

S

B

5

8

9



Alaska State Legislature

House

May 26, 1970

JUNEAU ALASKA

Mr. John M. Elliott
Executive Director
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99801

Dear John:

Committee Substitute for Senate Bill 589 amended contains sections 19.40.034 through 19.40.037, relating to an oil and gas severance tax. Wording of these provisions of the bill has caused concern among several members of the House that the provisions are either unconstitutional or present serious legal ramifications. Among the more significant questions raised are the following:

1. Do the provisions violate the equal protection or due process clauses of the state and federal constitution by imposing a tax on all oil and gas production regardless of whether or not the producer benefits from the proposed pipeline or the road?
2. Are the provisions defective because of vagueness; i.e.,
 - (a) Is the tax on North Slope production only or on all production in the state?
 - (b) Does the tax terminate when the amount reimbursed plus interest is paid or the amount not reimbursed plus interest is paid?
3. If the tax is levied to obtain reimbursement of funds not required to be reimbursed by an agreement, does the tax constitute a breach of the agreement by the state?
4. Since the tax is imposed on all producers, if the road contractor does not make reimbursement does this constitute delegation of the state's taxing authority?
5. Does the tax constitute a violation of Article 9, section 7, relating to dedicated funds?

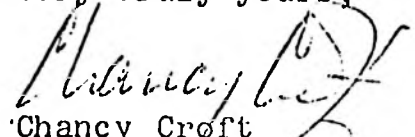
Mr. Elliott

-2-

May 26, 1970

I would appreciate your immediate response to these questions in particular and your comments on these provisions of the bill in general.

Very truly yours,


Chancy Croft
State Representative

QUESTIONS SUBMITTED BY MEMBERS OF THE LEGISLATURE
ON THE LEGAL ASPECTS OF THE N.S. ROAD

1. What are the plans of the Department of Interior with regard to the pending litigation that has been brought by both the Wilderness Society and others, and Stevens Village and others, that is, those in the District of Columbia courts, with respect to the proposal by the State to build the road? This is to include both the right-of-way and any permits that may be necessary.
2. Whether it is the position of the department that the injunctions that have been issued in any way would affect the right of the state to proceed to accept the right-of-way under the statute and whether or not the injunctions would in any way affect the right of the Secretary of Interior to grant permits for airports or for gravel, incident to the construction of the road?
3. Whether the Secretary of the Department sees any difficulty in obtaining a change in the Rampart withdrawal?
4. Aside from litigation, what time frame may be involved in the permits themselves?
5. Whether or not the department expects to have to consult with the Interior and Insular Affairs Committee on any phase of the state road? If so, what phase?
6. Would it be legally possible for the Secretary to, in a case of this kind, modify the land freeze order to the extent that it would cover the route of the proposed road where it would be crossing federal lands?
7. When someone buys or takes property from the federal government they theoretically have access afforded to cross intervening federal lands to that property, do they not? (In this case the state has

obtained lands in the Prudhoe Bay area.) Wouldn't the state have road access across federal intervening lands to get to the state lands?

8. I have seen the theory that the 1866 Act is not applicable to lands to which there is Indian title. If this is so, in the absence of the law suit brought by the Indians on their land claims, what would be the position of the Secretary as guardian to allow effective acceptance of the offer as in the statute? Obviously he can't do anything under the statute, but, perhaps he could refuse to give permits for gravel and airports?



IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

Honorable Barry W. Jackson
Chairman
Judicial Committee
Alaska House of Representatives
Juneau, Alaska 99801

MAY 22 1970

Dear Mr. Chairman:

This letter is in reply to the several telegrams we have received from your Committee and specifically to the eight questions which you presented to our Regional Solicitor on May 7 in Juneau.

With respect to the first question, we anticipate that the Justice Department, which represents this Department in the actions brought by the Native Village of Allakaket et. al. and by The Wilderness Society et. al., will bring the matter of the State of Alaska proposal for a road from the Yukon River to Prudhoe Bay to the attention of the Court, by appropriate motions, at such time as we have a definite and specific factual situation to present to the Court for a ruling. We do not believe that the matter of the road is now in a posture sufficient for presentation to the Court.

With respect to your second question, we do not believe that the injunction in either the Wilderness case or the Allakaket case would in any way affect the right of Alaska to proceed under R. S. 2477. The State is not a party to either action. We do believe, however, that the injunctions, and particularly that in The Wilderness Society case, may affect the right of the Secretary to grant permits for airports or gravel incident to the construction of the road. We will not be able to reach any final conclusion in this regard, however, until the State has taken final action on the road.

In answer to the third question, we do not at this time foresee any difficulty in obtaining a change in the Rampart withdrawal.

In answer to the fourth question, we are not in a position to give any meaningful estimate as to when the pipeline right-of-way will be issued. The Trans Alaska Pipeline system is providing us with additional information which will have to be evaluated before we can make such an estimate.

In reply to your fifth question, we believe that, pursuant to Secretary Hickel's commitment to the Interior Committees of the Senate and House of Representatives, we will have to consult with those Committees with respect to any modifications of FLO 4582 for gravel for the road or any other matter relating to the road.

In answer to the sixth question, it is legally possible for the Secretary to modify the land freeze order.

We do not believe we are in a position, at this time, to provide answers to the seventh and eighth questions. They raise particularly complex and difficult legal issues that can best be answered only in the context of a specific factual situation.

Sincerely yours,

A handwritten signature in black ink, appearing to be "William J. French", written in a cursive style.

Solicitor

Rough Draft

QUESTIONS SUBMITTED BY MEMBERS OF THE LEGISLATURE
ON THE LEGAL ASPECTS OF THE N.S. ROAD

1. What are the plans of the Department of Interior with regard to the pending litigation that has been brought by both the Wilderness Society and others, and Stevens Village and others[†], that is, those in the District of Columbia courts, with respect to the proposal by the State to build the road? This is to include ^{both the} right-of-way and any permits that may be necessary.
2. Whether it is the position of the department that the injunctions that have been issued in any way would affect the right of the state to proceed to accept the right-of-way under the statute and whether or not the injunctions would in any way affect the right of the Secretary of Interior to grant permits for airports or for gravel, incident to the construction of the road?
3. Whether the Secretary of the Department sees any difficulty in obtaining a change in the Rampart withdrawal?
4. ~~Whether or not you have had~~ ^{ASIDE FROM} litigation, what time frame may be involved ^{IN} on the permits themselves?
5. Whether or not the department expects to have to consult with the Interior and Insular Affairs Committee on any phase of the state road? If so, what phase?

6. Would it be legally possible for the Secretary to, in a case of this kind, modify the land freeze order to the extent that ^t would cover the route of the proposed road where it would be crossing federal lands?

Conclude

7. When someone buys or takes property from the federal government they theoretically have access afforded to cross intervening federal lands to that property, do they not? (In this case the state has obtained lands in the Prudhoe Bay area.) Wouldn't the state have road access across federal intervening lands to get to the state lands?

Conclude

8. I have seen the theory that the 1866 Act is not applicable to lands to which there is Indian title. If this is so, in the absence of the law suit brought by the Indians ^{on their} land ^{as guardian} claims, what would be the position of the Secretary [?] to allow effective acceptance of the ^{offer} land as in the statute [?] and ^{he} Obviously ^{could} can't do anything under the statute perhaps, but ^{perhaps} maybe he ^{could} can refuse to give permits for gravel and airports?

Conclude

Points to classify by legislation or amendment of memorandum

1. General contractor
 1. no profit
 2. s/h to bear overhead
 3. only payment to GC
is to be passed through
2. Time in which state is to obtain permits - ~~is~~ specify date?
3. Payment of expenses above \$120M limited to payments from participants
4. Clause in appropriation bill to provide pass through (exp. as to expenses of 120M)

5. Post June 1, 71 pipeline

payment by participant or

but 1) if pipeline carries 50% of other participants

w/ in 5 years of bidder increase 70% accordingly

2) if other participant acquires equity w/ in 10 years then it pays

Or change reimbursement formula to proportion of cost of pipeline (if less than \$1.2 B) as to 1.2 B eg if 600M pipeline then pay 60M on road

6. Guarantee for limited public use of road during pipeline construction

7. Clearly provide TAPs or Corp
is responsible for maintenance
of highway during const. of TAP.

8. Provide for state acceptance of
road upon its completion

9. Redefine legally defensible
strike "immediate"
insert ~~sub~~ "initiation of"
~~after~~ ~~con~~

" after Pipeline
~~before June 1, 1971~~

June 1, 1972
within one year(?) after
issuance of the permits

10. Economically feasible
insert percentage change
on cost

(not routing or design)

11. H 7

inc... for construction & operation...
w/o incurring any state imposed costs
amend to "title or fees"

or, except as to those imposed
on all other private person, ~~other~~
using the road, other costs for
use of the road.

12. Consider major gap

Pipeline after June 1971

by part of participants
over part of route

Now - no reimbursement

(Compare bottom of p 6
w/ page 7

13. Consider extending 1971 + 1973
data

Points to clarify by legislation or amendment of memorandum:

1. General contractor
 1. no profit
 2. S/h to bear overhead
 3. only payment to GC is to be passed through
2. Time in which state is to obtain permits - specify dates
3. Payment of excess above \$120 million
 - limited to payments from participants
4. Clause in appropriation bill to provide pass through
 - (exp. as to excess of 120M)
5. Past June 1, 1971 pipeline
 - payment by participant only
 - but 1. if pipeline carries oil of other participants within five years - increase percent of builder accordingly
 2. if other participant acquires equity within 10 years then it pays

Or change reimbursement formula to proportion of cost of pipeline (if less than \$1.2 B) as to 1.2B eg. if 600M pipeline then pay 60M on road

6. Guarantee limited public use of road during pipeline construction
7. Clearly provide TAPS or Corp is responsible for maintenance of highway during construction of TAPS
8. Provide for state acceptance of road upon its completion
9. Redefine legally defensible
 - strike "immediate"
 - insert "initiation of"

insert after pipeline

within one year(?) after issuance of the permits

10. Economically feasible

insert percentage change on cost

(not routing or design)

11. Paragraph 7 -

Use----for construction and operation-----

without incurring any state imposed costs
amend to tolls and fees, or, except as to those
imposed on all other private persons using the
road, other costs for use of the road.

