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August 20, 2002

State of Alaska
 Department of Natural Resources
 Joint Pipeline Office
 411 West 4th Avenue, Suite 2C
 Anchorage, Alaska 99501
ADNR_Administrative_Record@jpo.doi.gov

Argonne National Laboratories
 Toll-free fax: 1-866-542-5904

Re: TAPS Right-of-Way Reauthorization

Attached is a copy of North Slope Borough testimony which I delivered at the Bureau of Land Management's (BLM's) August 9 Barrow public hearing on the Draft Environmental Impact Statement (DEIS) for the Trans-Alaska Pipeline System (TAPS) right-of-way reauthorization. We ask that you fully incorporate here that testimony as comments on the State's consistency review of the TAPS reauthorization. The testimony describes the key points which the Borough sees as being at issue with respect to the reauthorization proposal. To the extent that the Borough's positions on these points is supported by the provisions of the Alaska and North Slope Borough Coastal Management Programs (ACMP and NSBCMP), the applicable enforceable policies are referenced below.

NSBCMP Policy 2.4.3.(d) states:

Development shall not preclude reasonable subsistence user access to a subsistence resource.

The combination of TAPS and the Haul Road have already restricted caribou movement to a degree such that animals are no longer regularly found in certain traditional subsistence harvest areas. The deflection of migrating herds away from these areas has caused hardship in affected communities. Reauthorization of the pipeline, in combination with the state's continued allowance of public access to the Haul Road, will likely result in continuing and increasing hardship within subsistence communities unable to reliably find caribou in traditional harvest areas.

55-1

NSBCMP Policy 2.4.3.(e) states:

Development which is likely to disturb cultural or historic sites listed on the National Register of Historic Places; sites eligible for inclusion in the national Register; or sites identified as important to the study, understanding, or illustration of national, state, or local history or prehistory shall 1) be required to avoid the sites; or 2) be required to consult with appropriate local, state and federal agencies and survey and excavate the site prior to disturbance.

NSBCMP Policy 2.4.3.(g) states:

Development shall not cause surface disturbance of newly discovered historic or cultural sites prior to archaeological investigation.

Appropriate surveys were not conducted prior to construction of TAPS and the Haul Road. Ongoing operations and maintenance, and potential incident responses, could damage important sites. Reauthorization of the TAPS right-of-way must include a requirement for a full inventory and designation where appropriate of historic, archeological, and cultural sites within the TAPS/Haul Road transportation corridor.

55-2

NSBCMP Policy 2.4.4.(d) states:

Development and commercial development must be served by solid waste disposal facilities which meet state and federal regulations.

The pipeline and Haul Road were constructed and intended to operate as a unit. The state's opening of the road to public access without the placement of sufficient waste disposal facilities has resulted in the improper disposal of human waste and garbage not only along the road, but also in expanding areas of the North Slope now more easily accessed by travelers utilizing the road.

55-3

NSBCMP Policy 2.4.5.1 states that development of the following categories will be allowed only if...the developer has taken all feasible and prudent steps to avoid the adverse impacts the policy was intended to prevent.

Policy 2.4.5.1(b) Development which restricts subsistence user access to a subsistence resource. See 2.4.3.(d) above.

Policy 2.4.5.1(f) Transportation development, including pipelines, which significantly obstructs wildlife migration. See 2.4.3.(d) above.

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55-5

NSBCMP Policy 2.4.6.(e) states:

A means of providing for unimpeded wildlife crossing shall be included in the design and construction of structures such as roads and pipelines that are located in areas used by wildlife. Pipeline design shall be based on the best available information and include adequate pipeline elevation, ramping, or burial to minimize disruptions of migratory patterns and other major movements of wildlife. Aboveground pipelines shall be elevated a minimum of 5 feet from the ground to the bottom of the pipe, except at those points where the pipeline intersects a road, pad, or caribou ramp, or is constructed within 100 feet of an existing pipeline that is elevated less than 5 feet. See 2.4.3.(d) above. It is not our intention to unreasonably restrict operations of TAPS or the Haul Road by reference to NSBCMP policies. We recognize that these assets are uses

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of state concern. Their operation, however, can and should still be conducted in a manner that minimizes impacts to subsistence users. Reauthorization should require operations, including any maintenance, repair, and retrofitting which is proposed to consider and pursue measures which will lessen the impacts on wildlife movements which have already occurred and are ongoing.

55-6
(cont.)

In addition, questions have been raised following the August 9 hearing regarding the Borough's endorsement of the concept of a TAPS citizens oversight group. We have been asked to clarify our position concerning the structure, function, and authority of the panel that we and others have proposed. We have made reference to the Prince William Sound and Cook Inlet Regional Citizens Advisory Councils (RCACs) as models for a new TAPS group. We have been encouraged to retreat from that position by some who have argued that the authority and expense of the RCACs is too great to apply in the context of TAPS oversight.

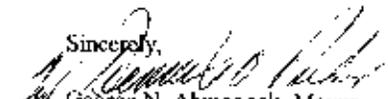
Rather than saying here what we believe the group *should not* be, we feel it is more productive to define what a meaningful TAPS oversight panel *must be*. These attributes include the following:

1. It must be inclusive, rather than exclusive. It must at a minimum have representation from each of the potentially affected communities along the pipeline/Haul Road corridor.
2. It must meet two or more times a year initially, with the long-term frequency of meetings to be determined based on need and experience.
3. The group itself must set the agenda for the meetings.
4. Meetings and other group functions must be funded by the TAPS owners and operators.
5. All meetings must be open to the public, and periodically held in member communities.
6. Each meeting agenda must at a minimum include the following:
 - Overview of ongoing operations, including maintenance, monitoring, security, incident reviews
 - Owner/operator written response to concerns raised at previous meeting
 - Oversight agency reports
 - Research priorities, study designs, study results
 - Community concerns, including cumulative impacts related to the Haul Road
 - Public concerns

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I hope this clarifies the North Slope Borough position regarding the need for an independent TAPS citizens oversight group.

Thank you for your attention to these comments.

Sincerely,

George N. Ahmaogak, Mayor

TAPS
August 20, 2002
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cc: BLM/Argonne National Laboratories
Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young
Eli Nukapigak, Mayor, Nuiqsut
Harry K. Hugo, Mayor, Anaktuvuk Pass
George T. Tagarook, Mayor, Kaktovik
Senator Donny Olson
Representative Reggie Louk
Rex Okakok, NSB Planning
Charles D.N. Brower, NSB Wildlife
Dennis Roper, NSB Government Affairs

Responses for Document 00055

- 00055-001:** The comment points not to restricted subsistence user access to resources due to the TAPS and the Haul Road (Dalton Highway), but rather to possible restrictions in caribou movement due to the these two pieces of infrastructure. The issue of modified caribou migrations due to the TAPS or the Dalton Highway is mentioned frequently by Alaska Natives and other rural Alaskans along the pipeline, and is presented in Section 3.24 for several communities (including Anaktuvuk Pass and Nuiqsut). Those possible impacts are considered under both the proposed action (Section 4.3.20) and cumulative impacts (Section 4.7.8.1). As discussed in Section 4.7.7.3.2, structures within the North Slope may delay or deflect the movement of some caribou, but have not impacted the herds overall. A text addition has been made to Section 4.7.7.3.2 that addresses the fact that no single factor is responsible for either changes in caribou herd sizes or dispersal patterns. With regard to restricted access of subsistence users to subsistence resources (which appears to be the focus of the referenced coastal management plan), the DEIS concluded that this would be a consideration (particularly on the North Slope) but the restriction would not be great. The point here is that traditional harvest areas for caribou are quite large (see Sections D.2.3.1.1 and D.2.3.1.2 for Anaktuvuk Pass and Nuiqsut) and the restricted areas relatively small.
- 00055-002:** Section 3.26 acknowledges shortcomings of prior archaeological projects, and the data that resulted from them. Much of the corridor has subsequently been resurveyed for other projects, as revealed by research for this EIS. That research, coupled with access to the State Historic Preservation Office cultural resources database, provides an improved ability to identify potential impacts on cultural resources under the proposed action and other alternatives.
- TAPS activities are completed in compliance with Section 106 of the National Historic Preservation Act. This act requires consideration of the effects of an undertaking on cultural resources. A programmatic agreement is currently being developed between the BLM, the Alaska State Historic Preservation Office, and the Advisory Council on Historic Preservation to streamline the Section 106 process for addressing cultural resource concerns in the vicinity of the TAPS.
- 00055-003:** As the comment suggests, the solid waste problems along the Dalton Highway appear to be related to tourism or other activities not directly related to the TAPS. The Dalton Highway is under the control of the Alaska Department of Transportation and is not part of the TAPS.
- 00055-004:** The comment points not to restricted subsistence user access to resources due to the TAPS and the Haul Road (Dalton Highway), but rather to possible restrictions in caribou movement due to the these two pieces of infrastructure. The issue of modified caribou migrations due to the TAPS or the Dalton Highway is mentioned frequently by Alaska Natives and other rural Alaskans along the pipeline, and is presented in Section 3.24 for several communities (including Anaktuvuk Pass and Nuiqsut). Those possible impacts are considered under both the proposed action (Section 4.3.20) and cumulative impacts (Section 4.7.8.1). As discussed in Section 4.7.7.3.2, structures within the North Slope may delay or deflect the movement of some caribou, but have not impacted the herds overall. A text addition has been made to Section 4.7.7.3.2 that addresses the fact that no single factor is responsible for either changes in caribou herd sizes or dispersal patterns. With regard to restricted access of subsistence users to subsistence resources (which appears to be the focus of the referenced coastal management plan), the EIS concluded that this would be a consideration (particularly on the North Slope) but the restriction would not be great. The point here is that traditional harvest areas for caribou are quite large (see Maps D-3 and D-4 for Anaktuvuk Pass and Nuiqsut) and the restricted areas relatively very small.

- 00055-005:** The comment points not to restricted subsistence user access to resources due to the TAPS and the Haul Road (Dalton Highway), but rather to possible restrictions in caribou movement due to these two pieces of infrastructure. The issue of modified caribou migrations due to the TAPS or the Dalton Highway is mentioned frequently by Alaska Natives and other rural Alaskans along the pipeline, and is presented in Section 3.24 for several communities (including Anaktuvuk Pass and Nuiqsut). Those possible impacts are considered under both the proposed action (Section 4.3.20) and cumulative impacts (Section 4.7.8.1). As discussed in Section 4.7.7.3.2, structures within the North Slope may delay or deflect the movement of some caribou, but have not impacted the herds overall. A text addition has been made to Section 4.7.7.3.2 that addresses the fact that no single factor is responsible for either changes in caribou herd sizes or dispersal patterns. With regard to restricted access of subsistence users to subsistence resources (which appears to be the focus of the referenced coastal management plan), the EIS concluded that this would be a consideration (particularly on the North Slope) but the restriction would not be great. The point here is that traditional harvest areas for caribou are quite large (see Maps D-3 and D-4 for Anaktuvuk Pass and Nuiqsut) and the restricted areas relatively very small.
- 00055-006:** Section 4.1.2.10 discusses pipeline design characteristics that focus on big game crossings. More than 550 designated big game crossings were included in pipeline construction to help promote the movement of caribou, moose, and bison, consistent with the policy referenced in the comment. Other considerations for minimizing adverse impacts to ecological resources associated with the operation and maintenance of TAPS are addressed in Section 4.1.3.3. Based in part on these features of the TAPS, caribou migrations do not appear to be affected substantially by the presence of the pipeline and associated facilities (see Section 4.3.17.2).
- 00055-007:** The reader is referred to Section 2.5 of the FEIS, "Alternatives and Issues Considered but Eliminated from Detailed Analysis."


SIU

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SEAFARERS INTERNATIONAL UNION
ATLANTIC • GULF • LAKES AND INLAND WATERS DISTRICT
NATIONAL MARITIME UNION

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VICE PRESIDENT AT LARGE
CHARLES STEWART
VICE PRESIDENT AT LARGE
JOHN SPADARO
INTERNATIONAL DIRECTOR

August 15, 2002

BLM TAPS Renewal FIS
Argonne National Laboratory EAD/900
9700 S. Cass Avenue, Argonne, IL 60439

RE: TAPS Renewal

Dear Sir or Madam:

On Behalf of the Seafarers' International Union I wish to support the 30-year right-of-way renewal for the Alyeska Pipeline Service Company currently being considered by the federal Bureau of Land Management and the State of Alaska. Our union represents many of the mariners involved in the coastwise Jones Act that serves Alaska. Our contracted operators include Alaska Tanker Company, the primary tanker operator that transports BP's Alaska crude to markets in Washington, Hawaii, and California and the major deep-draft vessel operators, TOTE and CSX Lines, who service Alaska's rail belt.

Our union sponsors a special hire marine training and employment initiative which seeks to recruit, train, and hire Alaskans, particularly Alaska Natives, disaffected youth, and unemployed fisherman and loggers. Our program has won national and state honors for its success in recruitment and retention of Alaskans. Many of the graduates of the program end up working on the tankers and cargo ships in the Alaska trade. Alaska's environment is a major beneficiary of the program, after all who better to protect our waters and natural splendor than those who have had a life long appreciation for its beauty.

FAX (907) 563-0122



The TAPS remains a remarkable feat of engineering and is among the safest pipelines in the world. Notwithstanding the *TV Exxon Valdez*, our U.S. flag fleet ranks among the safest of any nation. The quality of the TAPS trade vessels, officers, and crew continues to surpass its own accomplishments as new standards are set and met for training, equipment, and vessels. In fact, Alaska Tanker Company will soon be operating the most sophisticated and safe tankers ever built. These vessels will maintain redundant radar, navigational and propulsion systems that will minimize most any threat to the environment.

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By renewing the TAPS right-of-way for a 30 year period, you will be providing our state with the opportunity to produce 7 billion more barrels of ANS crude and increase the likelihood that our state will finally see the economic benefits we have long sought in commercializing the estimated 30 trillion cubic feet of "stranded" gas in the North Slope. Both of these outcomes are critical to our membership as our Alaska-related employment is dependent upon both a steady flow of oil resources and a prosperous Alaskan economy. In a nutshell, if Alaskan consumers and businesses aren't buying products than our cargo shippers will have nothing to ship and they will lay-up vessels, leaving our people unemployed. Consequently, we rely on you to make a right-of-way renewal decision that will enhance the ability for continued investment by the industry in sustained resource development. Do not place so many regulatory burdens and hurdles on these firms that they seek to invest on other nations or oilfields. Our members are depending on a future in Alaska.

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We urge the BLM and State to provide Alyeska Pipeline Services Company with a 30-year renewal of their federal Right-of-Way for the Trans-Alaska Pipeline.

56-3

Sincerely yours,


Harold M. Holten
International Representative

Responses for Document 00056

00056-001: Thank you for your comment.

00056-002: Thank you for your comment.

00056-003: Thank you for your comment.

TRUSTEES FOR ALASKA

A Nonprofit Public Interest Law Firm Providing Counsel to Protect and Sustain Alaska's Environment

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August 20, 2002

BLM TAPS Renewal EIS
Argonne National Laboratory EAD/900
9700 S. Cass Avenue
Argonne, IL 60439

John Kerrigan
State Pipeline Coordinator
Department of Natural Resources
Joint Pipeline Office
411 West 4th Avenue, Suite 2
Anchorage, Alaska 99501-2343

Re. PUBLIC COMMENT: Draft EIS, Renewal of the Federal Grant for the Trans-Alaska Pipeline System Right-of-Way, BLM/AK/PT-02/026+2880+990, U.S. Department of Interior, Bureau of Land Management (July 2002) and Commissioner's Statement of Reasons and Proposed Written Determination for the renewal of the Trans-Alaska Pipeline Right-of-Way Lease, ADL 63574 (July 5, 2002).

