

Editor's note: 94 I.D. 139; Appealed; aff'd, Civ.No. 88-0012-B (D.Wyo. Feb. 2, 1990), 730 F.Supp. 1535; aff'd, No. 90-8036 (10th Cir. July 23, 1992), 970 F.2d 757

EXXON CORP.

IBLA 85-458, 85-721

Decided April 23, 1987

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, issuing two separate right-of-way grants for the construction and operation of pipelines across Federal lands pursuant to section 28 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 185 (1982), W-79531(F) and W-87686.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Oil and Gas: Pipelines: Rights-of-Way -- Rights-of-Way: Act of February 25, 1920 -- Rights-of-Way: Oil and Gas Pipelines

Departmental precedent and regulations establish that sec. 28 of the Mineral Leasing Act of 1920, as amended, provides the proper authority for issuance of pipeline rights-of-way for transportation of gas produced from Federal oil and gas leases. Where the pipeline is constructed off-lease, this is true regardless of whether the pipeline facility is characterized as a gathering line or production facility on the one hand or a pipeline for transportation of gas to market on the other hand. This interpretation of sec. 28 of the Mineral Leasing Act is consistent with the intent of that provision to ensure the ability of Federal oil and gas lessees to develop their leases and market the products of lease development.

2. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Oil and Gas: Pipelines: Rights-of-Way -- Rights-of-Way: Act of February 25, 1920 -- Rights-of-Way: Oil and Gas Pipelines

Sec. 28 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 185 (1982), authorizing rights-of-way for "natural gas" pipelines provides the proper statutory authority for a right-of-way for a pipeline to transport all component gases produced from a well on Federal oil and gas leases, including a pipeline exclusively devoted to transportation of carbon dioxide subsequently separated from the other components of the gas stream emanating from the wellhead. This interpretation of sec. 28 of the Mineral Leasing Act is consistent with the intent of that provision to ensure the ability of Federal oil and gas lessees to develop their leases and market the products of lease development.

APPEARANCES: Quinn O'Connell, Esq., and Maryann Armbrust, Esq., Washington, D.C., for Exxon Corporation; R. Charles Gentry, Esq., Dallas, Texas, for Yates Petroleum Corporation; William R. Hoatson, Esq., Washington, D.C., for Howell Petroleum Corporation; John J. McHale, Esq., Division of Energy and Resources, Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Exxon Corporation (Exxon) appeals from separate decisions of the Wyoming State Office, Bureau of Land Management (BLM), concerning issuance of right-of-way grants to Exxon for the construction and operation of two pipelines across Federal lands under the authority of section 28 of the Mineral Leasing Act of 1920 (MLA), as amended, 30 U.S.C. § 185 (1982). Right-of-way W-79531(F), the subject of one appeal (IBLA 85-458), authorizes

a 28-inch diameter pipeline to transport "sour" ^{1/} natural gas from a dehydration plant, located on privately owned lands, across intervening Federally owned lands for a distance of approximately 35 miles, to the Shute Creek processing plant that is partially located on Federal lands. At this processing plant, the sour gas will be separated into its various components, which are: 66.0 percent carbon dioxide, 22.0 percent methane, 7.0 percent nitrogen, 4.5 percent hydrogen sulfide, and 0.5 percent helium.

After separation, the methane component will be transported by pipeline for sale. The carbon dioxide separated from the raw gas will also be transported to the point of sale by separate pipeline, a segment of which will be constructed and operated by Exxon. Exxon applied for and was granted right-of-way W-87686 for this carbon dioxide pipeline, which is the subject of the second appeal (IBLA 85-721).

Exxon objects to BLM's issuance of these rights-of-way pursuant to section 28 of the MLA, arguing that the proper authority for both grants is Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1982). In view of the related factual context of these two appeals and the similar issue which they raise, we have consolidated these cases for review by the Board. Variations in the nature of the two pipelines and the consequent effects on the legal analysis required to resolve the issues make it appropriate to analyze each appeal in turn.

