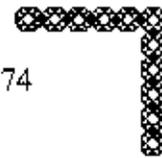


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August 20, 2002

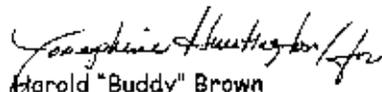
BLM TAPS Renewal Scoping
Argonne National Laboratory EAD/9100
9700 South Cass
Argonne, IL 60439

Re: TAPS draft EIS

Enclosed you will find our comments on the TAPS Right-of-Way Renewal Draft EIS.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.


Harold "Buddy" Brown
President

**TANANA CHIEFS CONFERENCE, INC.
COMMENTS ON TRANS-ALASKA PIPELINE SYSTEM RIGHT-OF-
WAY RENEWAL DRAFT ENVIRONMENTAL IMPACT STATEMENT**

This document is a compilation of the comments of several departments of Tanana Chiefs Conference, Inc. ("TCC") on the Draft Environmental Impact Statement ("DEIS") for the Trans-Alaska Pipeline System ("TAPS") right-of-way ("ROW" and collectively "TAPS ROW") renewal. TCC previously commented during the scoping phase of the EIS process in a letter submitted to Argonne National Laboratory. The following document includes some follow-up comments and concerns as well as additional comments and concerns regarding the DEIS and the EIS process to date.¹ These comments will provide several general observations on the DEIS, and follow with comments of more specific topics that are addressed in the DEIS.

General comments

The BLM decided to require an EIS for the TAPS ROW renewal because the renewal constitutes a major federal action as defined by the National Environmental Policy Act (NEPA). Its decision to prepare an EIS undoubtedly factors in the significant social, economic, political, and environmental change that has occurred in Alaska during the past 30 years. The decision to prepare an EIS also signals that there are significant known impacts, and the EIS is the process by which to lessen or mitigate those impacts in order to come up with a better decision on a major federal project. In spite of the purpose driving the EIS process, the TAPS ROW DEIS generally fails to identify and analyze

74-1

¹ These comments do not represent or bind the sovereign interests of the individual member tribes of TCC.

significant impacts and associated mitigating measures to lessen those impacts for the preferred alternative, the 30-year renewal of the TAPS ROW.

74-1
(Cont.)

The DEIS also overemphasizes the natural environmental and underemphasizes the cultural and human environment. This may be due, in part, to the fact that the preparers of the DEIS do not reside in Alaska and therefore lack intimate knowledge about contemporary social and political issues in Alaska. It also shows that the preparers have failed to recognize the human connection to the natural environment in Alaska.

The result of the preparers' unfamiliarity with current issues in Alaska shows throughout the DEIS. For example, the assessment of adverse consequences on the cultural environment is not persuasive. The weak arguments are partly based on a provisional assessment of the affected environment and, especially, its reliance on secondary sources of data. TCC requested during the scoping period that the preparers of the EIS avoid relying so heavily on previously issued government reports. An appropriately prepared EIS for the TAPS ROW renewal needs to rely on primary sources of data, such as first-hand accounts with Alaska Native peoples, especially for gathering Traditional Ecological Knowledge.

74-2

The DEIS treatment of the human environment also needs to include a more broad discussion and comprehensive review of cultural resources. The topic of cultural resources from a federal viewpoint concerns cultural heritage sites, or archaeological historic properties. The initial cultural resources investigations preceding construction of the TAPS largely concerned the inventory of and data recovery at pre-contact archaeological sites. The DEIS provisionally describes that initial work that was compiled in a report entitled "Pipeline Archaeology". However, since that initial report

74-3

was issued, the National Historic Preservation Act has been amended and new statutory and regulatory requirements include new provisions for inventory and evaluation, historic contexts, Tribal consultation, cataloging of traditional cultural properties, and so forth. It is also well recognized the National Historic Preservation Act, as amended, requires an update on cultural resources for renewed major federal undertakings such as the TAPS ROW renewal. Accordingly, there is a need for programmatic agreement on cultural resources that integrates the various requirements of the amended National Historic Preservation Act. The programmatic agreement should be prefaced by an updated professional report that synthesizes the initial cultural resources work on the pipeline and subsequent cultural resources work during the initial 30-year grant period. That document would then guide negotiations for a programmatic agreement on the management of cultural resources for the next lease period including consultation with affected federally recognized Tribes.

74-3
(Cont.)

Another major short-coming of the DEIS concerns the need to more thoroughly address scoping comments. The document fails to provide an adequate rationale for why suggestions during the scoping period were disregarded, especially since NEPA requires that the environmental impact statements be guided by public comment received during the scoping period of the EIS process.

74-4

Robert Sattler, Tanana Chiefs Conference, Inc. – Realty Program²

The DEIS Fails to Adequately Address Adverse Impacts on Restricted Native

Allotments.

² Text adopted from testimony presented at the public hearing on the TAPS DEIS concerning restricted Native allotments on August 6 in Fairbanks.

TCC holds a real estate services contract with the federal government to provide realty functions for Native owners of restricted town sites and allotments. There are approximately 2,400 Native allotment parcels and 500 town sites amounting to more than 225,000 acres of restricted land in the TCC region. At least 27 Native allotments are located within one mile of the TAPS ROW, and two are intersected by the TAPS ROW. The Real Estate Services program at TCC provides a full range of services to restricted land owners including appraisals, environmental, cultural resources, cadastral survey, probate, and processing of several types of realty transactions such as land sales, right-of-ways, leases, and gift deeds. The renewal of the TAPS ROW has provided the TCC Realty program a need to review environmental issues concerning allotments located in the vicinity of the TAPS and a short schedule in which to do it. The following comments share some of our provisional observations based on an analysis of environmental issues concerning Native allotments in the sphere of the TAPS renewal, and compare our analysis to that ascertained by the preparers of the DEIS.

TCC has previously participated in the NEPA process for the TAPS ROW renewal. Early on, the Realty staff at TCC identified issues concerning restricted lands that require appropriate treatment in the TAPS NEPA process. Consequently, TCC requested during the scoping period to be designated a cooperating agency for the purpose of sorting out environmental issues concerning Native allotments potentially affected by the TAPS ROW. The Realty program at TCC works under a tribal compact with the Bureau of Indian Affairs and is guided by the statutory and regulatory requirements of the BIA, the federal agency that has jurisdiction by law over restricted lands. BLM denied the request based on its evaluation of a provision in NEPA that

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directs lead federal agencies to designate Indian Tribes as cooperating agencies upon request when the undertaking crosses an Indian reservation. TCC understands that the federal designation of formal Indian reservations are not used in Interior Alaska, and that TCC is not a federally recognized tribe. What the BLM, through the Joint Pipeline Office ("JPO"), and its contractor Argonne National Laboratories failed to do is follow the provision in NEPA that allows any local agency to be designated a cooperating agency when it has jurisdiction by law or possesses special expertise with respect to any environmental issue. Argonne National Laboratories entirely misconstrued the point behind the request for cooperating agency status: TCC's expertise with regard to an area of environmental impact.

74-5
(Cont.)

The DEIS fails to substantively mention Native allotments anywhere in its 1500 pages. The only reference to Native Allotments in the DEIS is the single phrase on page 3.27-2 that states that since the TAPS authorization act, lands have been conveyed to individual owners pursuant to the Alaska Native Allotment Act, and goes on to say that the pipeline owners have acquired easements for the TAPS ROW across all parcels except one, which is currently under negotiation. The failure to address past and future impacts on Native allotment owners is a significant omission.

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Notably, the DEIS asserts that TAPS owners were able to accommodate private parties through perpetual ROW agreements. This wording alone is contradictory from a real estate point-of-view. Nevertheless, the phrase implies that the easements were forged in a congenial manner in favor of the private landowners. We can only assume that the private parties include Native allotment owners.

Although the Alaska Native Allotment Act is hardly mentioned again in the entire body of the DEIS, it is cited in Chapter 9.1 entitled "Federal laws" and is listed as "Alaska Native Allotment Act of 1906". Surprisingly, the document entirely neglects to mention the applicable federal regulations that authorize pipelines and the renewal of pipeline agreements across restricted Indian lands. Ironically, the DEIS states that allotments are used for subsistence purposes and on the same page references the state statute that "prohibits hunting with firearms within 5 miles of either side of the highway between the Yukon River and the Arctic Ocean." Is this an adverse effect? More significantly, there is no mention at all of the US code, Title 25, entitled Indians, in the entire 1500 page DEIS. The DEIS fails to define the Bureau of Indian Affairs, Native allotment, right-of-way, perpetual easement, trust responsibility, and cooperating agencies. In fact, the only other place where "Native allotment" appears in the DEIS is in the legend of the Atlas of Maps showing the TAPS ROW, but even those maps fail to illustrate all allotments along the TAPS ROW.

74-7

The silence over Native allotments in the DEIS indicates that individual Indian allotment owners are unimportant to the preparers of the DEIS and the lead federal agency. Apparently, both the preparers of the DEIS and the lead federal agency believe that there have been no direct, indirect, or cumulative effects on Native allotments during the initial 30-year ROW grant period, nor are any posed by the renewal of the TAPS right-of-way. This position is astonishing since the BLM has and continues to carry out inherent federal functions on Native allotments, and also because the BLM issued the deeds to the allotment owners that do not reserve ROW's for the TAPS. This is most striking in the context of the federal trust responsibility since BLM and Argonne lab,

74-8

which is a branch of the Department of Energy, have those obligations to perform for individual Indian land owners. Perhaps even more ironic to this oversight is the fact that the litigation involving the allottees and the TAPS owners created some of the most controversial environmental issues regarding the management of Native allotments in the entire TCC region, and possibly in the State of Alaska. Nowhere in the DEIS is there mention of the rationale by which Argonne decided to exclude a review of allotments in the DEIS. The failure to address issues regarding allotments is opposed to TCC's request during the scoping period that environmental issues regarding allotments be included in the EIS.

74-8
(Cont.)

Both of the allotments that are intersected by the TAPS in the TCC region were involved in litigation with the TAPS owners. With one allotment, the allottee entered into an agreement that allowed access for the period of the TAPS authorization after which she was told that the terms of the TAPS ROW would be renegotiated. In the other case, the allottee had to endure approximately 15 years of litigation that eventually resulted in a condemnation proceeding in federal court. It is important to note for purposes of the DEIS that the summary judgment in that case prescribed fees for the taking and added punitive damages in an amount the allottee believed was insufficient. Had the TAPS owners accommodated the allottee, as purported in the DEIS, a punitive damage amount would have been renegotiated and paid to the estate. To this day, the punitive damages established by the court in the mid 1980's have not been paid to the estate. These examples alone indicate that there are significant effects to the land ownership in the human environment that need to appear in the affected environment,

74-9

environmental consequences, and cumulative effects on a class of landowners: Native allotment owners.

74-9
(Cont.)

Probably the most significant issue regarding Native allotments is the status and validity of the ROW's across the two allotments that are intersected by the TAPS ROW. The DEIS states that the owners have perpetual easements across the allotments for construction and operation of the TAPS. However, as stated elsewhere in the DEIS, since the original agreements were put into place, the lands have been certified to the allottees. It is noteworthy to point out that BLM issued deeds to the individual Indian owners without a reserved right-of-way, easement, covenant, or any mention of the TAPS. Further complicating the matter, the purported agreement on one of the allotments has never been approved by the Secretary of the Interior or its designee, as required by law. Thus, it is unclear under which legal authority the TAPS owners acquired their easements across the allotments, especially since the statutory authority limits pipeline ROW's across allotments to 20-year periods. It is for these reasons that TCC offered its assistance as a cooperating agency.

74-10

Thus, the DEIS appears to initiate the NEPA process to renew the ROW across state and federal land. However, the TAPS owners may not yet have initiated the process of renewing the ROW across restricted Indian allotments. We believe that the NEPA process needs to be initiated for the renewal of ROW across allotments in good faith with current market conditions and within the applicable statutory and regulatory procedures governing pipelines across restricted Indian lands.

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TCC worked in good faith this past spring with the TAPS owners to negotiate a lease on one of the referenced allotments in order to replace a faulty gate valve. The

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allotment owner set aside the problems of the past and agreed to terms of a lease to allow construction activities outside of the TAPS ROW in the interest of the natural and human environments. The BLM, JPO, Argonne National Laboratories need to follow this example and reciprocate the good will in the interests of all Native allotment owners who are potentially affected parties in the TAPS renewal process.

74-12
(Cont.)

The failure on Argonne's part to follow up with scoping comments on allotment lands brings into question its capacity, or perhaps competency, to understand and evaluate Native issues in Alaska. At the same time, its oversight further strengthens the need for Native Alaskan-based cooperating agencies to assist it in preparing an appropriate EIS for the TAPS ROW renewal. In conclusion, the DEIS needs to include a section on Native allotments, and invite Alaska Native entities as cooperating agencies.

74-13

Jerry Woods, Tanana Chiefs Conference, Inc. – Employment Department

Issues regarding Section 29 – Training and Employment of Alaska Natives

The Alaska Native Utilization Agreement (ANUA) requires the recruitment, testing, training, placement, employment, and job counseling of Alaska Natives and that the Permittees shall conduct a pre-employment and on-the-job training program for Alaska Natives. Although this goal has been in place throughout the history of the TAPS, the reality of Native hire has been quite different.³

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In recent years, the most appropriate example of one of the "greatest impacts" to Alaska Natives in Interior Alaska under Section 29 was the October 4, 2001, Oil Spill

³ The Tanana Chiefs Conference Employment & Training Department provided verbal testimony (#32) before the Hearing Committee on Tuesday, August 6, 2002, during a public hearing held at the Chena River Convention Center.

Incident in Livengood when there was an immediate need to activate a qualified Oil Spill Response (OSR) Team from the local area. In this case, Minto was the most logical community, due to not only its close proximity and location along the TAPS Corridor, but also because of the direct effects that the spill had on the community.

Unfortunately, due in part to the "underutilization" of Alaska Natives for employment and training opportunities under Section 29, Alyeska failed to plan for or organize such an OSR Team. Therefore, there was no qualified, specialized or certified Oil Spill Response Team organized within the tribal community of Minto. Consequently, TCC was asked to help mobilize such a team on an emergency response basis. Once a Minto team was in fact mobilized, it had to be trained and state certified before it could be deployed to the spill site. Had Alyeska fulfilled its original obligation under Section 29, this last minute and emergency effort by TCC, the Native Village of Minto, and the relevant unions could have been avoided.

