

ADL 100833



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

RECEIVED
JUN 19 1979

DEPT. OF THE INTERIOR
JUL 2 1979
Section
JUN 15 1979

State of Alaska
Office of
Pipeline Coordinator
DC M
ENR
AD
SA mf
PIO
F.B.G.
ACT
FSS
TSS
PI
FBAS
AG
C/PPF

Mr. Paul E. Goulding
Acting Administrator
General Services Administration
18th & F Streets, N.W.
Washington, D.C. 20405

Dear Mr. Goulding:

In February of this year, I met with former Administrator Solomon and Mr. Markon to discuss the existing Alaska Petroleum Pipeline System, Haines-Fairbanks Division, (Haines-Fairbanks pipeline) and its relationship to the proposed Alaska Natural Gas Transportation System (ANGTS).

Northwest Alaskan Pipeline Company, which proposes to construct the Alaskan leg of ANGTS, has indicated its desire to acquire appropriate portions of the Haines-Fairbanks pipeline and has requested advice from this Department and the General Services Administration as to how this may be done expeditiously. Because the pipeline traverses several different categories of lands, the matter is quite complex. The purpose of this letter is to analyze the situation and present a strategy for resolving the various issues as quickly as possible, as mandated by the Alaska Natural Gas Transportation Act, 15 U.S.C. § 719, et seq. (1976).

I Background

The Haines-Fairbanks pipeline was constructed in the 1950's by the United States Army Corps of Engineers for use by the Department of Defense. Much of the pipeline was constructed on public lands of the United States, and the lands were set apart for the pipeline by two methods: (a) the pump station and terminal sites were formally withdrawn from the operation of the public land laws and reserved for pipeline purposes by several Public Land Orders; and (b) the linear right-of-way for the line of pipe was appropriated by actual construction of the pipeline and notation of the public land tract books by the Bureau of Land Management. The tract book notations appropriated a fifty-foot wide right-of-way and the Public Land Orders withdrew various specified acreages.

RECEIVED
AUG 27 1981

State of Alaska
Office of Pipeline Coordinator
Fairbanks Office

State of Alaska
Office of Pipeline Coordinator
Fairbanks Office

Over the years, much of the public lands traversed by the linear portions of the pipeline has been conveyed out of Federal ownership. Each land conveyance was issued with a clause excepting and reserving the right-of-way; in effect, conveying the land subject to the Federal right-of-way. Some of the public lands occupied by the pipeline that are still in Federal ownership have been selected by Alaskan Natives or claimed by the State of Alaska.

In 1973, the Corps of Engineers initiated procedures under the Federal Property and Administrative Services Act to relinquish Defense Department jurisdiction over the pipeline. The General Services Administration is presently asserting jurisdiction over the system.

II Nature of 44 L.D. 513 Notations

As was previously mentioned, the linear right-of-way for the pipeline was appropriated by actual construction of the pipeline and notation of the tract books. These notations, commonly referred to as "44 L.D. 513 notations" were made by the Bureau of Land Management pursuant to the Instructions set forth at page 513 of volume 44 of the Land Decisions of the Department.

Prior to the recent enactment of the Federal Land Policy and Management Act 1/, there was no general statutory provision for the setting aside of rights-of-way for Federal agencies, and the Bureau customarily employed the procedures set out in the 44 L.D. 513 Instructions to accomplish that purpose. The 44 L.D. 513 Instructions, issued in 1915 pursuant to the Secretary of the Interior's general management authority over the public lands, advised the General Land Office (now the Bureau of Land Management) regarding procedures to: put the public on notice of the existence and location of Federal improvements on the public lands; and to protect those improvements when the public lands upon which they were constructed were conveyed out of Federal ownership. The Instructions directed the Bureau to make appropriate notations in the tract books to accomplish the first purpose and to insert exception clauses in the land patents to accomplish the second 2/.

The principle underlying the Instructions is that the construction of a Federal facility on public lands appropriates the lands to the extent of the ground actually used and occupied by that facility and for so long as the facility is used and occupied by the United States. United States v. R.G. Crocker, et al., 60 I.D. 285 (1949). No third

1/ P.L. 94-579, 43 U.S.C.A. §§ 1701, et seq.

