

**Editor's note: 87 I.D. 21**

CITY OF ANCHORAGE, ALASKA,  
AND JACK G. FISHER, ET AL.,  
a.k.a. CONCERNED CHUGACH CITIZENS  
v.  
CHUGACH ELECTRIC ASSOCIATION, INC.

IBLA 79-410

Decided January 30, 1980

Appeal from a decision of the Alaska State Office, Bureau of Land Management, dated April 16, 1979, approving right-of-way Alternative K for the alignment of Chugach Electric Association's 230-kV transmission line.

Affirmed.

1. National Environmental Policy Act of 1969: Generally -- Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Generally -- Rights-of-Way: Federal Land Policy and Management Act of 1976

Public Land Order No. 2676 (1962), requires the approval of an authorized officer of the Department of the Army before the

Secretary of the Interior can grant a right-of-way over lands subject to the public land order. The Department of the Interior has no authority to grant a right-of-way where the approval is withheld.

2. Rights-of-Way: Generally

In reviewing a decision to grant a right-of-way based upon an environmental analysis report, the decision will be upheld where the record evidences consideration of all available information and a reasoned analysis of the factors involved, made in due regard for the public interest.

APPEARANCES: Olaf K. Hellen, Esq., Anchorage, Alaska, for City of Anchorage and Concerned Chugach Citizens; Carl J. D. Bauman, Esq., Anchorage, Alaska, for Chugach Electric Association; Russell L. Winner, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for BLM.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

The city of Anchorage, Alaska, and a group of individuals, styling themselves Concerned Chugach Citizens, 1/ appeal from a decision of the Alaska State Office, Bureau of Land Management (BLM), approving right-of-way Alternative K for the alignment of Chugach Electric Association's (CEA) 230-kV electric transmission line.

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1/ The individual named appellants who comprise the group calling itself Concerned Chugach Citizens are Jack G. Fisher, Nancy Fisher, Kenneth R. Harper, Susan Harper, Patrick A. Stanfield, and Richard R. Thiel.

The 18-mile transmission line is part of a large project funded by a Rural Electrification Administration (REA) loan. The REA determined that the loan involved "major Federal action" requiring an environmental impact statement (EIS). An environmental analysis prepared by a consulting firm retained by CEA was incorporated into the REA prepared EIS.

On January 9, 1978, CEA applied to BLM for a right-of-way grant for the portion of the transmission line scheduled to cross Federal lands. BLM prepared an environmental assessment record (EAR) to supplement the other environmental documents.

The EAR studies 11 alternative routes for the transmission line in addition to the route proposed by CEA. The EAR concentrated on a 1-mile section of the right-of-way that did not utilize existing rights-of-way and involved the border between the eastern boundary of the Chugach Foothills and Pleasant Valley subdivisions of Anchorage and a portion of the western boundary of Fort Richardson military reservation. The selection process generated considerable public response, particularly from the citizens whose homes border Fort Richardson.

As the evaluation process progressed, the Army announced that Alternatives designated "A" and "B" intruded too far into the Army reservation and would interfere with their training exercises. At

that time the military indicated that it would not oppose a right-of-way located 300 feet from the western boundary of the reservation. The proposed right-of-way located 300 feet inside Fort Richardson became Alternative K, the route ultimately approved in the Decision Record/Rationale.

The Decision Record/Rationale of April 16, 1979, signed by Curtis McVee, Alaska State Director, states:

Decision:

I approve Alternative K for the alignment of Chugach Electric Association's (CEA) request for a 230-KV transmission line right-of-way from Knik Arm to University substation.

Rationale:

The EAR and the Land Report for this project analyze the proposed action and the eleven alternatives developed for consideration. The reasons that I have approved Alternative K are:

1. it is more cost effective than the underground alternatives and has little cost difference from the parallel above-ground alternatives;
2. it is more reliable than underground alternatives when one considers that high voltage underground installations are untried and unproven in Alaskan frost conditions and that delays in repairing such underground circuits can take up to two weeks or longer;
3. it impacts the least number of residences and it allows future expansion of the right-of-way without conflicts with residential housing, by providing a buffer of natural vegetation between the power line and the housing area which directly borders the military reservation;
4. it would conform with plans for the East City Bypass and not conflict with the Far North Bicentennial Park Plan;

5. it will insure that the military can continue its training operations in an uninterrupted manner. The Regional Solicitor has determined that this office has no authority to permit land use on the military withdrawal without concurrence by the Department of the Army.

The Rural Electrification Administration, U.S. Department of Agriculture, has prepared an Environmental Impact Statement on CEA's proposal for upgrading its electric transmission system (Beluga Station No. 7 and No. 8, Bernice Luke Power Plant Unit No. 3, 230-KV Transmission Additions, January, 1978). The Environmental Assessment Record (EAR-010-8157), which BLM has prepared, supplements this EIS in areas which the U.S. Department of Interior felt were not fully analyzed. Therefore, I do not feel another EIS is necessary.

