs need common data standards before the applicant begins conducting surveys and studies.

### 3.4.6 Potential Legal Issues

If Alaska Native allottees do not grant access for the ROW, potential legal issues could arise regarding moving the route so that allotted lands are not affected.

If FERC certifies the pipeline prior to the conclusion of the Section 106 process (as it has done on occasion in the past), litigation could ensue.

### 3.4.7 Infrastructure

Several bridge, highway, and ferry upgrades will be needed, each of which could require 2 years to complete. The Yukon Bridge, which may not be strong enough to handle both TAPS and the Alaska gasline project, would require more than 2 years to upgrade or replace.

Siding and track upgrades will likely need to be added to the Alaska Railroad to accommodate the hauling of pipe.

Antigun Pass is a pinch point and will require special engineering to avoid conflicting with TAPS.

### 3.4.8 Security

The DHS OIP notes that the OFC should be thinking about security “from day one” and should work with the DHS to ensure that security is part of the design and operation of the pipeline. Adding the gas pipeline to the Yukon

River Bridge, which already carries TAPS, may be a DHS security concern.

### 3.4.9 Additional Studies

Agencies have identified a variety of studies to be conducted before they can issue their permits or grant their authorizations. These studies should address chilled pipelines and permafrost effects, air quality, construction worker impacts, gravel-associated impacts, the effect of siting of ancillary facilities on a national park, and the effects of climate change on a buried pipeline. Many of these issues will require long lead times.

### 3.4.10 New Regulations

Recently issued CFATS could be determined to apply to parts of the pipeline. Other environmental regulations (particularly those pertaining to threatened and endangered species, greenhouse gas emissions, and wetlands) could also change and should be monitored for their potential impact on authorizations and schedules.

## 3.5 DEVELOPMENT OF A MASTER PROJECT SCHEDULE

The purpose of this section is to provide information that can be used to build a master project schedule considering interagency interactions and other scheduling information. As such, it summarizes, in Table 3-3, the interagency interactions and the corresponding authorization responsibility(ies) for each agency, including:

- Scheduling information (the start date and length of time anticipated to be required for each action, where known),
- Interdependencies with other agencies, and
- Comments that may be useful in developing a master schedule.

**TABLE 3-3 Agency Authorization Scheduling and Interdependency Information for Developing a Master Project Schedule**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
FERC	Establish schedule for agency review of authorization requests.	As expeditious as possible, consistent with periods of response and analysis required by law.	FERC is to consult with the OFC and relevant participating agencies in establishing the schedule. Agencies are to comply with the deadlines established by FERC.	EPAct Section 313.
FERC	Issue schedule for environmental review.	Within 90 days of an application.	The notice informs agencies that do not have a schedule established by federal law that the date by which they are to reach a decision on requested authorizations is within 90 days after the anticipated issuance of the FEIS.	Must state, among other things, the anticipated date for completion of the FEIS.
FERC	Notify participating agencies of receipt of a project application.	As soon as possible after receipt of application.		
FERC	Set time for pre-filing, and coordinate pre-filing activities.	Pre-filing could begin as soon as possible.	The State of Alaska would like to have staff-level coordination very early with the federal government (recognizing FERC as the lead EIS mitigation stipulations writer) to reach agreement on issues such as sampling, monitoring techniques, navigability, and impact criteria.	Pre-filing process is initiated by a request from the project sponsor.
FERC	Prepare DEIS.	Within 1 year of completed certificate application.	EPA will act as a cooperating agency with FERC. Thus, in addition to reviewing and commenting on the EIS documents, EPA will play an early role in the scoping process.	FERC is to prepare a single EIS consolidating the environmental reviews of all federal agencies considering any aspect of the project covered by the EIS.
FERC	Prepare FEIS.	Within 180 days (6 months) of DEIS issuance.		

**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
FERC	Make final determination to grant or deny application.	Within 60 days after issuance of FEIS.		Authorizes construction.
FERC	Lead the NHPA Section 106 review process.	At least 1 year; two field seasons to collect data.	Consultative process; timing could be lengthy, particularly with Alaska Native consultations.	
FERC	Grant presidential permits for cross-border natural gas pipelines.			Presidential Permit, which is processed by FERC, in consultation with DOS and DOD.
ACHP	Review and comment on federal agency undertakings that may affect properties listed or eligible for listing on the <i>National Register of Historic Places</i> .	The NHPA Section 106 review process to begin at the early stages of project planning so that a broad range of alternatives can be considered during the planning process of the Alaska gasline project.	The following parties have consultative roles in the Section 106 process: the SHPO, Alaska Native entities, representatives of local governments, the applicant, and other individuals and organizations with a demonstrated interest in the undertaking. The SHPO will work with FERC as it collects information and otherwise complies with the regulations. ACHP expects a significant consultative process for the Alaska gasline project because of the concerns of Alaska Native Villages and Regional and Village Corporations. Potential jurisdictional conflicts and overlaps may arise as a consequence of the requirement that each permitting agency comply with the Section 106 rules.	

**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
CEQ	Issue regulations applicable to federal agencies implementing NEPA.	Dependent on required tasks (if any).		Could issue regulations requiring greenhouse gas emissions to be considered as part of NEPA actions.
USDA-FS	Approval of ROWs that cross FS or improvement to FS lands.	Dependent on required tasks (if any).		Envisioned pipeline route does not cross FS lands.
DOD-USACE	Authorize the discharge of dredged or fill material into waters of the United States (Section 404 permits).	The processing of Section 404 permits in Alaska takes about 10 to 12 months (because of limited resources and some uncertainty regarding changing wetland guidance).	If the project might affect threatened or endangered species or their designated critical habitat, USACE must consult with FWS before it makes its Section 404 permit decision. USACE Section 404 permits are conditional on receipt of necessary approvals for the project from the state. USACE indicated that the biggest potential gap would be if FERC's consultation, especially with the Alaska Natives, and public involvement activities do not meet USACE requirements. A potential future conflict area could be between EPA and USACE on water and wetlands issues. These could occur in the context of Section 402 and 404 permits and stormwater permitting.	CWA Section 404.



**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
DOC-NOAA	Review federal consistency requirements under CZMA.		<p>It is likely that the CZMA federal consistency provisions will apply to ANGTP authorizations. The state would determine consistency with state CMP enforceable policies, including applicable policies in the North Slope Borough’s CMP district plan. The North Slope Borough would provide input to the state in the federal consistency decision-making process.</p>	
	Conduct EFH consultations.		<p>If any action needed to construct or operate the pipeline would adversely affect EFH, then FERC must provide NMFS with a written assessment of the effects of that action on EFH. If adverse effects are found, NMFS is required to make conservation recommendations that may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects.</p>	

**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
DOC-NOAA (Cont.)	Ensure that any action undertaken, authorized, or funded by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.		If NMFS determines that the action is likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat, NMFS coordinates with FERC to develop reasonable and prudent alternatives to the proposed action that would allow the action to proceed without jeopardizing listed species or destroying or adversely modifying critical habitat. If NMFS concludes that the action is not likely to jeopardize any species or destroy or adversely modify critical habitat, or reasonable and prudent alternatives are developed, NMFS may authorize take of listed species associated with the effects of FERC's action through an incidental take statement.	
	Under MMPA, NMFS may authorize the take of small numbers of marine mammals.		Generally, the project proponent, not FERC, works directly with the Alaska Native communities to develop conflict avoidance agreements, which are designed to mitigate any impacts on subsistence activities. If the project proponent and the Alaska Native communities cannot agree on measures to avoid conflicts and mitigate potential impacts, NMFS will enter the discussion and, if necessary, conduct government-to-government consultations with the trusts and or the corporations, as necessary.	

**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
DOE	Enter into federal loan guarantee agreements.	Loan guarantee authority expires 2 years after the final CPCN is issued for the object.	OMB and Treasury to review provisions.	Public Law 108-324 (ANGPA).
DOE	License the export of natural gas.	If gas is exported by pipeline to a free-trade agreement country, an export license would be required, but the process would be ministerial in nature. If gas were exported to a non-free-trade agreement country, a careful examination would have to be made to ensure that such export was not contrary to the public interest.		