To Whom It May Concern:

These comments are submitted on behalf of Alaska Center for the Environment, Alaska Conservation Alliance, Alaska Conservation Voters, Alaska Forum for Environmental Responsibility, Alaska Public Interest Research Group, Alaska Wilderness League, Arctic Audubon Society, Eyak Preservation Council, National Wildlife Federation, Natural Resources Defense Council, Northern Alaska Environmental Center, Sierra Club, Sierra Club Denali Chapter, and The Wilderness Society on the above-referenced documents released by the U.S. Bureau of Land Management and Alaska Department of Natural Resources, respectively, on July 5, 2002. Initially, while we are submitting these comments within the 45 days allowed by your agencies, we would again like to request that members of the public be given additional time to analyze and comment on the voluminous documents associated with renewal of the federal grant and state lease for the Trans-Alaska Pipeline System. The reasons in your letters denying the requested extension, dated July 31 (DOI) and August 2 (DNR), go only to the availability of the document or the public's implied awareness of the process. Your reasons do not go to the ability of the public to analyze and respond to the nearly 2000 pages, and to consider the broad range of technical, social, and environmental issues implicated in renewal of the TAPS oil delivery system for another 30 years.

As the recent hearings around the state demonstrated, many individuals as well as community, environmental, and Native organizations are extremely interested in this issue.

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Despite the limited and inconvenient time frame, approximately 150 people testified. In three communities, the hearings ran past midnight. At Barrow, two elders, ages 79 and 83, waited more than five hours for the opportunity to express their concerns to you. We will not attempt to summarize the many specific issues raised by concerned citizens during this process. However, we will look forward with interest to your specific responses to the questions raised by concerned citizens. In light of the public interest in the renewal process, your guideline should be to involve the public more, not less, for this project of tremendous importance to the citizens of the State of Alaska and the nation as a whole.

I. FACTUAL BACKGROUND

The Trans-Alaska Pipeline System (TAPS) delivers oil from the North Slope to the Valdez Marine Terminal in Prince William Sound. Oil development along the Arctic coast of Alaska began with the discovery of the huge oilfield at Prudhoe Bay in 1968. Since oil began flowing down TAPS in 1977, oil development infrastructure has spread across the Arctic coastline of Alaska like an industrial driftnet. Over 400 miles of roads, over 1,137 miles of pipelines, and over 9,160 acres of gravel fill in wetlands have spread across Alaska's North Slope for oil development. All of this development is made possible by the Trans-Alaska Pipeline System, which delivers the oil from its source underground to markets in the U.S. and abroad.

Since the 1974 EIS for construction of TAPS, no other EIS has ever been prepared for a new onshore oilfield production or transportation project in Alaska. The environmental impacts of the full scope of the TAPS oil development system have never been comprehensively examined by any federal agency in an Environmental Impact Statement. Nor have the cumulative impacts of past permitting activities on the North Slope ever been comprehensively examined. Instead, federal and state agencies have looked at each development in isolation, finding that each of the thousands of incremental steps will not have a significant impact on the environment. As a consequence, Alaska's North Slope is now a complex latticework of roads, structures, and pipelines that has never undergone the thorough analysis of an EIS. As set out below, the current right-of-way renewal process is the appropriate time to undertake such an analysis under the National Environmental Policy Act (NEPA).

II. DEIS IS INSUFFICIENT UNDER FEDERAL LAW

A. DEIS IS INSUFFICIENT UNDER NEPA

Department of Interior's (DOI) Draft Environmental Impact Statement (DEIS) for the Trans-Alaska Pipeline System (TAPS) Right of Way Renewal fails to comply with NEPA. NEPA is an action-forcing document, requiring government agencies to rigorously examine the impacts of proposed actions and the comparative impacts of reasonable alternatives, so that the agency can make the most informed choice of action.

The TAPS DEIS fails to satisfy four NEPA requirements. First, DOI improperly defines the purpose and need of the DEIS too narrowly, thereby excluding reasonable alternatives from consideration. Second, the DEIS limits its analysis of direct, indirect, and cumulative impacts to a geographic and temporal scope that is too narrow. Third, the DEIS fails to consider a sufficient

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range of reasonable alternatives to the proposed action. Finally, the DEIS fails to comply with NEPA requirements for acknowledging and acting on incomplete information regarding adverse environmental impacts. We note at the outset that many of the issues discussed below were raised by the Alaska Forum for Environmental Responsibility in its scoping comments last fall but were summarily dismissed in both the state and federal documents supporting the course of action proposed by the reviewing agencies. As discussed below, we believe that many of these issues require serious consideration.

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(Cont.)

In order to remedy these NEPA shortcomings, DOI must prepare a new DEIS, adequately performing the required analyses. DOI must allow for public comment on the completed analyses in a revised DEIS because simply to perform the analyses and incorporate them into an FEIS without obtaining additional public review would violate the requirement in NEPA and the Administrative Procedure Act (APA) that an agency solicit and obtain public comment. The NEPA inadequacies in the current DEIS are simply too great not to obtain public comment on a revised analysis. While DOI gave an inadequate 45-day comment period for this DEIS, the public nonetheless found many NEPA shortcomings. That an inadequate and hurried public review process of 45 days found numerous glaring shortcomings underscores the many important flaws in the TAPS DEIS. The only option to remedy the NEPA violations in the DEIS is for DOI to prepare a new DEIS, completing the required analyses.

1. PURPOSE AND NEED IS TOO NARROWLY DEFINED

The TAPS DEIS violates NEPA because it defines the Purpose and Need for the statement too narrowly. The DEIS' definition of the purpose and need largely dictates the range of reasonable alternatives the statement must consider. Thus, if the statement defines the purpose and need too narrowly, it will not consider an adequate range of reasonable alternatives. Agencies cannot define the purpose and need so narrowly as to foreclose reasonable consideration of alternatives. By defining the purpose and need of the statement solely in terms of the TAPS owners' application, the TAPS DEIS excludes important alternatives from the range of reasonable alternatives that must be considered in order to comply with NEPA. The TAPS DEIS defines the purpose and need for the statement as "to assess the positive and negative environmental, social, and economic impacts associated with the application." TAPS DEIS Vol. I at 1-1. By limiting the statement of the purpose and need to a consideration of the positive and negative impacts of granting or not granting the right of way -- only as it was applied for by and on terms acceptable to the owners -- DOI has precluded examination of alternatives to the proposed action. DOI should have examined alternatives in addition to those presented in the TAPS owners' application.

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DOI should have examined the alternative of modifying the Grant terms to cure defects in the existing Grant, some of which were identified in public comments during the scoping period but were nevertheless not considered in the flawed DEIS. For example, the DEIS declined to consider requiring TAPS owners to deposit the required dismantlement, removal, and restoration (D,R,&R) funds into an escrow account as a pre-condition of renewal of the right-of-way. In addition, DOI should have evaluated the alternative of establishing a citizens' oversight group to ensure that the pipeline is maintained and operated in a manner that safeguards the natural resources of Alaska and ensures the safety of continued oil shipment. Another example of a new

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provision the DEIS should have considered is the periodic Technical Review and Audit of the TAPS. Due to aging equipment and possible effects of climate change and technological development, renewal of the right-of-way grant should be conditioned on satisfactory completion of an independent evaluation -- including technical review and audit every five years -- to ensure that TAPS uses best available technology and has systems in place and equipment on hand to address emergencies. The DEIS failed to evaluate any of these proposals to ensure that the Grant terms will be effective in fulfilling their stated purpose during the proposed renewal period. Due to these failures, the DEIS has violated the NEPA requirement that DOI not define the Purpose and Need section so narrowly that it excludes reasonable alternatives.

One way to properly define the purpose and need of an impact statement is to refer to the agency's statutory authorization to act, in addition to other congressional directives. In examining its congressional directive to act in the renewal of the right-of-way, DOI must consider the Trans-Alaska Pipeline Authorization Act (TAPAA), which mandates, "The Secretary of the Interior . . . [is] authorized at any time when necessary to protect the public interest, pursuant to the authority of this section and in accordance with its provisions, to amend or modify any right of way permit, lease. . ." Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1652(e). According to federal appellate courts, DOI must consider the emphasis the TAPAA placed on acting in the public interest in defining the purpose and need of the TAPS DEIS. Defining the purpose and need in accordance with TAPAA requires DOI to consider a broader range of options than the DEIS currently considers. Doing so would serve the public interest by, e.g. examining the benefits of requiring D.R.&R funds to be deposited into an escrow account, or by examining the environmental benefits of citizens' oversight of the TAPS system.

Because the TAPS DEIS defines its objectives so narrowly as to exclude reasonable options, the DEIS violates NEPA. DOI must perform a new DEIS, adequately defining the purpose and need for the study so as to include all reasonable options to the proposed action.

2. DEIS FAILS TO CONSIDER ADEQUATE SCOPE OF IMPACTS— DIRECT, INDIRECT, AND CUMULATIVE IMPACTS

The TAPS DEIS also fails to comply with NEPA because it considers an unreasonably narrow scope of impacts. DOI's decision to renew the TAPS right-of-way represents a "critical decision" to act on the TAPS site. The proposed action of renewing the right-of-way for another thirty years will ensure the continuing operation of the TAPS for at least thirty years, or until the Prudhoe Bay oil supply loses commercial viability. Because the proposed action will allow TAPS to operate for thirty more years, it represents a critical stage of the decision-making process at which DOI must consider the direct, indirect, and cumulative impacts of the proposed action and the alternatives. However, DOI failed to evaluate all site-specific impacts of extending operation of the TAPS oil delivery system. To comply with NEPA, DOI must produce a new DEIS that evaluates all direct, indirect, and cumulative impacts of the proposed action and its alternatives in compliance with NEPA.

NEPA requires federal agencies to analyze three types of actions, and three types of impacts. Agencies must consider actions that are connected, cumulative, and similar. Connected actions are those which are "closely related," including those that "[c]annot or will not proceed

unless other actions are taken," or those that are "interdependent parts of a larger action and depend on the larger action for their justification." Cumulative actions are those that "have cumulatively significant impacts and should therefore be discussed in the same impact statement." Similar actions include those that have "common timing or geography." The three types of impacts that agencies must consider are those that are direct, indirect, and cumulative. Direct effects are those that are caused by the action and occur at the same time and place. Indirect effects are those "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." A project's "cumulative impact," is

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. . . . Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

The DEIS for TAPS renewal failed to adequately consider these three types of actions and three types of impacts.

DOI should have considered the impacts of connected actions taken by federal agencies and private developers in the North Slope oilfields, as well as impacts of actions related to marine transportation and safety. All of these activities related to oil production in Alaska are "connected" within the meaning given in NEPA, as they clearly are interdependent parts of a larger action -- oil transportation -- and they all depend on that larger action -- the oil transportation system -- for their justification. Other similar actions that must be considered include the proposed renewal of other pipeline rights-of-way on the North Slope, because they share common timing and geography with TAPS renewal. DOI should also have considered the cumulative impacts of the natural gas pipeline proposed to parallel portions of the existing oil pipeline, and the implications of such a gas line and its associated construction impacts and natural gas infrastructure on the safety and integrity of the existing TAPS line. The DEIS must also evaluate the potential cumulative impacts of all proposed OCS offshore drilling activities currently in place or now being proposed by the DOI under that agency's newly-adopted 2002-2007 Five-Year OCS Oil and Gas Leasing Program, as well as current and proposed state offshore leases. In addition, future commercialization of subsea and permafrost methane hydrate deposits should be considered as part of the complex of cumulative impact issues to be evaluated, in light of the thirty-year timeframe being considered in the current TAPS DEIS process. All of these issues are foreseeable through reasonable forecasting by DOI, and they must therefore be considered in any revised DEIS.

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Also, the DEIS contains an inadequate risk assessment, which leads to an underestimation of the environmental risks from continued operation of the TAPS system without significant modifications of the lease. For an evaluation of risk to be properly portrayed, it is necessary for the probability an incident will occur (no matter how slight) to be multiplied by the value of the damage as a consequence of the failure. The TAPS DEIS consistently understates the magnitude of failure(s), which may have tremendous external costs in two different ways. The first is to drastically understate the negative impacts. For instance the discussion of an oil rupture into the Yukon suggests that only those downriver communities immediately adjacent to the crossing may be negatively impacted. It does not take into account

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the impacts on communities farther downriver nor on those upriver communities such as Whitehorse and beyond. As subsistence resources travel both upstream and downstream, the DEIS should analyze impacts to communities throughout the Yukon River watershed. Also, the DEIS minimizes the concept that any major polluting incident should be viewed as a negative impact -- on the contrary it states that a major incident should be viewed as a tangible positive economic benefit to all concerned as primary beneficiaries of the costs associated with any attempted cleanup. The next major error in logic in the DEIS is the assumption that the past record is a substantial indicator of future probability that polluting incidents will or will not occur during the future. It is generally recognized by students of low-risk/high-cost events that the past is not a reliable indicator of calculating probability for future events as noted by other individual testimony. The DOI must analyze the probability of future polluting incidents from this aging system, as such events are reasonably foreseeable and will have cumulative impacts.

57-8
(Cont.)

DOI also should have considered a broader universe of impacts of the TAPS. Renewal of the Federal grant of the right-of-way involves vast geographic areas in addition to the 800 miles of pipeline traveling from the North Slope to Valdez. The decision to renew the right-of-way also includes the entire North Slope drilling operations' infrastructure, the Valdez Marine Terminal, and the marine transportation system. Renewal of the right-of-way also impacts this vast area thirty years and more into the future. For example, over the next thirty years, for which DOI is proposing to renew the right-of-way, one can expect the number of oil spills to continue at the rate witnessed during the previous twenty-five year period--i.e. 1,500 North Slope crude oil spills, 2,300 diesel fuel spills, and more than 70 saltwater spills (4.7.4.10.1, TAPS Right of Way Renewal Oil Spill Database). In addition, DOI should have evaluated the environmental impact of chronic and reasonably foreseeable maintenance failures. For example, over the past seven years, restart problems have threatened pump station safety, caused oil spills, and caused internal pressure hammers that have moved the pipe, resulting in damage to pipeline support structures. Another threat to the environment is the failure of TAPS emergency response to leaks. For example, in October, 2001, TAPS owners' emergency response measures failed for 36 hours to plug a leak caused by a bullet-hole near Livengood. If emergency response plans cannot respond to a stray bullet, it appears doubtful that the emergency response actions could effectively prevent disaster in the event of a major spill. The DEIS discusses spill response measures as one of the mitigation factors ensuring environmental safety but also considers the spill response plans to be beyond the scope of its review. DOI also declines to evaluate the reasonably foreseeable effects of the marked warming trend of the past 20 years in Alaska on the TAPS above-ground support system in combination with the seismic risks -- especially, in the southern portion of the pipeline, where structures built on permafrost are most vulnerable to the effects of climate change -- despite the submission of a technical report on this subject during scoping. We find this dismissal of public concerns both inconsistent and unresponsive.

57-9

By failing to consider the vast temporal and geographical impacts of the proposed action, the DEIS fails to meet the requirements of NEPA. Furthermore, the failure to consider all the impacts of the proposed action prevents the agencies from evaluating the reasonable range of alternatives they are required to consider. In order to remedy these flaws in the NEPA process, DOI must perform a new DEIS and present the examination of impacts to the public for comment.

3. DEIS FAILS TO CONSIDER AN ADEQUATE RANGE OF REASONABLE ALTERNATIVES

The DEIS fails to consider all reasonable alternatives to the proposed action as required by NEPA. DOI should have examined alternatives of modifying the Grant terms to cure defects in the existing Grant, or modifying Grant terms to increase protections of public resources. Several of these potential alternatives for modification were identified in public comments during the scoping period but were nevertheless not considered in the flawed DEIS.

The TAPS DEIS briefly dispatches the suggested action of requiring TAPS owners to deposit into an escrow account funds for D,R,&R of the pipeline and its infrastructure. TAPS DEIS at Volume I, 2-6. The TAPS Mineral Leasing Act lease does not require the TAPS owners to pay funds prospectively. However, this has been done -- with potentially perverse consequences for public policy. Nevertheless, the DOI does not consider this a problem. Instead, DOI states that the D,R,&R escrow account suggestion is outside of the scope of the DEIS: "Additional regulatory authority would be necessary to change this situation. This would involve a separate rule making process with its own NEPA analysis." TAPS DEIS at Volume I, 2-6. First, it must be noted that DOI cites no legal authority for its statement that "additional regulatory authority" is a prerequisite to modifying lease terms to include escrow of DR&R funds. Nothing in the current law prevents DOI from imposing new or different stipulations and conditions at the time of lease renewal. As in any landlord-tenant relationship, lease renewal may be a time of negotiation. Thus the reasoning given by DOI for failing to consider lease modifications including escrow of DR&R appears calculated to impose a false roadblock.