^{1/} "Sour" gas is defined as: "Natural gas contaminated with chemical impurities, notably hydrogen sulphide or other sulphur compounds, which impart to the gas a foul odor. Such compounds must be removed before the gas can be used for commercial and domestic purposes." H. Williams & C. Meyers, Oil & Gas Terms, 711 (5th ed. 1981).

THE SOUR GAS PIPELINE RIGHT-OF-WAY (IBLA 85-458)

The LaBarge project was developed by Exxon to exploit the low-BTU natural gas reserves on its Federal leases located in Sublette County, Wyoming. The LaBarge project involves three Federal oil and gas units for which Exxon is the operator. Exxon, whose working interest ownership in each of the units ranges from 88 to 95 percent, operates the Lake Ridge, Fogarty Creek, and Graphite units for itself and other working interest owners, including Howell Petroleum Corporation (Howell) and Yates Petroleum Corporation (Yates). ^{2/} As of April 1985, Exxon had drilled 11 wells into the Madison reservoir and was in the process of drilling 8 more, with plans to drill an eventual total of approximately 64 producing wells (Affidavit of Paul W. Henderson, Operations Manager, Appendix to Appellant's Brief at 3).

On September 5, 1984, Exxon filed an amended application for a right-of-way (W-79531(F)) for the construction and operation of a sour or raw gas pipeline which would transport the gas from Exxon's dehydration facility located near the units in Sublette County, Wyoming, to Exxon's Shute Creek gas processing plant located in Lincoln and Sweetwater Counties, Wyoming. ^{3/} Exxon states that facilities such as the Shute Creek facility, which is designed to separate the components of the raw gas stream, are normally located on the Federal lease area. However, in this case, consideration of

^{2/} According to Table 1 attached to appellant's statement of reasons, Howell and Yates each own an interest in the Fogarty Creek unit, amounting to 4.831 percent and 2.063 percent, respectively. The other units also have minority working interest owners other than Exxon.

^{3/} The gas produced from wells on the units is first transferred by assorted feeder pipelines to the central dehydration plant where water is removed from the gas stream.

access problems in winter caused by the mountainous topography and environmental impacts (including wildlife habitat and air dispersion characteristics) resulted in selection of the Shute Creek site, which is located 50 miles from the well-field units.

Appellant asserts in the statement of reasons for appeal that section 28 of the MLA only provides authorization for the "transportation of natural gas." Citing Solicitor's Opinion, 87 I.D. 291 (1980), Exxon argues that the pipeline at issue is essentially part of a production facility rather than a transportation facility authorized by section 28 of the MLA. Hence, appellant argues the relevant statutory authority must be found in the right-of-way provisions of Title V of FLPMA. Further, Exxon seeks to find support in the distinction drawn by the Federal Energy Regulatory Commission (FERC) (formerly Federal Power Commission (FPC)) between gathering facilities and transportation facilities in defining the term "transportation of natural gas" pursuant to the Natural Gas Act (NGA), 15 U.S.C. §§ 717-717w (1982).

In answer to appellant's statement of reasons, BLM contends the distinction between production and transportation facilities recognized by the Solicitor's Opinion, supra, was limited to production facilities within Federal oil and gas leaseholds and does not apply to off-lease facilities. BLM cites Frances R. Reay, 60 I.D. 366 (1949), in support of its contention that section 28 of the MLA (rather than Title V of FLPMA) provides the appropriate statutory authority for off-lease pipeline rights-of-way without regard to any distinction between production and transportation facilities. The answer of BLM points out that the Reay case was discussed in Solicitor's Opinion, supra, but not overruled.

Further, BLM asserts that decisions of FERC or the FPC interpreting the NGA are irrelevant to a determination of the proper authority for a pipeline right-of-way grant. Finally, BLM argues the Board should apply the definition of "pipeline" and "production facilities" in the regulations at 43 CFR 2880.0-5(i) and (k) to find section 28 of the MLA provides the proper authority for this right-of-way grant.