**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
DHS-USCG BAP	Approve the location and clearances of bridges and causeways in or across the navigable waters of the United States, and/or connecting the United States with any foreign country.	The Office of Bridge Administration needs to know the final design before beginning the permitting process. Bridge permit applications will be reviewed by BAP as they are received, but BAP will not consider issuing any permits until FERC has issued its ROD. On average, it takes about 10 months to issue a permit after the office receives a complete application.	Before it issues a permit, the Office of Bridge Administration must have a water quality certification from the state with concurrence from the EPA and coastal zone management certifications for each proposed crossing, where applicable. A ROD for a NEPA action is required before a bridge permit can be considered. For international bridge crossings, DOS would first have to issue a Presidential Permit.	Bridge laws (33 USC 401, 491, 525, 535). BAP implementing regulations are at 33 CFR 114-118. Each structure will require its own permit; there would be no overall bridge permit that would cover all of the crossings required for the Alaska Gasline project
DHS-OIP	Conduct vulnerability assessment.	An Alaska gasline project vulnerability assessment would be conducted after the centerline of the pipe is determined and would take at least 2 weeks. If new CFATS were to apply, additional time may be required.	The PSA will work with TSA, and one of the responsibilities of the OIP is to ensure that the two entities (PSA and TSA) work together. There is a slight chance that newly issued CFATS (72 CFR Part 17687, April 9, 2007) could be determined to apply to parts of the pipeline, in particular, an LNG peak-shaving facility or temporary gas storage facility (should these become part of the system). CFATS are being implemented for new facilities; how they might apply to the Alaska gasline project is still to be determined. If and when TSA/Division of Pipeline Security issues pipeline security regulations, they could supersede CFATS (for pipelines). OIP believes there will be more clarity on this issue in a year.	

**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
DHS-TSA	Ensure that security is built into the design of the system.	TSA wants to work with the applicant as design proceeds to discuss security measures.	TSA is working with the Canadian standards committees to establish guidelines for security in Canada.	
DOI-BIA	Administer federal Alaska Native policy; help Native populations take advantage of economic benefits to be derived from construction of the pipeline.	To ensure a ready Alaska Native workforce that can benefit economically by supporting pipeline construction, early training is critical.		
DOI-BIA	Grant ROWs, with the consent of Alaska Native owners, across trust lands.	Until the centerline of the exact route is known, BIA cannot determine which, if any, trust lands will be affected. Once BIA knows the centerline, determining which trust properties might be affected would take an estimated 30 to 45 days.	Even if the allottee agrees to provide access, the Secretary of the DOI must approve and sign any ROW agreement made between an allottee and the applicant or any other party. To complete its ROW reviews, BIA would depend on ACHP Section 106 consultations, which would be done by the SHPO, and ESA Section 7 consultations, which would be conducted by FWS and contained in the NEPA analysis. While BIA needs to obtain ROW consent, the identification and analysis of other impacts on Alaska Native lands are the responsibilities of other entities.	
DOI-BLM	Authorize temporary use permits for access to ROW.			

**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
DOI-BLM	Issue ROW permits that cross federal lands (except NPS, Alaska Native trust, and OCS lands).	The Utility Corridor Plan, which covers the area from the North Slope to Fairbanks, clearly provides for oil and gas pipelines within the corridor. A potential difficulty would be if an applicant wanted to construct something outside the established corridor.	If any “off ROW” work is required for a NWR; FWS will need to grant an authorization or a Temporary Use Permit. Such authorization could be done in about 30 days. Because Alaska Native allotments and other Native ownerships have changed over the years, they need to be researched and verified. To the extent that access to lands under control of DOD will be required, early coordination with the DOD is critical to getting approvals from both the Army and the USACE land manager for the Army. Federal and state ROW staffs should meet to coordinate and resolve the details of the monitoring programs. The ROW boundaries of TAPS and ANGTS need to be flagged prior to resource surveys.	A replacement resource management plan (Eastern Interior Planning Area RMP) is being initiated for the existing management framework plan. If necessary, the MFP could be amended before the new plan is completed. There is a 60-day state review of the plan. Because of the potential need to go beyond the established ROW (e.g., for spread areas and transportation of materials and equipment) and to ensure conformance with environmental and related laws, BLM should be working on land status early on.
DOI-FWS	Consult with or grant approvals on projects affecting FWS resources.	FWS expects that it would be able to complete a BO within about 60 days if the BA is done properly and submitted well within the FERC EIS schedule.		FWS resources: fish, wildlife, plants, and their habitats; migratory birds; threatened and endangered species; certain marine mammals; interjurisdictional fish.

**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
DOI-NPS	Participate in NHPA Section 106 reviews; comment on Section 4(f) evaluations prepared by DOT.	Dependent on required tasks (if any).		
DOL	Establish a grant program to train Alaska workers in the skills required to construct and operate a natural gas pipeline.		Governor of the state must certify in writing that there is a reasonable expectation that the construction of the ANGP system will commence within 2 years from date of certification.	
DOS	Address foreign policy aspects of any agreements with the government of Canada concerning the Alaska gasline project.	Dependent on required tasks (to be determined).		The United States has certain existing international agreements with Canada that need to be considered and possibly modified in connection with an Alaska gasline project.
DOT-FHWA	Approve certain highway projects and uses of federal highway ROWs.	Accommodation of utilities is a state-led function. Alaska’s utility accommodation policy is established by statute.	Because of the length of time required to develop a highway project, most, if not all, of the needed highway system improvements must be implemented ahead of the FERC EIS process. A representative of the Alaska DOT stated that NEPA compliance for FHWA upgrades for infrastructure would be required as “stand alone” documents and would need to be completed prior to any construction, separate from the FERC EIS. This may be a potential gap in understanding.	

**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
DOT-PHMSA	Establish and enforce minimum safety standards.			
DOT-PHMSA	Issue special permits, if necessary.	<p>The processing of any special permit would take no less than 6 months. Important technical questions need to be answered regarding how different kinds of permafrost would react to two design types under consideration by an applicant (strain-based and design-based). This will most likely be a long-lead-time item. When standards are not in place, the permitting process can be “arduous.” PHMSA expects to have the R&amp;D information to the standards organizations in 2011–2012; preliminary information may be available in 2009.</p>	<p>PHMSA would work closely with the applicant and the state when processing special permits and wants to meet with the applicant as early as possible to understand their permitting needs. Other agencies/entities that PHMSA will depend on for completing its actions include DOI (coordination of permitting where the pipeline crosses federal lands) and the State of Alaska Department of Natural Resources. FERC’s interests are primarily siting-related, while PHMSA’s are more safety-related. PHMSA will work closely with FERC throughout the NEPA process so that FERC can address any siting or environmental implications related to special permits. The permits that BLM issues may affect future operation of the Alaska gasline project. The relative roles of PHMSA, BLM, and the state with respect to the Alaska gasline project need to be clearly defined, and the issues of commissioning versus operations and pre- and post-construction need to be discussed.</p>	<p>If the applicant submits more than one special permit application, PHMSA could process the applications together or separately. In part, this decision would depend on the applicant. For example, permits related to alternative pipe materials might be done first, if the applicant wanted to begin ordering the pipe.</p>



**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
DOT-FAA	Permit airstrips for planes that carry more than 30 passengers.	Approval of an airstrip-handling aircraft carrying more than 30 passengers could take 6 months. Modifications require submittal of a notice 30 days prior to construction.		The 6-month approval could be avoided by using aircraft that carry 30 or fewer passengers.
DOT-FAA	Approve construction or alteration notices.	60-day notification.		14 CFR 77.13.
EPA	Comment on the EIS.			Per Section 309 of the CAA.
EPA	Participate in CWA Section 404 permit process.			
EPA	Issue NPDES permits.		Alaska has applied to EPA, seeking authority to administer the NPDES program.	
EPA	Issue stormwater permits.			
FCC	Issue radio and wire communications permits and licenses.	Generally takes a few months.	Alaska Native notification is required, and if the tower is near a sacred area, additional consultation may be required. FAA approval may be required.	

**TABLE 3-3 (Cont.)**

Agency	Authorization/Responsibility	Schedule	Interdependencies	Comments
Treasury	Provide technical assistance to DOE for implementing loan guarantee; review loan guarantee provisions.	Treasury does not expect to become involved for at least a year or two (until after FERC has made its decision), and its review function may not occur for several years. While the DOE regulatory development process could take 6 months or more (because of public participation and OMB clearance requirements), the actual document review “should not take too long.”	Treasury has advised DOE that it wants to be involved early on so there are no surprises when the documents are ready to be reviewed.	Includes assistance in developing parameters for the loan guarantee program.

## 4 DISCUSSION

During a review and analysis of the available information, including discussions with key government agency officials and staff, a number of issues were brought forth that should be addressed by the OFC and its government partners. These issues potentially affect project schedules, agency responsibilities and work load projections, stakeholder involvement (especially government-to-government consultations), and the development of a decision-making process. In this section, the authors highlight key issues and the context surrounding the issues. Recommendations for addressing the issues presented in Section 4 of this report are developed in Section 5.

### 4.1 SCHEDULING AND TIMING FOR PERMITS AND AUTHORIZATIONS

An analysis of available information and discussions with the federal and state agencies did not uncover any insurmountable technical, regulatory, or legal issues. However, to meet required schedules, project applicants need to initiate action on items requiring permit or authorization approvals at the earliest practicable date consistent with the level of project design. It should be noted that financial analyses, open season issues, or a detailed examination of needed Canadian approvals are outside the scope of this report.