Recommendation: That Alyeska fund and train Oil Spill Response Teams, modeled after EFF Hot Shot Crews. These teams would be certified and ready for instant mobilization in their immediate area or, on an itinerant basis, along the length of the pipeline corridor.

Other concerns and recommendations by TCC to be requested for consideration include the following:

- Section 29 should implement provisions for compliance reviews to occur more often than the current three-year period;
- Section 29 should be amended to include additional provisions addressing not only monetary penalties for non-compliance under ANUA by Alyeska and its

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(Cont.)

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Contractors, but also provisions for pursuing non-compliance with alternative oversight or penalties;

- Section 29 should include stipulations requiring the accurate collection of relevant training and employment data, available to the public, which shows Alaska Native employment statistics with a breakdown reflecting administrative, professional, technical, clerical, skilled, and unskilled positions; the hiring of Alaska Native residents of corridor and non-corridor communities; and which corridor communities have trained Oil Spill Response Teams;
- Provisions requiring the participation of at least one Alaska Native representative from each of the villages located in or around the TAPS Corridor, to be appointed to the Section 29 Advisory Board; and
- A provision requiring periodic, formal meetings between the Tribes and Alyeska (and its contractors) to be held in designated TAPS corridor communities.

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(Cont.)

74-17

Donna Dwiggin, Ph.D., Applied Cultural Anthropologist, Tanana Chiefs Conference, Inc. – Natural Resources Department

The DEIS fails to Address Significant and Known Impacts Upon the Culture and Cultural Resources of Interior Athabascan Tribes.

The DEIS is written with little regard for Alaska Native cultures in the areas affected by the TAPS ROW, and the tone of the document reflects preconceived ethnocentric biases of Euro-American cultural origin. The DEIS assumes continuing the current structure, organization, and operations of the TAPS ROW with all of its contiguous installations and roadways into the future. Although two other possibilities are

74-18

mentioned, the depth of research into those two alternatives is minimal. Impacts to humans, by contrast, are given little consideration; even less attention is given to impacts on Alaska Natives specifically. Only about two pages of the entire DEIS are dedicated to the discussion of "Sociocultural Impacts". This paucity of treatment reveals inadequate consideration of the direct and secondary human impacts of the TAPS ROW renewal.

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(Cont.)

Subsistence received inadequate or inappropriate treatment and analysis by the DEIS.

The subject of "subsistence" is treated trivially and haphazardly throughout the DEIS, although the document acknowledges that it is one of the most significant direct and secondary impact subject areas of the TAPS renewal. One of the most significant omissions with regard to subsistence is that the DEIS does not have a valid base of information from which to perform an analysis of impacts on subsistence.

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The DEIS, by its own admission, uses outdated statistics mostly from AF&G surveys done 10-20 years ago. Moreover, the statistics used do not separately examine the competing fish and game usages by subsistence users and sport hunting and fishing users. Finally, the DEIS preparers made no attempt to incorporate available Traditional Ecological Knowledge ("TEK") in the analyses despite the fact that the Alaska Department of Fish and Game ("ADF&G") is now incorporating TEK into its surveys.

The DEIS treatment of subsistence is further complicated by its selective reliance on Federal and state definitions of the term "subsistence". For instance, when the DEIS chooses to follow Federal designations, subsistence applies only to rural residents, Native and non-Native. This designation is underinclusive and inaccurate because it omits the subsistence needs and activities of Native peoples who have been forced to move to urban areas to supplement subsistence resources, or whose subsistence areas had their

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character changed by the TAPS. Once Native people reside in urban areas, they are no longer considered subsistence users under ANILCA and the TAPS DEIS, as they are no longer categorized as "rural". Nevertheless, they may either travel to their home area to provide for their families, or they must utilize hunting and fishing areas closer to the urban areas areas that are excluded in the DEIS discussion of subsistence impacts. This arbitrary divide must be reconsidered, fully analyzed, and incorporated in the EIS to reflect the true extent of impacts on subsistence.

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(Cont.)

In Section 3.23.5, the importance of subsistence is mentioned (35% to 60% of daily caloric intake for rural residents), but the DEIS then states that "it is difficult to establish the relative economic importance of subsistence harvests." Further, the DEIS uses ADF&G attempts to provide equivalent economic amounts for subsistence at "between \$160 and \$267 million." The figures are misleading and difficult to use for a number of reasons. First, the ADF&G economic value estimate is not adequately contextualized for those families using subsistence as a percentage of their income. Second, the range is too large and the uncertainties about its accuracy are too great. Third, the commodification of subsistence resources disregards the cultural importance of subsistence resources and a traditional subsistence way of life. Thus, the DEIS's economic analysis of subsistence is flawed and perpetuates long-standing biases.

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Faulty logic and poor statistics cited in Section 3.24.1 compound the problem. The statistics used in the DEIS were based on ADF&G numbers taken at individual community levels, but its methodology eliminated any tribes and communities that did not meet a narrow set of criteria – "the 21 tribes identified by the BLM as those that would be potentially directly affected by renewing the TAPS ROW ... [plus] 23 largely

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non-Native communities...for which data exist." And, "Eleven of the 23 communities defined by geographic proximity to the TAPS ... would have been excluded from this analysis anyway because of their location in non-rural portions of Alaska by the Office of Subsistence Management." Also, as the DEIS admits, "the information examined is, in many cases, several years old and likely suffers from inaccuracies such as underreporting." And also, "variability over time makes use of quantitative characterizations of subsistence activities ... and depictions of geographic harvest areas of limited utility because of the inherent variability and flexibility of subsistence." This merely reveals the circular nature of the argument. The DEIS further admits that although the data presented in this DEIS are the best available on subsistence, they are dated and of limited utility. It goes on to note that one must use caution in drawing firm conclusions for the early 21st century from an examination of this data.

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(Cont.)

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If data does not exist, the preparers should seek and provide available data that is current and relevant. ADF&G and USF&W are able to provide the personnel to do these surveys, and they currently have data on some subsistence practices and TEK.⁴ Excuses as to the availability of relevant data do not meet BLM's responsibility to examine adverse impacts and mitigation measures.

Information that has been tapped from TEK sources is dismissed by the DEIS as unacceptable: "Information from interviews and testimonies on subsistence concerns is offered to help fill gaps in more conventional data, but this information in most cases never has been confirmed independently by systematic studies." This is not true, as US F&W has had an ongoing project to gather TEK information and include it into its recent

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⁴ Note: We support AFN's suggestion to develop systematic data collection and establish a protocol similar to its Attachment 2.

reports, and TCC is assisting in this effort.³ The casual dismissal of available TEK information creates doubt about the DEIS preparers' desire and ability to understand the subsistence impacts given the acknowledged absence of current and relevant "scientific" data on the subject.

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(Cont.)

Section 3.24 mentions the "sociocultural" and ceremonial usage of subsistence hunting and fishing, however the section only deals with the *economics* of subsistence, ignoring its sociocultural importance that is central to cultural lifestyles. More in depth consideration of the total impacts to the cultures, family structures, spiritual, ceremonial, clothing, customs, traditions, and other uses should be included for a complete picture of subsistence losses to cultural impacts.

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DEIS also fails to consider Alaska constitutional rights granting priority for subsistence practices as enacted under AS 16.05.940, choosing instead to follow the federal Title VIII of ANILCA, 16USC § et seq. that grants a subsistence priority to rural residents over nonrural residents in subsistence activities on federal public lands. Urban residency, as we know, does **not** preclude subsistence harvesting of fish and game, and, therefore, the statistics gathered for this DEIS are skewed incorrectly omitting Native urban residents from consideration.

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The DEIS fails to adequately consider the secondary impacts of TAPS infrastructure on subsistence.

Increased sport fishing and gaming as a result of TAPS facility and roads development, represents a challenge to increasingly distressed and limited subsistence resources. This "secondary" impact is not addressed, nor is mitigation suggested. On the contrary, language used in the document implies continual increases in usage from

74-27

³ See, e.g., P. Wheeler's work and contracts with ADF&G.
Tanana Chiefs Conference, Inc., Comments on
DEIS

sportsmen and other nonlocals. No plan is in place to prohibit, regulate, or mitigate negative impacts to subsistence users.

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(Cont.)

Section 3.24.2, which is supposed to address access to subsistence resources, doesn't really say anything. This section needs to be strengthened to include a discussion and analysis of specific data. No input was apparently received from villagers, or if so, it has not been incorporated in the DEIS.

74-28

Section 4.2.1 lists numerous environmental impacts that also impact subsistence activities, but the connection is not adequately addressed. Instead the known impacts and potential impacts are simply recited: "The mere existence of TAPS facilities has a continuous impact... Both ROW facilities and off-ROW facilities have been and will continue to be sources of potential impact... Other impacting factors include the potential alteration of animal habitats and migration patterns. Altered habitats and migration patterns also have continuing impacts on subsistence and on commercial and sport hunting and fishing."

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As previously noted, the DEIS lumps sport and subsistence activities apparently because those two categories were not separated for data recording until recently by ADI&G, so they cannot separate the data. But as discussed above, sport and subsistence are competing uses. Subsistence uses may be harmed by certain impacts of the TAPS infrastructure -- such as increased access for urban hunters -- that may benefit sport hunters. To the degree that there are known differences, these categories of resource users and the TAPS impact on them need to be separately examined in the final EIS.

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In section 4.3.15.1 the DEIS details how the construction of the TAPS, including the ROW, pump stations, and Valdez Marine Terminal resulted in the elimination of

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extensive areas of terrestrial and wetland communities. It also notes that this loss and alteration of terrestrial and wetland vegetation communities would persist throughout the renewal period. This statement without an analysis of its impacts on the loss of subsistence species habitats does not address a known set of direct and indirect adverse impacts.

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(Cont.)

Summary and conclusions from subsistence analysis in villages

Sixty to ninety percent of the populations of the Interior Athabascan villages that border or are affected by the TAPS ROW rely upon subsistence, with some areas reaching as much as 92% provisioning from subsistence activities. All of the communities report disruptions as a direct result of the TAPS ROW, or as a collateral effect such as competition for subsistence resources from TAPS employees (although they are specifically prohibited by contract from using these resources) or non locals who can now gain easy access because of roads or clearings built to support TAPS operations. In spite of the prevalence and importance of subsistence to these communities, AND to urban residents who rely on subsistence practices (omitted in the document), the DEIS fails to consider these needs seriously by completing a well-rounded study.⁶ The rationale for this lack of thoroughness is repeatedly cited as a "lack of data available" (*cf.* Section 3.24.3); however, the sources used – namely AF&G statistics, mostly gathered two decades ago – preclude an analysis based on current and relevant information. The DEIS compounds its available information problem by stating that: "Information from interviews and testimonies on subsistence concerns is offered to help fill gaps in more conventional data, but this information in most cases never has been confirmed

74-32

⁶ Note: See AIN's comments, at p. 6, "The DEIS takes great pain to gloss over the problems rural residents face in harvesting subsistence resources."

independently by systematic studies.”⁷ TEK is thus dismissed as “unreliable” or “unsystematic” even though it may be as reliable as the scientific data. The DEIS states, “This data problem is particularly unfortunate, because during public scoping, several individuals pointed to reduced access to caribou, primarily because of changing or disrupted migration patterns, as being an important TAPS-related impact on subsistence.” And further, “Data also indicate that caribou are sensitive to human activity, particularly to movement by people on foot or in some type of vehicle.” Yet the DEIS does not usefully consider this information in its final analysis. Paradoxically, the report acknowledges in many ways that subsistence is “an important source of food for many rural Alaskans” in some sections (e.g. 3.24-27), but then it summarily dismisses these subsistence-based populations because general population ratios make these smaller figures appear less significant.

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(Cont.)

The following is a list of specific defects in the village-by-village commentary of Annex D:

- The DEIS failed to gather relevant data or perform a meaningful analysis regarding subsistence impacts in the villages most directly affected by the pipeline; 74-33
- No information was researched or included on seasonal changes, bag limit patterns, area changes, and other impacts to subsistence patterns; 74-34
- No baseline information regarding proximity of game prior to TAPS is established for comparison; 74-35
- “Perceived impacts” are mentioned, but there is no follow-up in attempt to give credibility for these perceptions; 74-36

⁷ Has the “scientific” or “conventional” data been independently confirmed?
Tanana Chiefs Conference, Inc., Comments on DEIS

• Data is incomplete. Villages and communities within urban or urban-influenced areas were excluded, when in fact the greatest impacts were experienced by those nearer to urban areas (areas such as Fox, Salcha, etc.). People were forced to go further for their subsistence resources:

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• Additional security concerns (9/11/01) now will expand TAPS impacts even further into hunting and fishing areas. This is not even mentioned; and

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• Data utilized by the DEIS is obsolete, it was mostly compiled in the 1970s and '80s.

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The DEIS fails to draw a reasonable connection between the relevant facts and the sociocultural consequences that affect the human environment.

The population figures recited in section 3.25.1 of the DEIS indicate nearly 20% of the State population is of Native heritage who “rely heavily on harvesting available resources for subsistence” and close to half of the communities likely to be affected by TAPS operations (19 of 45) have over 30% Native populations. Despite these significant statistics on the Native populations likely to be impacted by the TAPS ROW renewal, relevant concerns are not reflected in the sections on subsistence (see above). Instead, the DEIS evades analysis of the direct and indirect adverse impacts on subsistence by noting that subsistence activities comprise only 2% of the State population’s provisioning.

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This off-the-cuff dismissal is a reflection on the methodology and analysis of the DEIS, especially on subsistence issues. It also indicates that the DEIS preparers failed to parse out the regional nature of commercially available foods and commercial harvests of fish and game. The final EIS should examine the regional dependence on subsistence foods along the TAPS corridor and not rely on gross statistics that are heavily skewed by the habits and preferences of urban Alaskans, particularly Anchorage residents, who are

neither subject to the adverse impacts of the TAPS ROW renewal nor dependent on subsistence foods.

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(Cont.)