12. Correct major gap

pipeline after June 1, 1971

by part of participants over part of route

Now ----- no reimbursement

(Compare bottom of page 6 with page 6)

13. Consider extending 1971 and 1973 dates

JOURNAL
SUPPLEMENT

SENATE AND HOUSE - SUPPLEMENT NO. 6

May 5, 1970

REMARKS BY GOVERNOR KEITH H. MILLER
BEFORE A JOINT SESSION OF THE ALASKA LEGISLATURE

"Mr. President, Mr. Speaker, members of the Sixth Alaska Legislature:

I have come here today to request that you appropriate up to \$120 million from the general fund for the construction of a permanent highway from the very heart of Alaska north to the rim of the North American Continent.

It is an unprecedented request and one warranted by the unprecedented circumstances that exist in Alaska today.

The Constitution of the State of Alaska states that 'it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.'

I want the state to build a highway from the Yukon River to the Arctic Ocean because I believe that no other highway in Alaska's history is so much in the public interest.

This highway, stretching north through the Arctic, will begin to open up a practically untouched third of the state. It will provide access to vast wealth we know to be there; to wealth we strongly suspect is there; and, if recent experience be a guide, wealth beyond our present hopes and dreams.

It will promote the convenience of public travel above the Arctic Circle and provide for orderly development and conservation of the Arctic. It will provide access to state lands and facilitate better environmental control of the same lands.

It will expedite and augment the state's revenues.

But, more than this, we know that the highway is an integral part of the trans Alaska pipeline system that must be built if the oil from the North Slope is to move to market through Alaska.

Because of a deep and continuing concern over the effects on Alaska and her people of the delays that have plagued the proposed pipeline, my administration has been working for months to facilitate the project. It is that deep concern that brings me before you today.

We have spared no energy or time in our efforts to get on with this project that is so vital to Alaska's future.

Last week at this time I was in Washington, D.C., with a distinguished group of Alaskans -- legislators, business, labor and conservation leaders who compromised my emergency task force.

I cannot praise those people highly enough. They deserve the thanks of all Alaskans for the outstanding job they did in going about their assigned duties in the nation's capital.

We went to Washington with a story to tell; we told our story and also listened to the other side and Alaska is better off today because we made that trip.

My request of you today is that you appropriate up to \$120 million to construct the permanent highway north and that you authorize the state to build it by contracting with a corporation formed by the Trans Alaska Pipeline System.

The state is to be reimbursed by TAPS for the \$120 million, or the actual cost of the construction, whichever is lesser.

It is only by contracting with the TAPS corporation that we can take advantage of the engineering work and mobilization that already has been done.

We must remember that we are actually talking about a highway to the Arctic Ocean from Livengood. The first section of that road, from Livengood to the Yukon River, has been completed by TAPS at a cost of \$19.4 million.

As I said earlier, unprecedented circumstances exist in Alaska today.

Without the permanent highway, and the construction of the pipeline, Alaska's future social, economic growth and financial stability could be severely damaged.

Let us look at some particulars.

Work stoppage on the North Slope highway and pipeline will result in immediate significantly increased unemployment in central and southcentral Alaska. Monthly unemployment rates will be from 50 per cent to 100 per cent higher than normal, depending on the slack picked up by offsetting construction projects.

Alaska, statewide, would lose employment growth of about 2,400 in 1970, 3,300 in 1971, and 4,300 in 1972. Projected population growth loss would be 3,900 in the first year, rising to 12,800 with a three-year delay. Total dollar loss to Alaska's economy is estimated to be \$60 million after one year, rising to over \$400 million after three years.

Two or three years ago, faced with these circumstances, Alaska would have been powerless to turn the tide.

Times have changed somewhat. True, we cannot authorize construction of the pipeline at this time; but we can get on with the building of the highway to forestall the disastrous economic consequences that are sure to result if it is not built.

A copy of the agreement between the state and TAPS has been given to the Senate President and Speaker this morning.

However, even if there were no reimbursement agreement, I would still recommend the building of this highway.

Some possible difficulties remain concerning gravel pits, but I am confident they can be resolved in a short time. The administration will continue to work on these points while you consider the proposal.

There are those who do not believe the state should build such a highway. They say the state's resources should be used almost solely for sewer and water facilities, schools, and housing.

The budget and the package of investment legislation which I proposed both provide for extensive upgrading of such facilities throughout Alaska.

I have reviewed the budget I submitted to you in January and I find no reason to propose changes in that document or any of the other administration investment proposals.

I am asking simply that we take \$120 million out of the general fund to build a highway to state secondary specifications. That money is to be returned to the state and will go back into the general fund to be invested. The loss of interest revenue that would accrue from the investment of these funds will be more than offset by increased tax revenues and other numerous benefits resulting from the project.

At this crucial time in our history, we must give our full measure to the establishment of a firm economic base that will allow for steady economic and social growth.

To do any less would be to betray the public trust and confidence that has been placed in us.

It is not acceptable to me to have the cities of Anchorage, Fairbanks and Valdez and the rest of the state poised for the promised economic boom only to have it delayed time and time again.

The uncertainty places us in a sort of limbo where planning and developing for the needs of the future is almost impossible.

For the first time since statehood, we have the means to propel ourselves out of the limbo and we cannot do any less.

We have been assured that the pipeline will indeed be built, but we must not sit idly by and wait. Let's get on with the building of the highway so there won't be any more delay necessary once the construction permit is granted.

If the highway is not built before the pipeline construction permit is granted, the completion of the pipeline will be delayed by a year. That delay will result in the loss of millions of dollars to the state in royalties and severance taxes.

We have been assured by Secretary Hickel and officials of the companies involved that no major route change for the pipeline is contemplated or necessary so that should pose no problem for the highway construction.

The highway will conform to the stipulations agreed upon between the interior department and TAPS, and will further conform to state secondary highway standards as approved by the Bureau of Public Roads.

Ever since last January 12, when the second session of the Sixth Alaska Legislature convened, we have heard it said over and over again that this is the most important legislative session in Alaska's history. Certainly nobody here quarrels with that assessment.

We have recognized that the needs of Alaskans lie far beyond the scope of any single party and I am confident we will continue to work together in a spirit of cooperation to meet those needs.

We are determined to do that which is right as well as that which is necessary.

I urge your favorable and speedy approval of this proposal.

Thank You."

Mr. Jackson:

I talked with Dick Bradley
re N.S. Road public hearing and
the desire to have answers to our
questions by then. He suggested
calling Sol. Mitchell Melick in
Washington, D.C., but didn't think
they could have answers by then.

I got the numbers for both Mr.

Melick and Mr. Wade - in Anchorage.

What is your wish?

Merle

202-343-2134 - Wash. D.C.

277-0596 - Wade in Anchorage

ROUGH DRAFT

Straight wire

sent 11:55 a.m. 5-11-70

Mr. Mitchell Melich
Solicitor, Department
of Interior
Washington, D. C. 20240

202-343-2134

THE HOUSE JUDICIARY COMMITTEE IS HOLDING A PUBLIC HEARING ON THE LEGAL ASPECTS OF THE NORTH SLOPE ROAD AND THE PROPOSED CONTRACTS FOR CONSTRUCTION ON THURSDAY, MAY 14.

MR. HUGH WADE, SOLICITOR, FROM ANCHORAGE, APPEARED BEFORE THE COMMITTEE ON THURSDAY, MAY 7, AT WHICH TIME HE WAS PRESENTED WITH QUESTIONS FROM THE COMMITTEE. HE HAS SUBMITTED THESE QUESTIONS TO YOUR OFFICE FOR ANSWERS. WE WOULD APPRECIATE RECEIVING ANSWERS TO THESE QUESTIONS PRIOR TO OUR MEETING AT 4:00 P.M., THURSDAY, MAY 14, REALIZING THAT YOU MAY NOT HAVE DEFINITIVE AND DETAILED ANSWERS ^{BY THAT} ~~AT THIS~~ TIME.

HOUSE JUDICIARY COMMITTEE
BARRY W. JACKSON, CHAIRMAN

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION

WILLIAM H. JACOBS
EXECUTIVE DIRECTOR

308 "G" STREET, SUITE 313
ANCHORAGE, ALASKA 99501
TELEPHONE 272-9431

PHILIP B. BYRNE
DEPUTY DIRECTOR
JOHN S. HEDLAND
LITIGATION SUPERVISOR

April 29, 1970

Representative Barry Jackson
c/o Judiciary Committee
Pouch "V"
Juneau, Alaska 99801

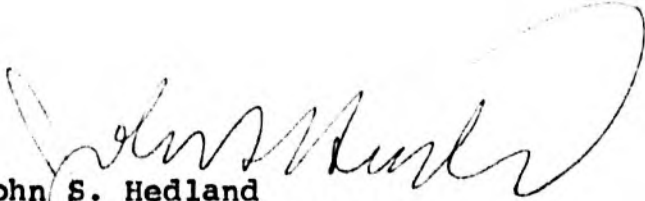
Dear Representative Jackson:

Enclosed are five copies of a memorandum regarding the legality of state construction of the TAPS road which we have prepared at the request of Art Peterson. I would appreciate it very much if you would send me copies or memoranda prepared by any other parties on this question.

Please let me know if we can be of further assistance to the Committee.