2/ A copy of the Instructions is enclosed. (Exhibit A).

party may take any action, such as mining, that would interfere with the Federal use and occupancy. A.J. Katches, A-29079 (1962). Notation of the tract books did not withdraw or reserve the land. Appeal of Paug-Vik, Inc., Ltd., ANCAB No. VLS 77-2 (1978). Nor did it purport to grant an interest in the land to a Federal agency or to transfer jurisdiction over the land to an agency. However, as a matter of practice, such notations were the usual vehicle for the Bureau of Land Management to authorize other Federal agencies to use the public lands for right-of-way purposes, and exercise jurisdiction thereover. See 43 CFR § 2800.0-1(b)

If the public lands traversed by the facility were later disposed of by the United States pursuant to the public land laws, the conveyancing documents were to contain exception language, similar to that set forth at 44 L.D. 514 for a telephone line. This exception served to reserve a right-of-way to the United States for the purposes described in the exception and for so long as the exception specified.

III Present Agency Jurisdiction Over Public Land Traversed by the Pipeline

When the Department of Defense determined that the pipeline system was no longer needed for military purposes, it initiated procedures, through the Corps of Engineers, to relinquish its jurisdiction. At that time, the General Services Administration considered that the entire system might be sold as an operating entity because several prospective purchasers had expressed interest in acquiring the line.

As part of the relinquishment procedures, the Corps sent a "Notice of Intention to Relinquish" to the Bureau of Land Management on August 20, 1973, as required by 43 CFR § 2372.1. 3/ The purpose of the report was to obtain a determination by the Bureau as to whether the lands should be turned over to the General Services Administration for disposal or returned to the public domain, pursuant to the Department of Interior regulations at 43 CFR § 2372.3 and 43 CFR § 2374.1. 4/

3/ A copy of the notice is enclosed. (Exhibit B).

4/ A copy of the text of these regulations is enclosed. (Exhibit C).

The Notice of Relinquishment stated that the lands proposed to be relinquished had not been changed in character other than by the construction of improvements. It requested the Bureau to determine which portions, if any, "of the lands hereby relinquished" were suitable for return to the public domain. It recommended that the improved areas be approved for final reporting to the General Services Administration for disposal due to the fact that otherwise it would not be feasible for the General Services Administration to consider sale of the system as an operating entity.

The following general description was given in the notice:

"The portion of the pipeline system being excessed begins at the Haines Terminal located on Lutak Inlet approximately 3 miles north of Haines, Alaska, and follows the Haines Highway into Canada to Haines Junction with the Alaska Highway, then along the Alaska Highway in Canada, and back into Alaska via Tok and Big Delta, to the termination of the excess at pipeline milepost 599 on Eielson Air Force Base in Section 18, T.3S., R.4E, F.M. Included in the pipeline system proposed for disposal, in addition to the main 8-inch fuel line, are the land and facilities situated on the booster pumping sites located at Border Station, Blanchard River, Haines Junction, Destruction Bay, Donjek, Beaver Creek, all in Canada; Lakeview, Sears Creek, Timber and terminals at Haines and Tok, all in Alaska. Of these pumping stations and terminals, Haines, Tok, Timber, Lakeview, and Sears Creek involve land held by withdrawal from the public domain."

The notice specifically described the pumping and terminal sites, together with the public improvements thereon. The following sites were identified as withdrawn public lands:

1. Haines Terminal (Tract A). Withdrawn by PLO 1032 dated November 17, 1954.
2. Haines Terminal (Tract N-Parcel 2). Withdrawn by PLO 837 dated June 19, 1952.

3. Lakeview Pumping Station (Portion of Tract F).
Withdrawn by PLO 3689 dated June 10, 1965.
4. Tok Terminal (Tract C). Withdrawn by PLO 1887
dated June 26, 1959.
5. Sears Creek Pumping Station (Portion of Tract F).
Withdrawn by PLO 3689 dated June 10, 1965.
6. Timber Pumping Station (Portion of Tract F).
Withdrawn by PLO 3689 dated June 10, 1965.

This description clearly includes the pumping sites and terminal sites that were withdrawn by the several Public Land Orders, together with the facilities within such sites. It also clearly included the line of 8-inch pipe across the public lands. But it expressly excluded those public lands which were appropriated by 44 L.D. 513 notations, as follows:

"The major portion of the main 8" pipeline in the United States and a waterline in the Haines area, are covered by 44 L.D. 513 notations on the Bureau of Land Management land records. These 44 L.D. 513 notations will not be relinquished until such time as the system is disposed of, as to do so would leave the pipeline and waterline in such areas without any land rights."