Howell and Yates, minority working interest owners in the LaBarge project, have filed petitions to intervene in this appeal. Petitioners assert the fundamental issue is the common carrier status of the pipeline which is mandated by statute if the right-of-way is granted pursuant to the authority of section 28 of the MLA. Petitioners assert that if the pipeline is not operated as a common carrier, it is unlikely they will be able to transport their share of the sour natural gas to the Shute Creek processing plant and market their share of the processed gas and other plant products. Exxon has opposed the petitions. In light of the potential adverse effect of the decision in this case on Howell and Yates, the petitions to intervene are hereby granted.

Exxon was granted a right-of-way for its raw gas pipeline pursuant to section 28 of the MLA, as amended, which provides in part:

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

30 U.S.C. § 185(a) (1982). Pipelines and related facilities authorized under the terms of section 28 of the MLA, as amended, must be operated as "common carriers." 30 U.S.C. § 185(r)(1) (1982). The statutory authorization for rights-of-way found in title V of FLPMA does not establish such a requirement.

[1] A proper understanding of the Solicitor's Opinion, supra, as well as a proper resolution of the issue of the relevant statutory authority for appellant's right-of-way, requires that we examine earlier Departmental decisions. In Frances R. Reay, supra, the question of the statutory authority for a right-of-way for an oil pipeline constructed across public lands by an oil and gas lease operator was examined. The pipeline in that case crossed unleased Federal lands, connecting two parcels which were under lease. Appellant contended the pipelines were gathering lines necessary for proper movement of oil produced on one part of the lease to another part of the lease and, hence, not pipelines within the scope of section 28 of the MLA subject to common carrier requirements. In rejecting the distinction between gathering pipelines and transportation pipelines for purposes of application of section 28 of the MLA to rights-of-way for off-lease facilities the Department held:

Although the pipe lines involved in the present proceeding may be short in length and necessary to the operation of the lease, nevertheless, the requested right-of-way is "through the public lands," and it is proposed to be used "for the transportation of oil or natural gas." The case comes within the scope of the unambiguous language of section 28.

60 I.D. at 367.

The Department went a step further in Continental Oil Co., 68 I.D. 186 (1961), in considering the authority for rights-of-way for pipelines to connect with an existing casinghead gas gathering line, for a residue gas fuel line, and for a gas collecting system. In this case the public lands which the lines would cross were under lease to appellant under the MLA. Notwithstanding appellant's contention the lines constituted a part of its gathering system, the decision held:

[T]he circumstances present in this case that the lines here under discussion cross only public lands under lease to the appellant and that the appellant contemplates their use only in production operations [do not] alter our conclusion [that section 28 applies]. * * * [Section 28] makes no distinction between lines which cross only lands under lease to the pipeline applicant and lines which may cross lands under lease to others or lines which may cross lands on which there may be no leases nor does it require that the lines be constructed, operated and maintained as common carriers only in the event the lines are to carry oil or natural gas to market.

68 I.D. at 189-90.

It was against this background that the Solicitor examined the applicability of the right-of-way regulations purportedly promulgated pursuant to the authority of section 28 of the MLA to gathering lines and other production facilities "located within the boundaries of oil and gas leases issued under sec. 17 of the [MLA]." Solicitor's Opinion, supra at 292. In holding that other provisions of the MLA (sections 187 and 189) give the Secretary broad authority to regulate all on-lease activities by lessees, the opinion held the Secretary had exercised that authority in the form of regulations governing applications for permits to drill and other permits