Moreover, an agency cannot ignore an alternative simply because it would be difficult to perform or because it would require action by Congress. NEPA requires DOI to "rigorously explore and objectively evaluate all reasonable alternatives" to the proposed action in the impact statement. However, the DEIS does not evaluate modification of the Grant to consider such reasonable actions, based on experience, as the D,R,&R alternative. Other examples of suggested improvements to the Grant, based on experience, are provisions for a Citizens' Oversight Group, as well as the periodic Technical Review and Audit of the pipeline system. DOI should review the technology in use now on TAPS that is related to control of actual and potential environmental pollution, and the agency should compare that with what would be considered best or optimal environmental protection and control technology in the year 2002. For example, is the back-up technology for discovering leaks and ruptures from ruptured crude oil storage tanks and then controlling them currently in use still considered "state-of-the-art" today? If not, what would be state of the art, and what are the relative environmental costs and benefits of imposing requirements in new lease modifications.

DOI must perform a new DEIS considering these alternatives and all other reasonable alternative lease modifications identified during scoping because NEPA requires federal agencies to consider alternatives even if they involve administrative difficulty, alternatives that it cannot accomplish acting alone, and a broader range of alternatives than it would normally evaluate. Until DOI performs this analysis, its DEIS cannot stand under NEPA.

4. DEIS FAILS TO CONSIDER MITIGATION MEASURES

Public Comment:
Renewal of TAPS Right-of-Way Grant and Lease

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NEPA requires a discussion of potential mitigation measures to ameliorate existing and potential adverse environmental effects. Section 4.8.4 of the DEIS admits that DOI did not consider any potential mitigation measures. The DOI must consider mitigation measures to avoid or minimize environmental effects. The DEIS acknowledges adverse impacts to wildlife and their habitat, yet no mitigation measures are proposed to reduce these effects. The DEIS analysis of direct impacts identifies numerous impacts from the previous 30 years of TAPS operation, and the agency simply cannot avoid any discussion of reasonable mitigation measures. Several reasonable measures that could mitigate adverse impacts have been suggested by the public in scoping comments: citizens oversight, periodic technical review and audits, and escrow of DR&R funds. Many more reasonable mitigation measures have been suggested by the public in testimony on the DEIS. The DOI must consider reasonable mitigation measures to comply with NEPA.

57-11

5. DEIS FAILS TO ADEQUATELY ADDRESS INCOMPLETE INFORMATION

Finally, the TAPS DEIS fails to comply with NEPA's requirements for identifying and acting on incomplete information. One of the most important aspects of NEPA is to ensure the agency does not act on incomplete information, only to regret its decision after it is too late to correct. However, the TAPS DEIS fails to acknowledge areas in which it has inadequate information. Further, the DEIS fails to perform the required analytical process when it does acknowledge inadequate information. NEPA requires DOI to go through a specific process when it lacks information relevant to foreseeable adverse impacts. When the agency cannot obtain the required information, or when the costs of doing so are exorbitant, the agency has to summarize all existing scientific information and develop a theoretical approach for analyzing impacts based on the available information. The TAPS DEIS fails to acknowledge instances of inadequate information, especially in considering the cumulative impacts of the proposed action and all reasonable alternatives. For example, the Joint Pipeline Office (JPO) acknowledged the importance of the National Academy of Sciences (NAS) National Research Council (NRC) study of North Slope cumulative impacts in the JPO's May 2, 2001 timeline for the TAPS renewal process. There, JPO observed that it might have to change the Preferred Alternative in light of information contained in the National Academy of Sciences North Slope cumulative impact study. However, in the DEIS JPO has failed to acknowledge that it is acting on inadequate information by proceeding without the NRC report. This oversight could be excused if DOI made findings as required by CEQ regulations, but it did not. In addition to failing to acknowledge acting on inadequate information, the DEIS also fails to perform the required analysis when it does acknowledge inadequate information. Thus, the DEIS fails to comply with NEPA requirements on inadequate information.

57-12

When the DEIS lacks adequate information, it fails to comply with the requirement of acknowledging that it has inadequate information. The most significant example of inadequate data is the cumulative impacts on the North Slope, as discussed above. Another example is the DEIS discussion of impacts on caribou. The TAPS DEIS acknowledges that the effect of the proposed action on caribou "might not be measurable because of the natural variability, including productivity, of a large population." TAPS DEIS, Vol. III, 4.7-95. However, the

DEIS does not acknowledge that it lacks the information, as required by NEPA. Nor does it undergo the process required by NEPA of determining whether the lacking information can be obtained, or whether costs of doing so are exorbitant. Further, the DEIS fails to summarize all relevant existing information and develop a theoretical approach for analyzing impacts based on the available information. The DEIS shortcuts the required NEPA process by not analyzing the effect of the proposed action on caribou. The statutory requirement to prepare an EIS ensures that the agency will obtain and consider detailed information about significant environmental impacts, and that the agency will disseminate that information to the public so that it too can join the decision-making process. The TAPS DEIS does not perform this legal obligation. Thus, DOI must perform a new DEIS acknowledging inadequate information, summarizing the existing information, and constructing a theoretical approach by which to analyze the impacts.

57-12
(Cont.)

B. DEIS MAY BE INSUFFICIENT UNDER ESA

The TAPS DEIS' failure to consider the adequate scope of impacts and the failure to consider an adequate range of reasonable alternatives make it impossible to assess Endangered Species Act (ESA) compliance. The ESA requires federal agencies to insure that any action funded or carried out by such agency is unlikely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1531 et seq. However, the TAPS DEIS fails to consider the ESA because it inadequately examines the scope of impacts of the proposed action and it evaluates an insufficient range of alternatives.

57-13

These NEPA violations make it impossible to determine whether DOI has sufficiently considered the impact of the proposed action on threatened and endangered species because the DEIS does not evaluate the impact of the proposed action on endangered and threatened species whose habitat includes the North Slope, interior Alaska, southeast Alaska, Prince William Sound, and the North Pacific. In order to assess whether the DEIS complies with the ESA, DOI must produce a new DEIS, which adequately assesses the scope of impacts and the reasonable range of alternatives.

II. THE COMMISSIONER'S DETERMINATION IS INSUFFICIENT UNDER STATE LAW

A. The DNR Decision Does Not Comply With AS 38.35.110.

The decision by the Commissioner of the Department of Natural Resources must comply with state law. Here, it appears that the Commissioner's decision does not comply with requirements of the Alaska Right-of-Way Leasing Act.

The Right-of-Way Leasing Act provides that right-of-way leases shall be renewable "so long as the lessee is in commercial operation and is in full compliance with all state law. . . and is in compliance with all terms of the lease." AS 38.35.110. The requirement of lawful operation reaches more than just the pipeline itself, and applies to all of the TAPS facilities including all pipe, pump stations, docks, tanker loading facilities, operations centers, etc.

In its report on compliance with Grant and Lease terms, the JPO defined its tasks regarding compliance as ensuring that Alyeska (1) obtain all permits, (2) know all requirements, (3) reasonably detect deficiencies related to these requirements and (4) correct them in a timely manner. While this interpretation of compliance sounds reasonable, it also appears to contradict Alaska's Right-of-Way Leasing Act, which requires the lessee to be "in full compliance with all state law." Assuming for the sake of argument that "full compliance with all state law" can be interpreted to mean "substantial compliance" as described by JPO, this problem remains: JPO has not defined or set guidelines to determine what constitutes timely identification and abatement of noncompliance issues.

The question of what it takes for an agency to find the TAPS Owners noncompliant is raised by two recent U.S. Department of Transportation enforcement action notices issued against Alyeska. Details of these two notices, previously unreported publicly, were revealed in the JPO report on Grant and Lease compliance, which provided the following substantive information:

- Notice of Probable Violation, Proposed Civil Penalty and Compliance Order (CPF No. 5 2002 5003, February 6, 2002) proposes fines for allegedly unsafe operations that caused (1) the massive pipe movement in Atigun Pass, discovered in May 2000, and (2) over pressuring at MP 710 (south of Glennallen), where a patch of mainline pipe was that had been gouged 80% through during construction was being repaired.
- Notice of Probable Violation and Proposed Compliance Order (CPF # 5 2001 0012, Dec. 3, 2001) proposes a new compliance order requiring Alyeska to correct violations of safety regulations on the small-diameter fuel gas line between Pump Stations 1 and 4.

Concerning the first notice, \$25,000 of the proposed \$80,000 fine is for the unsafe restart (or restarts) of TAPS in Atigun Pass in late 1999/early 2000, discussed above. This proposed fine follows OPS enforcement actions for restart violations in 1997 through 1999 and documented restart problems on TAPS in 1995 and 1996. Despite this history, JPO found Alyeska restart procedures to be safe in its CMP report on operations issued in April 2001. However, JPO's description in the same report of severe damage Alyeska inflicted on the pipeline contradicts the conclusion that Alyeska restart procedures are safe (Alyeska damaged above-ground structures in Atigun Pass to eliminate a 15-minute delay in the valve-opening sequence in Atigun Pass). Alyeska engineers concluded that the damage resulted from the creation of a violent pressure hammer on restarts, resulting in the pipe movement in Atigun Pass.

Concerning the second notice, the fuel gas line problems listed in that citation include exposed buried pipe on MP 84 hill. That location was the subject of a previous compliance order that "required Alyeska to take all practicable steps to protect its fuel gas line and associated appurtenances in those areas from future detrimental movement and external forces." In connection with the more recent notice, it is noteworthy that the May 6, 2002 letter from the TAPS Owners to Alyeska declined to approve a funding request for Fuel Gas Line System Maintenance. The recurring problems on the small-diameter fuel gas line appears to be another example of Alyeska's failure to abate problems in a timely manner.

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Given these two formal citations, issued in part to correct chronic and unabated problems associated with TAPS operations and maintenance, the agency findings that the TAPS owners do not have compliance problems on TAPS are dubious at best. DNR's conclusion that the TAPS owners are in full compliance with all provisions of the lease as well as all provisions of state law is not supported by the evidence. The Commissioner's Determination therefore may not stand without substantial revisions to address these problems.

B. The DNR Decision Does Not Comply With Lease Section 22.

Section 22 of the Right-of-Way Lease for the Trans-Alaska Pipeline System establishes a clear requirement to prevent or abate hazards or adverse conditions on the pipeline if it arises out of or could adversely affect the construction, operation, maintenance, or termination of the pipeline. As pointed out in comments and documents submitted to the State of Alaska, Alyeska has demonstrated a chronic failure to identify and abate operational, maintenance, and programmatic deficiencies in TAPS operation in a timely manner. However, in their reports on Grant and Lease compliance, the JPO and State Pipeline Coordinator state that

[t]he State Pipeline Coordinator does not actively monitor this section, since it is mainly a legal provision of the Lease. JPO conducts extensive monitoring of the integrity, safety and environmental issues that could rise to findings.

With regard to prevention, the JPO and SPCO state that "[p]revention of 100 percent of serious or significant harm . . . may not always be practicable. However, by working toward a prevention goal with a commitment to continual improvement of performance, a high degree of success will be achieved."

JPO's refusal to enforce the duty to prevent and abate hazards is indicated by the report that the CMP data base refers to seven reports listing field reporting on 15 specific performance attributes relating to Section 22. By comparison, the stipulation setting out requirements for surveillance and maintenance claims field measurement of 1,618 attributes covering a broad range of subjects, some of which may overlap with prevention and abatement. In other words, in the CMP database general surveillance requirements received 100 times the attention JPO devoted to duty to prevent and abate. It is not clear why JPO chose not to focus on the important question of hazard abatement, what is meant by "mainly a legal provision of the Lease" or what constitutes "high degree of success" in prevention.

DNR must detail in its Commissioner's Determination the requirements of Section 22 of the State Lease. To dismiss Section 22's requirement that the agency identify and abate deficiencies as "mainly a legal provision," is to ignore the best interests of the State of Alaska, which in itself could be a violation of Constitutional and statutory duties.

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C. The Commissioner's Determination Implicates But Does Not Address Constitutional Provisions.

The Commissioner's Determination, as written, implicates and possibly violates several provisions of the Alaska State Constitution.

As the proposed period for TAPS lease renewal is 30 years, this duration renders this a disposal of state land. As such, the Alaska Constitution requires prior public notice of the disposal as well as "other safeguards of the public interest" as may be prescribed by law. Ak Constn, Art. XIII, Sec. 10. In this case, DNR's refusal to extend the comment period in the face of multiple requests from a variety of Alaska interest groups could implicate this constitutional provision. DNR's Commissioner's Determination purports to analyze 30 years of TAPS operations, and it purports to justify an additional 30 years, and 45 days is simply too short a time to constitute adequate protection of the public interest. Again, DNR's denial letter regarding the requested extension does not provide reasons why denial is in the public interest; rather, it details DNR's efforts to make the documents known and available to the public. In this case, given the gravity of the environmental, social, and technical issues raised as well as the demonstrated degree of public concern, increased opportunities for public participation are necessary in order to safeguard the public interest.

Also, the disposal of state land here must meet the constitutional requirement that disposals be consistent with the public interest. Art. XIII, Sec. 1. The Alaska Right-of-Way Leasing Act, discussed above, was enacted to further the constitutional requirement that the legislature provide for the use of state resources "for the maximum benefit of the people." Art. XIII, Sec. 2. To this end, the Legislature allows renewal of a lease only if the lessee is in full compliance with all provisions of state law, as well as in compliance with lease provisions. AS 36.35.110. Here, as discussed above, DNR is proposing renewal of a lease that does not meet the "full compliance" test. DNR's action could therefore run afoul of the "maximum benefit" requirement of the Alaska Constitution.

The disposal of state land for an additional 30 years for TAPS, without modifications to the state lease to protect the public interest, also appears to run afoul of the State's public trust obligations. A trust responsibility is to be implied by the text of provisions of Article VIII (incl. Section 1-4, 8, 10, 13-14) requiring the State to manage its natural resources for the public's benefit. In order to satisfy the public trust, the State must ensure adequate funding for DR&R by requiring those funds to be placed in escrow, to protect state resources for the future. Also, the State must require adequate maintenance and technical integrity in order to protect state resources crossed by the pipeline, to ensure that the line does not foul state lands and waters. These and other obligations of the public trust have been ignored in the Commissioner's Determination.

These deficiencies, as well as those set out above, must be remedied before the DNR Commissioner's Determination is finalized.

III. CONCLUSION

TAPS DEIS fails to meet NEPA requirements in the Purpose and Need Statement, in the Scope of Impacts, in the Range of Reasonable Alternatives considered, and in the Acknowledgement of Inadequate Information. Therefore, DOI must complete a new DEIS that remedies the shortcomings of this statement. The problems identified in this DEIS are too great to be remedied in the FEIS. Public comment is required to remedy the shortcomings identified in these comments. Although the public comment period was impossibly short to evaluate the DEIS in detail, the public identified numerous glaring shortcomings. As a result, DOI must prepare a new DEIS solving the problems identified in these and other comments.

Also, the DNR Commissioner's Determination does not satisfy requirements of Alaska law as well as those of the lease itself. DNR should revise the Commissioner's Determination to meet the deficiencies discussed above, and release a new draft determination for further public review.

Thank you for giving full consideration to these comments. Please contact me if you have any questions, or if I can provide any further information.