Sincerely,

ALASKA LEGAL SERVICES CORPORATION



John S. Hedland
Director of Litigation

JSH/dp

Enclosures [5]

521

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION

WILLIAM H. JACOBS
EXECUTIVE DIRECTOR

308 "G" STREET, SUITE 313
ANCHORAGE, ALASKA 99501
TELEPHONE 272-9431

PHILIP B. BYRNE
DEPUTY DIRECTOR
JOHN S. HEDLAND
LITIGATION SUPERVISOR

M E M O R A N D U M

TO: Representative Barry Jackson
Chairman, House Committee on
the Judiciary

DATE: April 29, 1970

FROM: John S. Hedland
Director of Litigation
Alaska Legal Services Corporation

Mr. Art Peterson of the Judiciary Committee's staff has requested that Alaska Legal Services, along with various other organizations, present its views as to the legality of state construction of an access road for the Trans Alaska Pipeline System. Since the Committee is presumably considering legislation which would provide a sufficient framework of state law for such a project, these comments are limited to whether such action would contravene any provisions of federal law. In addition, they are not directed to the fiscal or other propriety of such action. Finally, it should be noted that this office represents clients whose vital interests would be affected by any action or non-action with respect to construction of a TAPS road, and these comments are necessarily offered in that context. In this regard, it should also be noted that we have previously supplied a special subcommittee of this committee, chaired by Representative Fink, with a complaint filed by this office in Village of Allakaket, et al. v. Miller, et al., U.S. District Court, District of Alaska, No. A-45-70. This case raises some of the questions within the scope of this memorandum.

Simply put, the question of the state's proposed action is whether there is any provision in federal law authorizing state construction of a road, acquisition of a right-of-way, or conveyance to a third party of a right-of-way over land which is (1) federally owned and (2) subject to "Indian title" or the right of aboriginal use and occupancy. The only provisions relating to state acquisition of rights of way over federal or Indian land of which we are aware are 25 U.S.C. §357 and 43 U.S.C. §932.

25 U.S.C. §357 provides for state condemnation, with the award of just compensation, of "(1)ands allotted in severalty to Indians." This statute is inapplicable to "Indian title" lands, and could conceivably provide for state acquisition of a right of way only over isolated portions of the TAPS route which traversed Native allotments. Even as to such lands, the statute is probably unavail-

TO: Representative Barry Jackson

April 29, 1970

able at present, due to the land freeze. See discussion, infra.

43 U.S.C. §932 provides as follows:

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

Section 932 is a federal offer of a right of way which must be accepted by the state in accordance with state law. 43 C.F.R. §2234. 2-5(b). This section is inapplicable to lands held in "Indian title" by Natives, and does not authorize extinguishment of "Indian title." Bennett County v. United States, 394 F.2d 8 (8th Cir. 1968). Moreover, the section is inapplicable at present with respect to any federally owned lands--whether or not subject to "Indian title--because of the land freeze, P.L.O. 4582, 43 C.F.R. Ch. 1, Appendix. The land freeze withdraws, until the end of 1970, all otherwise available federal land in Alaska

from all forms of appropriation under the public land laws (except locations for metalliferous minerals) . . . for the determination and protection of the rights of the native Aleuts, Eskimos, and Indians of Alaska.

Modifications to the land freeze by the Interior Secretary are authorized, but none have been made which would permit state construction of the TAPS road. On January 7, 1970, Secretary Hickel issued P.L.O. 4760 (35 Fed. Reg. 424) which modified P.L.O. 4582 so as to permit him to issue such a right-of-way, which he has not yet done. Nor does a "Notice of Proposed Classification of Lands for Multiple Use Management" at 35 Fed. Reg. 16-17, creating a "utility and transportation corridor" in northern Alaska, have the effect of lifting the land freeze. The effect of the corridor's creation was merely to segregate the land from location under various homestead, allotment and mining laws, and the notice expressly provides that it

will not affect . . . the determination and protection of the rights of the Native Aleuts, Eskimos and Indians of Alaska.

Finally, part of the proposed TAPS route, in the Stevens Village and Rampart areas, crosses land classified as a "powersite" for the Rampart Dam project by PLO 3520 (30 Fed. Reg. 271); see also 28 Fed. Reg. 2826-31, 3558, and 4040. Such lands are not "public lands, not reserved by public uses" within the meaning of section 932. 16 U.S.C. §818 provides that lands classified as a powersite are reserved "from entry, location or other disposal under the laws of the United States" unless permitted by the Federal Power Commission

TO: Representative Barry Jackson

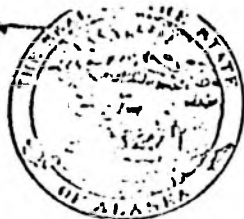
April 29, 1970

or by Congress. No such permission has been given.

It should be pointed out that the existing Livengood road (south of the Yukon) was constructed under the authority of 43 U.S.C. §932. In that case, both the land freeze (PLO 4582) and the power-site classification (PLO 3520) were expressly modified by the Interior Secretary to permit state acquisition of a right-of-way under §932. See PLO 4717 (34 Fed. Reg. 17170) and PLO 4676 (34 Fed. Reg. 13415). Neither has been so modified with respect to the proposed extension north of the Yukon. Moreover, as to the Stevens Village protest area, which lies along its route, the Secretary appears to be enjoined from so doing by the terms of a preliminary injunction entered April 3, 1970, in Native Village of Allakaket, et al., v. Hickel, (U.S. District Court, District of Columbia, No. 706-70) This order enjoins the Secretary:

from directly or indirectly: Issuing or granting any person or corporation a right-of-way for either a pipeline or a road through (the Stevens Village protest area) without the consent of the proper tribal and/or band officials of Stevens Village.

JSH/dp



JUNEAU ALASKA

Alaska State Legislature

House

May 26, 1970

Mr. John M. Elliott
Executive Director
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99801

Dear John:

Committee Substitute for Senate Bill 589 amended contains sections 19.40.034 through 19.40.037, relating to an oil and gas severance tax. Wording of these provisions of the bill has caused concern among several members of the House that the provisions are either unconstitutional or present serious legal ramifications. Among the more significant questions raised are the following:

1. Do the provisions violate the equal protection or due process clauses of the state and federal constitution by imposing a tax on all oil and gas production regardless of whether or not the producer benefits from the proposed pipeline or the road?
2. Are the provisions defective because of vagueness; i.e.,
 - (a) Is the tax on North Slope production only or on all production in the state?
 - (b) Does the tax terminate when the amount reimbursed plus interest is paid or the amount not reimbursed plus interest is paid?
3. If the tax is levied to obtain reimbursement of funds not required to be reimbursed by an agreement, does the tax constitute a breach of the agreement by the state?
4. Since the tax is imposed on all producers, if the road contractor does not make reimbursement does this constitute delegation of the state's taxing authority?
5. Does the tax constitute a violation of Article 9, section 7, relating to dedicated funds?

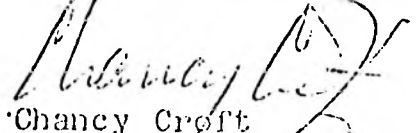
Mr. Elliott

-2-

May 26, 1976

I would appreciate your immediate response to these questions in particular and your comments on these provisions of the bill in general.

Very truly yours,


Chancy Croft
State Representative



IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

Honorable Barry W. Jackson
Chairman
Judicial Committee
Alaska House of Representatives
Juneau, Alaska 99801

MAY 22 1970

Dear Mr. Chairman:

This letter is in reply to the several telegrams we have received from your Committee and specifically to the eight questions which you presented to our Regional Solicitor on May 7 in Juneau.

With respect to the first question, we anticipate that the Justice Department, which represents this Department in the actions brought by the Native Villagers of Allakaket et. al. and by The Wilderness Society et. al., will bring the matter of the State of Alaska proposal for a road from the Yukon River to Prudhoe Bay to the attention of the Court, by appropriate motions, at such time as we have a definite and feasible plan and standards to present to the Court for a ruling. We do not believe that the matter of the road is now in a posture sufficient for presentation to the Court.

With respect to your second question, we do not believe that the injunction in either the Wilderness case or the Allakaket case would in any way affect the right of Alaska to proceed under E. S. 2477. The State is not a party to either action. We do believe, however, that the injunctions, and particularly that in The Wilderness Society case, may affect the right of the Secretary to grant permits for airports or gravel incident to the construction of the road. We will not be able to reach any final conclusion in this regard, however, until the State has taken final action on the road.

In answer to the third question, we do not at this time foresee any difficulty in obtaining a change in the Rampart withdrawal.

In answer to the fourth question, we are not in a position to give any meaningful estimate as to when the pipeline right-of-way will be issued. The Trans Alaska Pipeline system is providing us with additional information which will have to be evaluated before we can make such an estimate.

In reply to your fifth question, we believe that, pursuant to Secretary Hickel's commitment to the Interior Committees of the Senate and House of Representatives, we will have to consult with those Committees with respect to any modifications of FLO 4582 for gravel for the road or any other matter relating to the road.

In answer to the sixth question, it is legally possible for the Secretary to modify the land freeze order.

We do not believe we are in a position, at this time, to provide answers to the seventh and eighth questions. They raise particularly complex and difficult legal issues that can best be answered only in the context of a specific factual situation.

Sincerely yours,



William French Smith

QUESTIONS SUBMITTED BY MEMBERS OF THE LEGISLATURE
ON THE LEGAL ASPECTS OF THE N.S. ROAD

1. What are the plans of the Department of Interior with regard to the pending litigation that has been brought by both the Wilderness Society and others, and Stevens Village and others, that is, those in the District of Columbia courts, with respect to the proposal by the State to build the road? This is to include both the right-of-way and any permits that may be necessary.
2. Whether it is the position of the department that the injunctions that have been issued in any way would affect the right of the state to proceed to accept the right-of-way under the statute and whether or not the injunctions would in any way affect the right of the Secretary of Interior to grant permits for airports or for gravel, incident to the construction of the road?
3. Whether the Secretary of the Department sees any difficulty in obtaining a change in the Rampart withdrawal?
4. Aside from litigation, what time frame may be involved in the permits themselves?
5. Whether or not the department expects to have to consult with the Interior and Insular Affairs Committee on any phase of the state road? If so, what phase?
6. Would it be legally possible for the Secretary to, in a case of this kind, modify the land freeze order to the extent that it would cover the route of the proposed road where it would be crossing federal lands?
7. When someone buys or takes property from the federal government they theoretically have access afforded to cross intervening federal lands to that property, do they not? (In this case the state has

obtained lands in the Prudhoe Bay area.) Wouldn't the state have road access across federal intervening lands to get to the state lands?

