

#28.3

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF LAND AND WATER MANAGEMENT
NORTHERN REGION - 4420 AIRPORT WAY, FAIRBANKS, ALASKA 99709

DATE: October 14, 1987

TO: Grace Schaible
Attorney General

CHIEF R/W AGENT	
PRE AUDIT	
ENGINEERING	
TITLE	
PLANS	
MATERIALS	
APPRAISALS	
NEGOTIATIONS	
RELOCATION/PROP. MGMT.	
RETURN TO FROM:	Judith M. Brady
FILE	Commissioner, DNR

NORTHERN REGION		FILE NO:
Regional Director	TELEPHONE NO:	
D&C Director		
Planning & Research Chief	SUBJECT	
Adm. Serv. Officer		
MPO Director		
Licensing Officer		
Southern Regional Director		
Western Dir. Name		
RETURN		

479-2243 NOV 08 1987

Request for Attorney General's Opinion
TAGS Pipeline
Right-of-Way Lease

Alaska

Alaska Statute 38.35.020 requires an individual or company engaging in "the construction or operation of a oil, products or natural gas pipeline, which in whole or in part is or is proposed to be on state land" must obtain a right-of-way lease pursuant to A.S. 38.35.

The Department normally recognizes three distinct categories of land i.e., state patented, state T.A., and state selected. The state asserts full management authority on state patented and state TA'd lands and recognizes Federal jurisdiction on state selected lands. This system was recognized in ANILCA and expanded on by Section 906 (k)(1) of ANILCA granting the state the right of concurrence on Federal actions taking place on state selected lands before the Federal government creates third party interests on lands the state may receive. This process has worked to protect the state interests and, to date, has worked adequately.

A.S. 38.35.230(9) defines state land for the purposes of A.S. 38.35. The definition reads:

Section 38.35.230(9)(A) "state land" as defined in A.S. 38.05.965.

Section 38.35.230 (9)(B) defines state land as "public land of the United States selected by the state under Section 6 of the Alaska Statehood Act of 1958 (PL 85-508; 72 Stat. 399) as amended, and real property transferred to the state under Sections 21, 35, and 45 of the Alaska Omnibus Act of 1959 (PL 86-70; 73 Stat 140), as amended".

Section 38.35.230(9)(C) defines state land as "any interest owned by the state in land".

A.S. 38.05.965 (14) states "state land" or "land" means all land, including shore, tideland submerged land, or resources belonging to or acquired by the state."

Grace Schaible
 October 13, 1987
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Questions:

Does A.S. 38.35 require the issuance of a right-of-way lease on state selected land or does the ANILCA 906 K process of concurrence meet that requirement?

If yes, must this land be classified (See A.S. 38.05.300, 38.04.065, 11 AAC 55.280) and is a plan required prior to classification?

Does A.S. 19.40.200 as amended preclude the issuance of a right-of-way lease along the Dalton Highway south of 68 degrees north latitude?

Does A.S. 38.35.020 and A.S. 38.35.230 (9)(B) and (C) require the issuance of a right-of-way lease along or within highway rights-of-way?

Does A.S. 38.35.230 (9)(C) include interests owned by the Alaska railroad?

Does A.S. 38.35.230 (9)(C) include University owned land?

How does state jurisdiction on state selected lands pursuant to A.S. 38.35 relate to our case presently before IBLA relating to our assertion that state selections along the haul road corridor are valid and the dispute under review brought by Northwest (ANGTS)?

Unfortunately, as with most things, we need answers to these questions as soon as possible as they are critical to our continued processing of the TAGS pipeline right-of-way lease. If you require more information or further discussion, please contact Jerry Brossia at 479-2243.

FLS/br

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