Sincerely,



TRUSTEES FOR ALASKA

Bob Randall
Staff Attorney

Responses for Document 00057

- 00057-001:** Although 45 days is understandably a short time to review a document of this size, the time period is consistent with the Council on Environmental Quality regulations for implementing the National Environmental Policy Act regarding the review of draft environmental impact statements. Significant effort was made to advise people of the schedule and duration of the review well in advance (one year). The DEIS was published on schedule, and many substantive comments on the content of the DEIS, including yours, were received during the 45-day period.
- 00057-002:** Comments received during scoping are aggregated into a record of public scoping and are used to frame the issues and the analyses in the EIS. All scoping comments were considered in preparing the DEIS. Scoping comments are not listed and identified individually or responded to in the EIS. Comments received on the quality of the analysis in the DEIS are addressed specifically in the FEIS and may result in text changes in the FEIS, as well.
- The EIS was prepared in full compliance with the National Environmental Policy Act and the Council on Environmental Quality regulations. Please see Section 2.5 in the FEIS for additional text related to alternatives that were considered but not included.
- 00057-003:** The action that triggered the EIS was an application to renew the Federal Grant of Right-of-Way for TAPS for thirty years. Thus, alternatives to renew for thirty years, renew for less than thirty years, or not to renew were analyzed in the EIS. Please see Section 2.5 for additional information about alternatives.
- 00057-004:** Please see Section 2.5 in the FEIS for an expanded discussion of Alternatives and Issues Considered but Eliminated from Detailed Analysis.
- 00057-005:** The reader is referred to Section 2.5 of the FEIS, "Alternatives and Issues Considered but Eliminated from Detailed Analysis."
- 00057-006:** Please see Section 2.5 in the FEIS for an expanded discussion of Alternatives and Issues Considered but Eliminated from Detailed Analysis.
- 00057-007:** Additional explanation of the relationship of actions has been added to Section 4.7.
- 00057-008:** Spill scenarios considered along the pipeline and at VMT are discussed in Section 4.4.1 of the EIS. Similarly, the scenarios considered in PWS and at the North Slope are given in Section 4.7.4.10. For the purposes of analysis in the EIS, a spectrum of spill scenarios ranging from high frequency/low consequence to low frequency/high consequence events is considered. Many of the scenarios considered have not occurred during the 25-year operation of the TAPS but have been postulated to occur with certain frequencies in the EIS. Therefore, contrary to the suggestion made by the commentator, the future performance of the TAPS is not assumed to be based strictly on past performance. In estimating the frequencies and spill volumes for future spills, both the historical data from past spills and the potential for catastrophic spills of large consequence were considered.
- 00057-009:** The DEIS addressed the broader geographic issues in the cumulative analysis (Section 4.7). The spill scenarios developed in the FEIS (Section 4.4) are derived from ongoing operational activities and accidental releases. The FEIS contains information on the MP 400 incident, including lessons learned (Section 4.1.1.8). Climate change issues as they may affect structural support of the pipeline are found in Section 4.1.3.2.1.

00057-010: The EIS was prepared in full compliance with the National Environmental Policy Act and the Council on Environmental Quality regulations. Please see Section 2.5 in the FEIS for an expanded discussion of alternatives considered but not subjected to further analysis.

The BLM and member agencies of the JPO use an adaptive management approach to evaluate the effectiveness of stipulations and regulatory oversight. Ongoing monitoring programs, as identified in the 12 Comprehensive Monitoring Reports published since 1996, provide the BLM and JPO with the necessary information to evaluate the effectiveness of stipulations in the grant and lease.

The reader is referred to Section 4.1.1 (JPO oversight) and specifically to Sections 4.1.1.2 (“Adaptive Nature of the Grant in Compliance Monitoring”), 4.1.1.3 (“Risk-based Compliance Monitoring”), 4.1.1.4 (“JPO Comprehensive Monitoring Program”), and 4.1.1.8 (“Coordinated Planning and Response to Abnormal Incidents”) for more information on the role of adaptive management as a JPO business practice.

00057-011: Mitigation is discussed in detail in Section 4.1 of the FEIS. Many of the alternatives that were identified as potential mitigation factors during scoping are addressed in Section 2.5 of the FEIS.

00057-012: Please see Appendix E in the FEIS for a description of the methodologies used for analysis in the EIS. BLM recognizes that information was not always available for some analyses. For example, the BLM recognizes that there may be interactions between the TAPS and subsistence resources. The BLM also notes that current information does not show a relationship between TAPS and subsistence impacts. The BLM and State of Alaska within the JPO are currently working with industry and others to develop a science-based approach to determine how TAPS and subsistence interact.

00057-013: The BLM conducted all consultations required under Section 7 of the Endangered Species Act.

Testimony

Trans Alaska Pipeline System (TAPS) Right of Way Renewal

My name is Jack Laasch, and I am employed by Natchiq, Inc. as their Executive Vice President of Strategic Development and External Affairs. Natchiq, is a wholly owned subsidiary of Arctic Slope Regional Corporation, one of the thirteen native corporations formed as a result of the Alaska Native Claims Settlement Act in Alaska. Natchiq, is a global energy service provider that originated in Alaska by providing construction, engineering, maintenance, fabrication and assembly services to the oil and gas industry. I'm also President Elect of the Alaska Support Industry Alliance which represents over four hundred companies providing products and services to the oil and gas industry in Alaska.

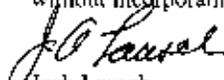
I was introduced to Alaska, as a result of working on construction of the TAPS line beginning with the haul road construction in 1974, through completion of construction of the pipeline. I am a registered professional engineer in Alaska.

I believe that the TAPS pipeline was built with the highest of quality standards, and to this day the fact that Alyeska has experienced 99% reliability is a testimony to that quality. Alyeska currently operates under standards that far exceed the industry for safety and protection of the environment. Total spill quantities on an annual basis compared to quantities transported are measured in parts per billion.

58-1

I have a high degree of confidence that the TAPS line will continue to operate safely, without negatively impacting the environment for at least another thirty years, and I recommend that the right of way renewal be in effect for that period of time. The delivery of oil through the pipeline is the a key economic driver for the State of Alaska and its residents and a vital resource that benefits those receiving the products refined from Alaska's oil. The right of way grant needs to be extended for an additional thirty years without incorporating additional cost into the transportation of oil. Thank you.

58-2


Jack Laasch

Responses for Document 00058

00058-001: Thank you for your comment.

00058-002: Thank you for your comment.



OFFICE OF THE CITY MANAGER

August 6, 2002

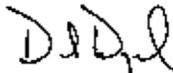
BLM FAPS Renewal Scoping
Argonne National Laboratory
EAD/900
9700 Cass
Argonne, IL 60439

Gentlemen:

On behalf of the City of Valdez, I am submitting the attached written comments on the Draft Environmental Impact Statement of the Renewal of the Federal Grant for the Trans-Alaska Pipeline System Right-of-Way.

If you have any questions concerning the City's comments, please do not hesitate to contact me.

Sincerely,


David Dengel
City Manager

CC: Joint Pipeline Office
Alaska Department of Natural Resources-Commissioner's Office

P.O. BOX 307 * VALDEZ, ALASKA 99686
907-835-4313 PH * 907-835-2992 FAX

**Written Comments of
City of Valdez, Alaska**

**Regarding the Draft Environmental Impact
Statement for the Renewal of the Federal Grant
for the Trans-Alaska Pipeline System
Right-of-Way**

August 5, 2002

The City of Valdez supports the proposed action to renew the federal grant and the state right-of-way lease for 30 years. The Valdez City Council adopted Resolution 02-56 (Attachment A), which supports the renewal of the Trans-Alaska Pipeline System right of way for 30 years. Renewing the right-of-way grant for 30 years will provide economic stability, predictability and future economic projections for not only the TAPS owners, but also the State and the municipalities along the pipeline corridor.

59-1

There is little doubt that the Trans Alaska Pipeline System has brought economic benefits to the City of Valdez and its residents. The operations of the City of Valdez are very dependent on money collected from ad valorem property tax. Approximately 75% of money collected from property tax comes from oil property.

HAVING SAID THIS the City does have some issues with the Draft EIS and the proposed action and determination of the Commissioner of Natural Resources.

With the exception of last year, the City has experienced a rapidly declining tax base. Between 1988 and 2001, the assessed valuation of oil property in Valdez declined over 50%. However, the level of throughput during that same time frame has declined just over 30%.

59-2

During the scoping meeting that was held in Valdez last fall, the City of Valdez asked that the Draft Environmental Impact Statement consider the socio-economic impact of this rapid decline of property value on the City of Valdez and its residents.

After reviewing the Draft EIS, we do not see where this has been addressed.

Volume 2, Section 4.3.19.3.5 State and Local Tax Revenues, which begins on page 4 3-73, discusses the very issues that Valdez is most concerned about.

The Draft EIS projects that total state tax revenues from oil production will decline at an average rate of 0.5% over the 30-year renewal period. This represents total taxes collected by the State.

Table 4.3-13 which is found on page 4.3-75 projects that local property taxes generated by TAPS will decline by 4.8% annually. Using the current value of TAPS property located within the City of Valdez, the assessed valuation of this property will decline 77 percent from the projected 2004 value of \$654,944,010 to \$150,645,778 in 2034. (See Attachment B)

Using the maximum tax rate that is assessed against oil property of 20 mills, the property taxes collected in 2034 from the TAPS property will be just over \$3,000,000. Today, at the 20-mill tax rate, the City of Valdez collects approximately \$13.1 million.

The Draft EIS at page 4.3-74 states that local municipalities tax revenues will increase by 0.8% annually. Attachment B provides a look at the City of Valdez's property tax revenue picture and how work this assumption really is. In order for the City of Valdez tax revenues to grow at this rate, the non-oil property will need to grow between 13 percent in 2005 and 141 percent in 2034. The City of Valdez already projects a growth in non-oil property values of 2 percent annually. This additional growth is on top of the City's 2 percent projection.

The Draft EIS assumes that the .0.8 percent growth will be based on state and federal transfers to local government not being affected by the declining state revenues and actually increasing to make up the difference. How can this be with the declining taxes generated by the oil industry? The Draft EIS assumes that the State will work its way out of the deficit that it faces. Perhaps we will, but Valdez cannot bet on it.

The transfers from the State have been declining over the last few years. From 1996 to 2001, Valdez has seen its state revenue sharing decline by almost 50% in this 5-year period. For example, in 1996, Valdez received approximately \$742,000. In 2001 Valdez received \$376,000.

The Draft EIS says that North Slope production has regularly constituted more than 15 percent of the country's domestic crude production. It all flows through Valdez. Valdez provides services that TAPS owners and shippers use and need. We have different costs than other communities of our size because of the Valdez marine terminal. We are on everybody's radar screen, figuratively and literally. What other community our size has police officers trained in bomb disposal? The local hospital is a necessary part of the infrastructure not only for the community but also for TAPS operations. The nearest hospital is 125 air miles and 310 road miles away.

59-2
(cont.)

In addition to these specialized services, the City provides the normal things cities do such as library, parks and recreation, education, snow removal, sewer and water, and solid waste disposal. All of these would need to be provided by Alyeska and its owners if Valdez were not here.

Valdez needs financial certainty just like the oil industry. To think that the State of Alaska is going to make up the difference due to the decline in value is ludicrous. Valdez does not even have a State Trooper. We do have a Fish and Wildlife Protection Officer, but no other state law enforcement personnel. There are communities smaller than Valdez without a major industrial complex that is critical to the economy of the State of Alaska and the United States that have state troopers.

For this reason, the valuation of TAPS needs to remain at a constant level as long as there is crude oil flowing through it. The City of Valdez will need to provide the same level of services that the industry requires today. On page 4.3-82, Section 4.3.19.5.4 the Draft EIS states:

"With the availability of state funds for local expenditure programs, together with moderate population and economic growth in the pipeline corridor region, impact of the TAPS renewal on local public finances and public service employment in the region is, therefore, not expected to be significant."

59-2
(cont.)

I direct your attention to one of previous comments. Revenue sharing from the State of Alaska has decline 50 percent over the last five years.

The Draft EIS dealt with the socio-economic issue of the reduction in oil property tax by the assuming that the State and the federal government through transfer payments. The State has its own problem that they cannot seem to resolve, how are they going to resolve Valdez's?

The City of Valdez believes that the one option that needs to be considered by both the State and the federal government is one of placing a floor on the value of the TAPS for property tax considerations.

Using the Draft EIS's projections, the City will need to make up between \$29 million annually all the way to \$425 million in assessed valuation in order to continue to provide the same level of services. This is significant.

The State is not going to help Valdez with this because, property taxes is a tariffable expense that reduces the value at the well head, thereby reducing the amount of money the State receives for royalty oil and severance taxes. The State receives most of its money from royalty and severance, not property taxes.

The Draft EIS has taken the easy way out in dealing with the socioeconomic impact of the devaluation of the TAPS property. The value of TAPS for property tax purposes needs to be addressed, as it will most definitely have an impact on the finances of Valdez.

The City of Valdez again requests that the Environmental Impact Statement discuss the impacts of the declining tax base of the TAPS property.

The City recommends and encourages that the Final EIS and language in the renewal documents encourage the State of Alaska to establish a floor on the value of TAPS. This floor should be not lower than \$3.0 Billion as long as throughput is below 1 million barrels per day. As throughput increases, the value of TAPS should also increase so that the value of the property for tax purposes, tracks with the value of the oil that is flowing through it. With the extension of the TAPS right-of-way for 30 more years, the value of the pipeline certainly has increased.

In fact, during hearings in 2001, the industry argued that the values of TAPS for property values should be much lower because the right-of-way permits would expire in 2004. With the renewal, the value should be higher because the life has been extended for 30 more years.

This is needed in order to provide financial certainty for the City of Valdez and other municipalities along the pipeline. We will be asked to provide services for the industry for the life of the pipeline.

Responses for Document 00059

00059-001: Thank you for your comment.

00059-002: Tax revenues from ANS production and TAPS have provided considerable financial benefits to local governments throughout Alaska. In addition to the royalties and severance taxes paid to the state on oil production, a share of which is distributed to local governments throughout the state, a number of local governments are able to collect property taxes on oil company property located within their jurisdictions. A large proportion of revenues collected by local governments in the North Slope Borough and in the City of Valdez come from oil sources, meaning that these communities have become highly dependent on these revenues. As the commentor notes, declining TAPS throughput has the potential to adversely affect the ability of local governments in these communities to generate sufficient tax revenues from local sources to maintain existing expenditure programs. Falling state tax revenues from declining ANS production would also potentially limit state support for local government programs.

While it is becoming clear that even with TAPS renewal, new sources of revenue in addition to likely cutbacks in expenditures, will be necessary in the near future at both the state and local level, the nature and timing of any changes that might be made to the structure of government finances in Alaska are unclear at this time. Because of this uncertainty, the EIS assumed that existing levels of revenue and expenditure growth would be maintained throughout the renewal period, and that the evaluation of decisions made by the state and by local governments to change the way tax revenues are raised to support existing expenditure programs, including changes in property tax rates and in the size of transfers between state and local governments, was considered to be beyond the scope of the analysis. Specifically, proposed changes in assessment rates for property taxes suggested by the commentor that might be made in order to maintain adequate levels of local government service provision in the City of Valdez, would be the result of negotiation between the City and the State of Alaska, the outcome of which is unknown at this time.

Date August 20, 2002

RE: Draft Environmental Impact Statement Report
Right of Way Renewal Agreement with Alyeska Pipeline Services Company

TO: BLM TAPS Renewal EIS
Argonne National Laboratory EAD/900
9700 S. Cass Avenue
Argonne, IL 60439

To whom this may concern:

My name is Jeannie Sayre. I testified on August 5, 2002 at the Anchorage Hilton Hotel and I am following up on several issues I wasn't able to address at that DEIS hearing. I will therefore add this document as a supplement to my testimony given on August 5th. I will be referencing many, many documents that should be available & provided to you by the Federal DOL, the State of Alaska DOL/OSHA, the JPO, VECO, and Alyeska Pipeline Services Company. If you have any problems in accessing these files, documents or websites, please let me know and I will make copies for you from my own files and mail them to you.

I am a Whistle-Blower on the Trans Alaskan Pipeline. I was fired twice by my employer - VECO Alaska, because I raised safety and environmental concerns. I filed several DOL complaints regarding the retaliatory treatment I received while working on TAPS. Alyeska Pipeline Services Company was also named in 2 complaints for retaliation against me for raising concerns. As stipulated in the ROW agreement, Alyeska is responsible for their contractors behaviors and the contractors compliance with ALL sections of the ROW Agreement. No exceptions. Alyeska cannot disregard their fiduciary duty as the sole operator of the Trans Alaskan Pipeline and the JPO cannot dismiss Alyeska's direct involvement in harassment, intimidation, interference, retaliation and discrimination against TAPS employees engaging in protected activities.