### 4.2 REGULATORY ALIGNMENT

With passage of ANCPA and EPCA, the statutory leverage required by the OFC and FERC to ensure expeditious completion of federal project authorizations is in place. Agencies are generally aware of the authority of the OFC, and agency representatives indicate that each agency is committed to meeting schedules. However, agency funding to develop the required staffing resources is a concern for some federal agencies. Additionally, FERC

authority to complete an 18-month EIS, as well as FERC authority to set agency schedules for the NEPA process, is not fully understood by some agencies.

All of the federal agencies have Alaska Native consultation requirements, but some agencies have multiple issue, permit, or authorization responsibilities that may require detailed government-to-government consultations. While FERC is the lead agency for the EIS, it is an independent commission and its role in government-to-government consultations is not as clearly defined as that of other federal agencies. However, FERC has stated that it will conduct government-to-government consultations as part of the NEPA process.

### 4.3 COMMUNICATIONS AND AGENCY COORDINATION

As the operational pace of the project increases and becomes more complex, the OFC will find that increasing attention must be directed at developing rapid and efficient project communications among the active participants. Several agency staff members have indicated that the agencies expect OFC to take the lead in project communication. Agencies indicated that it will be necessary to have a communications plan that is adaptive and supported by advanced Web-based collaborative tools.

### 4.4 NEPA

As interviews were conducted and information was gathered from the various federal agencies, it became clear that agencies' understanding of their role in the NEPA process is not always clear and may not be correct. For example, ACHP states that FERC must decide and then notify ACHP, if FERC wants ACHP to be a cooperating agency in the NEPA process.

DOE says it will determine the nature of its role, if any, in the NEPA process. While DOI will submit a consolidated set of comments from its services and bureaus, it is not clear how all departments will vet internal comments and address conflicting comments from multiple reviewers, staff, and managers.

Agency discussions and data gathering also noted that a potentially larger number of cooperating agencies may attach themselves to the EIS than FERC anticipates. For example, both NPS and EPA say they will participate as cooperating agencies on the FERC EIS, the possible outcome being a larger-than-anticipated number of cooperating agencies on the FERC EIS.

Discussions also revealed that there may be some uncertainty related to coordinating separate NEPA reviews. PHMSA anticipates that the FERC EIS will incorporate all special permit-related NEPA reviews. However, PHMSA also expects that FERC will deliver to PHMSA sections of the DEIS documents and request comments. FERC has also expressed concern regarding how infrastructure improvement (e.g., highway improvements) would be addressed in the EIS.

Finally, BIA representatives assume that the OFC will ensure that all agencies with NEPA responsibilities are notified of their responsibilities in a timely manner, preferably at the start of the pre-filing process. (Note the OFC will require agencies to prepare implementation plans, per the 2006 MOU.) ACHP asks that all MOU agencies regularly share information on NEPA issues.

#### **4.5 ALASKA NATIVE CONSULTATION**

Our analysis of the available information and discussions with the federal agencies developed the following issues:

- CEQ stated that there is a need to determine whether the government-to-

government relationship with Alaska Natives will be conducted through a single federal government spokesperson who will work with Alaska Native entities, or if several federal government representatives, each representing different agencies, will be in communication with Alaska Native entities.

- ACHP expects a significant consultative process for the Alaska gasline project because of the concerns of Alaskan Native Villages and Regional and Village Corporations. As with CEQ, ACHP also noted that potential jurisdictional conflicts and overlaps may arise as a consequence of the requirement that each permitting agency comply with the Section 106 (NHPA) regulations unless agreed to in writing. According to ACHP, FERC must make a reasonable and good faith effort to identify the Alaska Natives to be consulted in the Section 106 process.
- Alaska Native groups are keenly interested in jobs, material sales, and summer internships for students, and they want to be included from the very beginning of an application process. Because of these very early concerns, federal agencies need to be in close communication with project applicants and Alaska Native entities at the earliest possible date.
- As BIA has indicated, Alaska Native allotments and other Native ownerships have changed over the years, and these trust actions need to be researched and verified immediately upon determination of a proposed ROW. BIA stresses the importance of paying attention to the trust properties. In Alaska, obtaining the ROWs is not akin to eminent domain in the lower 48 states, where land can relatively easily be condemned for public

purposes. Although there would be no public involvement in the identification of the trust properties (individual allotments) that might be affected, this identification could be complicated because of “fractionation.” Because there are no deeds (the lands remain in trust), it may be difficult to identify the current allottees. Consent needs to be obtained from all allottees. According to BIA, for lands held in trust, the individual allottee has the right to refuse access.

- The FCC has a Tribal Construction Notification System used for identifying and notifying Alaska Native entities that might be affected by communications towers. If an Alaska Native entity expresses an interest, it may need additional information, and if the site is near a sacred religious area, consultation may be required.

#### 4.6 SCHEDULING AND COORDINATION

Several agencies mentioned that a potentially significant, but not thoroughly explored, scheduling issue is whether Canada will be able to match the U.S. approval schedule for an applicant’s project. In addition, FERC believes that federal and state coordination must be closely monitored to ensure that project schedules are maintained. EPA believes that the federal agencies will need direction from the OFC on how to develop the implementation plans required by the MOU.

For the DOE loan guarantee, OMB must review the credit subsidy model (the approach for determining the risk premium or cost of the loan guarantee), and Treasury will want to review the means for ensuring the repayment of the loan guarantees.

When the Section 106 consultative process is being conducted, ACHP noted that

information regarding the project to be reviewed needs to be provided in a form that will allow all parties to comment appropriately and intelligently. If information is lacking and further reviews are required, Section 106 reviews could become a critical path item on the project schedule, especially if stakeholders participate.

#### 4.7 AGENCY RESOURCE ISSUES

##### 4.7.1 General Resource Issue

There is a significant gap between government salaries for engineers and inspectors and industry salaries for these same professions. Industry (e.g., TransCanada, BP) is already paying premium wages for these professionals, and to attract needed staff, government salaries will need to be competitive. Much of PHMSA’s work (as well as that of other agencies) will occur in Alaska, where the qualified labor force is small.

Agencies need to ensure that they have sufficient time and resources to carry out the required tasks. Even if the resources come from the operational agency budget, agency staff indicated a need for dedicated funding codes for work on an Alaska gasline project. Some agencies may also need additional funding, if travel to Alaska is required (e.g., ACHP, CEQ).

The number of individuals with required NEPA experience is limited in Alaska, and all agencies (federal and state) located in Alaska may be staff-limited, given the possibilities of other large federal projects requiring EIS tasking. Even when consultants currently working on other Alaska projects are included, there will likely be a shortfall of individuals experienced with NEPA and other required regulatory actions, particularly when potential conflicts-of-interest issues among available consulting organizations are taken into consideration.

#### 4.7.2 Specific Resource Issues

Agency staff noted the following issues specific to their agency:

- DOE's loan guarantee workload will require a ramp-up in staffing resources after FERC certification is complete.
- Depending on the level of CEQ involvement, there could be some in-house staffing issues.
- Depending on the number of structures requiring permits (bridges or causeways that cross waters determined to be navigable), USCG manpower requirements in Alaska could increase. Currently, the Office of Bridge Administration has one person working in Alaska, and navigability determinations require significant onsite field work.
- BIA may experience a drawdown of its own employees as a consequence of pipeline construction. DOI needs to analyze the potential impact on BIA's ability to deliver services, especially in Alaska.
- Because PHMSA will be significantly involved in the review of the design and construction of a gas pipeline, addressing pipeline issues will require significant staff (and perhaps contractor resources) at PHMSA. Since PHMSA is responsible not only for issuing special permits but also for conducting inspections during construction, providing adequate funding for PHMSA could become a *critical path issue* for an Alaska gasline project. Funding for an Alaska gasline project is not in PHMSA's current budget. PHMSA is studying its resource requirements and expects a combination of additional FTEs and contractors will be involved. As more is known about the pipeline

design, it will be easier to identify funding requirements and dedicate/request funds. PHMSA also states that the organization needs a reimbursement mechanism; no such agreements yet exist for PHMSA's pipeline work.

#### 4.8 POTENTIAL AGENCY JURISDICTIONAL ISSUES

For issues of design review, commissioning versus operations, and pre- and post-construction, the roles of BLM, PHMSA, and the State of Alaska need to be clearly defined early in the application process. Because BLM played a major role in TAPS (PHMSA and its predecessor agency barely existed at that time, and BLM issued the guidance that affected integrity management of TAPS), issues regarding the relative roles of these two agencies with respect to an Alaska gas pipeline could surface. PHMSA notes that the permits that BLM will issue for the grant of ROW may affect future operation of the Alaska gasline project. For example, to repair a pipeline in a federal ROW requires a permit. State regulations also might affect pipeline operations.

Confusion could potentially occur between EPA and USACE on water and wetlands issues. The source of these jurisdictional issues would be in the context of Section 402 and 404 permits (e.g., stormwater permitting).