The last sentence of section 3.25.1-2 is offensive and ethnocentric, it implies that Euro-American cultural systems are "more" evolved than Native cultural systems and suggests that Alaska Natives are therefore evolving (or perhaps should be evolving) toward the standards and modes of Euro-American culture. This reference exemplifies the Euro-American ethnocentric cultural bias throughout the document, and the *a priori* assumptions present that assume a singular, linear, pre-determined path toward western industrialization. It would be more accurate to say that "Native cultural systems have been damaged and their natural development has been perilously disrupted during the past century or two." If the EIS is going to use the term "evolved" it should be defined.

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Approximately two pages of the DEIS deal with human socio-cultural impacts, mitigation, and scenarios. This is entirely inadequate. The result is that consideration of the human impact of the TAPS ROW renewal on Native cultures is essentially brushed aside.

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Section 4.4.4.15 presents a cavalier attitude toward losses or damages to sociocultural structures that may be suffered during, or as an aftermath of, accidents or spills. Many tribal communities now are experiencing precarious continuity in their cultural traditions due to impacts to subsistence resources, pressures for lifestyle changes, and disruption of value systems. Further disruptions that might require relocation, loss of traditional fishing/hunting grounds, loss of subsistence resources, or departure from ancestral locations would aggravate and gravely endanger tenuous cultural systems. Re-grouping in another location, or expenditure of resources and energies to correct disasters

74-43

could push some groups into the necessity for urban relocation, essentially jeopardizing continuity of the group's life-ways and value system. Similarly, less obvious impacts, such as undiscovered groundwater contamination, could quickly deplete communal human resources and Elders' counsel with medical expenses, care-giving for the ill, and infrastructure needs for cleanup. As has been stated by scholars, the loss of an Elder to a tribal community is the equivalent of losing a major library to Euro-American academic communities. Eliminating the culture bearers (elders) by the upheaval of moving, or debilitating accidents and illnesses, is tantamount to cultural annihilation.

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(Cont.)

Cultural resources stand a high probability of being significantly impacted or obliterated in the case of a major spill or catastrophic event. But the DEIS fails to factor in the fact that the quantity of cultural resource heritage sites is considerably less in the recordation of Native histories, hence a loss would be many-fold greater in proportion to the loss of a library which could be duplicated and regenerated again. There would be no possibility of regeneration of these cultural losses. Instead of addressing the potential impacts along with possible mitigation measures in Section 4.4.4.16, the DEIS assures that such grave events are "very unlikely" and that APSC has an archaeologist standing by for such a case. This is grossly inadequate treatment of a known impact issue.

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Summary and general comments

In spite of the considerable history and background information given in the DEIS on the cultures and villages along the TAP ROW, there is little attempt to analyze impacts to these cultures and villages in the context of their life ways and cultural systems. For instance, the DEIS makes no attempt to incorporate TEK or other information available from affected villages – that information is summarily discredited.

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Worse still, the entire document fails to reach an acceptable degree of inclusivity and objectivity toward these cultures. The document appears to be a “one-size-fits-all” recitation of simple facts that does not fit the particular circumstances, cultures, and needs of Native Alaskans from the Interior region. By its size, the DEIS appears to be an impressive academic exercise, but the impacts of the TAPS ROW strongly affect real people, real Alaskans, and real concerns that seem to be swept under the rug of formality and procedure. The concerns and needs of peoples of Interior Alaska are not adequately considered nor addressed in the DEIS, especially regarding Subsistence concerns and cultural survival.

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(Cont.)

Recommendations:

- We ask that appropriate consideration and protection be given to cultural resources, and preventative measures be included in the EIS for “just in case” scenarios;

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- The DEIS should be reviewed and revised by professionals experienced in recognizing and understanding cross-cultural biases. Also, Argonne National Labs should provide a mechanism for meaningful input by Native voices in all phases of planning and executing the formalization of the EIS;

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- The DEIS should incorporate detailed information on traditional cultural property data gathering that has been ongoing in the TAPS ROW areas, as well as develop a projection for an estimated amount of sites that will be recovered based upon data currently available;

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- Because of the significant known and possible adverse impacts, the thirty-year TAPS renewal period should be accompanied by adequate mitigation requirements.

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- That during the renewal period, sincere efforts be made to provide baseline data for subsistence; including information about cultural significance of subsistence resources; 74-50
- Data gathering and systematization of Traditional Ecological Knowledge should be carried out and incorporated into the FIS process; 74-51
- Archaeological and other cultural resource inventories should be vigorously pursued to ascertain traditional cultural properties; 74-52
- Appropriate treatment of all potentially affected cultural and historical sites should precede accidents and spills, emphasizing preparedness and mitigation of adverse effects; 74-53
 - Safety and health concerns should be researched and documented; 74-54
 - Cultural disruptions as a result of TAPS should be documented, integrated into its environmental calculus, and included in the FIS; and 74-55
 - Mitigation plans for significant impacts should be addressed and more thoroughly analyzed in an interdisciplinary fashion in the final FIS. 74-56

Michael Smith, Staff Researcher, Tanana Chiefs Conference, Inc. – Wildlife & Parks Department

Subsistence activities have been the cultural and spiritual center of Alaska native life for centuries. The unique knowledge of the land and its resources that Alaska's Natives possess, provides them with an unparalleled understanding of the effects that the TAPS has had on their environment. This knowledge and expertise has provided them

the unique understanding that since the construction of the TAPS their lifestyle, and the fish and game upon which they depend, has been profoundly affected.

Federal law requires the TAPS EIS to scope, analyze, and determine consequences that TAPS has had on subsistence resources and other human activities. The Mineral Leasing Act of 1920, the Alaska National Interest Land Conservation Act (ANILCA) and the Federal Grant of Right-of-Way itself have specific requirements for analysis and, if needed, mitigation efforts to protect subsistence users and resources.

The DEIS seeks to fulfill these requirements by establishing the following five categories on which to base its evaluation:

1. A decline in the population or amount of harvestable resources;
2. Changes in the geographic distribution of subsistence resources;
3. Competition for potential subsistence resources;
4. Disturbance of subsistence activities; and
5. Constraints on access to subsistence resources.

The DEIS states that any one of the previous stated categories or any combination of them "might" result in an adverse effect upon subsistence resources or users. It then goes on to qualify its evaluation by declaring that as a result of limited information or data the preparers could not "assign particular consequences to the TAPS as opposed to some other cause" and that they "could not determine the net effects of potential consequences". As a result of these "problems" the DEIS states that it could not make a "conclusive final evaluation". yet it then goes on to use this lack of data to conclude – in a circular and erroneous manner – that with regard to the five categories, there will be little or no impact upon the subsistence resources potentially affected by the TAPS.

Additionally, there are a number of other problems associated with the analysis used by the DEIS to arrive at the conclusion that there has been little or no impact upon subsistence resources. It is a statistical fact that any comparative analysis must first have an established baseline on which to base the comparison. The DEIS has no such scientific baseline and explicitly refuses to incorporate TEK as a form of baseline information and thus is suspect and in no way offers realistic or accurate comparison. Information used by the DEIS was acquired from ADW&G using the definition of a subsistence user under state law which makes no distinction between urban and rural users as well as combining sport and subsistence users into one category. This treatment dramatically alters the outcomes. The DEIS, while recognizing the importance of Traditional Ecological Knowledge and the availability of such data, refuses to offer any credence to it by declaring it to be unscientific and unverifiable, and thus ignoring it. While this knowledge may be unscientific and unverifiable it offers the most practical information, since there is no technical data available, as to any impact, and, therefore, should be used with or without the availability of other information or data.⁸

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Conclusion

The DEIS falls short in several regards, most particularly in its inadequate treatment of subsistence, its failure to gather current and relevant information, and its lack of consideration of significant, but subtle, secondary effects on the human environment. It is our hope that the final EIS addresses these failures of the DEIS.

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⁸ Please note that the DEIS also picks from the Federal or State definition of subsistence and its associated information when convenient.

in the big picture, given the controversy behind the initial proposal to construct the TAPS and the aboriginal land claims settlement that paved the way for actual construction of the TAPS, there is a need for additional mitigating measures that adequately assess Native issues. The most effective means by which that may be achieved is to designate a Native Alaska representative in the JPO. This should include a member on the executive committee and staffing for that person. The purpose of this representation would be to improve the oversight of the TAPS with regard to compliance issues such as Section 29 and Section 30 of the TAPS agreement, and other relevant issues. This level of representation will also improve the institutional culture regarding the management of the TAPS among the pipeline owners, state and federal agencies, and Alaska Natives.

74-60

Responses for Document 00074

- 00074-001:** The decision to prepare an EIS was based on the consideration that renewal of the Federal Grant of right-of-way constitutes a major Federal action. The decision to prepare an EIS does not mean that the BLM recognized that significant environmental impacts had already been recognized and analyzed. The BLM released the DEIS for public comment to ensure that all aspects of the analysis would be subject to public review and comment, including comments on the issues and analyses presented in the EIS. The FEIS has addressed comments on the issues and analyses received from the public.
- 00074-002:** The EIS addresses the human environment in several areas, including transportation, economics, subsistence, sociocultural systems, cultural resources, land use, recreation, wilderness, aesthetics, and environmental justice. In so doing, the EIS made extensive use of a variety of primary and secondary sources of data. Among the primary sources of data used were Alaska Department of Fish and Game subsistence surveys, which included traditional ecological knowledge, and a number of taped interviews with Alaska Natives and rural non-Natives pertaining to subsistence and related issues. In April 2002, project personnel contacted the 21 directly affected villages/tribes to explore the possible acquisition of additional information related to traditional ecological knowledge and traditional cultural properties. To date, no response to those certified letters has been received.
- 00074-003:** The limitations of the early archaeological surveys are addressed in Section 3.26.2. A synthesis of all archaeological research conducted along the pipeline appears in Potter et al. 2001, which is cited in Section 3.26.2 of the EIS. A programmatic agreement is being developed for cultural resources associated with the TAPS, as stated in Section 4.3.22. Beyond providing summary data, the EIS is limited in terms of how much specific information (particularly locational) it can provide on cultural resources because that information is protected under the Archaeological Resources Protection Act.
- 00074-004:** Public scoping comments provided the BLM with a wide breadth of information, issues, and concerns. The BLM, as required under NEPA regulations, carefully considered the material received under public scoping and developed the impact analysis to reflect those issues. In addition, the BLM specifically responded to alternatives presented by the public Section 2.5 of the EIS. The BLM is not required under NEPA to provide a specific response to all the scoping comments received by the agency.
- The BLM clearly understood the request presented by the TCC and stands by the decision not to allow TCC to become a cooperating agency. Argonne National Laboratory has no authority to grant cooperating agency status to TCC.
- 00074-005:** The BLM clearly understood the request presented by the **Tanana Chiefs Conference** (TCC) and stands by the decision to not allow TCC to become a cooperating agency. Argonne National Laboratory has no authority to grant cooperating agency status to TCC.

00074-006: The Native Allotment Act of May 17, 1906, as amended, was repealed by the Alaska Native Claims Settlement Act on December 18, 1971. The Agreement and Grant of Right-of-Way (ROW) for the Trans-Alaska Pipeline System (TAPS) took effect on January 23, 1974. Under the Mineral Leasing Act, the Secretary of the Interior did not have authority to grant the TAPS ROW across lands held in trust for an Indian. Native allotment applicants and certified allotment holders had prior rights that the federal government could not make subject to the TAPS.

Therefore, the federal government could not and did not authorize the TAPS across lands that were subject to a Native allotment application or that had been certified as a Native Allotment. The pipeline owners could only acquire access across the allotments by purchase, subject to approval by the Bureau of Indian Affairs, or by condemnation under the State of Alaska's laws.

The TAPS crosses seven Native allotments.

The pipeline owners acquired access rights across five Native allotments from the allottees. The Bureau of Indian Affairs approved these acquisitions. These are private access rights and are not subject to federal renewal of the TAPS ROW.

The pipeline owners acquired access across one Native allotment by condemnation under Alaskan Statute. The owners acted as agents for the State of Alaska. The access rights were acquired for and belong to the State of Alaska; they are not subject to federal renewal of the TAPS.

The pipeline owners are negotiating access rights from one certified allotment holder. They will acquire private rights or go to court and acquire access rights by condemnation that will belong to the State of Alaska. Neither will be subject to federal renewal. The original TAPS ROW grant did not and TAPS renewal will not authorize the TAPS on this allotment.

Finally, all the above Native allotments have been certified. The federal land status records do not show any Native allotment applications on the TAPS. Moreover, the effects of renewal on all lands along the pipeline—public, private, and Native allotments—are evaluated in the EIS.

00074-007: Many regulatory and statutory requirement relating to Native (e.g. Title 25) are not specifically listed in the EIS. The issues raised relate to the process BLM used in determining renewal or nonrenewal of the Federal Grant. The EIS only defines terms pertinent to the evaluation of the proposed action and alternatives to that action. Native allotments are not examined extensively because none of the access rights are subject to federal renewal of the TAPS ROW.

00074-008: The Certificates of Allotment (“deeds to the allotment owners”) were not issued subject to the TAPS ROW because the TAPS ROW was not granted on Native allotments. BLM could not reserve a TAPS ROW on the Native allotments because the allottees’ rights predate TAPS. The Mineral Leasing Act prohibits the Secretary of the Interior from granting ROWs on Native allotments because they are trust lands. Rights not granted cannot be reserved.

00074-009: Access across Native allotments in the Tanana Chiefs Conference (TCC) region was acquired legally. Court-approved compensation was awarded either by condemnation or by negotiation, as approved by the Bureau of Indian Affairs.

00074-010: The Secretary of the Interior did not grant TAPS ROW across Native Allotments or reserve the TAPS ROW in Certificates of Allotment because, the allotments are trust lands not subject to Mineral Leasing Act ROWs and the allottee’s rights predate TAPS. The federal government cannot renew TAPS on Native allotments anymore than it can on private lands such as homesteads, home sites, and trade and manufacturing sites.

Access across one parcel was acquired by condemnation. Condemnation is approved by the court; the Secretary of the Interior does not have authority to approve or deny access acquired by condemnation.