My first complaint to the DOL for retaliation was in 1996. It resulted in a DOL Hearing in October of 1997, to which the Honorable David DiNardi found both VECO and Alyeska Pipeline Services Company guilty of retaliation against an individual engaging in protected activities. (See DOL Case No.: 1997-TSC-6, File No.: 0-130-97-007)

In a second separate complaint filed in February of 1999, VECO was again found guilty of retaliation against an individual engaging in protected activities. Meanwhile, APSC did nothing to discipline or discourage this contractors' illegal behavior. (See DOL Case No. 1999-CAA-0019)

In 1999-2000, I filed a third compilation of complaints to the DOL for ongoing employer retaliation by both VECO and Alyeska Pipeline Services Company. This action resulted in a second DOL ordered Hearing held in April of 2001 before the Honorable Richard Malamphy, which has not yet been decided. (See DOL Case No. 2000-CAA-007)

I was fired in January of 2001 for a North Pole Metering Project Deficiency Report I had been requested to make by my Alyeska Lead at Pump Station #7 - James Giles. I spoke to an individual at the JPO, Mr. Joe Corea regarding these Quality Program Violations. I was requested by Mr. Corea to refer each line item to the Alyeska Quality Program Standards, and/or the Alyeska Specification and/or the Nationally recognized codes & regulations, because he "had been with the JPO for 8 years but never read these books". What type of oversight can this possibly be?

• **North Pole Metering Right of Way Agreement Violation:**

The NPM Project B176 was to build a larger building designed to deliver more crude to the North Pole refineries and re-inject the extremely hazardous waste by-product, known as residuum, back into the pipeline. The selected APSC installed software program for the metering of crude & residuum was not in compliance with the Right of Way Stipulation as noted below.... (CAPS)

3. TECHNICAL

3.1. General

3.1.1. The following standard shall be complied with in design, construction, operation and termination of the Pipeline System.

3.2 Pipeline System Standards

3.2.1 General Standards

3.2.1.1. ALL DESIGN, material and CONSTRUCTION, operation, maintenance and termination PRACTICES EMPLOYED IN THE PIPELINE SYSTEM SHALL BE IN ACCORDANCE WITH safe and PROVEN ENGINEERING PRACTICE and shall meet or exceed the following standards:

(please refer to the entire ROW Stipulation as referenced above)

I had mentioned and documented this violation of the ROW Agreement to the Asset Manager in a letter dated 10/09/00. But this was never resolved nor investigated by the JPO. Only recently was this projects' software program replaced with another vendors' product. Could this be due to the fact that the software program was not "proven Technology" as stipulated in the ROW Agreement? Why was this practice never questioned, investigated, nor brought to the attention of Congress in the JPO Weekly Report to Congress?

Hundreds of violations to adherence of 29 CFR were duly noted throughout the NPM Project Deficiency List. (See JPO Report 'Analysis & Review of the "Itemized Punch List of Non-Compliances" Associated with Project B176, North Pole Metering Station', prepared by Joseph Corea, September 2000, attachment 3, pages 1 thru 8), yet were 'washed over' by members of the JPO staff.

• **North Pole Metering APSC Quality Program Violations:**

Hundreds of violations to adherence to APSC's Quality Program Engineering, Procurement & Documentation Requirements are were duly noted throughout the NPM Project Deficiency List. (See JPO Report 'Analysis & Review of the "Itemized Punch List of Non-Compliances" Associated with Project B176, North Pole Metering Station', prepared by Joseph Corea, September 2000, attachment 3, pages 1 thru 8, last blue column on far right of spread sheet)

• **North Pole Metering APSC Specification Violations:**

Hundreds of violations to adherence to APSC's Equipment Specifications Requirements was duly noted throughout the NPM Project Deficiency List. (See JPO Report 'Analysis & Review of the "Itemized Punch List of Non-Compliances" Associated with Project B176, North Pole Metering Station', prepared by Joseph Corea, September 2000, attachment 3, pages 1 thru 8, middle blue column on far right of spread sheet) Additionally, these specifications are a Quality Program requirement, which is clearly stated in the ROW.

• **North Pole Metering Code Violations:**

(See JPO Report 'Analysis & Review of the "Itemized Punch List of Non-Compliances" Associated with Project B176, North Pole Metering Station', prepared by Joseph Corea,

September 2000, attachment 3, pages 7 & 8, items 29a, 83a, 83b, 83c, B3d, 100a, 122a, 123a, 124a, 125a)

Additionally within this report, please see 'MEMORANDUM' from Ray Elleven to Joe Corea, attachment #6, page 1, which addresses a few items I had identified in my NPM Deficiency List.

Item #79 was mis-identified by Mr. Elleven as being a *requirement* by NFPA. It was NOT a requirement but a *recommendation* as stated in my NPM Deficiency List. APSC has eye wash stations in all their facilities that have batteries. APSC additionally has an Alyeska Equipment Specification #I-105, which is specifically written for Eye Wash Stations and was referenced as such in the NPM Deficiency List. (See JPO Report 'Analysis & Review of the "Itemized Punch List of Non-Compliances" Associated with Project B176, North Pole Metering Station', prepared by Joseph Corea, September 2000, attachment 3, page 3, item #79, second blue column on the right)

I have found numerous errors on the JPO Report and an inordinate amount of "white-washing" of the issues regarding violations of the ROW Agreement, Quality Program, 29CFR, NFPA and other technical issues. How could such potentially catastrophic errors pass the JPO's oversight scrutiny?

Beginning with the State of Alaska Electrical Inspector report, I found his evaluation of the Area Classification for the NPM facility to be in **absolute error** & extremely disturbing. (See JPO Report 'Analysis & Review of the "Itemized Punch List of Non-Compliances" Associated with Project B176, North Pole Metering Station', prepared by Joseph Corea, September 2000, attachment 5, page 1, item number 1) Had this individual reviewed the Area Classification Drawing for this facility, he would have been able to determine that the **entire** area outside of the process area of the building is, in fact, identified as Class I, Division II, Group D. This determination was based on of APSC's utilization of the Industry standards as noted in the following Codes & Guidelines, which is consistent with all process areas on the Pipeline and the VMT:

1. API RP 500, Recommended Practice for Classification of Location for Electrical Installations at Petrochemical Facilities
2. NFPA 30, Flammable and Combustible Liquids Code
3. NFPA 58, Standard for Storage and Handling of Liquefied Petroleum Gases
4. NFPA 70, National Electric Code or NEC
5. NFPA 325M, Fire Hazard Properties of Flammable Liquids, Gases, & Volatile Solids

There are numerous other inconsistencies and inaccurate statements throughout this report but addressing them within the body of this letter would be time consuming, and of no value to individuals who do not understand the basic principles of drafting, design, engineering, & as-builts. However, one statement should ring loud and clear within the entire construction & engineering industry, which is *always error on the side of caution* (not money).

• **North Pole Metering State Regulations Violations:**

Violations of State of Alaska Requirements for Direct Supervision (and NOT spot checking certifications as was performed by State Electrical Inspector on 4(?) occasions) by Licensed Electrical Administrator (EA) and/or Licensed Mechanical Administrator (MA) and certification/sign off forms. The law requires 24/7 supervision of all work performed. There was a period of time, 3 months, when the EA refused to sign off of questionable installations occurring in Texas, and quit the job. Therefore, there was NO direct EA supervision for 3 full months in this instance. If the JPO conducted an adequate investigation and had I not been prevented from attending this inspection

walk-down, this would have come to light, had to have been addressed, and/or NOV's issued by the State Representative.

Additionally, it is my understanding that one of the State Inspectors, was trained as a DOL Safety and Hygiene Inspector and not an Electrical Designer, Engineer or Inspector. Also, as I understand the State Electrical Inspector is not an Electrical Designer or Electrical Engineer and therefore did not have the ability, experience or training to determine the correct Area Classification of the new North Pole Metering Facility.

I was requested to furnish Mr. Jim Giles, PS#7 Asset Manager, a sketch of what I determined the NPM Area Classification of this facility should be. This was based on my specific training and education in Area Classification Determinations provided to me by Flour Engineers and Constructors, July 1973.

I found the existing Area Classification drawing(s) woefully inadequate, in gross error and indisputably dangerous in that there are several areas within this building that were never identified as Class I Division I areas. These highly volatile hazardous areas would require a much higher design level of protection on the equipment selection, location and installation. A clear example of this would be the immediate area around any one of the many flow meters. The code requires a 3'-0" radius area surrounding the flow meters being classified as Class I Division I. (Highly explosive atmosphere)

All electrical equipment, hardware, and wiring should comply with API RP 500 Figure 102, Section 14.3.8. As well as NFPA 70, Art. 501-3. Meters, Instruments, & Relays. Yet, at the time of the JPO inspection of this facility, the duly appointed inspections individuals did not take notice of this design error nor the type and design of the adjacent equipment within the 3'-0" radius considered as the Class I Division I "sphere". (Please request from APSC a copy of the 5 page NPM Area Classification drawing/sketch I prepared and delivered to Mr. Jim Giles)

There were meter design errors as well as numerous other 'oversight' errors on the part of this inspections party, and which were not noted on the code violations report either inspections persons. Another extremely dangerous situation present at this site, and NOT looked into was the 'genny rigging' of the meters to accommodate a miscalculation on the counter mechanism tolerances. The "engineering fix" to the meters was to insert spacer bars to elevate the counter mechanism in order to produce more accurate reading/reporting.

By tampering with these metering devices, the UL listing was now void. If the meter was in fact rated for a Class I Division I installation - explosionproof, this rating also would be rendered null & void thereby placing the operators, any other personnel working within the confines of this structure and the adjacent neighbors in imminent critical danger since this device is no longer rated for a Class I-Division I application. The PSV's, the exhaust stacks, the sump tank, the sump tank vent, the external walls that were not designated vapor tight and the building air supply were a few items also not identified as potential Class I Division I Hazardous Areas and explosion proof designed equipment installed there in. How could this "minor oversight" happen?

Just how in depth was this JPO/DOL inspection? Why weren't the referenced documents reviewed and resolved. Isn't the JPO the oversight agency that is employed to insure the TAPS employees are doing their jobs? What about enforcement of the Quality Program Requirements as stated in the Right of Way Agreement? Why didn't these two individuals review the referenced documents on the NPM Deficiency List? Why was the author of this NPM Deficiency List not contacted after the "JPO/DOL inspection" to resolve outstanding issues? How is it that such a

hearty and robust spreadsheet of damning idiot-proof information be white-washed into a minor report penned by individuals without an iota of electrical design or electrical engineering experience?

On another issue, the lack of fit test certification documents for both electrical and mechanical installations of equipment were not located in the closeout documents as clearly stated in the NPM Deficiency List. Where are these documents within the Project close out package at the time of the JPO investigation? (See JPO Report 'Analysis & Review of the "Itemized Punch List of Non-Compliances" Associated with Project B176, North Pole Metering Station', prepared by Joseph Corea, September 2000, attachment 3, page 6, line items 130, 131, 132, 133) This is a Quality Program requirement as defined in the ROW Agreement

• **North Pole Metering City Permitting Violation:**

The City of North Pole has a Building Permit Policy in place and has been in place for years. The policy clearly states that:

All buildings being constructed within North Pole City Limits must have a current building permit and be in compliance with minimum construction standards set forth by the Uniform Building Codes as adopted by the State of Alaska, and by the City of North Pole Ordinance 81-5, Chapter 5, Section: 5-1 through 5-6.

Before a permit can be issued, the contractor must submit a set of construction plans and specifications to the City of North Pole for a plan review. The plan review process will review the proposed construction for compliance with the applicable Uniform Building Codes (i.e. U.B.C., U.M.C., U.P.C., N.E.C.). The plans to be submitted for review shall be at a minimum include the following:

*Site Plan
Foundation Plan
Floor Plan
Section
Electrical, Mechanical & Plumbing etc etc etc*

This requirement was never complied with by neither VECO nor APSC. I had documented this issue in my NPM Project Deficiency report to Mr. Jim Giles and Mr. Rob Merdes, Alyeska Pump Station 7 Area Asset Managers, as part of the Quality Program non-compliance items for this new construction project. (See JPO Report 'Analysis & Review of the "Itemized Punch List of Non-Compliances" Associated with Project B176, North Pole Metering Station', prepared by Joseph Corea, September 2000, attachment 3, page 8, line item 100a) Why was this never addressed?

It was alleged by VECO that the job was "in progress" & therefore incomplete. However, if a remotely adequate investigation was in fact performed, and if it was part of the investigation, as Mr. John Stallone, State of Alaska DOL OSHA, had requested I be, the findings would have been remarkable different in that this was a factual *project closing deficiency listing* for the transfer of care, custody & control of this project from VECO Engineering to APSC.

The question begs to be asked as to why was this highly visible APSC building installation investigation and subsequent report never submitted to Congress nor mentioned in the JPO's Weekly Report to Congress?

Why was the lack of hydrotesting and documentation of the crude oil piping and residuum piping at this facility never reported to Congress in the JPO's Weekly Report to Congress? Why was the hydrotesting documentation of all other piping in this facility not requested by the JPO? Is it available? Had the hydrotesting of all required piping of this facility ever been performed after it was installed at the NPM facility? Documented? Are these documents available?

• **Pump Station #1 Metering & Valdez Metering:**

Why has the metering of oil from Pump Station #1 to Valdez never balanced out? Why has APSC not completed a thorough investigation of this issue? Where is this "unaccounted for" oil? Why has the JPO not investigated this issue?

• **Underground Drawings:**

While I was employed on TAPS, I had several concerns about the underground drawings and lack of accuracy in the depiction of the underground piping, electrical feeders, water, gas and fuel lines. If the Ocean Tech drawings were audited by technically qualified personnel, Alyeska would demonstrate their inability to focus on and fund the complete as-building of all Alyeska facilities.

While I was at PS#7, a project required excavation for a trench on the pad for the electrical power, control and fire protection supplies. Within 5'-0" of exiting the generator building, while using a backhoe, the excavation crew chopped through a 2" power cable. This cable was not depicted on any drawing, nor was it found during the pre-exavation survey by Ocean Tech. Fortunately, the cable was "dead", no one was hurt and the job continued. Again, another cable was chopped through by the backhoe crew and neither was this second cable documented on any drawing, sketch, nor identified by the pre-job survey of the project area.

In both these instances, no one was injured. But the work crew was so alarmed and concerned for their safety, the job was halted and any further excavation was done by hand with pick axes, shovels and buckets full of sweat. Was this incident reported in the JPO's Weekly Report to Congress? Why not?

Other issues I had on the underground drawings were the lack of identification of buried fuel tanks abandoned under the gravel pads. PS#7 had 2 buried fiberglass fuel tanks that were "cleaned", filled with sand and crushed in, then covered with gravel. The drawings, at that time, did not depict these tanks nor did the drawings show the abandoned electrical conduits, and any associated underground piping/grounding. I had relined them onto the master set of Ocean Tech drawings but since these drawings are entirely inaccurate, few people trust the contents of these "as-built" drawings and even fewer utilize them for referencing.

The need to ask several questions regarding this practice is of significant importance. How could the determination be made that no soil beneath these abandoned fuel tanks were contaminated by fuel leaking from the fiberglass tanks? Why weren't the tanks dug up and removed as the State required? Could it be that if the tanks were exhumed, the potential for discovering contaminated soil is very high? And in turn the cost for clean up even higher, especially at a time with the 'Owner Companies' are ordering Alyeska to have cutbacks in pipeline spending? Why hasn't the JPO ordered the physical removal of these fuel tanks? How many other sites have these buried fuel tanks and are not depicted on any documents?

• **ROW Section 28 Compliance:**

Several women, including myself, had gone to the JPO and complained about gender discrimination and harassment while employed on TAPS. Why were there never any written

reports, subsequent documented investigations, follow-up interviews with the women who brought these concerns to the attention of the JPO EEOC Representative? Where are the files on these complaints? What was the final outcome? Were the complainants ever given copies of the investigations? And more importantly, why were these complaints regarding violations to the Right of Way Agreement, Section 28, never documented or in the JPO Weekly Report to Congress?