#### 4.9 POTENTIAL LEGAL ISSUES

A potential critical path legal issue that requires coordination between OFC and DOS is whether there is a need to update the current treaty with Canada to reflect project conditions that have changed since the original treaty was developed. For example, producers can now have equity positions in a gas pipeline, and the United States has provided opportunities for a federal loan guarantee.

FERC frequently certifies a pipeline prior to the formal conclusion of the Section 106 process. However, the Section 106 regulations require that the federal agency complete the Section 106 process prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license. Although FERC has always completed the Section 106 process, the fact that a project could be certified before all Section 106 requirements have been met provides a small risk for litigation.

#### 4.10 INFORMATION AND DATA COLLECTION

The Argonne staff analysis of the information provided in discussions with state and federal staff familiar with the EIS and permit data requirements resulted in following potential key additional studies that may be required to complete the application and approval process:

- The amount of drilling conducted to date on soils and surface geology along the non-TAPS portion of the alignment may be insufficient to provide needed data on permafrost issues.
- A buried chilled pipeline is a new engineering design in Alaska. This design needs further study both for safety considerations (including the gas-processing facility on the North Slope) and, as one staff member stated, to avoid “an 800-mile canal.”
- A study that delineates the effects of a chilled pipeline on stream crossings may be needed.
- Safety studies of the processing and handling of natural gas and associated products at both ends, including safety at transfer points, may be required.

- A potential issue requiring further study is the effect of climate change on a buried pipeline; the geotechnical data may become less reliable as the earth warms and alters the type and extent of permafrost.
- Important technical questions need to be answered regarding how different kinds of permafrost would react to the two types of design under consideration by TransCanada (strain-based and design-based). The time to complete these studies must be factored into the overall project schedule.

In addition to the above items, FERC has identified two critical path information issues:

- Federal and state staffs need to work together to achieve common data standards prior to the applicant and its contractor undertaking any surveys and studies.
- Databases and data management for all involved agencies should be interagency-compatible. By establishing a common data management platform early on, agencies will be able to easily share detailed information in all phases of the project. It is expected that the applicant would be involved, to some extent, in a data-sharing capability. While not all information needs to be shared (or can be shared), compatible systems improve interoperability and effective data sharing, especially during pipeline operations and oversight.

#### 4.11 POTENTIAL CANADIAN ISSUES

While the Canadian federal government is fully committed to meeting the FERC schedule for completion of all environmental reviews and processes needed for a certificate of need in

Canada, NRCan sees the need for early and close coordination between the OFC, FERC, and the NEB and/or the NPA. Importantly, the NEB now considers an application to be complete when the proponent clearly identifies the source of the gas that would be transported in the pipeline. Because a complete application may be available only upon completion of the FERC pre-filing process, developing a coordinated schedule for Canadian and U.S. environmental and permitting activities is viewed as a high priority by NRCan. In addition, while the United States has two major entities (FERC and the OFC) playing key roles in an Alaska gasline project, a desired condition noted by NRCan is to have a single point of contact to ensure Canadian and U.S. coordination.

The Canadian government is preparing to address the possibility of receiving two applications. The Denali application would be processed under the NEB, while the TransCanada and State of Alaska application would be processed by the NPA. It is expected that the NEB would assist the NPA in processing the TransCanada and State of Alaska application. NRCan stated that there is a Canadian interdepartmental committee developing processes that would apply to either or both pipeline applications.

The Alaska Department of Transportation states that the Canadians are currently upgrading the bridge deficiencies, but the road surface from the Alaska border south for approximately 150 miles is in very poor condition and will need upgrading.

SPCO representatives note that ROWs through Canadian sovereign First Nation Lands have not been settled, and as a result, the Mackenzie pipeline project has been delayed.

DOS perceives its actions with Canada as independent of the other federal agencies. When more application-related information is known, DOS states that it will work with Canada to determine whether the existing treaty and

agreement on principles need modifying and the best way to meet both countries' needs.

#### **4.12 ENGINEERING DESIGN FACTORS, MATERIALS, INFRASTRUCTURE, AND WORKFORCE CONSIDERATIONS**

The engineering design review by government agencies will occur throughout the time period of the project. Importantly, engineering design will drive the impact analysis conducted under the EIS. Coordinating the feedback and communication links between the project engineering design team and teams involved in environmental, regulatory, and agency authorizations is recognized by many agency staff as critical processes that will be conducted by the OFC. Agency staff noted that engineering design changes (which could happen with some frequency) will need to be quickly passed to the appropriate organizations and staff who are conducting environmental analyses. Engineering design changes that occur late in a schedule period could affect environmental-impact or authorization analyses. Environmental, regulatory, or authorization task schedules could then be affected as design changes are rolled into these dependent task areas.

The project will tie up global steel production, and many other steel-demanding projects are already under way worldwide. The availability of pipe-grade steel in the volumes and times needed is an open issue requiring OFC attention. Obviously, the project applicant will also be very closely monitoring the production and delivery of pipe, but as the lead federal coordinator, the OFC must track this issue. In addition, project startup or completion could be delayed because of a lack of key construction materials and equipment. For example, one agency staff member raised the issue of the specific type of pipe bedding machinery that will be used and whether sufficient numbers of trenching and pipe-laying machines could be found.



Currently there are not enough Arctic-qualified and -certified engineers available to support both an applicant and the agencies overseeing the application process. Both government and industry will need skilled engineers and inspectors in Alaska. The labor pool for these professions is already limited. One agency official stated, “They [prospective employees] will all flock to the big money of the project, leaving government, North Slope producers, and Alyeska Pipeline very thin on the ground.” Indeed, industry is currently paying a premium for these professions, and current government salaries are not competitive under current hiring conditions in Alaska. An equally, if not more, significant challenge is the overall diminishing pool of workers in skilled trades, such as experienced welders, corrosion experts, and construction line managers, many of whom are now approaching retirement age.

Many of the agencies (state and federal) are aware that significant infrastructure upgrades must be undertaken to support any pipeline construction operations. For example, the Alaska Railroad will likely need to add siding and track upgrades to accommodate the hauling of pipe. Although the Yukon River Bridge was designed and constructed to handle both the TAPS pipeline and an ANGTS pipeline, there are some agency staff who have raised concerns that the bridge may not be able to handle the load of both pipelines, as well as the equipment needed for hanging the gas pipeline. There is also a question as to whether DHS would recommend against the use of the bridge for the natural gas pipeline. An important factor in scheduling and permitting activities is that base camp and other pads used during TAPS construction will need to be approved by the State of Alaska; given ADEC closures of these sites, they may not be reopened easily for new construction activities. Thus, additional or new spread sites may need to be located.

Examples of several infrastructure upgrades, each of which would take 2 years to complete, include the following:

- Bridges will need to be upgraded significantly for two rivers between Delta and Tok, Alaska.
- Highways will need to incorporate upgrades to handle construction traffic and additional loading factors.
- Material sites (e.g., gravel) will need to be procured as early as possible to avoid potential limitations in material required for construction activities.

There is the potential for a major gas pipeline project to be caught up in the effects of a warming Alaska, especially on the North Slope. A plan for a reduction in the number of winter working days might be necessary, especially for construction times available to work on tundra and the design and use of ice roads. While not necessarily a regulatory or agency authorization issue, changing winter conditions could impact schedules.

There is a slight chance that newly issued CFATS (72 CFR Part 17687, April 9, 2007) could be determined to apply to parts of the natural gas pipeline, in particular, an LNG peak-shaving facility or temporary gas storage facility (should these become part of the system). CFATS are being implemented for new facilities; how they might apply to the Alaska gasline project is yet to be determined. If and when the TSA Division of Pipeline Security issues pipeline security regulations, they could supersede the CFATS (for pipelines). OIP believes there will be more clarity on this issue in a year.

## 5 RECOMMENDATIONS

The group of recommendations presented in this section has been developed to assist OFC with early program planning. These recommendations represent a set of actions that can be taken by the OFC to ensure that project issues (1) can be addressed as early as possible or (2) will produce a foundation for further actions as a project moves forward. The list of recommendations is not prioritized but formatted under categories in order to address planning issues and conditions.

### 5.1 OFFICE OF FEDERAL COORDINATOR: CLARIFICATION OF AUTHORITIES

A basic issue that needs to be fully clarified is that of the OFC authority to manage an Alaska gasline project. In the past, OFI authorities were oriented toward construction, since the OFI did not become active until after an EIS was completed. However, the OFC authorities must be exercised from the beginning of the project to 1 year after completion of the project. The OFC has significant statutory authority pursuant to ANGPA to ensure the compliance of all federal agencies with all of the law's provisions. If necessary, the OFC's enforcement authority to ensure other agencies' compliance with ANGPA would likely be implemented through the Department of Justice. It may be advisable for the OFC and Department of Justice representatives to discuss enforcement issues and then notify all of the federal agencies of a possible enforcement process.