8. I have seen the theory that the 1866 Act is not applicable to lands to which there is Indian title. If this is so, in the absence of the law suit brought by the Indians on their land claims, what would be the position of the Secretary as guardian to allow effective acceptance of the offer as in the statute? Obviously he can't do anything under the statute, but, perhaps he could refuse to give permits for gravel and airports?

HOUSE AND SENATE JOINT JUDICIARY COMMITTEE MEETING
MINUTES OF THE MEETING
MAY 6, 1970

Meeting was called to order at 8:10 p.m. by Chairman Barry Jackson of the House Judiciary Committee. Present were: Banfield, Harris, Metcalf, Orbeck, Rettig, Cornelius, Fink, Senator Miller, Lewis, Palmer, Merdes, and Rader. Senators Begich and Josephson were also in attendance.

Mr. Jackson gave an outline of the program by saying that the hearing would commence with Robert Ward, Secretary of State, being first on the program; followed by Commissioner Beardsley and his staff. Mr. Robert Price, for the AG's office, would give his testimony following this.

Robert Ward: I do not have a formal presentation tonight. Our purpose is to react to the wishes of your committee. In this regard, we did furnish the basic framework of the memoranda of agreement with TAPS. The TAPS people left on Friday to circulate this among their own people and will be back Monday, Tuesday, or Wednesday of this week. As yet we have not received their signed copies of this agreement. We have received confirmation by wire from the major participants. Since that time, we have been finalizing construction contracts. We do not have copies available but can discuss the provision of those contracts with you tonight. Tomorrow there will be hearings held with State Affairs and TAPS. I would like to point out that we have with us tonight Mr. Bob Price, from the AG's office. Besides myself, Mr. Price, Commissioner Beardsley, Deputy Commissioner Scougal, Commissioner Kelly, and Henry Pratt were on the negotiating team. John Becker, Chief Design Engineer, is also with us tonight. These people will be available to respond to your questions.

Senator Josephson: Question that occurs to me is in regard to Senator Rader's making a public proposal that the reimbursement on the road construction be done by adding to the severance tax on the North Slope production. What is your feeling on this?

Robert Ward: The governor felt the road was necessary whether or not the state got the money back.

Senator Josephson: I am interested in whether or not the administration had made an economic study of the effect of the state picking up the entire cost and not asking for reimbursement. What difference would this make? Particularly participating on an equity basis? Mr. Jackson did not want to pursue this line of questioning at this point.

Representative Cornelius: If it works out that the participants cannot agree on the memoranda, is the state prepared to go ahead and build the road without the pipeline participants?

Robert Ward: We don't think there will be basic disagreement on this.

Rep. Fink: I think Cornelius' question was that if the oil companies do not care to sign this agreement, would you change your position?

Robert Ward: No, because they have already agreed to sign.

Rep. Cornelius: Do we need this road regardless of whether the oil companies participate or not?

Robert Ward: Yes.

Mr. Beardsley and Mr. Price were asked to testify at this time. Mr. Jackson related that he had a memo from Alaska Legal Services that he had requested from them. He handed these out to the members that were seated at the table.

Mr. Price asked to explain that he was testifying for Attorney General Edwards. He also wanted to briefly explain their reaction to the memo that was furnished to him by Mr. Jackson. The position of the AG is that this memo from John Hedland, copy of which was addressed to Barry Jackson at his request, discusses certain questions which are at present in litigation in the courts. The question which is raised in the memo, the ethics question, is raised by the canons of ethics which govern the testimony which I may give tonight. This would prohibit an attorney, especially in the AG's office, from discussing questions that are presently under litigation. He read from a supreme court decision of 1959 to back this position. Generally speaking it is improper and contrary to the code of ethics for any attorney to publicly discuss a case in which he is or maybe interested. In that respect, the AG is under no less of an obligation than any other attorney. I would like to point out to the committee that if they wish me to testify with reference to the memo and answer the questions raised by Mr. Hedland, it should be done in executive session, or under conditions where this testimony will not be made public. -----or that I have been specifically asked to testify. Mr. Jackson after consultation with committee members requested Mr. Price to testify. Mr. Price also stated that circumstances would require him to comment before a legislative committee. The committee does request Mr. Price to comment on these issues.

Commissioner Beardsley will testify first--Most of what I have prepared related more to the merits of the case rather than the legal aspects. I may be able to answer questions.

Rep. Jackson: You do have a full set of the drawings and documents that were referred to in the ----- . Have you had adequate opportunity to review them?

Beardsley: Yes, sir. I became aware in the late fall last year. I requested my chief engineer, John Becker, to review the designs to that point and to make any suggestions for the design that would be more in conformity with out own designs. A number of meetings were held and some changes were made. The design that we are considering is not a snap decision. This is the result of 3-5 months study. It became apparent that it could become a part of our state system.

Rep. Jackson: Do the drawings substantially meet the standards of secondary highways?

Beardsley: State secondary highway standards are not hard and fast criteria. They are living criteria by continually being under change. They are based on the American Association of State Highways recommendations designed for the lower "48". They are modified by our staff in accord with Alaskan conditions. They are designed with the objective of getting the State of Alaska under the Federal Highway Aid Program. Our standards must be concurred in and approved by the BPR. Under normal procedure this is done on a project by project basis. These are not fixed standards. With the company design consultants for TAPS we tried to bring their design in as close conformity with our normal practice of constructing secondary state highways as possible. We have conditions like the Brooks Range. This range has never been traversed with highways before so we don't know all the problems that we will encounter. For all practical purposes and from review plans and field notes and documents along with aerial inspection, we are satisfied that in excess of 90 per cent of this project will be no more difficult than the 50 miles of existent highway. Grades will be no greater than 9 per cent. These construction people in the field may encounter special problems. These have to be acceptable in highway construction. The fact is that since there will be no federal monies involved-----.

Jackson: If federal money were involved, do you think that all sections would meet federal standards? (Just give your own opinion.)

Beardsley: In my expert opinion, nearly all would receive the concurrence of the BPR. Although there will be some field changes.

Jackson: Have you considered culvert size problems?

Beardsley: What the designers have done is size the culverts knowing that some will have to be changed. We will be influenced from our Fish and Game Department and the Department of Interior. The TAPS people have already sent up a ----- what they expect to encounter. This is normal practice. Some will have to be changed. We will probably have some surplus culvert.

Jackson: Has your department and TAPS been in contact with State Fish and Wildlife?

Beardsley: Yes.

Jackson: In the memo it says that the state will not be responsible for maintenance during the time it is being used by TAPS. Will there be any commitment that they would be maintaining it?

Beardsley: The contractors working under this agreement will provide maintenance of the highway. Following this, we don't exactly know when the pipeline construction will occur. Before the road, then the maintenance of the road will be continued by the subcontractors. As long as we haven't accepted the road it will be maintained by the subcontractors. The state will not be obligated for maintenance and implies that TAPS will be. It is my understanding that they will.

Begich: Do you have the construction contract and the corporation to be formed?

Beardsley: We will furnish copies as soon as they are available.

Jackson: Will you have serious routing problems? Movement of earth; slide areas; etc. Do you anticipate necessary field changes in construction?

Beardsley: They are provided for. The first 57 miles will be as difficult as any construction problems that will be encountered. We have established as a joint team with TAPS design consultants and BLM, Fish and Game, to protect the environment and to cause this construction to become what is now cited as a model of construction in the Arctic. We have learned from this and can qualify that by saying the contractors made and we have worked out new techniques and the arrangement by which we determine having field changes.

Jackson: Is the general routing dictated by the pipeline routing? There has to be a comparison over another routing if there are no other considerations involved, especially in construction or future maintenance cost and utility for an all year round road. Do you have any comments on that?

Beardsley: I would like to correct an impression. The pipeline was seeking in its constructive design the same kind of materials and security that a road would seek. And, in fact, TAPS investigators did a great deal of work that was a great assistance to the highway department. It is a fact that the highways department favors the route that TAPS has picked. This general route is the most favorable route. The Anatuviik Pass, the winter road, is different than an all year round road. This first one is good for a winter road or trail, but when you are seeking to build a permanent road, that is another matter. North of Anatuviik Pass there are a great many problems, such as overflowing streams, etc. This is a traditional route, especially as a winter trail. The difference in elevation in the other route, but we feel that the TAPS suggestion is favored.

Jackson: Is there any opportunity for federal assistance on this route:

Beardsley: This is a definite point. Nearly all of our federal apportionment is already listed to the upgrading of the existing highway system. We have succeeded in completing 1/3 of this program. The monies that we have diverted have been nominal. We have only extended the highway system by 10 per cent. If we take our federal aid monies and devote them to this top priority program and improve our maintenance factor, we have a 15-year program ahead of us. What I am saying is that the hard facts are--we don't have federal monies for this highway.

T. Miller: What would be your best guess after the legislature appropriates money, what mechanical things would then happen?

Beardsley: The first thing is to send a team headed by John Becker and including Woody Johanson to conduct an on the ground and aerial survey of the route to satisfy that there are no field problems readily seen. Probably assign two construction inspectors to each segment of the highway. There will be seven, I believe. Then the field changes that are necessary will be made. We anticipate that this would be the first phase, and it would take approximately ten days.

Senator Miller: Do you anticipate fairly quick action here? Would you be able to move rather quickly? Fink asked that if it weren't for the pipeline, would you be recommending this road to be built?

Beardsley: I would work in this direction. This isn't part of our five-year highway program.

Fink: Isn't it true that the primary reason is because of the pipeline?

Beardsley: The five-year program is for reconstruction of our existing highway network. If we had an expansion program, this would be our first priority. TAPS is to reimburse us less any federal funds.