- 00074-011:** BLM did not grant the TAPS ROW across Native allotments and is not renewing the TAPS ROW across Native allotments. Access issues on Native allotments are negotiated between the allottees, their representatives and the pipeline owners.
- 00074-012:** Issues about the TAPS on Native allotments are resolved between the allottees, their representatives, and the pipeline owners. The BLM has not reserved TAPS across Native allotments and does not manage TAPS on Native allotments.
- 00074-013:** The BLM has conducted extensive government-to-government consultations with affected Alaska Native villages and tribes (see Section 5.3). The BLM stands by its decision to not allow cooperating agency status for Native Alaska tribes and villages. Section 4.3.23.1 of the FEIS contains a section on Native-owned lands.
- 00074-014:** Neither Section 29 nor the current Alaska Native Utilization Agreement specifies that residents of Minto will receive training in oil pipe response. Thus, their fulfillment has nothing to do with activities following the incident near Livengood.
- How the APSC meets their Section 29 hiring targets is beyond the scope of this EIS.
- 00074-015:** The current procedures used by the APSC to respond to spills were considered in the DEIS. Approaches to hiring, training, and deploying spill response personnel in the future is beyond the scope of the EIS.
- 00074-016:** Section 29 is a specific provision in the Federal Grant of Right-of-Way for the TAPS that addresses aspects of Alaska Native employment on the TAPS. The EIS considers Section 29 under impacts of the proposed action on sociocultural systems (see Section 4.3.21). This is consistent with the purpose of this document, which is to evaluate environmental impacts of the proposed action and alternatives. Modifications to Section 29, as well as various provisions for monitoring compliance and penalties for non-compliance, are beyond the scope of this EIS.
- 00074-017:** Thank you for your comment.
- 00074-018:** The purpose of an EIS Statement is to provide decision makers with an accurate and concise discussion of the likely environmental consequences of a proposed action and its reasonable alternatives. It should highlight the most important consequences. The EIS discusses the effects of TAPS ROW renewal on sociocultural systems throughout the environmental consequences section. Likely impacts on sociocultural systems are discussed in Sections 4.3.21, 4.4.4.15, 4.5.2.21, 4.6.2.21, and 4.7.8.2. Effects on subsistence, a vital component of sociocultural systems are found in Sections 4.3.20, 4.4.4.14, 4.5.2.20, 4.6.2.20, and 4.7.8.1, as well as Appendices D and E. In addition there are discussions of consequences on the economy, land use, recreation, wilderness, aesthetics, and environmental justice. All these topics are part of sociocultural systems. In short, there is considerable information provided in the EIS regarding the likely effects of TAPS ROW renewal on sociocultural systems. In the interest of accuracy, the commentor should re-count the number of pages employed in this discussion, which is well in excess of the total (two) claimed in the comment. Revisions in the FEIS have expanded virtually all sections of the EIS dealing with human impacts in general, and Alaska Natives in particular.

00074-019: For the DEIS, a community-based, or village-based, evaluation of subsistence data was conducted based on the best available statistical data and detailed geographic descriptions of traditional use areas. Although the absence of longitudinal statistical data on subsistence practices, beginning before the TAPS was constructed and extending to the present, precluded a more definitive assessment of possible impacts of the TAPS on subsistence, available data do enable the identification of TAPS-associated activities that have a potential impact on this activity. As discussed in greater detail in Sections 3.24 and 4.3.20 of the FEIS, the largest sources of potential impacts on subsistence resources have nothing to do with the TAPS. Revisions of Section 3.24.4 provide additional evaluations of data on subsistence and sport harvests, including an approximation of how the two have changed over time in the vicinity of the TAPS.

In general, the EIS attempted to provide a thorough, balanced picture of potential impacts of the proposed action and alternatives based on the information available. That information included an explicit consideration of traditional ecological data, in the form of comments provided to various members of the team preparing the EIS as well as taped interviews of Alaska Natives and rural Alaskans pertaining to subsistence. Throughout the EIS process the BLM sought and incorporated additional traditional ecological knowledge from all parties, especially federally recognized Tribes and other Native organizations (including Tanana Chiefs Conference). For example, in April 2002 the 21 directly affected tribes associated with the TAPS were contacted by certified letter to invite their participation in providing additional traditional ecological knowledge explicitly associated with subsistence issues in the EIS. To date, no response has been received to any of those letters.

00074-020: There are many possible definitions of subsistence, in general and particularly in Alaska where the issue of its official designation has generated considerable attention over the past few decades. This EIS is a federal document, and as such, the federal definition of subsistence was used.

Sections 3.24 and 4.3.20 have been revised to discuss the multiple roles of subsistence in the Alaska Native and rural non-Natives more completely. Text in Section 3.24 also has been modified to note that nonrural Alaskans also may rely on harvesting wild resources, though in keeping with the federal definition, this is not identified as subsistence. Contrary to the claim made in this comment, there is no evidence to indicate that the TAPS has had led to change in subsistence use areas. Although the two sections named above acknowledge that there have been impacts to subsistence, they also point out that these impacts tend to be due to many other causes other than the TAPS (which available evidence indicates has had only a small impact).

00074-021: The cited section attempts to provide a rough sense of the economic importance of subsistence resources, and acknowledges at the onset of the second paragraph in that section the difficulty in measuring this importance. It makes no attempt to analyze economic contributions at the household level, both because the analysis conducted is at a much larger scale and because adequate data do not exist to support such an analysis for the directly affected tribes. The range presented was to preempt complaints that the initial figure was too low, and provides the conversion factor used — again to provide a rough sense of the economic value of subsistence resources in Alaska.

The cultural importance of subsistence, one of the most important contributions of subsistence to Alaska Natives, is not the issue upon which Section 3.23.5 focuses. Such considerations appear in Sections 3.24 and 3.25, and are carried through the impact analyses for subsistence (e.g., Sections 4.3.20, 4.4.4.14, and 4.7.8.1).

00074-022: The Tribes included in the analysis of subsistence (and sociocultural systems) are those Alaska Native Tribes who likely would experience impacts in several issue areas: subsistence, employment, culture, and land selection (see revised versions of Sections 3.25.1.1 and 5.3). This list includes Tribes well removed from the TAPS (more than 200 mi away, in some cases). The EIS also considered subsistence in other rural communities in the vicinity of the TAPS and likely to experience TAPS-related impacts, though their evaluation was limited to those for which subsistence data exist (see Section 3.24.2). Subsistence data presented in the expanded version of Section 3.24.3 provide additional insights on possible impacts in communities close to areas heavily exploited by sport hunting and fishing.

- 00074-023:** In response to public comments on the DEIS, the subsistence analysis was reexamined carefully. The revised version of Section 3.24 of the FEIS discusses a variety of subsistence data, including community harvest data, approximated subsistence harvests of selected game by geographic area, information on resource populations (see also Sections 3.19, 3.20, 3.21, and 3.22), and traditional ecological knowledge. Sections 4.3.20 and 4.7.8.1 refer to studies that have focused on impacts related to the oil industry on subsistence, thus providing an interpretation of key situational data on subsistence. The available data are adequate for purposes of evaluating impacts of the proposed action and all alternatives considered in this EIS.
- 00074-024:** Noting an absence of independent confirmation was not intended as a judgmental statement, but rather as a statement of fact. Although the U.S. Fish and Wildlife Service has had a program to collect traditional ecological knowledge, that program has not provided independent confirmation of the traditional ecological knowledge references cited in the DEIS. Traditional ecological knowledge was not dismissed, casually or otherwise, but rather used to augment more conventional data, such as the statistics collected by various government agencies. The text in Section 4.3.20 has been revised to discuss the role of traditional ecological knowledge more clearly with respect to causality.
- 00074-025:** Section 3.24, as well as sections discussing subsistence impacts (e.g., Section 4.3.20, 4.4.4.14, 4.7.8.1), have been revised to discuss the range of subsistence roles more explicitly. Moreover, Section 3.25 and other parts of the document dealing with sociocultural systems have been modified to acknowledge the role of subsistence (and subsistence impacts) in the broader context of such systems.
- 00074-026:** There are many possible definitions of subsistence, in generally and particularly in Alaska, where the issue of its official designation has generated considerable attention over the past few decades. This EIS is a federal document, and as such it uses the federal definition of subsistence. The FEIS notes that some urban residents also harvest and use subsistence resources for personal and traditional uses (see Section 3.24.1).
- 00074-027:** Original versions of Sections 4.3.20, 4.5.2.20, and 4.7.8.1 all discuss indirect or “secondary” (as the comment terms them) impacts of TAPS-related roads and infrastructure; revised versions of each section elaborate on such impacts. The magnitudes of these impacts are anticipated to be very small. Mitigation measures which would have a significant effect on subsistence resources, or competition for these resources, involve steps such as changes in predator management, the management of commercial fishing, the management of sport hunting and fishing in certain geographic areas—all of which involve government agencies other than those involved here and which are beyond the scope of this EIS.
- 00074-028:** Section 3.24.2 does discuss the topic of access to different categories of subsistence resources, the importance of this topic is noted in the final paragraph to the section. Some information has been received from villages and incorporated into the EIS. In an attempt to acquire additional information from Alaska Natives, representative of the 21 directly affected tribes/villages were contacted by certified mail in early April specifically to solicit information on traditional ecological knowledge pertaining to subsistence. Such information could have included issues associated with access. To date, no response has been received from any of the tribes.
- 00074-029:** The purpose of Section 4.2.1 is to identify those factors associated with the TAPS that could potentially affect the various resources considered in the EIS, including subsistence. Identifying more specific connections between these impacting factors and subsistence is left to those sections of the EIS that address such matters specifically—such as Section 4.3.20 for impacts to subsistence under the proposed action.

00074-030: The comment indicates some possible confusion by the commentor concerning Section 3.24.4. Game harvest data maintained by the Alaska Department of Fish and Game do not distinguish between recreational and subsistence harvests, regardless of the year. The revised version of that section uses an approximate distinction to provide a sense of sport harvest pressure. Section 3.24.4 in the FEIS discusses approximations of patterns of sport harvests versus subsistence for areas within the subsistence use areas for rural communities considered in this EIS. These data indicate varying degrees of competition, with units particularly close to populated areas (e.g., Fairbanks) and near highways showing evidence of greater sport harvests.

As the revised version of Section 4.3.20 now states more clearly, many impacts associated with opening the Dalton Highway to public use are mistakenly associated with the TAPS. That decision was made by the state, based on a road that they owned and managed, and is not associated with the pipeline.

00074-031: Sections 4.3.16, 4.3.17, and 4.3.18, immediately following the section cited in the comment, consider impacts due to habitat loss, alteration, or enhancement for fish; birds and terrestrial mammals; and threatened, endangered, or protected species; respectively. In no case are long-term, negative impacts anticipated at a population level.

00074-032: The EIS presents data on participation and harvest levels, which should not be equated with levels of reliance. TAPS employees are prohibited from hunting or fishing while on site, be they working or not, but are not prohibited from these activities during off-periods provided they have obtained the proper license(s). The decision to restrict the evaluation of subsistence impacts to rural residents, which is consistent with the federal definition of subsistence in Alaska, was made because this document is being prepared by a federal agency. The EIS has completed as well-rounded a study as possible, in the process considering both the statistical data as well as traditional ecological knowledge pertinent to the study. In April 2002, preparers of the EIS met with Alaska Federation of Natives and Tanana Chiefs Conference officials and informed them of data inadequacies, among other things appealing to these organizations to provide any additional data (or recommendations on where such data may be acquired) that the EIS team may have overlooked or otherwise been unaware of. No substantive data were identified. In addition, all 21 directly affected tribes were contacted by certified mail in April 2002 to discuss additional traditional ecological knowledge pertaining specifically to subsistence. To date no response has been received to any of those letters.

It is inaccurate to state or otherwise suggest that the EIS considered traditional ecological knowledge "unreliable." On the contrary, the EIS considered all pertinent types of information in evaluating subsistence, both in the interest of thoroughness and because of the importance of this topic to rural Alaskans (including Alaska Natives). In characterizing the logic used in the EIS assessment, the comment fails to note conflicting evidence, such as the absence of declining populations of subsistence resources for fish, birds, and terrestrial mammals during the empirically observed operation of the TAPS (see Sections 3.19, 3.20, and 3.21). Just as we felt obliged to consider traditional ecological knowledge, we also felt obliged to consider data that were not in the realm of traditional ecological knowledge. The assessment of impacts under all alternatives and the cumulative case stated available evidence as clearly as possible, as well as the difficulty in using them to come to particular conclusion. The conclusion stated was what preparers of the EIS felt the data supported.

00074-033: The EIS compiled data from existing sources that provide quantitative and qualitative information of subsistence patterns on communities in the vicinity of the TAPS, and related causes of impact on subsistence in those communities. Information consulted included taped interviews of Alaska Natives and rural non-Natives discussing subsistence and related issues, and other sources of traditional ecological knowledge (including statements made during public scoping for this study).

00074-034: Section 4.3.20.2 has been revised, and includes a brief discussion of possible impacts of changing bag limits and changes in seasons, which is a more logical location for this discussion than Appendix D (which contains descriptive data).

00074-035: Data on specific game locations (and numbers available) are unavailable for years prior to TAPS construction. Population data on several species are presented in Sections 3.19, 3.20, 3.21, and 3.22. Available information from traditional ecological knowledge concerning proximity of game and its possible relocation due to the TAPS and other activities is presented in Section 3.24.1 for certain rural communities.

00074-036: Traditional ecological knowledge, such as the judgments of individuals about ecological variables, is presented in Section 3.24.1.1 as well as Appendix D. It was assumed to be credible, with certain limitations, as discussed in Section 4.3.20. Considerable attempts were made to “follow-up” the assessment of these data, in the form of evaluating subsistence from other perspectives and with other information (including the statistical and cartographic information presented in Appendix D).

00074-037: The EIS used the current federal definition of subsistence, as the document is being prepared by a federal agency. This definition excludes nonrural settings, as defined by the Federal Subsistence Board. Moreover, subsistence harvest data for individual communities tend to be unavailable for nonrural settings—including Fox and Salcha.

The revised version of Section 3.24.4 includes an approximation of subsistence versus sport harvests in uniform coding units associated with subsistence use areas for the rural communities examined in this EIS, as well as a discussion of increased pressures on resources in these areas (which include areas near urban settings). Section 4.3.20 has been expanded to include an additional discussion of impacts on subsistence.