The authors recommend that the OFC select AAOs with the responsibility and authority to assist the OFC in the expeditious permitting and construction of the pipeline. The OFC should seek the authority to select an AAO from the federal agencies under a Presidential Order. These officers should have the authority and responsibility to sign the FERC-developed EIS and ensure that actions taken by their agencies

and all bureaus or services in their agencies comply with the schedules established by ANGPA and by the OFC in consultation with these officers.

An Executive Order would be the preferred mechanism to effectuate the AAOs (or similar term). An Executive Order is preferred over legislation for reasons of timeliness and specificity of purpose. The President can quickly issue an order and tailor it to specific purposes; the legislative process could be lengthy and laden with provisions not anticipated by the President or the OFC. The Executive Order could also clarify the OFC's authority to ensure agency compliance with ANGPA.

A key element for schedule compliance on a gasline project will be timely provision of adequate funding to the federal agencies to enable their *active* participation. Many agency staff and management expressed concern over the need for increased staffing, particularly in Alaska, where the labor pool with needed experience is limited. Funding issues need to be addressed by the OFC at the earliest possible date to ensure that agencies cannot use funding as a limiting factor in meeting deadlines or milestones. Reimbursement mechanisms should be investigated and developed to ensure the agencies can devote needed manpower to the pipeline while not neglecting their other responsibilities.

The OFC has "similar" Federal Land Policy and Management Act authority as BLM/DOI (from Section 802 of the Energy Independence and Security Act of 2007) to set up direct applicant funding of all project activities. BLM has stated (and appears to have the authority and ability) that it can develop agency funding mechanisms to support all of the federal agencies in their reimbursable work tasks. However, it may be desirable for OFC to develop the necessary budget and tracking mechanisms to become the "funding agent" for

all the agencies. There could be a large amount of perceived control that can be exerted on agencies to meet their obligations and responsibilities under aggressive schedules when the OFC is the source of and controls each individual agency's funding. The costs and benefits of developing such a funding mechanism would need to be carefully examined.

## 5.2 FEDERAL AGENCY IMPLEMENTATION PLANS

The OFC will require each affected federal agency to develop an Implementation Plan (IP) for an Alaska gasline project. It is recommended that agencies be given 90 days to prepare an IP. The minimum items for each agency to include in its IP would be those identified in the 2006 FERC MOU, including:

- Roles and responsibilities;
- Legal authority;
- Scheduling 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; and
- Project transition (preliminary preparation, NEPA — both before and after the filing of a complete application — project authorization, construction, operation).

Recommended additional items to include in the IP prepared by each agency are:

- Explicit identification of the decision maker, noting that the decision maker should not refer to a person's name, but to the person's office/title (to provide

for continuity). Also, the IP should identify who can sign or make a decision if the decision-maker is unavailable. If approved through an Executive Order, each AAO should be assigned decision-making authority.

- The IP should state how the agency will ensure that draft authorizations are completed by the time the DEIS is issued.
- The IP should contain detailed staffing and budget projections (by year). The agency should note the location of staff (e.g., District of Columbia or Alaska) and whether they will be federal employees or contractors. If staffing is unknown, each agency should provide ranges and assumptions used in making the projections.
- The IP should clearly show how each agency's funding will be obtained. If a reimbursable agreement through BLM or the OFC is envisioned, the agency should make sure the plan identifies the entity expected to provide the funds (e.g., BLM or OFC) and whether the agency has the authority to be reimbursed by BLM or the OFC and, if not, how and when the agency will obtain that authority.
- For all schedules developed by the agency, the IP must include specific information on timing relative to the completion of the draft and final EIS, especially how much time each agency believes it may need for each specific authorization. Also, each agency should provide any statutory requirements, limits, and allowances regarding the timing/scheduling of authorization approvals.
- Each agency should identify all items needed from all other agencies and other entities (state, applicant, Alaska Native

entities) and when these items are needed.

- Each agency should identify all public participation and comment process requirements and include timing/scheduling information for them to determine how they reconcile with the FERC EIS.
- Each agency should identify the trigger for the start date of each approval/ authorization for which the agency is responsible. That is, at what point will the authorization process start?
- Each agency should identify unknowns that could affect the schedule (speeding it up or slowing it down) and by how much.
- Each agency should identify the relative roles of any suborganization (state, regional, and headquarters offices) in the authorization process.
- All agencies must *provide information for each authorization required*, if the agency has responsibility for more than one authorization.
- The agency decision-maker must sign the IP, without exception.

The OFC must also ensure that all IPs are developed at the appropriate level in the department. For example, IPs must be developed by the BLM and FWS levels at DOI and the FS level at USDA. The bureau or service level in a department is often the legally designated entity with specific authorization responsibilities, not the larger department. Also, the OFC must prepare a template for the IP that can be used by the federal agencies to develop their required plans for an Alaska gasline project. The template will provide the necessary direction to the agencies and allow some of the information to be stored in a project database. The template or

parts of the template should allow agencies to provide updates or progress reports to the OFC.

### **5.3 GOVERNMENT-TO-GOVERNMENT CONSULTATIONS AND SECTION 106 CONSULTATIONS**

As the federal lead during the NEPA process, FERC has indicated that it will conduct government-to-government consultations. Because government-to-government consultations will proceed before, during, and after the NEPA process, the OFC should take a leadership role in consultations between project proponents, federal government agencies, and Alaska Native entities. The OFC has an excellent opportunity to provide overall program leadership by developing and then implementing a single mechanism (with integrated agency protocols) for government-to-government consultations. The OFC should work directly with FERC and the other federal agency MOU signatories to develop explicit federal communication and decision-making roles and to inform Alaska Natives and other affected entities as to who will speak for the Federal Government and lead government-to-government and other required consultations.

It is recommended that the OFC and FERC work jointly to undertake two key tasks: (1) FERC should determine what Alaska Native entities meet the regulatory definition of an Indian Tribe and will be affected parties in the context of an Alaska gasline project, as part of the pre-filing activities, and (2) the OFC and FERC should work jointly to determine how government-to-government consultation will be conducted *during the duration of the entire project* (e.g., whether there will be a single federal government spokesperson to work with Alaska Natives, or whether several federal government representatives, representing different agencies, would be contacting and conducting discussions with individual Alaska Native entities).

For TAPS renewal, BLM experienced significant delays in getting Section 106 clearances completed in time to cite the clearance in the DEIS. The Section 106 process is often cited by the pipeline industry as a major hurdle that requires early and constant communication with federal and state agencies. FERC and the OFC should target SHPO concurrence on Section 106 findings and mitigation for inclusion in the DEIS. Note that FERC requires all Section 106 surveys and data collection be completed during the pre-filing period. Indeed, a recent FERC slide show states that “all cultural survey work must be completed before an application is filed.” To meet the schedule requirements, FERC, the OFC, and the applicant(s) should initiate Section 106 consultations immediately upon an applicant beginning the FERC pre-filing process. FERC staff have noted that they have already started contacting Alaska Native groups.

It is recommended that FERC, the OFC, applicants, and the ACHP reach early agreement through a joint MOU on how information collected for the Section 106 process will be developed, presented, and reviewed by all parties. The MOU should provide guidelines on data presentation so that all parties (including the public and Alaska Natives) can comment appropriately and intelligently. If information is lacking and further reviews are required, the Section 106 process could become a critical path item on the project schedule. Because of the overlap with government-to-government consultations, clear direction on leadership issues related to the Section 106 process must be provided to stakeholders, agencies, and Alaska Natives.

#### **5.4 COORDINATING COMMUNICATION AMONG FEDERAL AGENCIES**

The OFC should not assume that all agencies will be aware of the status of the pipeline activity and the need and nature of their participation in the NEPA process. Through explicit notification by the OFC, the agencies

should clearly understand the roles and responsibilities each agency places on the project schedule and the milestone dates for any agency decision. All of the permitting, authorizing, and related actions need to be tracked in real time, and staff and management (leadership) must have access to all of the project information each needs to conduct required tasks. The OFC should operate a secure project Web site that is capable of rapid and effective dissemination of information.

As an operational management control issue, considering all of the state, federal, and Canadian administrations and agencies, stakeholders, and industry entities involved, the OFC must achieve a high level of coordinated communications. It is recommended that the OFC produce a communications plan. The plan must address both *external and internal* communication processes, and the plan must be adaptable to changing conditions. As operations intensify and additional entities participate in the project, control and coordination become increasingly important and challenging. The lack of a clearly defined plan could result in a major operational gap, given the diverse missions of the applicant, agencies, and interest groups and their natural tendencies to go it alone.

Specific recommendations on communication issues include the following:

- Because FERC is the lead agency for the NEPA process, FERC and the OFC should establish an agreement on communications protocols that will occur during the pre-filing and NEPA phases of the project.
- The OFC should rely on the AAO (if approved) in each federal agency to facilitate and help unify communications.
- The OFC should receive quarterly progress reports from each agency based on action items and requirements developed in the agency IP.