for production and gathering facilities on the leasehold. See 43 CFR Part 3160 (onshore oil and gas operating regulations). Thus the Solicitor found that permits for on-lease production and gathering facilities were properly authorized pursuant to these regulations rather than regulations promulgated pursuant to section 28 of the MLA. In this context the Solicitor expressly distinguished on-lease production facilities including feeder lines and gathering lines from pipelines or facilities utilized in the transportation of oil and gas, whether located on-lease or off-lease. 87 I.D. at 297-99. In doing so, he necessarily overruled Continental Oil Co., supra, to the extent that opinion had held that a section 28 right-of-way was required of a lessee for on-lease production and gathering facilities. However, contrary to appellant's contention, we find nothing in the Solicitor's Opinion, supra, to support granting a right-of-way for off-lease oil or gas pipeline facilities, regardless of whether they are part of the production and gathering system, under any other authority than section 28 of the MLA. See Gas Company of New Mexico, 88 IBLA 240 (1985). In this regard, it is important to note the Solicitor's Opinion, supra, discussed and followed the earlier decision in Frances R. Reay, supra. See Solicitor's Opinion, supra at 299.

The distinction between on-lease and off-lease facilities is recognized in current Departmental regulations governing rights-of-way promulgated pursuant to section 28 of the MLA. Thus, the regulations at 43 CFR 2880.0-5 define the terms "pipeline" and "production facilities" as follows:

§ 2880.0-5 Definitions.

As used in this part, the term:

* * * * *

(i) "Pipeline" means a line of [sic] traversing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on his lease.

* * * * *

(k) "Production facilities" means a lessee's or lease operator's pipes and equipment used on his lease solely to aid in his extraction, storage, and processing of oil and gas. The term includes storage tanks and processing equipment, and gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery. The term also includes pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

This Board is bound by duly promulgated Departmental regulations. See Garland Coal & Mining Co., 52 IBLA 60, 88 I.D. 24 (1981). Clearly, authority for rights-of-way for pipeline facilities located off-lease is provided by section 28 of the MLA, notwithstanding the pipeline facility is part of a gathering system. See 43 CFR 2882.1.

Further, we find nothing in the subsequently enacted Title V of FLPMA which indicates an intent to authorize rights-of-way for pipelines carrying oil and gas from Federal leases. Section 510(a) of FLPMA provides in pertinent part:

Effective on and after October 21, 1976, no right-of-way for the purposes listed in this subchapter shall be granted, issued, or renewed over, upon, under, or through [public lands and National Forest System lands] except under and subject to the provisions, limitations, and conditions of this subchapter * * *.

43 U.S.C. § 1770(a) (1982). The purposes of Title V are specified at 43 U.S.C. § 1761 (1982). That section provides that the Secretary of the Interior may grant, issue, or renew rights-of-way across public lands for, inter alia, "[p]ipelines and other systems for the transportation or distribution of liquids and gases, * * * other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom." (Emphasis added.)

We agree with counsel for BLM that Congress created two separate legal regimes for pipeline rights-of-way. The legislative history leaves no doubt about this conclusion. The report from the Interior Committee presented in discussion on the Senate floor describes the distinct coverage of the separate right-of-way provisions:

Title IV [of S. 507] provides uniform and comprehensive authority to the Secretary to grant rights-of-way on the national resource lands for such purposes as roads, trails, canals and powerlines. It is patterned after the Act of November 16, 1973 (87 Stat. 576) [amending section 28 of the MLA]; but it does not provide new authority to grant rights-of-way for oil and gas pipelines as this authority is contained in that Act. [4/] [Emphasis added.]

Accordingly, we conclude that right-of-way W-79531(F) for Exxon's off-lease raw gas pipeline over public lands between its dehydration plant and its Shute Creek processing plant was properly issued pursuant to the authority of section 28 of the MLA.

^{4/} 122 Cong. Rec. 4046 (1976). Title IV of S. 507 corresponds to Title V of FLPMA, P.L. 94-579, enacted Oct. 21, 1976.

THE CARBON DIOXIDE PIPELINE RIGHT-OF-WAY (IBLA 85-721)

The second pipeline right-of-way appeal before us raises the issue of the proper statutory authority in a slightly different context. Exxon has appealed the issuance of its right-of-way for the carbon dioxide pipeline (W-87686) across Federal lands on the ground that carbon dioxide, a noncombustible gas, is distinguishable from natural gas, which latter substance is a proper subject of a right-of-way under section 28 of the MLA. The right-of-way in this case is exclusively devoted to the transportation of carbon dioxide from Exxon's Shute Creek processing plant to Colorado where the gas is sold to an oil exploration and development firm for use in tertiary recovery operations from a partially depleted oil field.