Apparently the Corps of Engineers, aware that 44 L.D. 513 notations are not withdrawals, was concerned that a relinquishment by the Corps might terminate the Federal appropriation of the lands. To ensure that this did not occur, the Corps chose not to relinquish the notation lands until the General Services Administration finally disposed of the pipeline. Once the line of pipe and any other facilities were sold and removed from the notation lands, the appropriation would terminate in fact and the tract book notations could be safely cancelled.

That this exclusion of the 44 L.D. 513 notations from the relinquishment was definitely intended by the Corps is further demonstrated in its "Preliminary Report of Excess Real Property" which it had previously sent to the General Services Administration. 5/

That report contained the following statement:

"We will not relinquish to BLM any of the 44 L.D. 513 notations covering the pipeline until such time as the pipeline is finally disposed of, as to do so would leave the pipeline on lands without Government rights. As you are aware, 44 L.D. 513 notations protect the Federal Government but are not transferable except to another Federal Government agency."

It is therefore abundantly clear that the Corps did not intend to relinquish the 44 L.D. 513 notations. The Bureau of Land Management responded to the Notice of Intention to Relinquish by letter dated November 12, 1973. In this response, the Bureau stated as follows:

"The specific sites involved in your notice of relinquishment are the Haines Terminal, withdrawn by Public Land Order No. 837 of June 19, 1952; the Tok Terminal, withdrawn by Public Land Order No. 1887 of June 26, 1959; and the Lakeview, Sears Creek, and Timber Pumping Stations, withdrawn by Public Land Order No. 3689 of June 10, 1965."

"Your notice stated that the Department of the Army will retain the main 8-inch pipeline in Alaska and a waterline in the Haines area...."

"Mr. Vern L. Barnes, Director, Real Property Division, General Services Administration at Auburn, Washington, has informed us that General Services Administration has a lessee for the excessed pipeline and he requested that we formally advise you to report the line and stations to General Services Administration for disposition."

5/ Letter dated June 11, 1973, from Earl R. Tubach, Chief, Real Estate Division, Alaska District, Corps of Engineers, to V.L. Barnes, Chief, Real Property Division, Property Management and Disposal Service, General Services Administration, Region 10, Auburn, Washington. A copy is enclosed. (Exhibit D).

"Your agency, therefore, now has authority to make the transfer to General Services Administration." 6/

Although the Bureau's letter did not specifically discuss the line of pipe on public lands or the 44 L.D. 513 notations, it does reflect that the Bureau understood the Corps' proposed action. The reference to the specific withdrawn areas indicates that there was no confusion regarding those areas. With regard to the 44 L.D. 513 notations, the Bureau understood the Corps as saying that it intended to retain the rights-of-way across the public lands for the main pipeline and the waterline. Accordingly, the Bureau's letter made no express reference to the 44 L.D. 513 notations, and addressed only the specified pumping station and terminal sites. Consequently, the Bureau consented to the transfer of jurisdiction to the General Services Administration for only those sites.

Accordingly, we conclude that at the present time the General Services Administration has administrative jurisdiction over the six pump station sites and terminal sites that were withdrawn by Public Land Order and particularly described in the August 20, 1973, Corps of Engineers Notice of Intention to Relinquish. We also conclude that jurisdiction over the 44 L.D. 513 notation areas has not been transferred to the General Services Administration but remains either in the Corps of Engineers, if the Corps has not terminated its use and occupancy, or in the Bureau of Land Management.

IV Agency Jurisdiction to make Land Available for Construction of the ANGTS

In order to determine what actions may be taken by the General Services Administration and this Department to make lands available for construction of ANGTS, it is necessary to consider Section 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1976). This is because subsection (q) of Section 28 provides that Section 28 is the sole

6/ Letter dated November 12, 1973, from Sue A. Wolf, Acting Chief Adjudicator, BLM State Office, Anchorage, Alaska, to George Gregory Moen, Chief, Real Estate Division, Alaska District, Corps of Engineers, Department of the Army, Anchorage, Alaska. A copy of this letter is enclosed. (Exhibit E). The Bureau of Land Management sent a second letter to the Corps on this subject on November 12, 1974. This second letter is identical to the 1973 letter except for the date and the fact that it was signed by Carol F. Shobe, Acting Chief Adjudicator, BLM State Office, Anchorage.

authority under which Federal agencies may grant rights-of-way for oil or gas pipelines across Federal lands. That subsection, in pertinent part, provides as follows:

"(q) No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. ..."