- The OFC should consider development of a Joint Information Center, similar to that used in many large emergency response situations.
- A communications plan should provide special arrangements and personnel to accommodate international and Alaska Native communication needs. At least one Alaska Native communicator/liason should be assigned.
- The communications plan should explicitly address agreed-to turnaround times for internal reviews of communication products.

To assist in establishing an early communication leadership role for the OFC, it is recommended that the OFC compile a concise statement of its various statutory authorities for public release. Such a statement provides the necessary legitimacy for working with and directing all affected federal agencies. The concise statement should compile and analyze all referenced Federal Coordinator authority sources listed in the ANGPA, EPAAct, and the Energy Independence and Security Act of 2007. The statement (including sourced definitions of terminology) should have a legal review. Once a concise statement has been approved by the OFC, it can be used or referred to in subsequent agency agreements and program plans.

## **5.5 ALIGNMENT OF PROJECT STAFFING**

Personnel assigned to the project from agencies with widely differing missions will bring a diversity of agency-specific orientations that must be properly aligned to the mission and culture of the OFC in order to avoid unnecessary and time-wasting internal conflicts. To define a common mission and culture, it might be necessary to adopt a project charter that spells out each agency's role and regulatory responsibilities, as well as a firm commitment to

observe clear lines of authority and accountability within the OFC.

Agency team members must be selected on the basis of their understanding and commitment to excellence in achieving the goals of the project. This includes a willingness and personal commitment to submerge parochial agency concerns for the greater good and overall success of the project. The federal government has several excellent examples, including Incident Command System interagency emergency response teams, joint and combined military operations, and the Joint Pipeline Office (JPO) during TAPS renewal.

## **5.6 DATA MANAGEMENT**

Data used by all involved agencies must be shared with other agencies included in the project. However, federal and state agencies have numerous databases, and many are not compatible with each other. The OFC will not be able to change this situation. Rather, the OFC should retain the services of a technical contractor who can use current computing tools to merge disparate data sets, as required.

While FERC has filing requirements and criteria that will apply to the applicant and the cooperating agencies during the NEPA process, it is recommended that the OFC, in consultation with FERC, develop a set of high-level standards applicable to the OFC mission requirements that address, as a minimum, the following:

- For all data collection activities, data quality objectives are developed to ensure that collected data meet the purposes and analytical objectives for the decision(s) that will be dependent on the data.
- All agencies and the applicant agree to share all data with other involved agencies.

- All data that is collected must be tagged with a geographic location identifier (e.g., latitude-longitude) so that it can be placed in a geographic information system.

Additionally, the OFC must develop and maintain its own database system to track the environmental, design, and construction data needed to successfully monitor and oversee the pipeline system during its operation. This is a large task that will require significant technical resources.

## 5.7 NEPA PROCESS AND FERC COORDINATION

FERC and OFC need to engage early and closely to address potential ambiguities in responsibilities that could occur during the NEPA phase of the project and establish operational relationships to address potential NEPA issues. Both entities have the same general mission (to efficiently and rapidly apply their respective authorities to move forward an applicant's proposal to construct an Alaska gasline project), and both have a proactive approach to project management. To accomplish a joint understanding between FERC and the OFC, it is recommended that an MOU or similar jointly prepared document be developed that highlights the following:

- OFC and FERC are natural allies. The entire OFC portfolio is about getting this project done smoothly and on time. OFC understands and respects the FERC focus.
- The OFC and FERC multiply their effectiveness when they operate together.
- The OFC has overall oversight and coordination responsibilities from the beginning of the project until 1 year upon completion of construction and must work closely with FERC to ensure that all the other agencies involved in the process work in a coordinated fashion.
- The OFC and FERC will develop clear definitions of the NEPA process boundaries, thereby avoiding having items "falling through the cracks."
- The OFC will provide FERC with a clear delineation of OFC responsibilities in the overall process, including NEPA facilitation, and identify issues that are not clearly within the scope of FERC responsibilities or authorizations.
- The OFC and FERC will jointly develop an Alaska Native consultation process that covers all phases of the project timeline, including the 1-year-after-project startup.
- The OFC and FERC will develop a coordinated process to resolve interagency disputes or disagreements. The coordinated process will not allow any single agency to veto project decisions.
- The OFC and FERC must explicitly define their respective roles in the NHPA Section 106 consultation process, including handoffs from the NEPA phase to the construction phase of the project. To avoid potential legal issues, the OFC and FERC should reach agreement that all NHPA Section 106 open issues are resolved prior to FERC issuing a certificate. Note that while mitigation and recovery issues should be resolved upon issuing the CPCN, unanticipated discoveries during construction can occur and these should not hold up construction.
- The OFC and FERC should develop a coordinated communication plan and implementing protocols, including:

- Coordinated Canadian contact and information sharing,
- General agreement to coordinate day-to-day messages to the press, and
- Development of a FERC Alaska and DC liaison with the OFC at some point (and vice versa).

The MOU may also want to address EIS scope issues, including:

- The extent to which all infrastructure is addressed;
- Cross-border environmental impacts (cumulative) impacts (linear projects are usually addressed as a unit);
- Additional lower-48 pipelines that are project-dependent (however, FERC has stated that this issue would be covered after the EIS is issued);
- Level of engineering/design detail that is needed;
- Inclusion of worst-case impact assumptions (e.g., that the bridges need to be replaced) in the NEPA document in order to bound the EIS analysis. Thus, if design changes are made later in the project, after the EIS has been completed, the impact analysis will have already covered the expected outcomes that could result from future design changes.

While FERC will lead the NEPA process and each federal agency will adopt the FERC EIS, there is a need for the OFC and FERC to coordinate with all of the federal agencies in the following areas:

- While FERC has been circulating a draft range of alternatives, FERC and the OFC should work together to explain how alternatives will be developed and analyzed in the EIS.

- Most agency staff members located in Alaska are not familiar with FERC and how FERC operates both as a commission and as a lead NEPA entity. With this potential confusion confounded with the unique OFC responsibilities, there is a clear need to hold an in-depth workshop in Alaska with full federal interagency participation. The workshop would cover the FERC–NEPA process and the coordination role of the OFC.
- EPA will most likely play an early role in the internal agency scoping process. Issues that may come up are the applicability of permits that were granted previously (whether they still apply, or if they have to be reissued), an appropriate range of reasonable alternatives, and the extent to which evaluations regarding climate change and greenhouse gas emissions will be included in the NEPA analysis. While the EPA is not necessarily an action agency on the FERC EIS, it may raise additional issues that could require vetting by the OFC prior to FERC involvement.
- FERC and the OFC need to undertake federal agency and applicant coordination at the earliest feasible pre-filing stage of an application. NEPA and permitting efforts are directly tied to the status of the design for a project. *Major design changes during the NEPA process can significantly increase the EIS and/or project schedule.* Often an applicant will hold off on the final design until the NEPA process is completed and major permits are assured. Significant design changes made after the NEPA process (and indeed after the DEIS and public comment) could negate some of the findings in the EIS and place the CPCN in jeopardy. The OFC must establish protocols to track design issues that



directly affect NEPA or regulatory analyses. It may be useful to have the OFC adopt the FERC variance process. No matter how design changes are addressed by the OFC, the protocols should allow rapid communication of design changes to all regulatory agencies.

## 5.8 AGENCY JURISDICTIONAL ISSUES

The relative roles and responsibilities of PHMSA, BLM, and the State of Alaska with respect to the gasline project need to be explicitly defined by the OFC to avoid potential confusion related to jurisdictional overlap and authorities. Importantly, BLM federal grant and State of Alaska lease terms, conditions, and stipulations need to line up as closely as possible for a smoother construction and operation phase. Issues of commissioning versus operations, as well as pre- and post-construction must be addressed. Any permits that BLM issues may affect future operation of the gasline. For example, repairing a pipeline in a federal ROW requires a BLM permit. State regulations also might affect pipeline operations.

Based on an analysis of the available information, there appears to be some indecision about agency roles in federal oversight of the quality control of the design and construction; this could be defined as a regulatory gap. Several agencies have statutory responsibilities for safety, and many agencies oversee environmental protection during the design and construction phases, but no agency has a mandate to ensure the entire system is designed and constructed to actually perform as planned during project life.

However, besides the BLM, no agency has *overall* technical or engineering review responsibilities for design, construction, and operation of a natural gas pipeline system. According to Title 30, Section 185 (g), of the *United States Code*, “Pipeline Safety” (for pipelines passing through federal lands):

*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. (Emphasis added.)*

and 30 USC Section 185 (h), “Environmental Protection”:

*(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. (Emphasis added.)*

In addition, PHMSA will review design and engineering for minimum standards of safety.

Other agencies (e.g., the Alaska Department of Natural Resources) may also conduct a comprehensive design and engineering review for its ROW lease requirement.