Alternative K, including all mitigation measures which were recommended in the EAR, is approved.

Appellants argue that BLM's decision, based upon the various reports, is a violation of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4335 (1976), and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1781 (1976).

Appellants' objection to the selection of Alternative K over Alternative B is primarily aesthetic. 2/ The transmission line following Alternative K will impair the view from the houses in the subdivisions of the Chugach Mountains to a greater extent than if Alternative B were used.

The BLM decision approving Alternative K as the route of the transmission line is challenged by appellants on numerous specific

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2/ Appellants had argued earlier that Alternative K posed a greater danger to nearby residents and to their property than did Alternative B. This argument was essentially abandoned at oral argument.

grounds. Appellants most substantial arguments are: 1) BLM should have attempted to have Public Land Order (PLO) No. 2676 modified to negate the military's opposition or alternatively, the rationale of the military's opposition to Alternative B should have been further analyzed and reviewed by BLM to reflect the reasons for the military's opposition; 2) Alternative K should not have been chosen because it is inconsistent with the Anchorage Metropolitan Area Transportation Study (AMATS); and, 3) The selection of Alternative K results from the inadequate weighing of alternatives, a failure to consider all available information, a failure to properly analyze the factors involved, and a disregard for public interest.

[1] Pursuant to PLO 2676 (May 4, 1962) the land in question was again placed under the jurisdiction of the Department of the Army. <sup>3/</sup> The authority to grant rights-of-way over the land remained with the Secretary of the Interior with the limitation that no grants would be made without the approval of an authorized officer of the Department of the Army.

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<sup>3/</sup> The land was temporarily withdrawn and placed under the control and jurisdiction of the War Department for use as a military reservation pursuant to Exec. Order No. 8102 (Apr. 29, 1939). Exec. Order No. 9526 (Feb. 28, 1945) amended Exec. Order No. 8102 to return jurisdiction to the Department of the Interior 6 months after termination of the national emergency. On May 4, 1962, PLO 2676 transferred jurisdiction back to the Army. PLO 2676 provides:

"ALASKA

"Amending Certain Orders Which Withdrew Lands for Use of the War Department for Military Purposes

"By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Section 204(i) of FLPMA, 43 U.S.C. § 1714(i) (1976) restricts the Secretary of the Interior's authority to modify or revoke withdrawals. Section 204(i) provides: "In the case of lands under the administration of any department or agency other than the Department of the Interior, the Secretary shall make, modify, and revoke withdrawals only with the consent of the head of the department or agency concerned, except when the provisions of subsection (e) of this section apply."

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fn. 3 (continued)

"1. Executive Orders No. 8102 of April 29, 1939; No. 8343 of February 10, 1940; No. 8755 of May 16, 1941; No. 8847 of August 8, 1941, and Public Land Orders No. 47 of October 12, 1942, and No. 95 of March 12, 1943, which withdrew public lands in Alaska for use of the War Department for military purposes, are hereby amended to the extent necessary to delete therefrom the following paragraph included therein, or added thereto by Executive Order No. 9526 of February 28, 1945, or Public Land Order No. 284 of June 12, 1945:

"The jurisdiction granted by this order shall cease at the expiration of the six months' period following the termination of the unlimited national emergency declared by Proclamation No. 2487 of May 27, 1941 (58 Stat. 1647). Thereupon, jurisdiction over the lands hereby reserved shall be vested in the Department of the Interior, and any other department or agency of the Federal Government according to their respective interests then of record. The lands, however, shall remain withdrawn from appropriation as herein provided until otherwise ordered.'

"2. The orders of withdrawal referred to in paragraph 1, above, are hereby further amended by substituting the words "Department of the Army" for the words "War Department" wherever they appear.

"3. The Department of the Interior shall retain jurisdiction of the mineral and vegetative resources of the lands.

"4. The Department of the Army may issue permits revocable at will for authorized use of the lands included in this order; but authority to change the use specified by this order or to grant rights to others to use the lands, including grants of leases, licenses, easements and rights-of-way is reserved to the Secretary of the Interior or his authorized delegate, provided that no grants will be made under this authority without the approval of an authorized officer of the Department of the Army.

"John A. Carver, Jr.,

"Assistant Secretary of the Interior.

"May 4, 1962.

"[F.R. Doc. 62-4581; Filed, May 10, 1962; 8:46 a.m.]"

Subsection (e) provides that the Secretary of the Interior may make an emergency withdrawal when he determines "that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost."