- **ROW Section 29 Compliance:**

I know of a female native who had gone to the JPO with complaints of being treated in a discriminatory manner because she was a native. Was this action documented by the JPO? Is there a copy of this investigation? Would it be available to the public? Why was there never any resolution to this issue? Wasn't this a direct violation of the Section 29 Clause in the ROW Agreement? Was she the only Native person to complain to the JPO about disparate treatment due to her/their race? And more importantly, why were these complaints regarding violations to the Right of Way Agreement, Section 29, never documented or in the JPO Weekly Reports to Congress?

- **RGV Ventilation:**

The RGV's or Remote Gate Valves are located on the pipeline primarily to control the amount of oil that may be spilled during a catastrophic event on the pipeline. The RGV's consist of a control module/building which houses the various devices, components, signals and alarms for the capability to remotely control these valves. In the wintertime, the RGV buildings are an environmentally sealed building with no automatic ventilation means available to remove any hydrogen gases that may build up during the battery re-charging process. There is no automatic fire suppression system installed in any RGV on the pipeline. This condition is extremely hazardous and in fact against NFPA 70, the code adopted by this state. This requirement has been in place since the creation of the pipeline. Therefore, the argument can't be made that this is a recent addition to the code or that this requirement wasn't in place during the design of the pipeline. Check the DOL library for the NEC code in place during the early '70's.

The NEC specifically states *Provisions shall be made for sufficient diffusion & ventilation of the gases from the battery to prevent the accumulation of an explosive mixture. (National Electrical Code NEC Art. 480-8 a)*

I brought this concern forward to the APSC ECP Department in '97. A 24 hour non-standard, by-the-seat-of-their-pants "test" was performed by the APSC Safety Dept personnel. This non-technical "test" consisted of drilling a hole in the bottom siding/wall of an RGV enclosure/module and inserting a gas testing tube through the hole every 60 minutes, then recording the readings. This "test" resulted in demonstrating that no dangerous accumulation of Hydrogen gases (from the action of battery recharging) was present. However, this "test" did show a positive high level reading of Carbon Monoxide gas present over that 24 hour "testing" period.

The question begs to be asked as to why was the hole drilled at the bottom of the RGV enclosure/module? Who decided this was the best place to test the gas level for hydrogen gas accumulation? A first year chemistry student would know that hydrogen gas is lighter than air and therefore would accumulate in the ceiling area and certainly not the floor area. Secondly, the 24 hour test was wholly inadequate given the fact that during the severe winter months & for weeks at a time, the RGVs are not entered for "ventilation" or work/inspections. The action of the battery recharging can potentially build up extremely dangerous levels of hydrogen gases in these small, non-ventilated RGV enclosures. How could this potentially catastrophic disaster pass the JPO oversight scrutiny? It is relatively easy if there is no one on staff with electrical design or electrical engineering experience.

- **Pipeline Bullet Hole Incident:**

Why was the Pipeline not immediately shut down when the pressure dropped? Mr. Robert Malone stated several times in numerous speeches that the detection equipment on the pipeline was so sophisticated, that a pin hole leak in the pipeline could be detected in an instance and the line immediately & safely shut down. Why didn't this detection and immediate shut down happen? How is it that this pipeline's sophisticated detection equipment didn't detect a drop in pressure but that an unscheduled helicopter flight found and reported the spill? What would have happened if the helicopter flew in the opposite direction? How long - minutes, hours, days - would it have taken for APSC's sophisticated detection equipment to alarm the Pump Station Control Room personnel that the pipeline had a drop in pressure and releasing tens of thousands of gallons of toxic crude onto the tundra? Why was this never reported to both the public and to Congress in the JPO's Weekly Report to Congress? Why wasn't this simple question ever asked by anyone with the Authority of Jurisdiction over the Pipeline?

Is this such a technical question that only one person in the entire state would ask this? Why wasn't the bullet retrieved for prosecution of the shooter? For a ballistics test? Why wasn't the damaged pipe cut out for ballistics testing and for researching & replaced with a new piece? Could it be that perhaps if the pipe was cut and presented at trial, the public could clearly see the corrosion of the interior/exterior of the pipe? I have spoken to many hunters and they seem to agree that the caliber of that rifle coupled with the reported bullet load weight, would not necessarily bring down an adult bull moose with a kill shot to the shoulder. So, I'm a little confused how is it that this gunshot could put a hole in a 3/4" thick treated steel pipe and not bring down an adult moose shot in the shoulder?

- **Fire Protection Issues:**

In 1996 I brought forward concerns of gross errors in design, engineering and as-builts of the fire protection systems at PS#3. I researched the requirements for design and engineering and drawings regarding fire protection systems by multiple phone conversations with the State Fire Marshal's office personnel, state fire codes & regulations literature, and face to face meetings with the then State Fire Marshal, Craig Goodrich. An APSC ECP Employee, Patrick Higgins, accompanied me to one such meeting.

I brought these concerns to the JPO, Bob Jones, Coleen McCarthy, and James Lusher. However, before any JPO investigation commenced, I was fired from my job at PS#3 for raising these concerns. The JPO led a formal investigation on my concerns resulting in several findings in my favor. However, there were even more findings left "indeterminate" and never subsequently followed through and resolved.

These issues could and would have been easily concluded if the JPO personnel had an Electrical Designer or Engineer on staff to make these determinations. Better yet, a simple phone call or meeting with the State Fire Marshal would have been sufficient to make multiple findings and issue hundreds of Notice of Violations to APSC for Fire Systems Violations.

The question that begs to be asked is simple. Why was this course of action never taken by any member of the JPO "technical" staff? Yet another more important question must be asked - why are there no Electrical Designers or Electrical Engineers on staff full time at the JPO? If more than 75% of the GAO Audit findings were electrical in nature, then why wouldn't the JPO's "technical" staff be comprised of 75% Electrical Designers or Electrical Engineers?

Two final questions I have regarding this matter is why was this formal JPO investigation concerning the wrongful termination of a TAPS employee for engaging in a protected activity, never reported in the JPO's Weekly Report To Congress? What happened to this investigative report? Why was there no official file/investigation number assigned to this set of documents? How can a person obtain a copy of this investigation without having an identification or file number? (Investigation report document by Coleen McCarthy and James Lusher - JPO General Engineers - completed in May 1997)

In Alaska's desolate and frigid north, a massive explosion & fire could spell ultimate disaster to both personnel and the environment. The weather is unpredictable. The environment unfriendly to man. The ability to get rescue and spill response crews to the site could be severely impacted by inclement weather such as a blizzard or white-out. Getting personnel off the Pump Station Pad during such a cataclysmic event could be virtually impossible if the crude tank were to explode and cut off the exit out of Pump Station #3 as an example.

How could this potentially catastrophic disaster pass the JPO oversight scrutiny? It could be easily argued that it is relatively easy if there is no one on staff with fire protection design, electrical design or electrical engineering experience.

- **Violation of 41 CFR 50-201.201 - Breach of stipulations.**

- **Section Number:** 50-201.201 (b)
- **Section Name:** Breach of stipulations.

(b) Whenever a final determination of a breach of stipulations is made, the Secretary of Labor will furnish to the contracting agency a copy of the findings and decision with such recommendations as will assist the contracting agency in determining whether or not the contract should be canceled for such breach.

Alyeska had wantonly breached the Right of Way Agreement by allowing the retaliation of a TAPS employee by both their engineering contractor on TAPS and their own employees. This happened on more than one occasion and to dozens of whistleblowers who brought concerns up. These cases are a matter of public record and evidence of this activity can be found on the DOL website www.dol.gov

My own particular case against Alyeska can be found on this website. (See DOL Case No.: 1997-TSC-6, File No.: 0-130-97-007)

- **Violation of 29 CFR 24.2 - Obligations and prohibited acts.**

- **Section Number:** 24.2
- **Section Name:** Obligations and prohibited acts.

(a) No employer subject to the provisions of any of the Federal statutes listed in Sec. 24.1(a), or to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 et seq., may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in this section.

(b) Any employer is deemed to have violated the particular federal law and the regulations in this part if such employer intimidates, threatens, restrains, coerces, blacklists,

discharges, or in any other manner discriminates against any employee because the employee has:

(1) Commenced or caused to be commenced, or is about to commence or cause to be commenced, a proceeding under one of the Federal statutes listed in Sec. 24.1(a) or a proceeding for the administration or enforcement of any requirement imposed under such Federal statute;

(2) Testified or is about to testify in any such proceeding; or

(3) Assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other action to carry out the purposes of such Federal statute.

(c) Under the Energy Reorganization Act, and by interpretation of the Secretary under any of the other statutes listed in Sec. 24.1(a), any employer is deemed to have violated the particular federal law and these regulations if such employer intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee because the employee has:

(1) Notified the employer of an alleged violation of such Federal statute or the AEA of 1954;

(2) Refused to engage in any practice made unlawful by such Federal statute or the AEA of 1954, if the employee has identified the alleged illegality to the employer; or

(3) Testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Federal statute or the AEA of 1954.

(d)(1) Every employer subject to the Energy Reorganization Act of 1974, as amended, shall prominently post and keep posted in any place of employment to which the employee protection provisions of the Act apply a fully legible copy of the notice prepared by the Occupational Safety and Health Administration, printed as appendix A to this part, or a notice approved by the Assistant Secretary for Occupational Safety and Health that contains substantially the same provisions and explains the employee protection provisions of the Act and the regulations in this part. Copies of the notice prepared by DOL may be obtained from the Assistant Secretary for Occupational Safety and Health, Washington, D.C. 20210, from local offices of the Occupational Safety and Health Administration, or from the Department of Labor's Website at <http://www.osha.gov>. (2) Where the notice required by paragraph (d)(1) of this section has not been posted, the requirement in Sec. 24.3(b)(2) that a complaint be filed with the Assistant Secretary within 180 days of an alleged violation shall be inoperative unless the respondent establishes that the complainant had notice of the material provisions of the notice. If it is established that the notice was posted at the employee's place of employment after the alleged discriminatory action occurred or that the complainant later obtained actual notice, the 180 days shall ordinarily run from that date.

- **29 CFR 98.305 - Causes for debarment.**

- **Section Number:** 98.305
- **Section Name:** Causes for debarment.

Debarment may be imposed in accordance with the provisions of Secs. 98.300 through 98.314 for:

(a) Conviction of or civil judgment for:

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

- (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
- (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
- (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

For a complete copy of reasons for debarment, please refer to the DOL website www.dol.gov under **29 CFR 98.305**.

references for violations of 29 CFR:

- *Alyeska was found to have retaliated against an individual engaging in a protected activity. See DOL website www.dol.gov.*
- *My own substantiated case against Alyeska can be found on this website. (See DOL Case No.: 1997-TSC-6, File No.: 0-130-97-007)*
- *My 2 substantiated cases against VECO can also be found on this website. (See DOL Case No.: 1997-TSC-6, File No.: 0-130-97-007 & DOL Case No. 1999-CAA-0019)*
- *My second complaint/case against Alyeska and third complaint/case against VECO are currently pending before the DOL's ALJ Judge Richard Malamphy. (See DOL Case No. 2000-CAA-007)*

If this debarment action was to have taken place as the law prescribes, negotiations for the ROW renewal process would not be taking place with this Pipeline Operator. The debarment proceedings would/should have removed both Alyeska and VECO from engaging in any contract or agreement of this nature. Nor could either of these companies be performing any services on this Pipeline, since the ROW is with both the State of Alaska and the Federal Government.

And finally this certainly warrants the GAO investigation and questioning of the JPO authorities as to why they have not been enforcing the stipulations of the ROW Agreement? Additionally, where is the JPO with regards to strict enforcement of laws pertaining to discrimination against persons engaging in protected activities? Doesn't this lack of action on the part of the JPO bring to light the desperate need for the creation of a Citizens' Oversight Group?

I have had hundreds of questions regarding the technical and non-technical aspects of the TAPS Pipeline processes and operations, but this is not the place to have all of them addressed. I have personally had no luck and do not trust the staff of the JPO. First, I find the JPO personnel inept and technically unsound with regards to the design and engineering concerns of the pipeline. Secondly, the covert "memorandum of understanding" between Alyeska and the JPO defeats the purpose of having this oversight agency. Lastly, the staff has never resolved most of the concerns I had brought to them. This organization never finalized any investigations or reports in association with my concerns. The JPO's failure to execute their obligation of reporting Alyeska's ROW violations in their Weekly Reports to Congress is an absolutely unacceptable method of conducting pipeline oversight.

I find the upper level staff at the JPO is remarkably similar to a double edged sword. No matter what way they swing, you will get sliced. This happened to me on several occasions in my dealings with the JPO and as I recommended to Connie Broadus in 1996, I still recommend now - get rid of these current state and federal lapdogs. Replace them with individuals with solid skills, training, education, abilities, character and most importantly - integrity.

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This action can only be accomplished through a valid, capable, non-prejudicial citizen oversight group. As was suggested during the August 5th Hearings, the money for the final North Slope Clean-up & Restoration Fund should be placed in an interest bearing account with the interest going to support a citizen committee to oversee the pipeline. This would be a real agency where frightened TAPS workers can bring their concerns to and have them addressed by professionals who are not "tethered by a goat rope" to the oil companies. People who are well versed in the codes and regulations. People who are not afraid to enlist the services of other agencies, such as accessing the staff at the State of Alaska Fire Marshal's Office, when fire related issues arise. People who will not back down when lay-off rumors are intentionally "planted" among the TAPS workforce.

60-2

People who will develop a following of pipeline workers who bring concerns forward & will not fear retaliation or demotion because their identities will remain protected if requested. An agency that will document and report incidences of questionable behaviors, illegal actions, engineering or construction issues, equipment malfunctions, deceitful management decisions or dubious maintenance practices. A place where trust is the key to success and the word of mouth spreads this success throughout the Pipeline.

I also support creating a program similar to the NRC's requirement to shut down the operations of a plant if more than 10% of the employees feel uncomfortable raising safety or environmental concerns. If yearly surveys of the TAPs employees would be conducted by the citizen oversight group and more than 10% felt uncomfortable raising concerns, then the federal government should step in, take action & implement immediate resolutions. By doing this annual "audit" of the work environment, the survey questionnaires could not be "manipulated" to reflect Alyaska's wants or desires but will truly mirror the trust, faith & confidence which the TAPs employees have for the Operator of the Pipeline.

60-3

Thank you for allowing me the opportunity to provide to you my testimony and my feelings on the current proposal for another 30 year ROW renewal with no additional stipulations to the agreement. I feel allowing this to happen is a terrible disservice to the Alaskan people, the TAPS employees, the Alaskan wildlife and the unique Alaskan environment.

If you have any questions, please give me a call at 907/345-0292 or email me at jeannies@alaska.net.

Sincerely,
Jeannie Sayre *Jeannie Sayre 5/20/02*
(injured former TAPS employee/whistleblower)

cc: A. Alene Anderson
Jackie Kittrell
Robert Seldon
George Miller
John Dingell
Maria Cantwell
Bob Randall

Responses for Document 00060

- 00060-001:** Thank you for your comment.
- 00060-002:** Please see Section 2.5 of the FEIS for information regarding citizens' oversight.
- 00060-003:** The reader is referred to Section 2.5 of the FEIS, in which audits are addressed under Alternatives and Issues Considered but Eliminated from Detailed Analysis.

00061

Alaska Forum for Environmental Responsibility
Alaska Center for the Environment
Northern Alaska Environmental Center

August 20, 2002

BLM TAPS Renewal Scoping
 Argonne National Laboratory, EAD/900
 9700 South Cass Avenue
 Argonne, IL 60439

State of Alaska
 Department of Natural Resources / IPO
 Joint Pipeline Office
 411 West 4th Avenue, Suite 2
 Anchorage, Alaska 99501 2343

Re: *Public Comment on Draft Environmental Impact Statement, Renewal of the Federal Grant for the Trans-Alaska Pipeline System Right of Way (BLM/AK/PT-02/026+2880+990, U.S. Department of Interior, Bureau of Land Management, July 2002) and Commissioner's Statement of Reasons and Proposed Written Determination for the Renewal of the Trans-Alaska Pipeline Right-of-Way Lease (ADL 63574, July 5, 2002)*

Dear BLM and State of Alaska:

The Alaska Forum for Environmental Responsibility has closely monitored and actively participated in the recent hearings held in seven Alaska communities on TAPS Grant and Lease renewal. Three factors compel us to submit this supplementary comment at the close of the 45-day public review process: the importance of this issue to the citizens of Alaska, the inadequacies of the review process and the shortcomings of the documents that support proposed agency recommendations to renew the TAPS right-of-way Grant and Lease agreements without modification. The Northern Alaska Environmental Center and the Alaska Center for the Environment join us in submitting these comments.