To address these myriad roles and ensure that the gas pipeline project meets or exceeds all design and construction criteria, each affected agency needs to clearly specify its role in design and construction oversight, based upon statutory authority, and publish this role in the agency IP. Upon publication in the IP, the OFC should develop a written agreement, signed by all participating parties, on the required role each agency has and will play in the technical and engineering design review. It is also recommended that the OFC develop a written agreement with the State of Alaska to coordinate design standards and develop a written agreement on the standards that will be applied to monitoring and survey actions that will be undertaken post-construction.

## **5.9 WORKFORCE CONDITIONS AND REPORTING CONDITIONS**

As with any large complex project, there is a potential for “whistle-blower” activity. The OFC and applicant(s) must take the potential for this activity into account when developing agency planning actions and when reviewing quality assurance/quality control standards. It is recommended that the OFC coordinate whistle-blower issues for the federal government.

Prior to the end of the FERC pre-filing process, the OFC should develop protocols and policies that can clearly define and adjudicate the inevitable whistle-blower complaints related to design and construction defects. These complaints or notices may include allegations of discrimination, unfair labor practices, criminal activity, or highly technical safety or environmental protection issues. Federal agencies with official whistle-blower protection enforcement authorities include the U.S. Department of Labor and EPA. However, especially during construction, with regulatory

and jurisdictional gaps in avenues to be taken, complaints could appear. Indeed, the fact that there is a gap actually can drive the complaint, because a regulation that is on-point usually results in quick resolution. Depending on the nature of the complaint, virtually any federal agency may be compelled to take investigatory and/or remedial action.

## **5.10 TECHNICAL ISSUES**

### **5.10.1 Air Quality**

Even though Alaska has air quality permitting primacy delegated from EPA, air quality permits are issued on a long lead time. Separate permits are needed for both construction and operation. The proposed Gas Treatment Facility on the North Slope will be a PSD source, as will the compressor stations. Pre-construction baseline air quality monitoring is required for a minimum of 1 *full year* before construction. However, the process typically takes 2*years* because of technical reviews and approvals by ADEC of the air quality modeling by the applicant. Permanent operating permits are not needed for up to a year after startup (ADEC). In addition, EPA has said it will oversee all federally delegated permits. It is recommended that the OFC develop an agreement with the EPA on the scope, data requirements, and review processes that EPA will use in its oversight role. The agreement should ensure that any air quality work undertaken by the applicant and overseen by the State of Alaska will fully comply with EPA requirements. The purpose of the agreement is to ensure that EPA will not need to conduct any additional analyses or oversight actions after the State of Alaska has completed all of its necessary compliance decisions.

### **5.10.2 Material Sources**

There will be a large requirement for pipe bedding and cover material, road gravel, and

other construction materials. Geologic sources need to be located well in advance, and particular attention to Alaska Native lands as potential commercial sources would be beneficial to the federal government.

### 5.10.3 Design Considerations

The science and engineering of a buried chilled gas pipeline passing through all phases of permafrost and various types of stream crossings is still developing. Because some field changes and modifications will be required during construction, it is obviously better to have completed detailed geologic, geophysical, and engineering studies on the matter prior to that phase.

The OFC must ensure applicant(s) are focused on permafrost and the potential issues of a warming climate from the early stages of field work and engineering design.

## 5.11 INTERNATIONAL CONSIDERATIONS AND CANADIAN FEDERAL GOVERNMENT COMMUNICATION

The *Agreement Between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline* may need to be officially “refreshed” to account for substantially changed conditions since 1977. Among the differences are the following:

- The original agreement anticipated using Mackenzie Valley (the “Dempster Line”) as supplies, as well as Alaskan gas throughout (Section 3(a) and Section 5). The Dempster Line seems to be stalled.
- The original agreement guaranteed some use of Alaskan gas by the territories and provinces through which the pipeline passed, with replacement gas in the same BTU value being added at the

point the gas enters the United States. This situation may not be the same now (Section 3(b)).

- The original agreement was based upon an understanding that the pipeline would be privately financed. Congress has changed this provision, and it might also be seen as a change in the agreement to the position that financing would “not prohibit, limit, or inhibit the financing of the Dempster Line” (Section 4(c)).

The OFC should query the DOS, if it believes that the treaty needs to be updated or amended. If so, the OFC should request appropriate initiating actions.

The OFC needs to coordinate with Canada on certain Alaska Native and First Nation issues. Note that that ROWs through Canadian sovereign First Nation Lands have not been fully settled, and as a result, the Mackenzie pipeline project has been delayed. It must be made clear to all parties that cross-border Alaska Native or First Nation entities that reside on both sides of the international border will be treated separately in the United States and Canada. Alaska Native entities residing in the United States will be subject to U.S. statutes, regulations, and authorities, and First Nation entities residing on the Canadian side of the border will be subject to Canadian statutes, regulations, and authorities. There will be no “comingling” of U.S. or Canadian authorities or policies for Native groups that reside on both sides of the international border between Canada and the United States.

Because an Alaska gasline project will necessarily involve project planning, approvals, and construction in Canada, the OFC must develop explicit communication protocols with its Canadian counterparts. Indeed, the OFC, FERC, and their Canadian counterparts should immediately address how these entities will share information on schedule issues, regulatory processes, decision-making roles and responsibilities, and the inevitable, but unknown

at this time, issues that will arise as a project moves forward. Also, the applicant must be involved in the communication processes that are developed.

Specific recommendations that should be undertaken early in the project application process include the following:

- There is an immediate need to develop a formal procedure on how the OFC, FERC, and the Canadian government will communicate on a regular basis to coordinate the environmental review and permitting schedules. Since Canada has stated that it will endeavor to meet the schedules mandated by the U.S. Congress, it is critical that a mechanism be developed to share scheduling information among OFC, FERC, and NEB or NPA on a regular, timely basis.
- A potential scheduling issue (when comparing the United States to Canada) is that environmental and permit reviews conducted in Canada occur *after a completed application is received by the NEB or NPA*. Without a pre-filing process, the NEB and/or the NPA will be required to complete environmental and permit reviews in much less time than allocated in the United States (with pre-filing). Thus, it is strongly recommended that a mechanism be established to involve the NEB or NPA in the FERC pre-filing process.
- It is also strongly recommended that the OFC develop a mechanism to work with Canadian federal agencies upon completion of the activities of the NEB and/or NPA. Since a number of Canadian federal entities will be issuing permits during the construction phase of the project, the OFC needs to develop a coordinated communication plan with the Canadian federal government to ensure that construction issues are well-known by both Canadian and U.S. entities. Since there is no Canadian entity similar to the OFC, it behooves the OFC to take an active role in establishing clear lines of communication with Canadian federal entities at the earliest possible time.

## 5.12 ADDITIONAL ACTION ITEMS

Table 5-1 provides a set of proposed action items that supplement the recommendations provided in this section. The action items address some of the specific issues raised during discussions with federal and state agencies. These action items can provide a checklist for the OFC to use as it develops program plans and reviews agency implementation plans. While some of the issues addressed in Table 5-1 are more fully developed in the recommendations provided above, many of the additional actions identified in Table 5-1 are operational in nature and provide the OFC with insight on what others believe to be work requirements that should be led or monitored by the OFC.

**TABLE 5-1 Alaska Gasline Project Issues and Action Items to Address the Issues**

Issue	Potential Action
Alaska Native groups are keenly interested in jobs, material sales, and summer internships for students, and want to be included in discussions from the beginning.	Establish a dialogue among applicants, OFC, and Alaska Native entities to define opportunities.
Rural Alaskan Natives need the opportunity to benefit economically from the construction of the pipeline.	Ensure that early Native workforce training occurs.
ROWs crossing Alaska Native trust lands require the consent of the allottee and the approval of the Secretary of the DOI.	Determine which trust lands could be affected by the pipeline as soon as possible so that ROW access can be obtained.
Alaska Native allotments and ownerships have changed over the years and will require research and verification. The identification of trust properties could be complicated because there are no deeds and many lands initially granted to one individual have been subdivided..	Begin allotment and ownership research now, even though the centerline of the final ROW may not be known.
Where land transfers under the Alaska Native Claims Settlement Act are not complete, secretarial approval will be required for ROW access.	Determine whether any disputed lands are in the area of the ROW.
For the Alaska Native Corporation lands that are split estates, ROW access approval must be obtained from the Village Corporation for the surface rights and from the Regional Corporations for the subsurface rights.	Begin determination of split-estate Corporation lands that overlay the proposed ROW as soon as possible.
The labor pool for skilled engineers and inspectors in Alaska is small; competing projects and employers will exacerbate the shortage. Nationwide, the number of experienced welders, corrosion experts, and other skilled professionals is decreasing, as these workers approach retirement. Many of the workforce issues facing federal agencies in Alaska will apply to state agencies and industry — and could lead to schedule and cost increases.	Determine whether DOL’s mandated training program can help address any of these shortages.
Base camp and other pads used during TAPS construction must be approved by the State of Alaska for potential use by gasline construction.	Ascertain number and location of additional spread sites that may be required. Make sure they are incorporated into construction planning.
Requirements for pipe bedding and cover material, road gravel, and other construction materials will be enormous.	Locate geologic sources well in advance, paying particular attention to Alaska Native lands as potential commercial sources. Geologic material sites inventory work along the known alignment can begin immediately.