B----: Is there any reason that this is not in the contract?
.....

Beardsley: If we wanted to dilute our present programs, we could go ahead and build this.

.... You have mentioned several times that EPR doesn't have anything to do with this road. Do you anticipate that they will have any inspectors on the road at all? TAPS is using itthat the state doesn't have any obligation to maintain it? If it is a public road for public use and when will it become available for public use?

Beardsley: After we accept it. I still have the right to close it for safety purposes. We will have to have some means for safe travel on the highways. If there is no pipeline, then we will have to make special provision for safety on the highway.

..... TAPS as a cooperative matter.

Beardsley: I can't give you a concrete answer to that question.

.....Do you believe that the road will be able to be used simultaneously along with TAPS? If the public is using it, the state then has the obligation to maintain the road?

Beardsley: TAPS will be required to maintain it.

.... In regard to the bills sent down---one eliminates the authorization of contract by bid, why?

Beardsley: Two reasons: (1) It appears that we should deal with the existing contractors through TAPS. Subcontractors through TAPS have already gone through a bidding procedure. They are there because they are successful bidders. This is not under state procedures but they

are selected and evaluated as providing the most road for the least amount of dollars. The intent of the law would be threatened in this case. We get into a mish-mash of renegotiation between the new contractors and the ones existing there. There wouldn't be any construction season left. We felt that they were there and that their existing arrangement with TAPS should be honored.

.... cost plus contract? Set fee?

Beardsley: The contract limits the state's obligation to \$120 M; if the cost is less we pay this amount. If the cost exceeds \$120 M TAPS will pick up the rest. Two types of contractors--target contract and the other is a unit contract. Because of the scope, the cost will fluctuate. There will be a new corporation formed which in turn will pick up the contractor with the prime bid ers on the road.

Jackson: This appears to be a contract on a cost only basis. No profit provided for that corporation. Is this, then, a nonprofit corporation?

Fink: As of this moment, does the state have any environment stipulations?

Beardsley: There will be a number of state departments involved besides highways. HW and Fish and Game. They were also involved in the first 57 miles.

Fink: At this stage, do you anticipate any federal people on the road? Especially in regard to federal stipulations?

Beardsley: BLM people will be up there. They were also there for the first 57 miles. We have a good working basis with these people.

Merdes: His question related how to determine what was "economically feasible"? Defines that as a permit to build the pipeline with TAPS routing currently in existence.

Mr. Price: sum of the money that might be termed cost-- whether or not TAPS organization has a sum which is its proposed cost which makes it economically feasible. The latest figure is \$1,300,000,000. There are a couple of factors that should be brought out. This is planned for underground pipeline. They are getting serious about above ground construction. The factor of whether or not it will be above or below might make a difference. I can't speak to the question. You might ask TAPS representatives. When the governor told the Legislature that the highway would further conform to state secondary highway system..... The Governor was in error in referring to BPR. Those are the design that we had.

Senator Josephson: Have these drawings been agreed upon by the Department of Interior and TAPS? Fink mentioned that there would be difficulty on gravel pits. What difficulties, and how much gravel?

Price: The question that you are raising, Senator, relating to the gravel permits is the question that is raised in the litigation back in Washington, D. C., in the Wilderness Society versus Mickel. In that action a preliminary injunction was issued by Judge Hart 23 April 1970. It would be helpful if I read from that and discussed it a bit more fully. (Read from the case.).....hereby enjoined from issuing a permit with the TAPS system to any person or corporations.Construction of a haul-road over public lands of the United States from Prudhoe Bay to the Yukon.to the use of gravel for such a road.perhaps it should differ on the haul-road. This is in the case against Governor Miller--gravel from public lands. The language of the injunction states that it is deposited on a dedication of the road with the pipeline, however, if the state constructs a road independently of the pipeline system the two are split off. You have a changed condition. At the present time the Secretary of Interior is enjoined from issuing to any person or corporations.... This referred to TAPS. The use of gravel from public lands is cited. What are public lands, when you consider the 1866 Road Act? The permits for gravel did not require a permit, furthermore, there is also the possibility that gravel found in navigable waters that belong to the state already belong to the state.

Josephson: Some people are concerned thatthey think we have done something. Doesn't the state have any plan to test the theories that you have recited so that the legislature can be sure that the passage of the Governor's program would be barred?

Price: There would be different ways for this to take place. Request the court to reconsider its preliminary injunction on the basis of changed conditions.draw rest in litigation filed by ALS in the Anchorage District Court where the state is preparing an answer. I am not sure when this will be filed.

Josephson: Commissioner, normally if there were problems in the field the contractor can process claims on the job.with the fact that we are relying on design by the parties in the general contractors corporations. Our liability is limited to \$120 M. There is a claims section.

Price: In the target contracts..... In the two contracts that are set units there will be a clause in it. Commonly found in government contracts.

Beardsley: If total cost came below \$120 M there would be the possibility of increasing that cost by such claims above the \$120 M. After having reviewed their construction quotes that we had in, it would be fortunate to build this road for under \$120 M.

Cornelius: You have indicated that the construction problems north of the Yukon would be much the same as south of the Yukon.

Beardsley: No, south of the Yukon is similar to other roads already built. When you are out of the mountain range they are similar to the section of Livengood and the Yukon Road. The cost per mile for the 57 miles was 19.4 M dollars. \$340 per mile. We anticipate \$327,000 per mile projection for the entire road.

Cornelius: Fink asked about your 5-year program. Did TAPS propose to build a road to Prudhoe Bay? Would your office have considered building a road into that area?

Beardsley: The problem is involved. Basically you have to envision a projected need. Then you have to remember that the 5-year program is for reconstruction of existing highways. No extension of new roads was in the new program.

Cornelius: On Page 14 there is a reference to a possibility that the federal program may pick up part of the cost. Are you going to go ahead with plans to try and get federal participation?

Beardsley: I am concerned that we are so limited that to do the job we have at hand that I would consider it not prudent to devote any federal money to new highways.

.....If you follow the general federal requirements would it be possible at a later time to make an application for funds to reimburse the state for a percentage of the costs involved?

Beardsley: I read the contract that I can't see how this could be done. It will be part of the highway system. It can be improved with federal highway funds at a later date.

..... What I am getting at, we can't make an application with BPR but is it possible to go ahead and use what we haveand then get that approved at a later date and also get reimbursed at a later date.

Beardsley: I talked with the District Engineer. He thought that it would be difficult. Mr. Fink already asked about the maintenance. The state is responsible because it was a state road. The question arose that in the contract the state will not be responsible.

.....Can't the state contract with TAPS to maintain this?

Beardsley: This was done this winter.

Orbeck: There seems to be a lot of confusion. Isn't it true that they were bid under unit cost system? On the unit cost basis?

Beardsley:1-5 year bid on a target brief and the subcontractors benefits vary.

Orbeck: Isn't it cost plus? Isn't it true then that Livengood cost was high because it was started in the winter.

Beardsley: This road would be built in the summer and should cost less.

Senator Palmer: You thought that you would be surprised if it cost less than \$120 M. I have hear that it might cost \$250 M.

Beardsley: Anything in excess ^would be paid by TAPS. This would be whether the permit was granted or not.

Beardsley: Let me state that I understand it that there is some- think under \$40 M in mobilization cost and administrative costs in addition to this, anything in excess they will pick up the remainder. This does not include \$19 M they spent on the Livengood Road.

Rader: Do you feel that the route of the pipeline is certain now?

Beardsley: This isn't my area to judge.

Rader: I notice that the contract provides that if it goes an alternate route there would be no repayment. Are we taking the pipeline companies word on that?

Secretary of State Ward: This gets into policy--major deviations could negate their having to reimburse the state. We have had a strong assurance as we can get and have indicated that there was no change in their plans and the route that they favored was the route throught the Detrick Pass.no desire to move the pipeline. If they got a permit that said you cannot construct it through the other pass instead of the Detrick and they are not party to that then their agreement says that the state would be reimbursed on the road that did follow the pipeline route.

Rader: Doesn't this make a different a state ris and not a pipeline risk? They specifically have it..... We are relying on the pipeline for the route and we don't have a choice. Is the state taking the risk or the pipeline?

Secretary of State Ward: The realities of the situation is that they will go along that route. They already follow that.

Jackson: To close this line of thinking--let us return to Commissioner Beardsley.

Metcalf: Do you intend to let the public use the road?

Beardsley: This will be maintained 12 months out of the year--when the state takes it over. Use would be based on volume of traffic.

Metcalf: Do you have an estimate of maintanance--such as \$2,000 or \$2,500 per mile?

Fink: Federal government allows so many dollars which comes from highway user taxes. This is divided among the states according to population and other factors. Most are apportioned in the neighborhood of 94% to 6% for state dollars. There are certain things they will not participate in. In other areas you will find 88% federal dolaars to 12% state dollars. The ratio is so high because of your high precentage of federal lands. This amounts to \$48 M per year.

Fink: Any federal funds that we apply to the road have to be taken away from other programs.

Beardsley: We can use it any way that we see fit. Any federal funds

that we put on the road will have to come from other programs. Livingood is not a public road today. Until the pipeline is completed in accordance with the agreement with TAPS.

Fink: What about North of the Yukon to Prudhoe Bay?

Beardsley: It will be a public road. You have no way to get to it until such time as the pipeline is completed. If the pipeline construction is in the picture. Before the pipeline is completed it is almost a fair statement to say that it is not a state road. It will be limited public use.

Jackson: Do you anticipate that there will be limited public use from Livengood to Yukon.

Beardsley: We have discussed this with them. We have merely agreed that there was a problem but we don't have that worked out.

Jackson: Who will provide the Yukon crossing?

Beardsley: There will be an ice bridge in the winter and a ferry in the summer, both operated by TAPS. Following that we will negotiate with TAPS.

Jackson: How many months out of the year do you expect to be able to use this road?

Beardsley: 10 months.