00074-038: As discussed in revised text in Section 4.3.20, TAPS-related restrictions on subsistence are extremely small. Additional constraints on access to hunting and fishing areas following the attacks on September 11, 2001, in the form of further restrictions on use of access roads, are noted in Section 4.3.20. However, the effect of these constraints would be lessened by impacts on hunting and fishing areas by making them less accessible to sport hunters and anglers from the main road system.

00074-039: Most of the statistical data presented were collected by the Alaska Department of Fish and Game in the 1980s and 1990s. Although dated, they are the best, most detailed village-specific data available on subsistence harvest levels and participation rates for individual subsistence resources. Other statistical data presented were collected as the late 1990s and additional data on subsistence have been added to the FEIS that date to 2001 (Section 3.24.4). Traditional ecological knowledge presented dates primarily from the 1990s, though some also was obtained by members of the EIS team in the past year while developing the impact assessment.

In all cases, the EIS presented the best and most appropriate data available. Recognizing data inadequacies, in April 2002 preparers of the EIS met with Alaska Federation of Natives and Tanana Chiefs Conference officials and informed them of data inadequacies, among other things appealing to these organizations to provide any additional data (or recommendations on where such data may be acquired) that the EIS team may have overlooked or otherwise been unaware of. No substantive data were identified. In addition, all 21 directly affected tribes were contacted by certified mail in April 2002 to discuss additional traditional ecological knowledge pertaining specifically to subsistence. To date no response has been received to any of those letters.

00074-040: Although Section 3.25.1 does discuss statistics on total population and Native population, neither that section nor any other in the EIS states that all of these individuals “rely heavily on harvesting available resources for subsistence,” as stated in the comment. No data presented in the document supports this assertion. The EIS did not evade analysis of direct and indirect impacts, but rather did the best possible analysis with all pertinent data available—including both traditional ecological knowledge and statistical data. The figure of 2% of total fish and game harvested being used for subsistence was presented to provide a relative sense of how subsistence harvests compare to other forms of harvest, including sport harvests. There is no way of knowing if this amount of subsistence harvest is equivalent to the State’s “provisioning.” To avoid the inherent problems of using general statistics and other forms of data to examine a practice that differs greatly among rural communities, the EIS presented village-specific subsistence harvest, participation, and use data to incorporate local differences. Document preparers felt that participation and use statistics better reflected the importance of subsistence in individual communities than availability of commercial food sources. Data reflecting habits and preferences of urban Alaskans are not apparent in the EIS.

00074-041: The final sentence of Section 3.25.1.2 in the DEIS refers to the emergence of Alaska Native political awareness, as a further outgrowth of the Alaska Native Claims Settlement Act. It was not intended to be offensive or ethnocentric, and makes no implications about Euro-American cultural systems level of development with respect to Alaska Native (or any other) sociocultural systems. The terms “evolution” and “evolve” in this EIS with respect to culture refer to change, with neither positive nor negative connotations nor implication that sociocultural

00074-042: The EIS addresses impacts to Native sociocultural systems as a whole in Sections 4.3.21.1, 4.4.4.15, 4.5.2.21, and 4.6.2.21. Native subsistence a core component of Native sociocultural systems, with implications far beyond economics, is treated in Sections 4.3.20, 4.4.4.15, 4.5.2.20, and 4.6.2.20, along with Appendices D and E. Cultural resources including impacts of areas of cultural importance to Alaska Natives are treated in Sections 4.3.22, 4.4.4.16, 4.5.2.22, and 4.6.2.22. In addition, effects on Native cultures are also taken into account in other topical areas. The EIS examines those cultural areas most likely to be affected by TAPS renewal and presents them to the decision makers in a concise manner as part of a complex set of factors likely to be affected by TAPS renewal.

In part because of comments on the DEIS, all of the above issue areas have been revisited carefully in the process of developing the FEIS. As appropriate, revisions have been incorporated into the text of the FEIS.

00074-043: The EIS identifies the potential for “severe” impacts on aquatic subsistence resources, and “substantial” negative consequences to sociocultural systems as a result of major spills, which was not intended to be cavalier. The commentor has specified a number of examples of these major consequences. Although the sociocultural consequences of certain accidents would be severe, the risk of any one of these unlikely to very unlikely events occurring along a particular stretch of pipeline is extremely small. The calculation of risk takes into account both the predicted frequency and the predicted severity of consequences (see Section 4.4.1.1). The chance of these scenarios occurring is extremely small, as small as 1 chance in 255 million in the case of a severe spill into a particular river (see Section 4.4.4.3). Therefore the likelihood of a substantive effect on Alaska Native cultural systems is small.

The aim of the analysis of impacts from spills to subsistence and sociocultural systems was not to discount the severity of potential accidents. By the same token, the EIS attempts to treat impacts in an evenly balanced manner. To ignore a possible reaction to a spill through relocating subsistence efforts within a region where subsistence already occurs for a particular rural community would be incomplete treatment of the impacts. Moreover, to speculate on the impact of the death of certain tribal members would require development of scenarios with no basis in any of the analyses conducted. The text in Sections 4.4.4.14 and 4.4.4.15 has been changed to discuss impacts to subsistence and sociocultural systems more completely, but those modifications do not include speculations about extremely unlikely events resulting from other extremely improbable occurrences.

00074-044: Section 4.8.3 states that cultural resources are nonrenewable. Section 4.4.4.16 states that a spill could adversely affect cultural resources. The determination of such an effect relies on combining specific spill simulations with locational data for cultural resources. Section 4.4.4.16 also states that a programmatic agreement is in place for considering cultural resources during a spill event. The APSC has generated and maintains spill contingency plans for the entire pipeline.

00074-045: The EIS attempts to address sufficient specifics for individual villages to provide a basis for the evaluation of impacts under the various alternatives considered. In the process of preparing the FEIS, sections in the document dealing with subsistence and sociocultural systems were both revised and expanded, in part to direct further attention towards community-specific concerns. One aspect of this has been to organize discussions regionally, to enable a focus on problems that may not be well-defined for each individual community, but are understood at a regional level. With regard to traditional ecological knowledge, the EIS considered that information available.

However, this type of information is not used to explain issues that likely are beyond its capability—such as conducting complex exercises in assigning causality of subsistence impacts. An appeal to all 21 federally recognized tribes considered in the EIS to provide additional information on traditional ecological knowledge, by certified letter mailed in April 2002, has received no response.

00074-046: Section 3.26 identifies the laws and procedures which protect cultural resources along TAPS. In addition to the laws and normal procedures for considering cultural resources, a programmatic agreement for protecting historic properties during emergency spill response is discussed in Section 4.4.4.16. The programmatic agreement requires spill contingency plans to be in place for the entire pipeline. The APSC maintains these plans.

00074-047: The EIS has been prepared by, and reviewed by, individuals whose professional training, work activities, research, and writing involves the evaluation of other cultures.

With regard to Native input, Alaska Native groups were contacted in April 2001 informing them that an EIS was being prepared for TAPS ROW renewal. In the year that followed, Alaska Natives were met with on numerous occasions in an attempt to incorporate Native concerns and perspectives into the EIS. This includes a meeting in April 2002 with representatives of the Alaska Federation of Natives to discuss issues in the EIS associated with subsistence, also participated in (via teleconference) by commentor. The 21 federally recognized tribes were contacted again by registered mail in April 2002 requesting input on traditional knowledge regarding subsistence and traditional cultural properties. This letter included an offer to meet with representatives of Alaska Native groups individually at the convenience of the Alaska Natives. To date, no response to these requests was received by Argonne National Laboratory, the BLM, or any other agencies in the Joint Pipeline Office.

00074-048: The EIS relied on all current information held by the Alaska State Historic Preservation Office on traditional cultural properties. No contacts made during the preparation of the EIS indicated that additional traditional cultural properties were being examined in areas that could be affected by the TAPS. Formal requests in April 2002 to the 21 federally recognized tribes identified as likely to experience direct impacts from the TAPS failed to provide any additional information on this topic.

00074-049: The BLM and member agencies of the JPO use an adaptive management approach to evaluate the effectiveness of stipulations and regulatory oversight. Ongoing monitoring programs, as identified in the 12 Comprehensive Monitoring Reports published since 1996, provide the BLM and JPO with the necessary information to evaluate the effectiveness of stipulations in the grant and lease.

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

00074-050: The revised version of Section 3.24 of the FEIS discusses a variety of subsistence data, including community harvest data, approximated subsistence harvests of selected game by geographic area, information on resource populations (see also Sections 3.19, 3.20, 3.21, and 3.22), and traditional ecological knowledge. Sections 4.3.20 and 4.7.8.1 refer to studies that have focused on impacts related to the oil industry on subsistence, thus providing an interpretation of key situational data on subsistence. The available data are adequate for purposes of evaluating impacts of the proposed action and all alternatives considered in this EIS. The acquisition of additional subsistence data, and how these data would be collected, are beyond the scope of this EIS.

00074-051: Sections 3.24.1 and 4.3.20 both contain references to traditional ecological knowledge in the description of subsistence behavior and the evaluation of subsistence impacts. In an attempt to acquire additional traditional ecological knowledge, all 21 directly affected Tribes were contacted by certified mail in April 2002 to discuss processes for obtaining such information with particular regard to subsistence. To date, no response has been received to any of those letters.

00074-052: Numerous surveys have been conducted for cultural resources along the TAPS. Surveys attempt to identify all cultural resources in the area being surveyed. The difficulty in identifying traditional cultural properties is that there may not be any physical evidence of their existence.

In recognition of the scarcity of data on traditional cultural properties, preparers of the EIS contacted all 21 directly affected Tribes by certified letter, in April 2002, to begin the process of obtaining additional information on such resources. To date, no Tribes have responded to that inquiry.

00074-053: Guidance and procedures for consideration of cultural resources during spill events are presented in the following reference, cited in the EIS:

Programmatic Agreement, 1997. Programmatic Agreement on Protection of Historic Properties During Emergency Contingency Plan, Annex M. Alaska Federal/State Preparedness Plan for Response to Oil and Hazardous Substance Discharges/Releases. Agreement between 10 federal and state agencies.

In addition, APSC's current contingency plans for spills are presented in a different document, also cited in the EIS:

Alyeska Pipeline Service Company, 2001, TAPS Pipeline Oil Discharge Prevention and Contingency Plan CP-35-1, Anchorage, Alaska.

These documents provide general procedures, because the number of variables associated with spills makes it impossible to address every situation, and are cited in the EIS. The location and nature of the spill will dictate the threat to cultural resources. APSC's plan does provide guidance on a milepost-by-milepost basis.

The oil spill planning and prevention effort in the JPO is a large-scale, multi-agency endeavor. Each participating agency (Alaska Department of Environmental Conservation, Environmental Protection Agency, BLM, and the Alaska Department of Natural Resources) has a particular focus, but these are all considered collectively in the JPO TAPS oil spill response and planning group. This inter-agency group generally meets monthly with APSC and maintains a continuous monitoring program on TAPS oil spill planning and related issues. The group also coordinates with the Office of Pipeline Safety, which reviews the Pipeline Oil Spill Contingency Plan.

The emphasis of all agencies is on the prevention of spills. This is accomplished through a combination of: 1) oversight of spill contingency planning (including 64 exercises on TAPS annually) and, 2) through JPO's comprehensive TAPS operations oversight, monitor issues which could contribute to a spill in the future. In the event of a spill, however, JPO has a number of highly-trained individuals who are fully prepared to respond quickly and effectively.

Section 4.4 in the FEIS addresses spills for the proposed action generally. See Section 4.4.4.16, which discusses the impacts of spills on cultural resources.

00074-054: Section 4.4.4.7, “Human Health and Safety,” provides a detailed analysis of the potential effects of oil spills on human health.

The BLM and member agencies of the JPO are committed to the protection of human health and the environment. The Federal Grant and authorizing legislation (TAPAA) provide unprecedented authority to BLM in assuring the protection of human health and the environment. Stipulations (the guiding conduct of operations for the operator of TAPS) within the Federal Grant contain numerous provisions that are protective of human health and the environment.

00074-055: The effects of the proposed action and alternative measures are discussed in Sections 4.3.21, 4.5.2.21, and 4.6.2.21 of the DEIS, and the potential consequences of spills are discussed in Section 4.4.4.15. In addition, consequences to cultural systems are considered in the sections on subsistence, economics, wildlife, health, and environmental justice. These sections have been reviewed in response to this and other comments, and the information presented has been amended or modified as appropriate.

00074-056: The BLM and member agencies of the JPO use an adaptive management approach to evaluate the effectiveness of stipulations and regulatory oversight. Ongoing monitoring programs, as identified in the 12 Comprehensive Monitoring Reports published since 1996, provide BLM and JPO with the necessary information to evaluate the effectiveness of stipulations in the Grant and Lease.

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

00074-057: The statement of Alaska Native unique knowledge of their environment is consistent with the position assumed in the EIS. Evaluation criteria for subsistence under the proposed action appear in Section 4.3.20, though the connection with impacts is stated definitively (rather than using the term “might,” as stated in the comment). The remainder of the comment is duly noted.

00074-058: Although it is not necessarily a “statistical fact,” an analysis of impacts indeed does require comparison to a baseline and the absence of this baseline is a major constraint to the evaluation of subsistence impacts, as stated explicitly in Sections 3.24.1 and 4.3.20. The EIS does not discount the validity or credibility of traditional ecological knowledge, but tries to point out certain considerations that one should keep in mind when employing such data (such as the assignment of causality). Although traditional ecological knowledge points to TAPS-related impacts, as discussed in Sections 4.3.20 and 4.7.8.1 there are indications that some subsistence resources are present in greater numbers than before the pipeline, while examinations of current fish, birds, terrestrial mammals, and other subsistence resources (see Sections 3.19, 3.20, and 3.21) do not indicate that any resource populations have suffered under nearly 30 years of TAPS operation. The existence of contrasting conclusions to those posited by traditional ecological knowledge sources makes it impossible to rely solely on the former. Any conclusions based solely on a single source of information while ignoring other valid sources of information while ignoring other valid sources of information could not be defended.