We note that section 204(e) is not, by its terms, specifically applicable to the revocation or modification of withdrawals as opposed to their formulation. Assuming without deciding that subsection (e) would be applicable to revocation of a withdrawal, appellants have not argued nor does the case record disclose that the military's objection to Alternative B has created such an emergency situation. Thus, under either theory, section 204(i) of FLPMA prevents the Secretary from modifying PLO 2676 to override the military's objection to Alternative B.

Appellants have also argued that BLM had an affirmative duty both to independently evaluate the basis for the military's objection and, if unconvinced of the merits of the Army's concerns, to endeavor to change the military's decision. While this Board is not unmindful of the Department's obligation under numerous statutes to safeguard the environment to as great an extent as possible, we also recognize that:

There is reason for concluding that NEPA was not meant to require detailed discussion of the environmental effects of "alternatives" put forward in comments when these effects cannot be readily ascertained and the alternatives are deemed only remote and speculative possibilities, in view of basic changes required in statutes and policies of other agencies - making them available, if

at all, only after protracted debate and litigation not meaningfully compatible with the time-frame of the needs to which the underlying proposal is addressed.  
[Emphasis supplied.]

Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 551 (1978), citing NRDC v. Morton, 458 F.2d 827, 837-38 (1972).

While situations might arise in which BLM might be required to attempt to alter the view of a sister agency, such a situation is not disclosed by the facts of this appeal. Such necessity might arise where the only environmentally or economically feasible alternative for a needed project crosses or encroaches upon land which is under the jurisdiction of another agency, and the local official of that agency has, with no discernible justification, refused consent. It would also have to be shown that all other alternatives result in grave environmental or economic depredations. In such a circumstance, BLM might well be required to undertake to have the local official's decision reversed. For a number of reasons, such is not the situation disclosed herein.

First, while Alternative K may have a greater aesthetic impact upon appellants, it can clearly not be said to be totally environmentally unacceptable. Moreover, while appellants argued that BLM is obligated under NEPA to choose the alternative which has the least environmental impact, the Supreme Court has recently addressed this

precise question. In Strycker's Bay Neighborhood Council, Inc. v. Karlen, 48 L.W. 3433 (January 8, 1980), the Court, in a per curiam decision, stated:

Vermont Yankee [supra] cuts sharply against the Court of Appeals' conclusion that an agency, in selecting a course of action, must elevate environmental concerns over other appropriate considerations. On the contrary, once an agency has made a decision subject to NEPA's procedural requirements, the only role for a court is to insure that the agency has considered the environmental consequences; it cannot "interject itself within the area of discretion of the executive as to the choice of the action to be taken."

48 L.W. at 3434. While this Board, as the Secretary's agent, can exercise executive discretion, the Court's decision clearly stands for the proposition that considerations other than environmental impacts are properly weighed in the decisionmaking process.

[2] From our review of the EAR it is clear that BLM not only obtained sufficient information to satisfy section 204(e), but also adequately reviewed the Army's reasons for its opposition to Alternative B.

The Army did not directly supply BLM with all of the documentation supporting its opposition to Alternative B. A portion of the information was ultimately released by the Army to Senator Stevens' office and eventually provided to BLM and included in the final EAR. Both the Army's lack of consent and the reason for this opposition are mentioned in the decision rationale.

Appellants contend that the selection of Alternative K is inconsistent with a potential freeway route proposed by AMATS. Appellants' major concern is that when and if the freeway is built it will be routed between their homes and the routing of Alternative K. The EAR recognizes that such a routing is possible but concludes that the more probable placement will locate the freeway further from the homes than the power line, preserving the desired buffer zone.

The freeway under consideration by AMATS is only a proposal. A determination has not been made as to the exact location of the freeway. While BLM could have been faulted for totally ignoring the freeway study, in light of the speculative nature of the freeway, sufficient attention was given the proposal in the EAR. See County of Suffolk v. Secretary of the Interior, 562 F.2d 1368 (2nd Cir. 1977), cert. denied, 434 U.S. 1064, 98 S. Ct. 1238 (1978).

Appellants generally challenge the adequacy of the EAR and are critical of the decision process that led to the selection of Alternative K.

On arriving at its decision, BLM must consider all available information. The record must evidence a reasoned analysis of the factors involved made in due regard for the public interest. The decision will be upheld unless appellants can show sufficient reason to change the result. Dean W. Rowell, 37 IBLA 387 (1978); Robert L. Healy, 35 IBLA 66 (1978); Broken H Ranch Co., 34 IBLA 182 (1978).

We are not persuaded that sufficient reason exists to change the result. The EAR adequately considers the maintenance and operating units of the proposal and the alternatives. The environmental consequences including the impact upon the air, land, water, plants, animals, and human values were thoroughly considered by BLM and are reflected in the Decision/Record Rationale. BLM made a special effort to take into account the viewpoints and concerns of both the immediate residents and the Municipality of Anchorage.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