Robert Ward:federal provision in the contract.....
The inclusion for repayment to TAPS if any federal funds were received by the state. Our original draft did not have that in there....not devote any funds available and not jeopardize the construction of this road. The participants asked if we would object in the event that we would get any reimbursement. That is why it is in there.

Senator Miller: What general broad public policies bind public roads. As Commissioner do you feel that the North Slope Road has a value as a logistic notwithstanding the pipeline? Do you feel that the state would feel justified to build this road even if the pipeline were not built? Should the state bear the risk rather than the companies in the route deviations?

Beardsley: This might not be an important consideration. First on the value of logistics rather than a tool to build the pipeline. The risk isn't too great then because the state can recover because of the....

Robert Ward: I would like to put any businessman's mind at ease as to where the risks lie. Every program that we have invested in whether by the administration or legislature sponsored, in any case, it requires an appropriation of funds. It requires a lot of money. If it is to be done in an orderly fashion. The administration and the legislature have recognized that we have to have continuing revenue. Oil is the number one thing now. Along with that in marketing the oil we can accomplish that and get the road too. If it is the administration and the commissioner that the

road will serve a basic purpose besides the pipeline then some of these questions in terms of broad policy and other methods that the state can use to recover its cost if this agreement doesn't work out.

Senator Hammond: The states liability would not exceed \$120 million regardless.

Ward: We are assured that TAPS will underwrite a road regardless of cost.

Hammond: Or does this mean at TAPS option? They will say we don't want the road to go any further. Is it assuredly going to go from point "A" to point "B"?

Cornelius: Fink brought out an interesting point about public highways in regard to Livengood to the Yukon. The basic reason that we would appropriate for this road without an absolute guarantee from TAPS is because it is important for supplying the oil fields by the trucking industry. Don't you think it is important that at the time for scheduled completion of the road north of the Yukon be a public road the same as south of the Yukon?

Beardsley: We have not reached any formal agreement on this yet. Isn't any real strong... of making both parts a public road at the same time. I mean on the part of TAPS.

Cornelius: Why couldn't this be included in the agreement?

Beardsley: We have discussed this but there has been no agreement at the present time. We don't know what the safety standards will be. If we can work out this arrangement without impeding the construction..... Traditionally the highway program has used about 15% of the budget. The \$120 million is roughly 15% of the \$900 million.

Rettig: According to the timetable expressed in the agreement, sometime before June, 1971 the road is finished, the state is reimbursed, and then they finish the pipeline. At that point, who owns the road?

Beardsley: The state owns the road.

Rettig: How about maintenance equipment along the road. Is that part of the transfer to the state?

Beardsley: No, that would be TAPS construction equipment.

Rettig: How much does it cost to put in the ice bridge?

Beardsley: \$25,000 per year.That is our part of the road.

Rettig: Would the ferry be part of the road system?

Beardsley: I will be negotiating with them.

Rettig: Did I understand that the participants are to use their best interests to get their permit. After that they are not obligated to try anymore.

Rader: The road has other purposes. Assume that the road was built to Anatuviik Pass. Would a second road to the slope be authorized?

Beardsley: Yes, this opens a great recreational area.

Rader: If TAPS built a road to Anatuviik Pass, would you suggest a parallel road?

Beardsley: If we built a road over the route, we are talking about the state taking one route and TAPS another route, then we would have two routes to the slope. This would be a duplication. This would not be a permanent road. It would be impossible to maintain this road.

Rader: Do you think that two roads would be justified?

Beardsley: At least part way. Up to the vicinity of Anatuviik Pass. It will open up a new area there.

(Five minute recess)

Price: We have exempted the monies from state income tax. The corporation is not exempt from state tax.

Jackson: The contract would be written that this would not be a profit corporation.

Ward: Overhead is a part of the \$120 million. The state.....

Jackson: Mention of airports at three locations. Are they to be state airports? Also what legal problems are involved in getting land for the airports?

Price: I may have some answers to these. As I understand the modifications to the land freeze, there have already been arrangements made for airports. I don't know whether or not they apply. There would have to be appropriate modification made for these airports. Or, if they are tied to the pipeline they would be covered by present exemption.

Ward: TAPS corporation has shown.....as part of the pipeline. Total number needed for the pipeline. This is for the airports not necessary to the road construction.

Jackson: Last sentence refers to the environmental provisions of the state. Could you provide us with a copy of those.

Price: I can provide a copy. Parties to the agreement anticipate that it may be necessary to get further modification in the land right-of-way under (USCA 932). It may be necessary to get permits from the federal government for gravel and other materials.

Jackson: What problems may be encountered?

Price: It may be necessary to get modifications from the land freeze to use these materials. It is a question of whether the....with material necessary to have a further modification of the freeze or whether it is unnecessary because of the present modifications which we have.

Jackson: Would it be necessary to have Judge Hart modify his preliminary injunction?

Price: At the present time there is just different schools of what to do. Probably go to Judge Hart and ask that he modify his injunction in regard to the gravel sites. I think the changes are fairly good. Secretary Hickel has.....

Jackson: Question of the withdrawal for the Rampart Dam site.

Price: There has been an early modification of the Rampart site withdrawal for the road from Livengood to the Yukon River. There is still a portion which is in the withdrawal and we have assurances that there will be no problem in getting a modification on this. Power Commission and Secretary of Interior must act of this. This provides that once there has been a modification, the state has the first opportunity to take advantage of the power site withdrawal for the purposes of right-of-way.

Jackson: In a particular statute?

Price: I will furnish that after the hearing.

Jackson: It has also been suggested that even after that the land order is necessary to obtain right-of-way with or without being pushed by Native groups. This may present a problem.

Price: The state is involved in the litigation, we have no way of saying about those villages north of the Yukon. This is the only suit in which the state is presently involved. The suits in Washington D. C. and the other suit in Anchorage only involves TAPS or the Secretary of Interior, therefore, what I discuss would relate to the suits that have been filed..... Land freeze when the question was presented to the Senate Committee on Insular Affairs they did not feel that they.....for a road and the....in no way affected the native land claims. I am not sure whether you want me to go into details of the litigation in Anchorage. It might take up more time than you would like to have occupied by a legal commentary on a memo.

Jackson: I will leave that up to the committee. Assuming that the suit was withdrawn, would there still be a problem as to whether or not you could obtain a right-of-way because of the comments in the memo?

Price: I don't see any. If there were necessity for a native village to pass through a tribe organized under the Indian Organization Act. It may sound that there were a number of hypothesis that had to be overcome.

Jackson: In paragraph 4--In that the company would pay all costs over \$120 million rather than the state would have to pay this without reimbursement. That appears not to be in intent. I suggested that the

language in the section should be amended to make it clear that while the state is agreeing to pay the corporations for additional costs it is limited solely to the funds that are advanced by TAPS.

Price: I think you are referring to the sentence in the event..... It is anticipated by that clause that if for example there is a cost overrun over \$120 million that the participants of TAPS will furnish the money to the state to continue its payment to the general contractor who in turn will furnish it to his subs.

Jackson: Is that obligation on the part of TAPS without the limits or.....Nothing to do with the granting of the permits on the pipeline itself. Reimbursement of the state? Why the date June 1, 1971, was selected as a cut off date and what its purpose was?

Ward: I think the original discussion was to time that to the end of the road construction besides that the TAPS people would be binding upon them. Originally they didn't think it should be taking long.... time to the completion of the road. That is the main reason for that date.

Jackson: What happens if the permit is granted after that date?

Ward: If TAPS builds the pipeline then along the same route within two years after this date, they would reimburse under this agreement.

Jackson: The participants but not the total corporations then, they would be reimbursed according to the percent of their participation?

Ward: All of this gets tied up in the economically feasible permit. Definition, of course, if they get a permit that they agree to, that is when they June 1, 1971. They reimburse whether they build the pipeline or not. If they don't agree--this is the permit and the condition so onerous they say we can't build a pipeline. They would not be required to follow this. As long as they agree that it would be economically feasible is one thing and the permit is favorable they are forced to pay.

Jackson: For other reasons they do not want to build. There is no builtin incentive for them to continue. Even up until then. How do you define "good faith" and "best efforts"?

Ward: No provision for changes in the participation among the members of TAPS. Whether or not that may not present a problem.....especially if the pipeline is commenced after 1971. Then the provision is for the participation in accordance with the percentage of participation with TAPS. They are bound until then.

Jackson: I am confused on the last sentence on page 6. On the paragraph beginning "after the listing of the participants and on through page 7.

Ward: What you have are different alternatives--covered by the sentences that you referred to. If there is a legally defensible and economically feasible permit by 1971. Next constructing a pipeline basically along

the same route from 1971-73. Participate in the reimbursement to the state with the percentage set out in the first paragraph on page 7. In the three...If they received the permit prior to 1971 for a different route than what they applied for, the state would only be reimbursed as to the portion that followed the pipeline.

Jackson: Why are you using the term "tax fees" permits and not used on page 6?

Ward: This is to cover the last question that you raised. Along about two years or three we wouldn't have the last sentence. We raised the question that if on July 1 you began to build the pipeline....From then we started the two years. etc. We would get as much reimbursement as we could.

Jackson: On the definition section--Legally defensible. Permit the immediate construction of the TAPS. This raises the question in my mind, what if the permit is issued but there is litigation that holds up construction? Does this let the company off the hook? and they do proceed with the construction of the pipeline.

Price: If there were litigation which made the permit grant invalid at the end of that litigation then the permit would have been one that would not have been legally defensible. This in no way makes the permit on that wasn't legally indefensible.

Jackson: I raised that question because on page 6 you have a good clause that one or more of the participants commences the pipeline. You are covered. If a permit is issued in the near future but litigation does hold up the construction of the pipeline until early 1971, what then? It seems to me that a strict reading of this language would let them off the hook.

Ward: There is strong concern for us too. They were to guard against what even though a remote possibility that perhaps by Congressional action it would not be legally possible. Economically feasible--when the terms would be unable to be met by TAPS.