00074-059: The DEIS conducted a community-based, or village-based, evaluation of subsistence data based on the best available statistical data, detailed geographic descriptions of traditional harvest areas, and traditional ecological knowledge available (see Sections 4.3.10, 4.4.4.8.1, and 4.7.8.1)

In the interest of obtaining additional information with which to evaluate impacts to the TAPS on subsistence, a meeting was held with representatives of the Alaska Federation of Natives and Tanana Chiefs Conference in April 2002 to discuss this and other issues associated with the evaluation of subsistence impacts. Although some information was provided during and following that meeting, no actual data were forthcoming that would enable the improvement of the subsistence analysis. That same month, the 21 directly affected tribes associated with the TAPS were contacted by certified letter to invite their participation in providing additional traditional ecological knowledge explicitly associated with subsistence issues in the EIS. To date, no response has been received to any of those letters.

Impacts on the human environment are discussed for transportation, economics, subsistence, sociocultural systems, cultural resources, land use, recreation and aesthetics, and environmental justice.

00074-060: The BLM employs an Alaska Native to assist with issues related to Section 29 and Section 30 issues and to facilitate communication with Alaska Natives (including government-to-government consultations). As this comment is written, that position had recently become open and BLM is in the process of filling it with a qualified individual.

1 TOM LAKOSI P.O. BOX 100648 ANCHORAGE, AK 99510 Pb/Fax 563-7380

2 August 20, 2002

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4
5 BLM TAPS Renewal EIS
6 Argonne National Laboratory, UAD/900
7 9700 South Cass Avenue
8 Argonne, IL 60439

9
10 State of Alaska
11 Department of Natural Resources / JPO
12 Joint Pipeline Office
13 411 West 4th Avenue, Suite 2
14 Anchorage, Alaska 99501-2343

15
16 **Re:** Public Comment on *Draft Environmental Impact Statement, Renewal of the Federal Grant for*
17 *the Trans-Alaska Pipeline System Right-of-Way* (BLM/AK/PT-02/026+2880+990, U.S.
18 Department of Interior, Bureau of Land Management, July 2002) and *Commissioner's Statement*
19 *of Reasons and Proposed Written Determination for the Renewal of the Trans-Alaska Pipeline*
20 *Right-of-Way Lease* (ADI. 63574, July 5, 2002).

21
22
23 Dear BLM and State of Alaska:

24
25 This letter is sent as a supplement to my comments presented on August 5, 2002, at the
26 Anchorage Hilton Hotel, and on August 20, 2002 by phone to 1-866-542-5903. This writing is
27 necessitated by the material omission in the 7/5/02 JPO News Release which failed to mention a time
28 limit on the phone in comment option. I found myself limited, time and again, to reciting my name and
29 address and little else, and without the opportunity to personally contact anyone to provide for a
30 continuous and comprehensive comment. Discovery of this omission at approximately 4:18 PM on
31 8/20/02 did not leave sufficient time to put my comments in writing. I therefore request a written
32 authorization to supplement my comments as a mitigating measure to compensate for this material
33 omission.

34 I adopt and incorporate by reference the written and/or oral comments provided by:
35 Richard A. Fineberg/AFER on 8/6/02, 8/7/02, 8/9/02 and 8/20/02;
36 Richard Charter/Environmental Defense Fund on 8/20/02;
37 Tom Copeland on 8/20/02;
38 Bob Randall/Trustees for Alaska on 8/20/02, and;
39 Walter Parker on 8/6/02.

40 The DEIS and Commissioner's Statement must be redone and resubmitted for public comment
41 due to their incomplete assessments, illogical and unscientific conclusions, failure to comply with
42 applicable law and failure to provide for the constitutional rights of Alaska's citizens and users of
43 Alaska's natural resources. Neither the Grant nor Lease may be renewed where they fail to provide for
44 reasonable concurrent uses of Alaska's resources as a matter of law and fact. The use of federal and state
45 lands by Alyeska Pipeline Service Company, (APSC), cannot be certified as "reasonable" pursuant to
46 the mandates of Article VIII, Section 8 of the Constitution of the State of Alaska where it has actively
47 chosen to evade, and continues to evade, the provisions of law, Grant and Lease regulating the quality of
48 oil spill response equipment, timeliness of spill response and degree of response effort. Similarly, the

DEIS and Determination Comments lakosh/8/20/02

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1 Grant and Lease may not be renewed where no authorized regulatory or oversight agency of government
2 is willing to enforce these applicable provisions of law, Grant and Lease. The records of the litigation
3 and administrative appeals that I have incorporated into my comments clearly establish the following
4 un-refuted material issues of law and fact:

- 5 1) DNR has deferred to DEC its obligation to enforce Lease provisions regulating oil spill contingency
6 planning;
- 7 2) The Alaska Supreme Court, Case No. S-09619, has determined that DEC has never properly
8 interpreted its obligation under law to deny approval of oil spill contingency plan permits that do not
9 utilize the best technology available at the time permits are submitted or renewed.
- 10 3) DEC has never enforced the quality standards for spill response equipment under any and all law
11 codified to date.
- 12 4) The Alaska Legislature and the Supreme Court of Alaska have determined that oil spills present an
13 imminent threat to Alaska's natural resources: "In 1980 the Alaska legislature, finding that it is a
14 matter of the highest urgency and priority to protect Alaska's coastal and inside water, estuaries,
15 wetlands, beaches, and land from the damage which may be occasioned by the discharge of oil,
16 enacted Alaska's Oil Pollution Control Act." Alaska Supreme Court Opinion 5589 at p.1, Lakosh
17 vs DEC Case # S-09619.
- 18 5) Given this imminent threat of damage from oil spills, all potentially affected natural resource users
19 must be provided due process and due compensation prior to effective divestment of their interests
20 pursuant to Article VIII, Section 16 of the Constitution of the State of Alaska.
- 21 6) I still have active due process adjudications which must be fully resolved prior to any additional
22 state or federal action, such as Grant, Lease and contingency plan approval, that could constitute an
23 effective divestment of my interests.

24 The DEIS presents two mutually exclusive statements: APSC is in compliance with all Lease and
25 Grant provisions, and; the Alaska Supreme Court, Case No. S-09619, has determined that DEC has
26 never properly interpreted AS 46.04.030(e). Both the Grant and Lease require that APSC be in
27 compliance with applicable law as a primary condition of compliance with the Grant and Lease. No
28 assertion of compliance may be proffered where, as a matter of law, DEC has not enforced applicable
29 statutory or regulatory compliance. A lack of compliance, in fact, must be presumed where the defect in
30 enforcement is established as a matter of law. The instant DEIS must be rejected and redone where it
31 contains such false and misleading statements. Indeed, Argonne National Laboratory, JPO personnel and
32 any other persons authorizing the distribution of these false statements should be prosecuted under state
33 and federal law for providing false statements in federal and state investigations. Such false statements
34 and disregard of my comments on EIS scoping are likewise, a violation of my rights to fair and just
35 treatment in executive investigations pursuant to Article I, Section 7 of the Alaska Constitution.

36 There are several other misleading statements and omissions that could/may well be deemed
37 fraudulent by misrepresentation and/or omission under state and federal statutes and would at least reach
38 the level of unjust treatment. The underlying report of the State Pipeline Coordinator, upon which the
39 Commissioner's Determination is based, and the JPO's report on Grant and Lease compliance, integral
40 to the DEIS, (Reports), misrepresent APSC's full compliance. The reports fail to even mention several
41 of the provision of law, Grant and Lease that are at issue in the incorporated pending, and prior,
42 litigation and administrative appeals. The fact that these provisions are omitted from the reports
43 establish that: the authorized oversight agencies are oblivious to their mandated duties; have never
44 enforced their mandated duties; and/or are actively suppressing disclosure of specific duties in an
45 attempt to unlawfully subsidize APSC, owners of the transported oil and the State of Alaska at the
46 expense of the rights of Alaska's citizens and other natural resource users. The latter accusation,
47 although a very serious allegation, is clearly supported by the dismissive treatment given to DNR's

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1 obligations under the Lease, my oral testimony, affidavits and other evidence submitted in the
 2 incorporated documents. 75-6 (cont.)

3 The Reports failed to adequately disclose and address agency obligations pursuant to the Coastal
 4 Zone Management Act, Alaska Coastal Zone Management Act and Coastal District Management Plans,
 5 given the potential for spilled oil to adversely affect well over 1,000 miles of coastline in at least six
 6 coastal districts, as has been established in the Exxon Valdez Oil Spill. It is patently absurd to presume
 7 that a catastrophic spills from TAPS facilities reaching open waters less than 30 miles from Bligh Reef
 8 could not adversely affect the same area as the EVOS. The fact that the VMT must regularly suspend
 9 loading of tankers due to an inability to conduct effective spill response establishes that TAPS/VMT
 10 spills during these periods could reach Bligh Reef unabated, and from there the rest is history. 75-7

11 The DEIS presumption that catastrophic spills should be totally discounted in assessment of
 12 potential resource damages is likewise absurd given the report's failure to consider the material facts of:
 13 APSC's and other relevant lease/permit holders' inability to timely contain, control, recover and
 14 mitigate oil spill damage from any actual water-borne spills and several land spills; failure to perform in
 15 conformance with standards set forth in contingency plans during spill response drills; failure of
 16 agencies to enforce mandated duties; outstanding compliance measures and conditions of approval to
 17 TAPS/VMT contingency plan approvals; the known terrorist threats to U.S. petroleum facilities/vessels;
 18 the potential for unabated vandalism against TAPS that have a high potential for development into
 19 catastrophic spills subsequent to ignition of spilled oil and a resultant structural failure of TAPS; the
 20 increase potential for these catastrophic fires given the increasing content of natural gas liquids in North
 21 Slope Crude Oil. Given these glaring deficiencies in the DEIS analysis of potential spill damage, the
 22 report must be deemed well outside the minimum standards necessary to qualify it as a scientific and
 23 reasoned study of the material issues under evaluation. The standards of cited law and scientific integrity
 24 demand that all of the material factors be reconsidered in a re-issued DEIS subject to professional and
 25 public scrutiny. This re-issued DEIS should not, as a matter of scientific integrity, and cannot, as a mater
 26 of due process and fair treatment, be completed until I have fully exhausted all legal recourse afforded to
 27 protect my potentially affected interests as established by precedent, law and constitutional right. 75-8

28 Where DNR, BLM and DEC have abandoned their mandated duties for 25 years, or at least feign
 29 ignorance thereof, it is incumbent upon the Secretary of the Interior and Commissioner of DNR to
 30 construct, and present as an alternative in a new DEIS, Grant/Lease provisions/stipulations that
 31 substantially clarify and specify the obligations and rights of all interested with respect to the quality,
 32 quantity and timeliness of oil spill response. Given DNR, BLM and DEC's failure to fully enforce, and
 33 APSC's failure to fully comply with, cited spill response obligations, it is clearly unduly burdensome to
 34 impose another 30 years of ambiguous enforcement obligations. The Grant and Lease should only be
 35 renewed for five years so that affected parties may be fully insured that detailed guidelines for
 36 implementation of new provisions/stipulations are fully developed and enforced by the authorized
 37 oversight agencies. The Lease and Grant should not, thereafter, be renewed if APSC is not fully
 38 compliant with requirements to employ, to their best efforts, state-of-the-art and the "best" technology
 39 capable of immediately abating damage from oil spills in addition to employment of all required spill
 40 prevention measures. Although spill prevention is typically preferable to, and more cost effective than,
 41 spill response, virtually all informed parties agree that prevention of known threats of intentional
 42 damage to the TAPS is impossible. The Livengood Spill is living proof of this vulnerability and APSC's
 43 incompetence and misrepresentation of response capability. Full compliance with response obligations is
 44 necessary now, more than ever. Immediate authorization and funding of a Citizens' Oversight Group
 45 could substantially accelerate and coordinate representation of the interests of those persons/entities that
 46 are continually subject to adverse accumulative impacts from TAPS. 75-9

47 Sincerely, *Tom Lakosh*
 48 Tom Lakosh 75-10

75-11
 75-12
 75-13

Responses for Document 00075

- 00075-001:** Although 45 days is understandably a short time to review a document of this size, it is consistent with the Council on Environmental Quality regulations for implementing the National Environmental Policy Act regarding the review of draft environmental impact statements. Significant effort was made to advise people of the schedule and duration of the review well in advance (one year). The DEIS was published on schedule, and many substantive comments on the content of the DEIS, including yours, were received during the 45-day period. A decision to not extend the comment period has already been announced and it is inappropriate to provide an exception for individuals.
- 00075-002:** Thank you for your comment.
- 00075-003:** The Federal Grant, TAPAA, and the Mineral Leasing Act provide the foundations on which decisions to renew the Federal Grant are made. If the applicant is in compliance with all laws and regulations, the BLM is required to renew the Federal Grant.
- 00075-004:** Thank you for your comment.
- 00075-005:** Thank you for your comment.
- 00075-006:** Thank you for your comment.
- 00075-007:** The responsibilities of BLM relative to the Coastal Zone Management Act and the Alaska Coastal Management Plan (ACMP) are described in the EIS in Section 4.3.23.2, "Coastal Zone Management." The Valdez Coastal Management Plan requires oil spill prevention and response plans consistent with the statewide Alaska Coastal Management Program standards. Spill scenarios for the proposed action and potential impacts on coastal zones are discussed in Section 4.4.4.17.2.

00075-008: The possibility of pipeline failure is addressed in the spill analysis. (See Sections 4.4 and 4.7.1.10 of the EIS.) In estimating the frequencies and spill volumes for future spills, both the historical data from past spills and the potential for catastrophic spills of large consequence were considered. As with any other engineering project, there is no 100 percent proof that the pipeline will not fail. However, the owners of the pipeline and the federal and state agencies with oversight responsibilities for TAPS are doing everything possible to keep the likelihood and consequences of future spills at acceptable levels.

The Oil Discharge Prevention and Contingency Plan for the pipeline (C-Plan) provides for significant resources, including equipment, trained personnel, and effective organization, to respond if oil does spill from the pipeline. (See Section 4.1.4 of the EIS.)

The TAPS C-Plan is updated periodically and lessons learned from actual occurrences, as well as from regular exercises conducted along the pipeline, which are incorporated into the plan. In addition, the plan is reviewed annually by the BLM, every three years by ADEC, and every 5 years by DOT. EPA also reviews the plan as it applies to pump stations. As part of this process, APSC and the federal and state agencies with oversight responsibilities for TAPS make sure that the appropriate emergency response equipment is made available along the TAPS.

Changes to spill plans are made when problems with the existing procedures or equipment are noted. For an example, see the text box in Section 4.1.1.8 for a synopsis of the Livengood bullet hole incident and changes made to the C-Plan.