Many of those testifying at the recent hearings criticized the timing of the hearings for two principal reasons. The hearings took place at the height of the summer, when many persons were engaged in hunting, fishing or were otherwise engaged in customary summer activities. Moreover, many who testified requested more time to review the documents on which they were asked to comment. These documents, totaling more than 1,900 pages, were made public on July 5, only three weeks before the first hearing. More than twenty public interest, environmental

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and Native organizations formally requested an extension to the public comment period, but the request was denied by state and federal officials July 31. One indication of the importance with which many people regard this issue is the fact that approximately 150 people testified at seven statewide hearings that ended August 9. In three communities, the hearings ran past midnight, at Barrow, elders waited more than five hours for the opportunity to express their concerns about the renewal terms. Although we believe the procedural flaws in the public proceedings that end August 20 compromise the entire process, our process objections are already part of the record and will not be repeated here. Rather, this comment will focus on TAPS and the operating, maintenance and management procedures of the TAPS Owners.

Representatives of the Alaska Forum observed and testified at each of the seven hearings. Principal issues discussed by Alaska Forum representatives at the seven hearings included the following:¹

- the pernicious effect on the safety of TAPS operations resulting from chronic cost-cutting pressure by the TAPS Owners,
- the effectiveness of the Reliability Centered Maintenance (RCM) process, which both the state and federal monitors constituted a major reason to assume the adequacy of the TAPS Owners' program for assuring adequate maintenance on TAPS,
- the citation of the RCM process as a basis for finding the TAPS Owners to be in compliance with certain Grant and Lease requirements,
- failure of the government monitors to devote sufficient attention to risks associated with human factors and shortcomings in operating procedures;
- Alyeska's failure to identify and abate conditions adverse to safe operations in a timely manner,
- failure of the government documents to deal with demonstrated inadequacies in the required TAPS mainline oil spill prevention and response program,
- failure of the government documents to deal adequately with Alyeska's efforts to deal with the risks associated with climate change,
- failure of the government documents to deal adequately with Alyeska's efforts to deal with the risks associated with seismic events;
- failure to provide details as to how (or whether) Alyeska has dealt with the problem of restarting TAPS after an extended winter shutdown—a design requirement that Joint Pipeline Office (JPO) identified in 2001 as the most significant operational compliance issue on TAPS.

In addition to these concerns, the Alaska Forum also submitted for the record its June 2002 report, *The Emperor's New Horse: How Big Oil Gets Rich Gambling with Alaska's Environment*, by Richard A. Fineberg. That report and our previous testimony contain strong evidence to support each of the points to which the Alaska Forum has previously testified. The testimony

¹ This summary is not intended to replace testimony submitted previously by representatives of the Alaska Forum. The points and concerns raised by the Alaska Forum and requiring formal response can be found in the oral and written testimony submitted for the record at each of the seven public hearings. Since those materials, *The Emperor's New Horse* and our comments during scoping last September all contain documentary references for the concerns presented, that documentation is not repeated in this commentary.

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Supplementary Comments of the Alaska Forum for Environmental Responsibility, Alaska Center for the Environment and Northern Alaska Environmental Center / TAPS Grant and Lease Renewal / August 20, 2002 (Page 3)

we have presented during these hearings provides both documentation for the concerns of that have been raised during the public review process. This final comment provides perspective.

The Alaska Forum (and most of those advocating modifications to the Grant and Lease) do not seek to terminate TAPS operations. The guiding purpose of the Alaska Forum's efforts in the Grant and Lease renewal process has been to institute improvements in the governance of TAPS that will protect Alaska's land and watersheds - and continued, uninterrupted delivery of this vital commodity - during the proposed period of renewal.

A proposed improvement recommended by many - but given little consideration in the renewal process - is the establishment of a citizens' oversight group (COG) for the pipeline similar to the organizations established by Congress in 1990 for Prince William Sound and Cook Inlet. Noting that the Bureau of Land Management already has a mechanism for citizen oversight of all lands under its management, the federal Draft Environmental Impact Statement (DEIS) dismissed this suggestion. The state's Proposed Determination simply ignored the proposal. In response, we renew our request for consideration of this proposal and make the following points:

- a multi-purpose, statewide group dealing with diverse lands issues is clearly different from a technical advisory body whose focus would be limited to the pipeline, the TAPS corridor and potentially affected watersheds;
- the existence of other institutional mechanisms does not preclude the establishment of a COG by contractual agreement;
- the failure of government monitors to apprehend and address citizen concerns about the operation, maintenance and management of TAPS in a timely manner demonstrates the need for a formal entity that would improve the interaction between government and concerned citizens;
- during this hearing process, the need for such an entity was recognized by representative governments at both ends of the pipeline; and
- the efficacy of citizen oversight groups has been demonstrated by the experience in Cook Inlet and Prince William Sound. In view of the positive impacts these groups have exercised on environmental issues in their respective regions, we believe this issue falls clearly within the scope of the DEIS and Proposed Determination.

In order to focus on the environmental consequences of TAPS operations, maintenance and management in the limited time available for comment, during this hearing process the Alaska Forum decided not to develop detailed materials on TAPS economics or North Slope operations, which are served by the pipeline and dominated by the three major owners of TAPS. However, during the scoping process last fall the Alaska Forum submitted several economic reports dealing with the profitability of North Slope operations and the effects of TAPS on competition, a factor that is generally recognized as crucial to continued North Slope development. Additionally, our June 2002 report quantifies both the high of return that TAPS delivers to its owners and the separate - and equally extraordinary - windfall benefit the TAPS Owners have received through pre-collection of cash for the future dismantling of TAPS. The federal DEIS arbitrarily ignored these economic issues, considering only economic literature that excluded analysis of profitability, cash flow, competition and the windfall gains the TAPS Owners realize through the dismantling provision of the TAPS tariff (shipping charge). We question the logical and legal

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Supplementary Comments of the Alaska Forum for Environmental Responsibility, Alaska Center for the Environment and Northern Alaska Environmental Center / TAPS Grant and Lease Renewal / August 20, 2002 (Page 4)

bases for this approach, as well as the results. While we have noted, as a technical matter, apparent contradictions in the aggregate data on which the authors of the DEIS explicitly relied, in this wrap-up testimony we are concerned with three broader issues that flow from the selective approach to economics taken by the DEIS:

- Based on (1) investment in the existing infrastructure, (2) the marketing system served by that infrastructure and (3) analysis of North Slope profitability previously submitted by the Alaska Forum, we believe the COG – and the other measures we have proposed – may have net economic benefit because these measures tend to reduce the likelihood of a disastrous shutdown of oil flow. Moreover, we have seen no analyses to indicate that environmental mitigation measures we have proposed are not viable economically.
- In Anchorage and again at Fairbanks, some persons suggested that a COG for TAPS might jeopardize the competitiveness of North Slope oil on the global market. Many of these individuals noted present or past or affiliation with firms employed on TAPS, on the North Slope or in support services, their testimony was typically unsupported by data such as that previously submitted by the Alaska Forum. As Walter Parker of the Alaska Forum Board later observed, the opposition to a citizens' oversight group by individuals who believe this modest proposal jeopardizes their livelihoods precisely demonstrates the Alaska Forum's concern that the perceived (but unquantified and possibly misperceived) need to hold down costs tends to threaten safe and environmentally sound operations.
- The high rate of return on TAPS investment and the demonstrated windfall benefit to the TAPS Owners from the collection of approximately \$1.6 billion for the future dismantling of TAPS both have potential environmental consequences, as well as harmful effects on competition. The Alaska Forum finds the determination that these issues are beyond the scope of the DEIS incomprehensible and therefore requests explanation.

The Alaska Forum has found agency efforts to redress various problems on TAPS to be insufficient. The rejection of public concerns about specific issues on TAPS by the agencies that are supposed to address those concerns is a subject that warrants further attention. As we request again that the renewal process consider these previously-documented issues in detail before a 30-year renewal for the TAPS right-of-way is authorized, we suggest a possible explanation for agency intransigence and the polarization between JPO and concerned citizens. Consider in this regard the alleged failure of the TAPS operators to abate in a timely manner the risks associated with recurrent pipeline restart problems after planned and unplanned shutdowns. The Alaska Forum provided reviewers with an information packet documenting restart problems with potentially significant consequences in each of the last seven years.² However, these concerns have been dismissed by state and federal monitors and were ignored by the documents released

² See: Documentary package on TAPS restart problems between 1995 and 2000, submitted as an attachment to Richard A. Fineberg, *Comments on Trans-Alaska Pipeline System Operations (Part II)*, submitted at Scoping Meeting for the TAPS Right of Way Renewal Application of the Owners of the Trans-Alaska Pipeline System (May 2001), Fairbanks, Alaska, (October 10, 2001). (The issue is also documented in my testimony at Cordova, July 26 [pages 2 and 3, footnotes 3 through 7].)

61-2
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Supplementary Comments of the Alaska Forum for Environmental Responsibility, Alaska Center for the Environment and Northern Alaska Environmental Center / TAPS Grant and Lease Renewal / August 20, 2002 (Page 5)

in support of the proposed Grant and Lease renewal. Informally, JPO officials have told the Alaska Forum that TAPS restart procedures are safe and that each incident was an isolated event.³ In other words, JPO believes that because it cannot identify a single causal mechanism, these events are unrelated. The Alaska Forum believes that because each event occurred during a restart, as indicated in the previously submitted document package, Alyeska has demonstrated its inability to manage restarts safely.

In assessing this difference of opinion, it may be useful to consider the lessons of the ill-fated *Challenger* launch in 1986. The space shuttle, carrying a crew of seven including its first civilian passenger, exploded 73 seconds after blast-off, killing all on board. The *Challenger* decision seriously damaged the credibility of the National Aeronautic and Space Administration (NASA) and resulted in a Presidential Commission to determine the cause of this tragedy. The final, fatal mistake was the decision to launching at temperatures far below that specified as safe for the critical joint between the solid rocket motor and its booster. The critical O-rings that comprise that joint failed during the launch. Moreover, engineers from Morton Thiokol, the rocket manufacturer, had specifically warned launch managers of the danger. Had an arrogant and amoral bureaucracy, intent on enhancing its reputation and ensuring congressional funding by meeting its schedule, ignored these technical concerns? After reviewing the event industrial sociologist Diane Vaughan came to a different but equally disturbing conclusion. She found there was no intentional managerial wrongdoing. Rather, she concluded, the disaster resulted from the failure of a complex organization to deal appropriately with an unprecedented and uncertain technology in an environment of scarcity and competition.⁴

What went wrong? The problem of charring and erosion of the critical O-ring seal had been clearly identified well in advance of the fatal launch. With no cold-weather launch experience, as early as 1982 the NASA engineers began to develop a set of makeshift guidelines designed to deal with the problem. With each successful launch, they became more confident about their complex compromise with safety.⁵ In retrospect, physicist Richard Feynman, a member of the Presidential Commission, felt the warning flags should have been clear. The O-rings were not supposed to char and erode at all.⁶ Six months before the fatal launch, an independent observer within NASA had concluded that the partial failure of the O-rings on previous launches immediately defined as "deviant and risky" a problem that people in the launch decision chain regarded as "normal and acceptable." But that warning flag was discounted, in part because the author was not an engineer.⁷ An investigating group was formed to consider the problem, despite the concerns of the engineers within that group, the investigation languished, at least in part due to inadequate resources. Consequently, the issue was not resolved in a timely manner.⁸

³ Interview with Gary Reimer, Deputy Authorized Officer, BLM, in Anchorage, Aug. 14, 2002.

⁴ Diane Vaughan, *The Challenger Launch Decision: Risky Technology, Culture, and Deviance at NASA* (University of Chicago Press, 1996), pp. xi-xv.

⁵ Vaughan, pp. 9, 395.

⁶ Richard Feynman, *The Pleasure of Finding Things Out* (Perseus Publ., 1999), pp. 155-156.

⁷ Vaughan, p. 417.

⁸ Vaughan, pp. 450-455.

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Several months later, as the weather in Florida approached freezing on the eve of the January 1986 launch, the unresolved problem became critical. At that point, all of the appropriate rules were followed. After an unusual pre-flight teleconference meeting failed to resolve all doubts, flight managers even extended their rules to allow the concerned engineers additional time to marshal their arguments.⁹ By then it was too late. Operating within the accepted norms of cost, scheduling and safety satisficing, the engineers were further handicapped by partial information. Moreover, they were attempting to communicate among themselves from three separate locations. In the short time available they were unable to present an argument that met the required standards of scientific excellence.¹⁰ Only later was it discovered that the critical technical rule regarding temperature constraints had been misread, misinterpreted and misused for years.¹¹ In sum, the concerned engineers were unable to combat a mind-set that unintentionally discounted critical arguments while highlighting confirming information.¹² According to Vaughan, the engineers reluctantly acceded to the launch decision, contributing to a tragic mistake whose "origins were in routine and taken-for-granted aspects of organizational life that created a way of seeing that was simultaneously a way of not-seeing."¹³ Reflecting further, Vaughan noted that some analysts believe that accidents are normal or inevitable in certain technological systems. The root of those accidents, she writes, may lie within the system, rather than its component parts.¹⁴

The failure of the *Challenger* team, despite the best intentions of its members, calls attention to the danger that any system designed to manage new technology may develop an inappropriate resistance to warning signals generated outside that system. This lesson may help explain the marked differences between the analysis of the restart issue by the JPO and that of the Alaska Forum, discussed and documented in statements in this forum, and in *The Emperor's New Horse*. The fact that potentially serious problems have occurred during TAPS restarts year after year suggests the existence of a condition adverse to safe operations – a problem that exists whether or not JPO has identified the warning signal.

The various issues identified in previous testimony in which the Alaska Forum has differed from government monitors suggest that three lessons from the history of the *Challenger* may be applicable to TAPS:

- engineering experts do not have an iron-clad grip on truth;
- a complex system may contain the seeds of its own downfall; and
- cost constraints may have unanticipated consequences for system safety.

⁹ Vaughan, pp. 2-6.

¹⁰ Vaughan, pp. 396-399.

¹¹ Vaughan, p. 391.

¹² Vaughan, p. 354.

¹³ Vaughan, p. 394.

¹⁴ Vaughan, p. 415.

Supplementary Comments of the Alaska Forum for Environmental Responsibility, Alaska Center for the Environment and Northern Alaska Environmental Center / TAPS Grant and Lease Renewal / August 20, 2002 (Page 7)

The lessons of the *Challenger* appear to have particular relevance to the arbitrarily defined concepts of compliance and abatement employed by the TAPS monitors and relied upon by the DEIS and the documents supporting the Proposed Determination. As noted in previous testimony, when the records clearly indicate recurrent failures to abate hazards and conditions adverse to safe operations, we do not believe that the TAPS Owners are in compliance with the requirements of the Grant and Lease. Further, we believe this discrepancy is evident in the documentary record, as demonstrated by ongoing agency enforcement actions that have been taken and are underway precisely because identified compliance issues remain unresolved.¹⁵

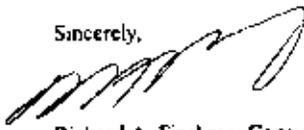
At the broadest level, the history of the *Challenger* suggests the need for independent review of agency conclusions regarding the immediate and long-term safety of TAPS. The following questions, raised in previous testimony, are foremost among those that should be answered by an independent inquiry *before* the TAPS Grant and Lease are renewed:

- Has JPO demonstrated that the Reliability Centered Maintenance (RCM) can serve to identify and eliminate unanticipated problems caused by human error on TAPS?
- Has JPO demonstrated that RCM can function effectively when top managers seek budget reductions that may reduce the ability of field personnel to participate in the RCM process?