Jackson: The word immediate construction should be made to allow construction to be started by June 1, 1971. The other problem I have is....the point has been raised about the design and cost.will not meet the Department of Interior requirements. There will have to be some major changes. What does this do to the plans we have now?

Beardsley: Suggested that the actual cost may not be any greater. I am reluctant to delve too deeply into this and TAPS people will be here tomorrow. In view of this, I think TAPS and the Department of Interior..... Their main hangup was they hadn't heard about how to build the pipeline above ground. TAPS would get engineering requirements for building above ground. They do have the designs ready now. The main difference was how much above the ground. They had room to move....toward the limits of the possibilities of the Department of Interior.

Senator:

Earlier you indicated the state owns the gravel under the waters of the state. To use that gravel does the state have to get anyone's permission? Such as Corps of Engineers?

Beardsley: No, Senator, on the beds of submerged bodies of waters. There is a question about navigable. Once the beds of navigable waters have been defined.....

Senator: Are there adequate gravel beds under water between Prudhoe Bay and the Yukon?

Beardsley: At this time, we are not sure.

Senator: What steps did you take? Before the new corporation goes into operation?

Price: Right-of-way is all right now. No action is necessary. He read from the regulation--a federal code. 1866 Act.reference to a right-of-way by anyone under the 1866 statute. "No application should be filed under RS.....2777.....As no action on the part of government is necessary."

Fink: Is there a standing offer from the federal government to anyone?

Beardsley: You would have to get permits to use the gravel. There would have to be permits.

Fink: Contract, gravel permits, 200' right-of-way. If you aren't about to come up with the permits, do you consider this a legally binding contract?

Price: This will not be binding until you pass legislation. It is an agreement.

Fink: Could they go to court and sue on this.

Price: Yes. It is legal.

Fink: Is Employment Security Contribution a tax?

Price: This is more general than the language in the proposed bill. Advance payments.....it is always an advance against something. It is clear enough that they are paying some other money that they owe us. Monthly advance payments. When you advance something, you are paying something that will be due. They are giving us money which we will give to the general contractor who will use it for something else.

Borer: Roughly what is the cost of the road that you are presentlyroad from Palmer to Fairbanks?

Beardsley: This is not available. I would say about \$250 to \$350 thousand per mile. This is my estimate.

Jackson: One point. I suggested to you that it will be necessary to put a clause to cover these additional payments beyond the \$120 million. If they are paid to the state and intend to be funnelled.....to be..... subject to appropriation. We do this with certain federal actions with a wild card clause.

Price: It is in the appropriate act. There is a paragraph which is entitled "For reimbursement" which might cover that.

Rettig: Page 6 (1).....for all cost incurred if the permit is received by June 1, 1971. What is the implication of related.....Is this overhead type costs?

Beardsley: Primarily.

Jackson: Would the department be paid its overhead?

Beardsley: The department expects the pay or portion out of state funds.

Jackson: Does this mean that you would allocate up to the \$120 million limit? A certain portio.. of department operations as they are related to the pipeline? Is that what it says?

Beardsley: The costs are defined in the construction contract which you will have shortly. They do not expect to pick up state costs. Costs related to and necessary for the construction. Not direct costs for moving gravel, say. Camp maintenance would be another one.

Price: The construction contract is incorporated by reference into this agreement. There is no one overriding document.

Jackson: Has this been signed by all of the parties?

Ward: No, it has not been signed by all parties.

Rettig: (2) Advance payment. Say, May 31, 1971. They have two years to come under this paragraph. 2% to 3 1/4%. Say if Home Pipeline construction undertook the job. 2% of \$120 million isn't very much.if one can be completed at all.

Ward: That is on the basis of this agreement. Only to the percentage of their participation with TAPS.

Rettig: Doesn't the state have to take the risk of the dissolution of TAPS?

Ward: TAPS has indicated quite clearly that they would not.

Rettig: If I am reading it properly, this is binding on TAPS on June 1, 1971. After they decide.....this they do not have to pursue it any longer. It seems to me that it would be very easy for one of these participants to undertake construction on his own and allow the others to get off the hook. In which case none of the others would have to participate and then only to the percentage of their participation.

Ward: This agreement would bind them to the consortium.

Cornelius: One of the minorities to go and construct it by themselves and that way the state would be reimbursed only to the state as say 2% of the cost. Then sell its interest to the other companies and they have voided reimbursing the state within that two year period. They would not have proceeded in "good faith".....in order to get two more years.

Ward: There is no "good faith" requirements on the extra two years. This is only up until the 1971 date. We might consider putting that in there.

Cornelius: As you know there is a tremendous amount of money involved. There aren't any nice guys. In respect to Judge Hart's order, would you please read that portion again?

Ward: "order that the defendant agent's attorneys.....any persons in the act of consortium enjoined until final determination for an injunction and other relief from issuing a permit to the TAPS system. Constructing a haul-road over public roads from Prudhoe to Yukon River.... to the use of gravel from public lands of the United States for such a road."

Cornelius: Wouldn't it be possible for the Secretary of Interior in case this injunction were interpreted to the uses, could he modify the land freeze and allow the state to select these lands so that it would be state lands instead of federal lands?

Price: This is one possibility.

Cornelius: Would that be a possible alternative in case legal problems developed.

Senator Josephson: I thought that state land should be in compact continuous tracts. Do you mean that we could select a 200' strip of land?

Price: It is compact. The state department of law is involved with a department of justice in the matter of the cases before Judge Hart in Washington, D. C.

Josephson: Are we a party?

Price: No, we are not a party. The Justice Department has made its offices available to us. They do not cost anything. Our interests are compatible. We do have law suits that involved the department of justice.

.....I have heard from others that your department has elected not to intervene in either case before Judge Hart.

Price: At the present time we have not intervened.

.....Do you have any expectations of the outcome of those cases as to whether the department of law would be.....

Price: I think Judge Hart was wrong. He said that he would reconsider his ruling because he could be wrong. In our brief in Washington the

Justice Department had not applied because they had no new arguments to present. They have not yet chosen to request Judge Hart to reconsider his decision. The reason I ask is that the matter I raised initially, the logic of his decision still plagues the road program. Some action has to be taken. You replied that the Interior and Insular Affairs Committee has responded affirmatively to the request by Secretary Hickel on whether or not the state had the authority under 1866 statute to construct a highway over public lands. Do you think that that affects Judge Hart's decision.

Price: It is possible to cite the House Committee on their modification. This was approved by the House Committee. This carries a certain amount of weight with the Judge.

.....Feeling that way, does the department have any present plans while the legislature is still here to clarify the claimed right of the state to proceed under the.....?

Price: The AG attorneys will be here tomorrow. If there were action by the legislature that indicates an intention to go along and set up authorization and appropriate this would come in the argument to Judge Hart that it was a separate highway project independent of the pipeline project and his decision and his decision in the suit was based on a different set of circumstances.

TAPS then applied for a haul-road in conjunction with the pipeline right-of-way application. State can exercise its rights under highway legislation. Really then you don't want the state to be a party in the court.

Price: I would have to refer that to the AG. We are engaged in the litigation. If we are to file successfully in the district court in Anchorage.....that did not preclude or amend the orders, injunctions against the district court in Washington D. C. If there were inconsistent orders, the governor of the state of Alaska would only be bound by the State of Alaska and not by the District of Columbia. Only the Secretary of Interior is bound by Judge Hart.

Rettig: Page 7, paragraph 7. The participants employ agents and contractors during the time of construction and the operation does not have to pay any state imposed cost. Fuel taxes, highway taxes, use permits, employment taxes?

Price: I do not read this as a tax. As a tool maybe.

Rettig: It is possible to construe the word that broadly but would not fit in the contract. Used here in a legal sense. It is extended for the life of the pipeline which might be 50 years.

Price: It wasn't the intention that cost would include exemption from state gas tax. Just to provide a tool I presume.

Rettig: For the life of the pipeline?

Price: It is going to be part of the state highway system. It is a state highway. You cannot change tools.

Rettig: If there isn't any purpose in it, why is it in there?

Price: For caution by the TAPS people.

Jackson made some closing announcements.

He hoped to have Hugh Wade tomorrow night on the legal problems. TAPS representatives if they wish to appear on the same problem. This meeting will be recessed until 8:00 p.m. tomorrow evening, May 7.

Meeting recessed at 11:05 p.m.

TAPS HEARING - May 7, 1970

Meeting was called to order at 8:10 p.m.

The AG will not be here tonight. I gave him a copy of the list of questions I had on the contract based on the testimony taken yesterday. He advised that these concerned administrative policies. Mr. Price said he was committed tonight and could not appear. Mr. Beard reported that he was unable to line up anyone for tonight. Mr. Wade from the Department of Interior will be here and also TAPS representatives will be willing to meet with us. Either in the afternoon or in the evening. Hopefully for 4:00 p.m.

Miller: I would go along with that on the investigation, that it was my understanding that we ask for subpoenas to be issued if they do not attend.

Kerttula thinks Mr. Miller has a good point.

Cornelius: Because of my personal feelings of hoping for this road and the pipeline permit. It really pains me to see this, but in my mind it is without a doubt one of the worst legal documents I have ever seen. There is a potential law suit in every paragraph, whether the pipeline is built or not. As a result of the.....there are so many loopholes that it is just painful. Particularly one that Mr. Rettig brought out last night, if the pipeline permit is given after July 1, 1971. Only liable to the amount of their participation in TAPS. Two per cent interest. The state gets back only 2% of the money. They could assign their interest to any of the other interests. This is just one of the examples. I am concerned about this.

Jackson: We have to recognize that they have been under intense pressures to come up with an agreement. It is not needed for changes in the agreement. When would Mr. Bradley expect Mr. Wade? A member of the audience went to see about this. I don't know what we can do at this time. I could review points I have discovered, but I hate to do that.