Security along the TAPS ROW has been increased in response to concerns over potential vandalism and terrorist acts. There are elaborate security measures and plans in place, involving numerous federal and state agencies. The BLM has reviewed these confidential plans and agrees with them. Opportunities to strengthen these measures will always be pursued diligently by the agencies involved.

The potential fire hazard always exists. That potential was considered in the design of fire prevention and suppression systems for TAPS and in developing spill contingency plans. (See Section 4.4.3.)

00075-009: The BLM has followed all of the requirements of the National Environmental Policy Act and all of the implementing regulations of the Council on Environmental Quality in preparation of the DEIS and FEIS.

00075-010: The oil spill planning and prevention effort in the JPO is a large-scale, multi-agency endeavor. Each participating agency (Alaska Department of Environmental Conservation, Environmental Protection Agency, BLM, and the Alaska Department of Natural Resources) has a particular focus, but these are all considered collectively in the JPO TAPS oil spill response and planning group. This inter-agency group generally meets monthly with APSC and maintains a continuous monitoring program on TAPS oil spill planning and related issues. The group also coordinates with the Office of Pipeline Safety, which reviews the Pipeline Oil Spill Contingency Plan.

The emphasis of all agencies is on the prevention of spills. This is accomplished through a combination of: 1) oversight of spill contingency planning (including 64 exercises on TAPS annually) and, 2) through JPO's comprehensive TAPS operations oversight, monitor issues which could contribute to a spill in the future. In the event of a spill, however, JPO has a number of highly-trained individuals who are fully prepared to respond quickly and effectively.

The Trans-Alaska Pipeline System Pipeline Oil Discharge Prevention and Contingency Plan, CP-35-1, prepared in 2002 by the APSC (C-Plan) provide full disclosure of spill planning, reporting, and response. The C-Plan is approved by the member agencies of JPO, C-Plans are reviewed continually and major revisions are subject to public review and comment. See Section 4.1 for additional discussions on spill contingency planning.

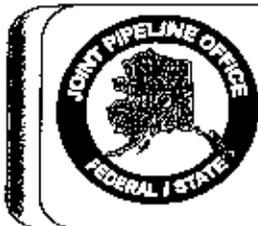
00075-011: The reader is referred to Section 2.5 of the FEIS, in which audits are addressed under Alternatives and Issues Considered but Eliminated from Detailed Analysis.

00075-012: The text box in Section 4.1.1.8 provides a synopsis of the MP 400 bullet hole incident. Details of the spill and the response are provided. Changes to the pipeline's spill contingency plan that are being made as a result of lessons learned are also discussed.

00075-013: The reader is referred to Section 2.5 of the FEIS, "Alternatives and Issues Considered but Eliminated from Detailed Analysis."

Responses for Document 00076

- 00076-001:** Thank you for your comment.
- 00076-002:** The reader is referred to Section 2.5 of the FEIS, "Alternatives and Issues Considered but Eliminated from Detailed Analysis."
- 00076-003:** The reader is directed to the discussion of escrow funds found in Section 2.5.
- 00076-004:** The reader is referred to Section 2.5 of the FEIS, in which audits are addressed under Alternatives and Issues Considered but Eliminated from Detailed Analysis.
- 00076-005:** The reader is referred to Section 2.5 of the FEIS, "Alternatives and Issues Considered but Eliminated from Detailed Analysis."
- 00076-006:** The BLM and the agencies within JPO acknowledge both that there have been legitimate issues related to APSC's Employee Concerns Program (ECP) and that APSC has undertaken considerable efforts to improve and refine its ECP program.
- The BLM and JPO expect to continue to evaluate the effectiveness of APSC's ECP through confidential surveys that will seek input from all TAPS employees (see Section 4.8.4 of the FEIS). Like the three prior surveys, these efforts can provide broad measures of the confidence that TAPS workers have in APSC's ECP and can suggest areas needing improvement.
- The JPO also notes that a confidential hotline (1-800-764-5070) currently exists for employees or members of the public to report issues and concerns about TAPS. Recorded messages are checked daily by the BLM-Alaska Special Agent's office. The purpose of the hotline is to identify issues relating to pipeline integrity, public safety, environmental protections and regulatory compliance for incorporation into the JPO work program. The BLM also refers employees seeking personal relief (e.g., restoration of employment or lost compensation) to the U.S. Department of Labor or other appropriate authorities for further investigation.
- 00076-007:** The BLM and member agencies of the JPO use an adaptive management approach to evaluate the effectiveness of stipulations and regulatory oversight. Ongoing monitoring programs, as identified in the 12 Comprehensive Monitoring Reports published since 1996, provide BLM and JPO with the necessary information to evaluate the effectiveness of stipulations in the Grant and Lease.
- The reader is referred to Section 4.1.1 (JPO oversight) and specifically to Sections 4.1.1.2 (Adaptive Nature of the Grant in Compliance Monitoring), 4.1.1.3 (Risk-based Compliance Monitoring), 4.1.1.4 (JPO Comprehensive Monitoring Program), and 4.1.1.8 (Coordinated Planning and Response to Abnormal Incidents) for more information on the role of adaptive management as a JPO business practice.



BLM's Trans-Alaska Pipeline System
 Right-of-Way Renewal 00077
 Draft Environmental Impact Statement
 Public Hearing Comment Form

Use this self-addressed form to submit your TAPS Renewal Draft EIS comments. Please give this completed form to one of the meeting hosts or take it with you and mail it. Make your comments, fold the form, tape it shut, place a stamp on the outside and drop it in the mail. *Comments must be postmarked no later than August 20, 2002.*

Please provide this information:

Name Dick Farris
 Title/organization Alaska Research Group
 Mailing address POB 73329
 City FAIRBANKS
 State ALASKA Zip+four 99707 3329

E-mail (I wish to receive TAPS Renewal EIS information by e-mail at this address) dfarris_99707@yahoo.com

I am adamantly opposed to the renewal of Alyeska's permit for the pipeline unless a Citizen's Advisory Group is created to provide on-going review and oversight. This Group should be made up of a cross section of workers who reside in communities in which the pipeline passes through, i.e., a professional worker, construction worker, retail worker, government worker. I would propose that the maximum number of members on this Group be 15.
 My own preference would be for the State of Alaska to own and operate the pipeline as this would directly allow public access to all records and financial information and allow for better and safer monitoring of the pipeline

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WARNING: DISCLOSURE OF PERSONAL INFORMATION
 BLM's practice to make comments, including names and addresses of commenters, available to public users such as regular business hours. Individuals may request that their names and addresses be withheld from the public record, and BLM will honor such requests to the extent allowable by law. Circumstances may also arise in which BLM wants to withhold from the public record a commenter's identity, as allowable by law. If you wish BLM to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, BLM will not accept anonymous comments. BLM will make all submitter's names, organizations, businesses, and firm names available identifying themselves as representatives or officials of organization or business, available to public inspection in their records.

Responses for Document 00077

- 00077-001:** The reader is referred to Section 2.5 of the FEIS, "Alternatives and Issues Considered but Eliminated from Detailed Analysis."
- 00077-002:** The reader is referred to Section 2.5 of the FEIS, "Alternatives and Issues Considered but Eliminated from Detailed Analysis."

8/20/02

These are my comments on the DEIS. I suggest substantial revisions to it before going final. The draft has a number of areas that expose it to litigation, and this could lead to court-imposed ROW terms.

The scoping record shows a number of concerns that someone at BLM or Argonne has decided can be safely ruled outside the scope of this NEPA process. By what standard, or on what basis did that person determine that concerns such as adequate funding, a citizens' oversight group, and escrow of the funds required for dismantling the pipeline were beyond the scope of review?

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In fact, there appears to be an assumption that renewal should be automatic unless the regulating agencies make findings of problems. Please cite the language that justifies such complacency. There have been problems so clear and obvious that we who were there do not need agencies to tell us about them.

There was a colossal oil spill less than 15 years ago, for which the Alyeska Pipeline Service Company was outrageously unprepared. They had successfully eroded the regulatory process to the point where they were allowed to equip themselves with nothing better than skimmers which were ineffective against this grade of oil, booms buried under snowbanks and insufficient equipment and personnel for uncovering them, and no barge capable of holding any oil they collected. They were forced to improve that. Within a year the industry was back in Juneau fighting a law that would have allowed un-announced state inspections of its facilities.

Last year a drunk shot a hole in the pipeline and it took 3 days to stop the leak, because Alyeska never acquired a large enough clamp for such pressure conditions, despite its promises. Yes, Alyeska had succeeded in eroding the regulatory process again. Over the years of the pipeline's life there has been an electrolytic effect that led to substantial corrosion and required large parts of the pipeline to be sheathed. There has been shifting and thumping. Even such a simple thing as the Remote Gate Valve system somehow can not attain proper functionality. Regulation has failed again. I do not believe that placing the sole weight for ruling all these comments outside the scope of the review on findings by those same regulators is prudent.

Even after all these insults, we still do not really know at what point these monitors would finally find the operators in violation of, for example federal Section 24, which requires them to abate hazards, or state Section 22, which requires them to prevent and abate hazards.

The Joint Pipeline Office has never seen it as its mission to let the public know what was really going on with the pipeline. How many years of its jargon-laden minimalist reports, many of which contain field data that on its face clearly contradicts the report's own conclusions, would you like me to provide for you?

We are asked to rely on some vague concept of "reliability centered maintenance" to identify and remediate problems in a timely manner. A

process is not a performance standard.

These are my recommendations. The terms of the pipeline's right of way across public lands should be substantially altered, and the length of time is questionable. The technical studies I have been able to see in the short time in which they have been available do not provide sufficient basis for a 30-year renewal period. Alyeska must have effective citizen oversight, or there will be an environmental catastrophe well within the next 30 year renewal frame. The terms do not sufficiently compensate the public for the use and risk to its lands. The analyses of risk to public and subsistence resources from potential spills into streams the pipeline crosses are certainly voluminous but once you boil them down they are still unrealistic. Conditions change, and so does human knowledge. There should be independent reviews every 5 years by a panel of the National Academy of Sciences of Alyeska's performance in the context of changing conditions and new understanding.

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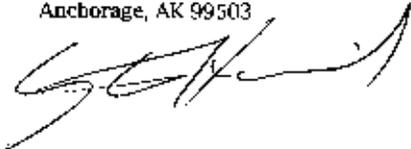
The justification for renewal without change is insufficient. The pipeline is going far beyond its design life, and the terms need a serious examination. This has not happened. AS 38.35.110 says renewal shall be granted if the operator is in full compliance with the law. This has not been the case. Even the less than strict JPO can only bring itself to call it "substantial compliance."

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On what basis did the authors rule out the possibility of modifying grant and lease terms? Surely such things as the experiences of the past 30 years, changing physical conditions, and the emergence of new scientific understanding and technologies warrant examining changes in those terms. It is asserted that these can all be accommodated within the existing powers and flexibility of JPO. I don't think so.

NEPA requirements have not been satisfied in the draft EIS. The treatment of good faith comments provided during the scoping process has been disrespectful and dismissive.

Steve Helmelt
3303 Dorbrandt St.
Anchorage, AK 99503



Responses for Document 00078

- 00078-001:** The rationale for finding several proposed alternatives to be out of scope for further analysis in the EIS is explained in detail in Section 2.5 of the FEIS.
- 00078-002:** The reader is referred to Section 2.5 of the FEIS, "Alternatives and Issues Considered but Eliminated from Detailed Analysis."
- 00078-003:** Thank you for your comment.
- 00078-004:** The comment does not address how the spill analyses are unrealistic. It was the intent of the authors that the analysis be conservative but realistic. This was accomplished by applying assumptions and models that tend to overestimate the impacts, but still keep them at reasonable levels.
- 00078-005:** The reader is referred to Section 2.5 of the FEIS, in which audits are addressed under Alternatives and Issues Considered but Eliminated from Detailed Analysis.
- 00078-006:** The BLM and member agencies of the JPO use an adaptive management approach to evaluate the effectiveness of stipulations and regulatory oversight. Ongoing monitoring programs, as identified in the 12 Comprehensive Monitoring Reports published since 1996, provide BLM and JPO with the necessary information to evaluate the effectiveness of stipulations in the Grant and Lease.
- The reader is referred to Section 4.1.1 (JPO oversight) and specifically to Sections 4.1.1.2 (Adaptive Nature of the Grant in Compliance Monitoring), 4.1.1.3 (Risk-based Compliance Monitoring), 4.1.1.4 (JPO Comprehensive Monitoring Program), and 4.1.1.8 (Coordinated Planning and Response to Abnormal Incidents) for more information on the role of adaptive management as a JPO business practice.

August 20, 2002

To Whom it may concern,

I am writing as a citizen of Cordova, Alaska who is concerned about the impending lease renewal for the TAPS. I understand these comments will have no effect other than to enable me to sue.

It is a dangerous idea to keep TAPS running in the same condition it is in currently. The amount of spills that have already occurred attest to that. The fact that a large number of the support members ~~are~~ are in jeopardy due to permafrost melting as a result of global warming, which scientists agree is affecting Alaska to a much greater degree than anywhere else in the world. Before the pipeline lease is renewed, there needs to be an independent audit of TAPS. Otherwise, the lease should not be renewed.

The economy of Cordova would collapse if the Copper River Salmon runs were harmed by an oil spill in the Copper River, which seems likely since 20% of the pipeline runs through the Copper River watershed, for which there is no oil spill response plan. This is an unacceptable risk. The pipeline crosses 76 salmon bearing streams in that watershed. The pipeline should not be allowed to operate without a spill response plan for the

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entire Copper River watershed and all other watersheds that the pipe passes through, especially the Yukon River watershed as well. A significant spill on the Copper would make Cordova a ghost town.

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There need to be independent studies of the health effects of oil on people, and these need to be paid for by the TAPS involved oil companies before the lease is renewed.

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As a resident of Cordova, I would like to testify that the claim in the DEIS that Cordovans do not participate significantly in subsistence is absurd and a classic example why the DEIS is horribly flawed and inaccurate. Everyone I know here is involved in subsistence activities from berry picking to moose hunting, every year. Studies have shown that at least 85% of Cordovans do subsistence. Studies have also shown that the Exxon Valdez oil spill dramatically decreased subsistence by contaminating subsistence foods. So the pipeline's questionable condition is a threat not only to our money economy, but also to our subsistence economy, which is very real to us, and should have been represented in the DEIS. It would have been easy to get the average number of salmon harvested in our local subsistence fishery, per capita, from Fish and Game.