The compass of this provision is very broad since "Federal lands", as used in the Section, is defined in subsection (b)(1) as follows:

"(b)(1) For the purposes of this section 'Federal lands' means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. ..."

Thus, on its face, Section 28 applies to all Federally owned lands except those in the three enumerated categories, irrespective of which Federal agency otherwise has administrative jurisdiction over the lands. The definition is not limited to public domain lands.

In addition, Section 28 of the Mineral Leasing Act gives jurisdiction to grant rights-of-way across Federal lands for oil and gas pipelines only to the Secretary of the Interior in situations where the pipeline right-of-way will traverse lands of two or more Federal agencies. See subsection (c) of Section 28, 30 U.S.C. § 195(c) (1976), which provides that:

"(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary [of the Interior], is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section. (2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit

application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction."

The reasons for this provision of the law were explained in the Senate Committee's report 7/ on the legislation:

This subsection authorizes the Secretary to grant, issue or renew rights-of-way across Federal lands where a particular right-of-way crosses land subject to the joint jurisdiction of two or more different Federal agencies or where the right-of-way would cross separate tracts of land subject to the jurisdiction of more than one Federal agency. An example of the first instance might be a tract subject to the jurisdiction of the Bureau of Land Management but temporarily withdrawn for a specific military purpose. An example of the second might be an application for a right-of-way crossing both public domain subject to jurisdiction of the Bureau of Land Management and a military installation subject to the jurisdiction of the Department of Defense.

The purpose of the section is to authorize the Secretary of the Interior to coordinate the processing and review of applications for such rights-of-way so that an applicant or holder of a right-of-way will have a single point of contact in the Federal Government.

Prior to the granting of any right-of-way under this subsection it is contemplated that the Secretary would transmit the application to the appropriate agency heads and that they would make the determination as to whether the right-of-way should be granted and, if it should, prepare the terms, conditions, and stipulations for inclusion in the right-of-way.

The Secretary and other agency heads are authorized and encouraged to enter into interagency agreements for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way applications, issuing joint regulations, and assuring that decisions are based upon a

7/ S. Rep. No. 93-207, 93d Cong., 1st Sess. 32, 1973. Report of the Senate Committee on Interior and Insular Affairs to accompany S. 1081.

comprehensive review of all factors involved in any rights-of-way application. Each agency head will, of course, administer and enforce the provisions of this Act, appropriate regulations, and terms and conditions of rights-of-way insofar as they involve Federal lands under that agency head's jurisdiction.

A. Withdrawn Areas

The General Services Administration must make the ultimate decision as to the impact of Section 28 on its land management and disposal authorities and whether it can sell or lease any lands under its jurisdiction for ANGTS purposes. We see no difficulty with the General Services Administration selling or leasing lands to the pipeline builders where the lands are disposed of for purposes other than use as a right-of-way. Where a right-of-way is involved, it appears to us that only the Secretary of the Interior could act to grant the right-of-way. However, we will interpose no objection to any decision reached by the General Services Administration with regard to its authority to sell or lease the Haines-Fairbanks pipeline system pump station sites and terminal sites that were withdrawn by Public Land Order and are now under the jurisdiction of the General Services Administration.

B. 44 L.D. 513 Notation Areas

A different situation exists with respect to the 44 L.D. 513 notation areas. Inasmuch as these notations are not withdrawals or reservations of public lands and are still a part of the public domain, it is our view that lands subject to such notations are not within the operation of the Federal Property and Administrative Services Act. They do not fall within the definition of "property" in Section 3(d) of the Act, as amended, 40 USC § 472 (1976), which is as follows:

"(d) the term 'property' means any interest in property except (1) the public domain;...and lands withdrawn or reserved from the public domain except lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator, - determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise...."

Because such lands at all times remain a part of the public domain, albeit subject to the use and occupancy of the military, they automatically become subject to the jurisdiction of the Bureau of Land Management when the military use and occupancy terminates, without the necessity of following the excess property procedures.