**TABLE 5-1 (Cont.)**

Issue	Potential Action
APSC has certain rights and obligations within the TAPS ROW.	Begin coordination with APSC early to identify and mitigate potential issues related to the TAPS ROW and a proposed gasline ROW.
PHMSA and DHS need information on pipeline design as soon as possible. PHMSA noted that often applicants spend minimal resources on pre-NEPA engineering, holding off on the final design until they are assured of the permits. This could generate approval delays, since final designs would not be available until after the EIS is complete.	Ensure that PHMSA and DHS have access to pipeline design information as soon as it is available; press applicant to provide final design information as soon as possible.
Planning time would be needed to engineer substitute materials for FHWA structures, if the availability of steel is limited.	Ensure that FHWA has pipeline design information as soon as it is available.
Alaska gasline project activities will likely extend beyond the established ROW (e.g., for spread areas and transportation of materials and equipment). Access to lands under the control of the DOD may be required.	Work on land status issues by BLM early on.  Identify, contact, coordinate, and resolve with appropriate DOD officials.
The BIA stressed that its role is to obtain ROW access across trust lands, while the State of Alaska would be responsible for identifying and analyzing other impacts (e.g., subsistence issues), and the EIS would identify environmental impacts.	Establish upfront the roles of various agencies regarding the evaluation of impacts to Native populations.
If allottees do not grant access for the ROW, potential legal issues could arise if the route is moved to avoid affecting allotted lands.	Encourage early identification and meeting with allottees.
Neither allowing a portion of the loan guarantee to cover cost overruns nor the “bridge shipper” option has been resolved.	Track progress on resolving these issues with the DOE and facilitate the acquisition of any data so DOE can make its determination.
Several bridge, highway, and ferry upgrades will be needed, each of which could require 2 years to complete. The Yukon Bridge, which may not be strong enough to handle both TAPS and the Alaska gasline project, would require more than 2 years to upgrade or replace.	Work with appropriate state and federal agencies to identify infrastructure-improvement needs and share information with appropriate authorizing agencies so they can plan well in advance.
Siding and track upgrades will likely need to be added to the Alaska Railroad to accommodate the hauling of pipe.	Encourage prompt submittal of design so impacts can be evaluated and permits issued.

**TABLE 5-1 (Cont.)**

Issue	Potential Action
Antigun Pass will require special engineering to avoid conflicting with TAPS.	Encourage prompt submittal of design so impacts can be evaluated and engineering approved.

## 6 CONCLUSIONS

With passage of ANGPA and EPAct, the statutory authority required by the OFC and FERC to enforce the expeditious completion of federal project authorizations is in place. Agencies are generally aware of the authority of the OFC and the challenges of the project and have stated their willingness to meet schedules. However, it was discovered that FERC authority as the lead federal agency for an 18-month EIS, as well as its authority to set agency schedules during the NEPA phase of the project, may not be as clear to some of the federal agencies.

Since FERC does not have a process (or intend to develop a process) for agency cost reimbursement, it will be necessary for the OFC to immediately determine the process whereby all federal agencies will be reimbursed for work tasks associated with any Alaska gasline project. Clear funding arrangements will ensure that federal agencies can devote resources and priority to regulatory issues associated with a proposed project. The OFC may want to consider developing a cost-sharing agreement for all federal agencies (similar to what BLM does with ROW applicants).

Under the ANGPA project application and development scenarios, the available information suggests that there is sufficient time available to properly plan and execute the Alaska portion of an Alaska gasline project. This finding is based upon Argonne's analysis of the information provided by the federal and state agencies and consideration of the projected schedules for the two applicant proposals that have been publicly announced. An analysis of the available information and detailed discussions with key agency staff did not uncover any insurmountable technical, regulatory, or legal issues that would require major new legislative or long-term engineering or field data collection and analysis tasks. However, the current treaty with Canada may need to be updated to reflect changed conditions (producers can now have equity positions; the

United States has provided for a federal loan guarantee). A specific financial analysis or a detailed examination of required Canadian approvals was outside the scope of this report.

Certain long-lead-time issues related to field data collection and analysis should receive priority attention by applicant(s). Indeed, uncertainties as to when applicant(s) should initiate action to seek permit or authorization approvals should default to the earliest practicable date consistent with project design. Agency-applicant coordination (monitored by the OFC) should be initiated at even the most elemental stages of design.

All federal agencies have Alaska Native consultation requirements; however, some agencies must address more issues of possible interest to Alaska Natives than other agencies. The State of Alaska expects that FERC will be the lead federal entity for federal outreach to Alaska Natives and conduct government-to-government relationships. However, the OFC can improve the efficiency of and enhance the effectiveness of communication with Alaska Native entities, by providing a single mechanism or an overarching agreement (containing protocols agreed to by all of the federal agencies and FERC) for coordinating government-to-government consultations.

The FERC role in conducting the required NEPA process is straightforward. However, the OFC needs to be closely aligned with FERC during the pre-filing and filing stages of the NEPA process to facilitate and ensure that cooperating federal agencies are fully aware of the requirements, roles, and responsibilities associated with working under the FERC guidelines. A key role for the OFC will be the need to track schedules and milestones of the federal cooperators as these relate to the completion of the NEPA EIS and the production of a ROD. It must be acknowledged that the FERC EIS is tasked to carry the NEPA



requirements of each individual agency and that multiple cooperators entails schedule and budget risks. For example, NEPA and permitting efforts are directly tied to project design. Major design changes during the NEPA process can severely impact the overall project schedule. It may be necessary for the OFC to ensure coordination between project design and regulatory requirements (including NEPA requirements).

The Canadian federal government is fully committed to meeting the FERC schedule for completing all environmental reviews and processes needed for a certificate of need in Canada. To meet the FERC schedule, NRCan understands the need for early and close coordination among the OFC, FERC, and the NEB and/or the NPA. It will be especially important to develop coordination procedures during the FERC pre-filing process because Canada lacks a similar process to meet critical environmental and permitting schedules. Importantly, the NEB now considers an application when the application is complete — that is, the application must clearly identify the source of the gas that would be transported in the pipeline. Because a complete application may be available only upon completion of the FERC pre-filing process, developing a coordinated schedule for Canadian and U.S. environmental and permitting activities is viewed as a high priority by NRCan.

Importantly for an Alaska gasline project, NPA, which was established under the Northern Pipeline Act, would need to be reconstituted to serve as the primary regulatory body for a project submitted by TransCanada and the State of Alaska. TransCanada holds the original approvals granted to the Foothills Pipeline in the 1970s. Currently, the NPA exists only on paper because no pipeline project has been developed. An application submitted by TransCanada in partnership with the State of Alaska would undergo an environmental review, but the environmental assessment would be consistent with — not performed under — the CEAA. Rather, the NPA would determine the additional

environmental review documents that would be needed for a project.

A significant gap exists between government salaries for engineers and inspectors and industry salaries for these same professions. Industry is already paying premium wages for these professionals, and to attract needed staff, government salaries will need to be competitive. For example, much of the PHMSA work (as well as that of other agencies) will occur in Alaska, where the qualified labor force and the population base are both small. In addition, the number of experienced individuals familiar with the NEPA process is a relatively small number in Alaska, and all agencies (federal and state) may be stretched very thin, given the possibilities of other large projects requiring EISs. Even when consultants currently working on other NEPA projects are included, there will likely not be enough experienced staff, particularly when potential conflicts of interest are taken into consideration.

An analysis of roles and responsibilities indicates that the OFC may have to clarify how the responsibilities of BLM, PHMSA, and the State of Alaska interrelate for the design review, commissioning versus operations, and pre- and post-construction. Because BLM played a major role in TAPS (PHMSA and its predecessor agency barely existed at the time), issues regarding the relative roles of these two agencies with respect to a gasline project are likely to surface. For example, BLM issued the guidance that affects integrity management of TAPS, and APSC is still carrying out these procedures. PHMSA notes that the permits that BLM issues may affect future operation of a gas pipeline project. For example, repairing a pipeline in a federal ROW requires a permit. State regulations also might affect pipeline operations. If there is an ANGTS project, these questions are magnified, because BLM has already issued the Term and Conditions of Right-of-Way Grant.

Finally, the OFC must develop explicit mechanisms to track “ancillary” but required

infrastructure development associated with a gas pipeline project. These projects must be incorporated into a master project schedule; each item must be tracked for permit or authorization requirements, and, importantly, a determination must be made as to how these projects fit into the scope of the FERC EIS. Examples of these

types of projects include the likely need for the Alaska Railroad to add siding and track upgrades to accommodate the hauling of pipe, road, and bridge improvements, changes in shipping and port actions, or other connected project needs.



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