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research, although the document does not reflect that. I believe the information was deliberately altered. Also inaccurate is the description of the "twin communities of Cordova and Eiyak." There is no such community as Eiyak. Obviously, whoever wrote that description has not visited Cordova, or spoken with anyone who has. This misunderstanding of the nature of our community, economy, and way of life is unacceptable because it means the DEIS does not recognize or analyze the very real threats TAPS poses for us, which by law it was supposed to do.

The meeting held in Cordova at the Moose Lodge was not a public meeting, as required by law. That building is not handicapped accessible. The meeting was held during a gillnetting and a seining opener, which means that the majority of the people who work here, and a huge fraction of the total population (the public) were on the fishing grounds and were unable to attend. Many of those people work much more than full time and would not have had enough free hours to read the document anyway. The comment period should be extended another 80 days, so that fishermen can have the opportunity to participate, and a real public meeting should be scheduled after the fishing-

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is drafted, but that won't happen because the document was deliberately drafted to deceive and misinform. It is too outrageously flawed to be a mistake. The public needs proof that the pipeline will not fail, and history has proven otherwise. The lease should not be renewed under the current circumstances because the concerns of commercial fishing have not been heard and the pipeline is a disaster waiting to happen.

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Sincerely,

Sierra Drake, commercial fisher
PO Box 1464
Cordova AK

99574

(907) 424-4394

Responses for Document 00079

- 00079-001:** The age, condition, operation, and maintenance of the TAPS were considered in the preparation of the EIS.
- 00079-002:** The pipeline is continuously monitored and maintained. In addition, a proactive maintenance program, called reliability-centered maintenance (RCM), that systematically evaluates critical components of TAPS and takes measures to rectify any identified weaknesses both materially or in procedural matters, has been initiated. The spill analysis within the EIS considers the probability and consequences of future spills (See Section 4.4 of the EIS). In estimating the frequencies and spill volumes for future spills, both the historical data from past spills and the potential for catastrophic spills of large consequence were considered.
- 00079-003:** VSM stability is obviously critical to TAPS integrity. As such, it is the focus of extensive monitoring and surveillance. Please see Section 4.3.2 of the FEIS (Soils and Permafrost) for additional information.
- 00079-004:** The reader is referred to Section 2.5 of the FEIS, in which audits are addressed under Alternatives and Issues Considered but Eliminated from Detailed Analysis.
- 00079-005:** The EIS recognizes that there would be potential for impacts to salmon resources if an oil spill occurs in a salmon-bearing stream or river (Section 4.4.4.10). The extent of the impacts would be related to the amount of oil spilled, the size of the receiving stream, and the location of various salmon resources and life stages relative to the spill location. The estimated probabilities of various oil spill scenarios occurring at particular locations along the TAPS are presented in Section 4.4.1.1. APSC's oil spill response capabilities and plans for the TAPS are summarized in Section 4.1.4 of the EIS and explained in detail in "TAPS Oil Discharge Prevention and Contingency Plan" for the pipeline and in the "Valdez Marine Terminal Oil Discharge Prevention and Contingency Plan" for the Valdez Marine Terminal. The plans are available to the public at various libraries in several major cities in Alaska. Oil spill prevention and response capabilities and related activities specific to the Copper River drainage area are discussed more fully in a text box that has been added to Section 4.4.4.3.
- 00079-006:** Section 4.4.4.7, "Human Health and Safety," provides a detailed analysis of the potential impacts of oil spills on human health. The BLM and other member agencies of the JPO are committed. The federal grant and authorizing legislation (TAPAA) provide unprecedented authority to BLM in assuring the protection of human health and the environment. Stipulations (the guiding conduct of operations for the operator of TAPS) within the federal grant contain numerous provisions that are protective of human health and the environment.
- 00079-007:** The EIS does not state that "Cordovans do not participate significantly in subsistence." On the contrary, it states that many residents participate in subsistence as a means of supplementing wage income, and notes (among other figures) that nearly 80% of the households (sampled) in Cordova engaged in subsistence fishing in 1997, the year for which data were considered "representative" by the Alaska Department of Fish and Game (see Section 3.24.2.4.2; see also Tables 3.24-1, 3.24-2, and D-26). The EIS is thus in agreement with, and generally supports, the comment.

- 00079-008:** Current studies do not indicate that subsistence foods in the vicinity of the TAPS pose a threat to human health, including those from Prince William Sound (as discussed in Section 3.17.2; see also Section 4.3.13.2). The EIS also concluded that for subsistence resources from marine environments (fish, shellfish, and marine mammals), food that is not noticeably unfit for human consumption (e.g., visible oil on the surface or smell of oil) would not be expected to cause adverse health affects (Section 4.4.4.7.4). However, the EIS also noted the potential impact on subsistence of perceived contamination of various foods, as continued in Prince William Sound several years after the Exxon Valdez oil spill (see Section 4.7.8.1). Note that text in Section 4.7.8.1 has been expanded to discuss impacts on subsistence systems due to the Exxon Valdez oil spill in greater detail, including references to figures in Section 3.24 that show pre- and post-spill subsistence levels for the three Prince William Sound rural communities considered in the EIS. This discussion reveals a substantial decline in subsistence harvests in 1989 and 1990, followed by recoveries of varying degrees documented through 1997.
- 00079-009:** Potential impacts to subsistence due to pipeline condition are reflected in Sections 4.3.20 (“Subsistence Impacts Under the Proposed Action”) and 4.4.4.14 (“Subsistence Impacts of Spills”). The DEIS presented data for salmon and many other resources harvested for subsistence purposes, in terms of edible pounds harvested, percentage of households participating in harvesting, and percentage of households using. As a result of comments, additional data from the ADF&G subsistence fisheries harvest database have been examined and incorporated. In no case were data deliberately altered.
- 00079-010:** The FEIS corrected the misstatement that Eyak is a separate community, as it was in the past, bringing the text in line with a statement (later in Section D.2.3.4.2, the section to which the comment refers) that Eyak was annexed by Cordova in 1992. Section D.2.3.4.2 has been corrected to identify Eyak as the Alaska Native Village of Eyak, a federally recognized Native village within the city boundaries of Cordova that is designated by the U.S. Bureau of the Census as an “Alaska Native Village Statistical Area.”
- 00079-011:** The meeting room at the Moose Lodge in Cordova is provided with universal access via a ramp to the rear entrance.
- 00079-012:** Although 45 days is understandably a short time to review a document of this size, the time period is consistent with the Council on Environmental Quality regulations for implementing the National Environmental Policy Act regarding the review of draft environmental impact statements. Significant effort was made to advise people of the schedule and duration of the review well in advance (one year). The DEIS was published on schedule and many substantive comments on the content of the DEIS, including yours, were received during the 45-day period.
- 00079-013:** The age, condition, operation, and maintenance of TAPS were considered in the preparation of the EIS. The possibility of pipeline failure is addressed in the spill analysis. In estimating the frequencies and spill volumes for future spills, both the historical data from past spills and the potential for catastrophic spills of large consequence were considered. As with any other engineering project, there is no 100 percent proof that the pipeline will not fail. However, the owners of the pipeline and the federal and state agencies with oversight responsibilities for TAPS are doing everything possible to keep the likelihood and consequences of future spills at reasonable levels.
- 00079-014:** Thank you for your comment.

8/13/02

Deerblodin
P.O. Box 204
Cordova, AK 99574

Dear Ms. Hatten, regarding EIS comments to of AK DOR TAPS team,

The TAPS renewal permit request is a necessary step in the process of safe operating our beautiful and wild state. A 45 day review period is not enough time for us Alaskans to not only get a copy of the DEIS and read it, but respond in an intelligent accurate manner, but have eyes, anyway.

From what I've been able to discern, the DEIS is full of misstatements and inaccuracies. The discussion of "economic benefits" of an oil spill is absurd. Even the stated two billion dollars that Exxon spent in '89 attempting to clean up Prince William Sound and the North Gulf coast of AK, did NOT benefit many local Alaskans. On the contrary, entire towns are suffering the economic impact of Exxon's refusal to pay what a court of law found as appropriate compensation for their GROSS negligence. If their continued refusal is any indication of oil companies CEO's true feelings for doing what they said they'll do, the TAPS renewal should be denied, with not further discussion necessary.

But with your narrow scope of focus, let me continue. The DEIS neglects & discounts the Native Peoples of our state & the TAPS area. I would like to assure you that the

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People of the Native Village of Elyth are very much alive and well and quite capable of contributing to an accurate assessment of the impacts of 30 more years of an old pipeline through their land. (section 3.25, 1.1.2 pg 325-11).

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(cont.)

I would strongly encourage the regulatory bodies charged with review of this application to mandate a fully funded & empowered local citizens oversight committee. Funding for the committee would be provided by the TAPS group. The oversight committee would be comprised of citizens living along the pipeline route & given access to maintenance & safety records of the pipeline inspection teams and have the power to ensure an ongoing safe and structurally sound system.

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Establish a "reward" fund which would be given to TAPS employees who discover safety hazards & shelling foundation before an oil spill would happen.

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Before the right-of-way permit is renewed plans & funding for a replacement of the entire pipeline with thicker & stainless steel pipe, thus drastically reducing the potential of corrosion based oil spills is needed.

Roughly 20% of the pipeline travels over through the Upper River watershed & over 76 salmon bearing streams. The Upper River is a world famous and very fragile ecosystem supporting a great number of Alutians with food.

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and a livelihood. When oil spills happen, permanent damage occurs to the land and water the oil touches (there are still lots of oil oiled beaches in PWS 13 years later). No amount of money can repair polluted land and streams. Prevention of oil spills is the only answer.

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The permit is melting, or haven't you heard. Replacement of footings & support structures is vital for prevention of oil spills. TAPS should have inspection & replacement plans in writing before the removal is granted.

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We all want cheap oil. The oil companies want their expenses as little as possible as well. But, the environmental devastation of a spill can not compare to the few dollars saved by removing the lease agreement to the oil companies preference. This renewal application is your chance to ensure and prevent future oil spills into the future - for the next 30 years.

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If the TAPS lease is approved to the oil company's request and the inevitable oil spill occurs, the death and destruction of not just land and water, but people's lives & livelihoods will be on your hands

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as well as the oil billionaire CEOs.

May God help you with this most important health and safety decision.

Don't allow the oil companies to save a few dollars at the expense of our ever fragile & shrinking wilderness.

Thank you, in advance, for implementing my ideas as the only viable option to preserve & protect our environment.

Sincerely,


Rose Black
P.O. Box 204
Culora, AK
99574

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Responses for Document 00080

- 00080-001:** Although 45 days is understandably a short time to review a document of this size, the time period is consistent with the Council on Environmental Quality regulations for implementing the National Environmental Policy Act regarding the review of draft environmental impact statements. Significant effort was made to advise people of the schedule and duration of the review well in advance (one year). The DEIS was published on schedule and many substantive comments on the content of the DEIS, including yours, were received during the 45-day period.
- 00080-002:** Text has been added to Section 4.7.8.3 of the FEIS providing additional sources of information about the impact of the Exxon Valdez oil spill (EVOS) on communities, including intangible impacts, such as psychological stress, and in the fisheries, recreation, and tourism industries in the Prince William Sound area. In addition, compressed overviews of selected impacts of the EVOS have been added to Sections 4.7.8.1 and 4.7.8.2.
- 00080-003:** Thank you for your comment.
- 00080-004:** The EIS explicitly examined Alaska Natives in the vicinity of the TAPS, with the discussion focusing on 8 Native sociocultural systems and 21 directly affected tribes. Additional information has been added concerning the Native Village of Eyak; see Section 3.25. It also examined issues closely associated with Alaska Natives, including subsistence (see Section 3.24).
- Alaska Natives (including the Native Village of Eyak) have received ample opportunities to contribute to the EIS, involving interaction associated with the NEPA process as well as government-to-government consultations (see Section 5.3, Table 5.3-1). In April 2002, an explicit invitation to contribute additional information (on subsistence and traditional cultural properties) to the EIS was sent to the 21 directly affected tribes in the form of a certified letter. To date, no response to that letter has been received.
- 00080-005:** The reader is referred to Section 2.5 of the FEIS, "Alternatives and Issues Considered but Eliminated from Detailed Analysis."
- 00080-006:** While replacement of the entire pipeline is a possibility, a more scientifically based approach is being followed. BLM and member agencies of JPO in close cooperation with Alyeska Pipeline Services Company have begun a systematic process to identify the critical functional components of TAPS. The process, called reliability centered maintenance (RCM), is an on-going system-by-system audit that determines function, failure modes, consequence and preventative maintenance of critical systems. The BLM is committed to RCM and believes that this process represents a pro-active approach to oversight and regulation of TAPS. In addition, RCM is the industry standard for reducing risk of failure to critical system components. Reducing risk in TAPS critical systems directly translates to reducing safety and environmental risks.
- 00080-007:** Section 4.4 of the EIS discusses the spill scenarios considered and the estimated impacts from these scenarios. The scenarios range from high frequency/low consequence events to low frequency/high consequence occurrences. The discussion includes potential impacts in the Copper River Drainage area. Depending upon the timing and the quantity of oil, it is true that major impacts could occur to salmon in the Copper River if a large amount of oil from a pipeline break were to reach the Copper River. Text has been added to Section 4.4.4.10.1 to reiterate the importance of the Copper River for salmon production in the area and to recognize the potentially severe impacts to salmon in the event of a large spill entering the basin. Oil spill prevention and response capabilities and related activities specific to the Copper River Drainage area are discussed more fully in the text box "Oil Spill Planning for the Copper River Drainage" in Section 4.4.4.3.

00080-008: The BLM and member agencies of the JPO use an adaptive management approach to evaluate the effectiveness of stipulations and regulatory oversight. Ongoing monitoring programs, as identified in the 12 Comprehensive Monitoring Reports published since 1996, provide BLM and JPO with the necessary information to evaluate the effectiveness of stipulations in the Grant and Lease.

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

00080-009: Thank you for your comment.

00080-010: Thank you for your comment.