It is important to keep in mind the fact that, unlike withdrawals and reservations, 44 L.D. 513 notations do not continue in effect once the Federal Government's use and occupancy terminates. The notations draw their efficacy from the Federal use and occupation. They have no existence separate and apart from that Federal use and occupancy. Once the Federal use and occupancy terminates in fact, the notations have no segregative effect even though they still remain on the land records. Hence, it is not possible for the General Services Administration, or any other Federal agency, to transfer 44 L.D. 513 notations to third parties. In order for the Federal Government to grant a gas pipeline right-of-way to the builders of the ANGTS over the public lands now subject to 44 L.D. 513 notations, recourse must be had to Section 28 of the Mineral Leasing Act. If the Corps terminates its use and occupation, then the Bureau of Land Management may proceed to issue rights-of-way for the ANGTS pursuant to Section 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1976), provided that the lands are not required to be conveyed to the Alaskan Natives.

Even assuming for the sake of argument that the 44 L.D. 513 notation areas survive the termination of Federal use and occupation of the land and are within the operation of the Federal Property and Administrative Services Act, the normal procedures would have to be followed; i.e., this Department would make a determination pursuant to 43 CFR Part 2370 as to whether the lands are suitable for return to the public domain or unsuitable for return because they are substantially changed in character by improvements or otherwise. Without prejudging the matter, it is possible to conclude that the existence of a pipeline does not have the effect of substantially changing the character of the land so as to render it unsuitable for return to the public domain. If the Department should reach that conclusion, the land would return to the public domain and the Bureau of Land Management could grant a right-of-way under Section 28 of the Mineral Leasing Act.

If, on the other hand, the Department should determine that the character of the land had changed so as to render it unsuitable for return to the public domain, it is questionable whether the General Services Administration could grant the right-of-way to Northwest Alaska Pipeline Company for a gas pipeline. This is because, as previously discussed, Section 28 of the Mineral Leasing Act provides that it is the sole authority for the grant of rights-of-way across any Federally-owned lands for oil and gas pipelines and further provides that the Secretary of the Interior shall issue such grants in cases, such as that of the proposed Alaska Natural Gas Transportation System, where the pipeline right-of-way will traverse the lands of more than one Federal agency.

C. Patented Lands

Turning next to the former public lands that have been patented subject to rights-of-way for the Haines-Fairbanks pipeline, we are still of the view we previously expressed in our letter to you of April 6, 1978. 8/ We do not believe that the rights-of-way excepted from the patents can survive the termination of the Haines-Fairbanks pipeline. The exceptions in the patents are not uniform in language. In addition to the example contained in our April 6, 1978, letter, some other typical examples of such exceptions may be helpful to you:

"Excepting however from this conveyance that certain pipeline and all appurtenance thereto, constructed by the United States, through, over, or upon lots 13, 14, 15, and 16, said Sec. 20, and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same, so long as needed or used for or by the United States". 9/

"As to the right-of-way, Fairbanks 010143, and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described and the right of the United States, its agents or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States." 10/

"Excepting and reserving to the United States ... that Haines-Fairbanks pipeline right-of-way, Fairbanks 010143, and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described and the right of the United States, its agents and employees, to maintain, operate, repair, or improve the same so long as needed or used for or by the United States." 11/

8/ Letter to Mr. Roy Markon, Assistant Commissioner, Office of Real Property, Public Building Service, General Services Administration, from John D. Leshy, Associate Solicitor, Division of Energy and Resources, Office of the Solicitor, Department of the Interior. Copy enclosed. (Exhibit F).

9/ Patent No. 1229079 issued to Joseph Anthony O'Day, 10-11-62,

10/ Patent No. 50-77-0088 issued to Allen J. Druckemiller, 4-8-77.

11/ Patent No. 50-72-0368, issued to Hollis Melvin Allen, 4-11-72.

"Also excepting from this conveyance that certain pipeline and telephone lines and all appurtenances thereto, constructed by the United States, through, over, or upon the land herein described, and the right of the United States, its officers, agents, or employees to maintain, operate, or repair, or improve the same so long as needed for or by the United States." 12/

Our analysis of these provisions lead us to conclude that the United States has not retained an interest in the land sufficient to enable this Department to issue a right-of-way across them under Section 28 of the Mineral Leasing Act, supra. Whether the General Services Administration may sell or lease the excepted Haines-Fairbanks right-of-way or the pipe and other facilities thereon to third parties for construction of the ANGTS is a matter for determination by the General Services Administration.