The discussion of recurrent problems at the Valdez Marine Terminal in *The Emperor's New Hose* provides strong indication that RCM may not function effectively to abate hazards associated with TAPS operations, maintenance and management.

In conclusion, we reiterate that the purpose of these questions is to underscore the importance of the specific issues discussed in the Alaska Forum's status report on TAPS, and in our previous testimony.

Sincerely,



Richard A. Fineberg, Consultant
Alaska Forum for Environmental Responsibility

Submitted on behalf of the Alaska Forum for Environmental Responsibility, the Alaska Center for the Environment and the Northern Alaska Environmental Center

¹⁵ Although the purpose of this commentary is to provide perspective on issues we have already documented on one or more occasions, two examples from the Alaska Forum's previous testimony and reports are particularly noteworthy in this regard: Enforcement actions by the U.S. Department of Transportation and actions by the Alaska Department of Environmental Conservation to resolve the inadequacies in the TAPS mainline oil spill contingency plan that became evident during the response to the MP 400 bullet hole spill last October.

Responses for Document 00061

- 00061-001:** Although 45 days is understandably a short time to review a document of this size, the time period is consistent with the Council on Environmental Quality regulations for implementing the National Environmental Policy Act regarding the review of draft environmental impact statements. Significant effort was made to advise people of the schedule and duration of the review well in advance (one year). The DEIS was published on schedule, and many substantive comments on the content of the DEIS, including yours, were received during the 45-day period.
- 00061-002:** The reader is referred to Section 2.5 of the FEIS, "Alternatives and Issues Considered but Eliminated from Detailed Analysis."
- 00061-003:** The BLM and member agencies of the JPO use an adaptive management approach to evaluate the effectiveness of stipulations and regulatory oversight. Ongoing monitoring programs, as identified in the 12 Comprehensive Monitoring Reports published since 1996, provide the BLM and JPO with the necessary information to evaluate the effectiveness of stipulations in the grant and lease.
- The reader is referred to Section 4.1.1 (JPO oversight) and specifically to Sections 4.1.1.2 ("Adaptive Nature of the Grant in Compliance Monitoring"), 4.1.1.3 ("Risk-based Compliance Monitoring"), 4.1.1.4 ("JPO Comprehensive Monitoring Program"), and 4.1.1.8 ("Coordinated Planning and Response to Abnormal Incidents") for more information on the role of adaptive management as a JPO business practice.



Chugach Regional Resources Commission

August 20, 2002

Chenega Bay

Eyak

Nanwalek

Port Graham

Qutekeak
Native Tribe

Tatitlek

Valdez Native
Tribe

BLM TAPS Renewal Scoping
Argonne National Laboratory, EAD/099
9700 South Cass
Argonne, Illinois 60439

To Whom it May Concern:

The Chugach Regional Resources Commission (CRRC) is a Tribal nonprofit organization composed of the seven Tribes in the Chugach Region of Alaska (Chenega Bay, Tatitlek, Eyak, Port Graham, Nanwalek, Qutekeak, and Valdez Native Tribe). The CRRC was established to work with the Tribes in addressing issues of concern relating to the natural resources and environment in the traditional use areas of its member Tribes. In accordance with our mission statement, we respectfully submit the following comments regarding the Draft Environmental Impact Statement for the renewal of the Federal Grant for the Trans-Alaska Pipeline System Right-of-Way.

The Chugach Regional Resources Commission supports renewal of the Trans-Alaska Pipeline System Right-of-Way, as long as the federal grant allows for safe and secure operation of the pipeline and transport of oil through the traditional waters of Prince William Sound and the Gulf of Alaska.

62-1

We must express our deep disappointment with the refusal of the Bureau of Land Management to extend the comment period by 45 days. Requests by Tribal Governments, as well as Native organizations and other sectors of the general public requested an extension to allow additional time to adequately review this four-volume document. These requests were summarily dismissed with little or no consideration of the trust relationship

62-2

the federal government has with the Tribes or of the Tribal policy the Department of Interior is mandated to operate under. It is our sincere hope that our comments are not treated in a similar manner and adequate time is spent seriously considering the comments submitted by the Tribal Governments and Native organizations affected by the renewal of the right-of-way.

62-2
(cont.)

Throughout the document, it is very clear that inadequate time was spent conducting research by Argonne Labs on subsistence in Alaska, and what little information was gathered during their site visits is conspicuously absent in the DEIS. Although traditional ecological knowledge is discussed and recognized as a tool in research in the DEIS, this information gathered as a result of the DEIS is treated as anecdotal information and inconclusive. While the authors appear to recognize the value of TEK by stating that "observations of life-long subsistence hunters and fishermen regarding declining harvests and increasing difficulty of subsistence activities are very compelling" this information is summarily dismissed in the same sentence. Given the number of individuals who claim that loss of subsistence opportunities and resources are directly related to the TAPS should be given more credence and more serious consideration in the decision-making process.

62-3

The DEIS states that available data do not enable the researchers to make assessments on declining/increasing resource populations, change in subsistence locations, increased competition for resources, disruptions of subsistence activities, reduced/increased access to resources, or how these factors are directly or indirectly linked to the TAPS. If the researchers had taken advantage of the TEK, this information would have been available. In addition, much of the available technical data used by the researchers is outdated and unreliable. Many of the Tribal Governments along the TAPS corridor have natural resource programs with reliable harvest and population data, as well as other valuable information (TEK) that would show how the subsistence lifestyle has been impacted by the TAPS. It doesn't appear that there was any effort made to contact these Tribal programs for this information. A literature search on Alaska Department of Fish and Game

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reports regarding subsistence only scratches the surface of the information that is available on this subject. More research should be done on the subsistence impacts, and this research should be done through contracts with Tribal Governments and/or Tribal organizations that have established natural resource programs. This should have been considered when formulating the DEIS. Funding should be provided to these entities to provide continuing research and data on subsistence resources, impacts, and issues throughout the operation of the TAPS.

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(cont.)

We strongly disagree that "potential impacts on subsistence due to accidents such as oil spills, would not be part of normal operations under the proposed action" and "subsistence possibly has experienced substantial negative impacts . . . these impacts are not clearly associated with the TAPS to the exclusion of other potential causes." The Exxon Valdez Oil Spill was directly related to the operation of the TAPS and definitely has substantial negative long term impacts on subsistence. To not recognize the impacts of this technological disaster is a travesty and an insult to the residents, both Native and non-Native, still living with the negative effects of the oil spill on a daily basis. The treatment of oil spills in the DEIS as an impact separate from the "routine operations" of the TAPS is misleading and should be changed. The Tribes of the Chugach Region experienced first hand the oil spill and take exception to the statements in the DEIS, like "the most significant environmental impacts associated with the TAPS already occurred when the pipeline was constructed" and the "transit of the tankers through Prince William Sound under normal operations has also not resulted in any observed impacts on physical marine resources." The BLM must give proper recognition to the importance of the oil spill and the impact it had on the people and resources of the Chugach Region.

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The DEIS states that the transportation of oil through Prince William Sound from the Valdez Marine Terminal is not a component of TAPS and that this is a cumulative impact and not a direct effect of the TAPS operation. The DEIS must recognize that the Exxon Valdez Oil Spill was a direct effect of the TAPS operation and should seriously consider the full impact of the TAPS, including the fact that the oil pipeline

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transportation corridor extends from the North Slope all the way through the Gulf of Alaska. It is irresponsible for the BLM to ignore the fact that the oil is transported through the traditional use areas of Alaska Natives once it leaves the Valdez Marine Terminal when considering the renewal of the right-of-way.

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(cont.)

The Tribal Governments, ANCSA regional and village corporations, and regional Native nonprofit organizations worked together to develop a resolution signed by all parties outlining issues that should be addressed when considering the renewal of the TAPS. The key issues included:

- o Recognizing that the transportation corridor of the pipeline extends beyond the oil pipeline terminal in the Port of Valdez through Prince William Sound, to the 200 mile limit of the Gulf of Alaska
- o The establishment of an endowment to assist the Tribes in being more meaningfully involved in the operation and oversight of the TAPS; and
- o Satisfaction of all claims resulting from the Exxon Valdez Oil Spill, holding the oil industry accountable for promises made in the original right-of-way agreement.

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A copy of this resolution as well as public testimony was provided to BLM during the scoping process. None of these issues were addressed in the DEIS and feel that a response is warranted. In addition, the Inter-Tribal Oil and Gas Coalition (of which many of the Chugach Tribes are members) submitted testimony and a video outlining the issues of the Tribes located along the pipeline transportation corridor, and none of these issues were addressed in the DEIS. Again, given the fact that the BLM should be abiding by its Tribal policy and Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, these issues should be given some attention in the DEIS.

We take exception to the statement made in the DEIS that “for the Chugach Alutiiq, a sociocultural system much changed through considerable interaction with non-Natives, relatively few impacts are anticipated under

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the proposed action beyond continued access to cash . . ." There is a very real concern in the Chugach Region of another oil spill. The natural resources, upon which the Alaska Natives depend, are keys to the maintenance of traditional ties within and beyond the community. Any disruption of the subsistence resource harvest will have far reaching and long term effects in the Chugach Region. The Exxon Valdez Oil Spill impacted social relations, traditional subsistence activities, as well as the mental and physical health of the communities and their members, and should not be ignored in the DEIS.

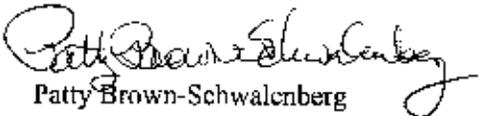
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(cont.)

Finally, under Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, we are respectfully requesting input and involvement in the development of the new federal right-of-way grant, once the right-of-way is approved. Even if there will be no changes to the existing grant, the Tribes of the Chugach Region should be consulted and provide input into this process. This Executive Order states that federal agencies have a fiduciary and trust obligation to "... establish regular and meaningful consultation and coordination with tribal officials in the development of federal policies that have tribal implications." We believe the reauthorization of the federal grant of right-of-way has tribal implications.

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Thank you for the opportunity to comment on the DEIS. If you have any questions or are interested in working with us to redraft the section on subsistence, please feel free to contact us at 907/562-6647.

Respectfully submitted,


Patty Brown-Schwalenberg
Executive Director

Responses for Document 00062

00062-001: Thank you for your comment.

00062-002: Although 45 days is understandably a short time to review a document of this size, the time period is consistent with the Council on Environmental Quality regulations for implementing the National Environmental Policy Act regarding the review of draft environmental impact statements. Significant effort was made to advise people of the schedule and duration of the review well in advance (one year). The DEIS was published on schedule and many substantive comments on the content of the DEIS, including yours, were received during the 45-day period.

While comments on the DEIS had to be received by the end of the 45-day comment period in order to be addressed in the Final EIS, additional provisions for involvement in the decision-making process apply to Tribal governments and Native organizations. The process of government-to-government consultation allows these groups to continue dialogue with the Bureau of Land Management.

00062-003: The EIS contains extensive information regarding the experience of Native Alaskans, including traditional ecological knowledge. Much of the latter is provided in Section 3.24.2. Those data are accorded the same level of importance as other types of what is deemed reliable data (e.g., statistical data collected by government agencies). There is no intent to dismiss the validity of traditional ecological knowledge, but the EIS does acknowledge possible complications in using certain types of information. In the case of traditional ecological knowledge, there is a concern that the complexities of causality of subsistence impacts could be extremely difficult to assign with traditional ecological knowledge.

00062-004: The FEIS considered traditional ecological knowledge available to its preparers. In addition to documented data, the BLM attempted to obtain such knowledge from Alaska Natives, both through meetings with Tribal and other Alaska Native groups and through written requests to these groups (see Table 5.3-1). Certified letters mailed in early April 2002 inviting the 21 directly affected Tribes to provide additional traditional ecological knowledge to date have received no response. Additional information relevant to subsistence has been added to the FEIS based on comments received on the DEIS.

The available data are adequate for purposes of evaluating impacts of the proposed action and all alternatives considered in this FEIS. The acquisition of additional subsistence data, and how these data would be collected, are beyond the scope of this FEIS.

00062-005: Spills, notably large spills such as the Exxon Valdez Oil Spill, are not a part of normal TAPS operation, but occur when mistakes happen. The EIS considers potential spills under a 30-year right-of-way renewal, including their probability of occurrence and likely impacts, in Section 4.4. The issue is by no means avoided or discounted, but is dealt with in what preparers of the EIS considered to be the most appropriate locations.

The second passage quoted in the comment refers to impacts of normal operations (Section 4.3.20), not spills. The EIS indeed does recognize the impacts of the Exxon Valdez Oil Spill, and discusses this event in a number of different places in the document (e.g., Sections 4.7.8.1 and 4.7.8.2, both of which contain expanded discussions of that event).

00062-006: The proposed action addressed in this EIS is the renewal of the Federal Grant for the TAPS right-of-way, which extends from Prudhoe Bay to the Valdez Marine Terminal. The Federal Grant does not include transportation of oil from the Valdez Marine Terminal through PWS and the Gulf of Alaska. For this reason, Sections 4.1-4.6 of the EIS discuss the consequences of Grant Renewal related to the pipeline right-of-way. Oil production on the North Slope and transportation of oil from the Valdez Marine Terminal to market are other actions, closely related to renewal of the TAPS Federal Grant. Thus, they are included in the cumulative effects analysis, Section 4.7: Cumulative Impacts, as required by NEPA regulations. Section 4.7 addresses spill scenarios and impacts of spills during the renewal period. Historical impacts from oil spills are also included.

Maps 3.24-1, D-21, and D-24 show Alaska Native subsistence harvest areas for Chenega Bay and Tatitlek (no such map data were available for Cordova). Sections 3.24.2.4.1, 3.24.2.4.2, 3.24.2.4.5, D.2.3.4.1, D.2.3.4.2, and D.2.3.4.5 discuss subsistence activities for Chenega Bay, Cordova, and Tatitlek. All potential impacts of tanker traffic through Prince William Sound consider these subsistence areas, as noted in Section 4.7.8.1 (again, Cordova is not mentioned because of an absence of data on the precise location of its subsistence area).

It is important to understand that the issue of potential impacts of transporting oil by tanker through Prince William Sound, and traditional use areas of Alaska Natives, are not avoided by the EIS. It is merely considered under cumulative impacts as opposed to impacts of the proposed action. Both categories of impacts will be considered by the BLM prior to making its decision regarding right-of-way renewal.

00062-007: The Bureau of Land Management authority under TAPPA and the Federal Grant only extend to the delivery of oil to the tankers at the Valdez Marine Terminal. The U.S. Coast Guard and the U.S. Department of Transportation have authority to regulate tanker traffic in Prince William Sound and the coastal waters of the United States.

The BLM does not have the authority to establish an endowment fund that specifically funds tribal government involvement in the oversight of TAPS.

The settlement claim for punitive damages related to the Exxon Valdez oil spill in Prince William Sound is currently in court system and is outside the scope of the environmental impact statement process for the renewal of the federal grant of right-of-way. Federal decisions on the renewal of the grant of right-of-way will not consider the issue of damage claims related to the Exxon Valdez oil spill.

The Bureau of Land Management has worked closely with the affected tribal governments during the EIS process, beginning well before the onset of the EIS process (in April 2001; see Sections 4.3.25 and 5.2). Many of the issues cited by Alaska Natives have been considered in the DEIS, as they relate specifically to environmental impacts associated with the TAPS. Other issues which do not specifically relate to these environmental impacts are not considered in the EIS, but can continue to be considered under government-to-government consultation.

00062-008: The concerns voiced by the comment are valid and were not ignored in the EIS. However, they tend to be addressed in other portions of the document than the one referred to in the comment. A discussion of sociocultural impacts associated with spills (see the revised version of Section 4.4.4.15), as well as subsistence impacts and impacts on other issue areas (see other subsections in Section 4.4.4), appear in the portion of the EIS explicitly focused on spills.

Sociocultural impacts occurring due to the Exxon Valdez oil spill, in turn, are discussed under cumulative impacts in the revised version of Section 4.7.8.2, with closely related subsistence impacts due to that spill located in the revised version of Section 4.7.8.1.

00062-009: The BLM conducted extensive government-to-government consultations with directly affected villages and tribes that is clearly documented in Table 5.3-1 of the EIS and summarized in Section 5.3.