Fink: I can't agree with Mr. Cornelius at all. I think that we have to acknowledge that the contract was handed out by two parties after negotiation. Looking at the viewpoint of one party, it is not the way you would like it to be. There are two parties involved. There is no question in my mind that the state will be reimbursed. There is a lot of question in my mind. The 2% bit is absurd. We could get it from them in other ways. Government regulates. The big issue is whether it will ever be built. We could criticize the administration and TAPS. Not written for either one, but to give certain advantages to both.

Miller: I have listened to both of these. I think the contract lacks a lot for either side. Benefits to the state are so clearly lacking that I would question it on the basis of mutuality if not for other legal theory.

Cornelius: Maybe we will have to make a policy decision. Some feel that the road should be built regardless. There are \$100 million worth of resources up there--and just a supply road for these deposits would be

advantageous. We should build it for the minerals there. Whether or not the pipeline is built. We should have a better contract than this one. The railroad to the West was built to help private enterprise get to the West Coast. It opened up a large section of the United States. The same possibility exists up there.

.....We haven't offered them every section.

Kerttula: That railroad caused the states' legislatures to be controlled by the railroad.

Miller: I agree with most of what Cornelius said. I think it should be built for the sole purpose of opening up that country. We are going to build it a 100 miles at a time. Now we can develop the state beyond all imagination. If you are going to tie it to the contract--well, there are weaknesses in the contract. It should be mutual and fair to all. On the other hand, if you are going into economics there is copper and asbestos, and other developments, homesteading, and agriculture, too. There are many advantages to opening the road. There is also lumbering and other things besides oil. Really the purpose is to develop the pipeline and the delay is very expensive. \$400 million in three years. The road is needed and should be built.

Harris: I request a ten minute recess until Mr. Wade arrives.
(Recessed until Hugh Wade and Dick Bradley arrived.)

You probably will not be able to give definitive answers to the questions we will ask tonight. You have had an opportunity to see the agreement between the state and TAPS. Comment first of all on the question of permits for airports and free use materials. The committee has received copies of applications for gravel--What is the benefit in the department of the handling of that? When is action expected?

Mr. Hugh Wade, Department of Interior: I would like to explain my position and our position on this whole thing. I had a call from Art Peterson and he indicated that he thought that maybe we could be helpful, so I communicated with the office in Washington, D. C., the Solicitor, and was told that we are not in on all of the negotiations of the pipeline and the highway permit so it probably would be best if the state had any legal questions that you should refer your questions to Washington. In view of these instructions, I didn't think we could appear. I called the Solicitor and told him about this and he said we have talked at length with the AG for the State and you have answered many of the questions he had. We haven't had time to communicate what his answers were and his questions. You probably better stay away from the meeting. About an hour later he said I talked with the Secretary's office. No, the Secretary feels that if the committee in the legislature feels that we can be helpful, it would be best for us to appear. But, I did want you to know that under established precedent for the last 9 months.....TAPS had a legal problem that was presented to BLM in Anchorage or not to the Solicitor's office in Anchorage but to Washington, D. C. Washington answered it. I can frankly say that lots of times the Solicitor doesn't communicate everything that he has

discussed about Alaska with the Regional Solicitor. Many problems that we are not aware of and know nothing about. The Secretary reversed the Solicitor and said, "No, I would like to have Mr. Wade appear and tell the committee that if the Interior Department can be helpful they will be glad to do so." Peterson sent a wire to the Solicitor when I talked to him he had not yet received an answer.asking a very general question of what legal problems were anticipated? I talked today with the Solicitor and practically asked him if he received the wire yet. He didn't mention it. I am sure you will be receiving an answer from the Solicitor of his views.

Jackson: I would like to know what the plans are of the Department of Interior with regard to the pending litigation that has been brought by both the Wilderness Society and others and Stevens Village and others. In the District of Columbia courts with regard to the proposal by the state to build the road. Both as to right of way and as to any permits that may be necessary. (2) Whether it is the position of the Department that the injunctions that have been issued in any way would affect the right of the state to proceed to accept the right of way under the statute and whether or not the injunction would in any way affect the right of the Secretary to grant permits for airports or for gravel, incident to the construction of the road. (3) Whether the Secretary of the Department sees any difficulty in obtaining a change in the Rampart withdrawal? It is my understanding that a formal request has been issued by the state. (4) Aside from litigation, what time frame may be involved in the permits themselves? (5) Whether or not the department expects to have to consult with the Interior and Insular Affairs Committee on any phase of the state road? If so, what phase?

answer

Mr. Wade: I can't/any one of the four or five questions that you posed. I have not been aware that there is any problem as far as airport sites are concerned. In connection with construction of the highway?

Jackson: Yes, sir.

Mr. Wade: One thing I can comment on I think. That is that yesterday I met with the two assistant attorney generals, Kishowa and....Ranking assistant attorney general in the Department of Justice. He was in Anchorage yesterday and with his assistant Mr. Pittle who tried and argued the five village cases before Judge Fort and the Wilderness case. The reason we met that they thought that we ought to be informed as to what their arguments were and the status of the case at the present time. No indication as to what their plans were for following up the injunctions. Except to say that they are considering either an appeal which would take some time to get a decision on and a request for modification. This is the status of the thinking at this time. They brought up this question about the Secretary's letter to the various committees. And I had seen the Congressional Record that had come in that day that the Chairman of the House Committee, Mr. Aspinall, had replied to the Secretary's inquiry. There was daily debate as it affected the Interior Department. The Congressional Record came in three or four days later. They had notified the Secretary that they had replied to his letter. They had

no objection to the state application for highway right-of-way. Mr. Pittle spoke up.....we saw and we were aware of this and this is an accredited report.

Jackson: Has the House answered the letter?

Wade: I asked if they had any answers from the Senate Committee. They had not at that time. I would say in talking with the gentlemen from the Department of Justice. They had not replied to it and they made quite a point of saying that the AG was not going to rule on the question. But legal affairs of the Department of Justice would probably have a pronouncement to make. What theI don't know. After the Legal Affairs decision of the Department of Justice receives the problem you will probably get some sort of an answer.

Jackson: I think you will recognize that members of the committee that even if we appropriate the \$120 million tomorrow and not seek reimbursement but because there may be legal implications.....any assistance you can give us.

Cornelius: Would it be legally possible for the Secretary to in a case of this kind modify the land freeze order to the extent of the route of the proposed road.....state and the road would not be crossing federal lands?

Wade: This might be an approach and I expect to talk with them tomorrow and ask them about this.

(6) Another question - When someone buys or takes property from the federal government they theoretically have access to cross intervening federal lands to that property. In this case the state has obtained or partially obtained lands in the Prudhoe Bay area. Doesn't the state have road access across federal intervening lands to get to the state lands?

Wade: This would be without a permit from the Interior Department. We have a case similar to this and it could be something to explore on the part of the state.

Jackson: Would you say without the necessity of a permit from the Interior Department?

Wade: This is what we have determined in this other particular case.

Miller: I think that the law provides that the permit is required where it becomes a permanent dedication. Just to use it I don't think you need a permit.

(7) I have seen the theory that the 1866 Act is not applicable to lands to which there is Indian title. If this is so, in the absence of the law suit brought by the Indians on their land claims, what would be the position of the Secretary as guardian, to allow effective acceptance of

the offer as in the statute? Obviously, he can't do anything under the statute perhaps, but perhaps he could refuse to give permits for gravel and airports?

Wade: I can't answer except to say that the Interior Department does not recognize Indian title on lands in Alaska at this time.

Bradley: The 1866 Act says when it is self-executing. If it applies we don't have to do anything to give it to you.

Jackson: If it does apply, the Secretary may not recognize the Act.

Wade: I am sorry that I was told that TAPS was coming down here. Maybe you would get to us sometime during the evening. I thought I would come about 8:30. Sorry I was late. I will assure you that if by tomorrow I can have these specific questions that you asked, I will be able to telephone the Solicitor and say these are the questions that the committee would like an answer to. I did want to let you know that the Secretary and the Solicitor told me that we were to cooperate fully....willing to do anything that the state asked them to do if it wasn't contrary to law and regulations of the department.

Closing remarks by Jackson: We will be continuing to work on this. An executive session is planned with administration and TAPS sometime tomorrow.

Cornelius: Would it be possible that Mr. Wade be present at the executive session?

Wade: You can reach me at Dick's office.

Fink: From what you said I am not sure about the law of 1866. Where its application has anything to do with being North of the Yukon.

Wade: Tom, he must have had in mind that the state was going to select some land up there.....10950.....anyone that wanted to do anything up there. Pertains only to when the state wants to select the land. I think that is what the Solicitor would say. This question has already been sent in to the Solicitor. 6 (c) of the statehood act spells it out pretty much as to when and what you can do. This limitation only affects selection by the State of Alaska. That is my opinion, Tom.

Miller: Since you mentioned that the law doesn't pertain to this these lands are not public lands. These are, aren't they?

Bradley: The Interior Department has not recognized this. They are public lands.

Miller: This law would apply to them? Wouldn't it tie down that actually this applies to the withdrawal of these lands for this particular purpose?

Bradley: The question I had was whether.....changes the character of "super freeze" all vacant and unused land.

Miller: That is the question. These lands are not unreserved public lands according to the 1866 Act.

Jackson: For the information of the committee "from all forms of appropriations of the public land laws." An action to accept a right-of-way is an appropriation of public lands.

Wade: We haven't gotten an answer at this point.

.....(8) The state testified that they probably had the authority from navigable waters for construction of the road. This belongs to the state under the Statehood Act. Is that true? What is the Interior Department's position as to what is and what is not navigable waters? (9) Take gravel from navigable waters you still have to get a permit from the Corps of Engineers or other agency?

Wade: The mere taking of gravel needs a permit from the department unless in the course of taking they obstruct navigable waters.

Cornelius: What about fisheries, there is a problem here. State Fish and Game might prohibit you. I don't think Sport Fisheries and Wildlife have any authority to stop anybody from doing it. They can advise you not to do it. You may be ruining a spawning ground.

Miller: The state department of natural resources controls streams. It would be changed to the Department of Fish and Game so the state would control this.

The meeting adjourned at 9:00 p.m.