V Pending Adjudications of Native Selections Before ANCAB

At present, there are three administrative cases pending before this Department's Alaska Native Claims Appeal Board (ANCAB) involving the Haines-Fairbanks pipeline.

Appeal of Doyon, Ltd., ANCAB No. RLS 78-1, involves 44 L.D. 513 notation areas. In 1975 Doyon, a Native regional corporation, filed its selection of certain lands traversed by the pipeline, pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601, et seq. (1976). The Bureau of Land Management rendered a decision approving the conveyance with a reservation to the United States of the Haines-Fairbanks pipeline right-of-way. Doyon appealed this reservation to ANCAB, arguing that 44 L.D. 513 notations are neither withdrawals nor reservations; that the United States has abandoned the Haines-Fairbanks right-of-way; and that the conveyance should be issued without the right-of-way reservation. The Bureau of Land Management has conceded that the conveyance should not include such reservation, but advised ANCAB that the General Services Administration is asserting an interest in the right-of-way. ANCAB joined the General Services Administration as a party to the litigation, but the General Services Administration has not submitted any views to the Board.

12/ Patent No. 1146842, issued to Leonard G. Davis, 9-22-54

In Appeal of Tranacross, Inc., ANCAB No. VLS 78-51, the issue is whether the Tok Pumping Station is available for Native selection. The linear right-of-way, F-010143, is not in issue. The Bureau of Land Management's position is that the pump station was formally withdrawn by PLO 1887 and is therefore not available for Native selection. The General Services Administration has been made a party to the adjudication but has not appeared. On March 30, 1979, ANCAB ordered the record closed.

Northway Natives, Inc., ANCAB No. VLS 78-57, involves Native selection of both 44 L.D. 513 notation areas and the Lakeview Pump Station site withdrawn by PLO 3689. The Bureau of Land Management has taken the position that the Haines-Fairbanks pipeline right-of-way should not be reserved from the conveyance to the Natives, but that the withdrawn pump station site is not available for Native selection. The General Services Administration has been made a party to the litigation, but has not appeared.

These three cases are still under consideration by ANCAB.

VI Proposed Action

We intend to pursue the following course of action with respect to making the Haines-Fairbanks pipeline right-of-way available to the builders of the ANGTS.

A. Areas withdrawn by Public Land Orders.

Since these areas (pump station and terminal sites) have been transferred to General Services Administration jurisdiction, this Department believes that the General Services Administration should determine whether, taking into account the provisions of Section 28 of the Mineral Leasing Act previously discussed, it may sell or lease these areas to the builders of the ANGTS. This Department will defer to any determination reached by the General Services Administration in this regard. Because of the pendency before ANCAB of Native selection adjudications involving some of these areas, we caution that no disposals should be made until those adjudications have been completed.

B. Areas subject to 44 L.D. 513 notations.

This Department will grant the necessary rights-of-way to the builders of the ANGTS once the Corps of Engineers terminates its use and occupancy and the Native selection adjudications have been completed. The General Services Administration may then proceed to dispose of the pipe and other pipeline facilities on such areas, inasmuch as jurisdiction over those fixtures has been transferred to the General Services Administration.

C. Rights-of-way across private lands.

This Department believes it has no jurisdiction over such lands and therefore will not undertake to issue any rights-of-way over them for the ANGTS. If the General Services Administration, taking into account Section 28 of the Mineral Leasing Act, concludes that it has authority to sell the pipeline right-of-way or pipeline facilities thereon, this Department will defer to that conclusion.

We feel that this course of action will provide the most expeditious course of action by the Federal Government in accordance with the directives of the Alaska Natural Gas Transportation Act and the President's Decision thereunder and at the same time protect the interests of the United States and the Alaskan Natives.

Sincerely,

/s/ Guy R. Martin
Assistant Secretary for
Land and Water Resources

Enclosures

cc:
Secy's Files
Secy's RF (2)
Land & Water (2) ✓
Land & Water/Martin (1)
Docket
DER-RF
Branch of Realty
Mr. McHale

JJMcHale:vl:kwl:6-12-79:x4444