Appellant points out in its statement of reasons for appeal that section 28 of the MLA literally authorizes the grant of rights-of-way for pipeline purposes for the transportation of "natural gas" or "any refined product produced therefrom." 30 U.S.C. § 185(a) (1982). Title V of FLPMA, on the other hand, authorizes the grant of rights-of-way through such lands for purposes of pipelines for transportation of "gases, other than * * * natural gas." 43 U.S.C. § 1761(a)(2) (1982). Exxon contends "natural gas" is a term of art referring to combustible, hydrocarbon gas as contrasted with pure carbon dioxide which is neither a hydrocarbon nor combustible. Appellant cites the regulation defining "oil and gas" as "oil, natural gas, synthetic liquid or gaseous fuels or any refined product produced therefrom." 43 CFR 2880.0-5(g). Exxon contends the carbon dioxide is not a refined product of

natural gas. It asserts refining refers solely to a process by which the chemical characteristics of petroleum products are changed.

The answer filed by BLM contends the term "natural gas" in section 28 of the MLA refers to gas of a natural origin as opposed to manufactured or artificial gas. Thus BLM contends section 28 of the MLA is applicable to the carbon dioxide pipeline. Counsel for BLM points out the inconsistency in appellant's position that carbon dioxide is gas for purposes of development under an oil and gas lease issued pursuant to the MLA (most of the carbon dioxide entering the pipeline was produced from Federal oil and gas leases) and yet not a natural gas for purposes of a transportation pipeline right-of-way under section 28 of the MLA. BLM asserts the modifier "natural" was added to the term gas in the section 28 right-of-way provisions to distinguish gases produced from oil and gas leases from artificial or manufactured gas. Further, BLM contends the carbon dioxide to be carried by the pipeline qualifies as a refined product produced from the gas generated by the wells. Counsel for BLM notes that although "refined product" is not defined in the statute, the word "refine" is commonly held to mean the removal of impurities, or making something pure.

Howell and Yates, intervenors in the prior appeal regarding the raw gas pipeline, have also petitioned to intervene in Exxon's appeal of the carbon dioxide pipeline right-of-way. Petitioners are the owners of working interests in one of the units from which the gas is developed that is subsequently

separated into the carbon dioxide component for the pipeline. Both petitioners assert, in effect, that the real issue here is the applicability of the common carrier requirement of section 28 of the MLA. Petitioners contend they will be unable to transport and market their share of the carbon dioxide produced from the unit since Exxon will refuse to transport their share of the carbon dioxide if not compelled to operate the pipeline as a common carrier as mandated by section 28 of the MLA. In light of the potential adverse effect on petitioners, the petitions to intervene in this appeal are also granted.

[2] This Board has previously examined the question whether the term "gas" as embraced in a reservation of oil and gas under a patent issued pursuant to section 1 of the Act of July 17, 1914, as amended, 30 U.S.C. § 121 (1982), includes carbon dioxide as well as combustible, hydrocarbon gas. See Robert D. Lanier, 90 IBLA 293, 93 I.D. 66 (1986). In answering that question in the affirmative, the Board reviewed some of the cases cited by appellant in support of the asserted distinction between the terms "gas" and "natural gas."

The court in Navajo Tribe of Indians v. United States, 364 F.2d 320 (Ct. Cl. 1966), decided the question of whether a lease of oil and gas deposits conveyed the right to develop helium, a noncombustible, nonhydrocarbon gas. The court found that gases existing in nature do not fit into mutually exclusive categories such as hydrocarbon and nonhydrocarbon, but rather the various elements are commingled and the hydrocarbon content cannot be produced separately from the other components. Id. at 326. Although the court recognized the parties to the lease may have contemplated leasing only

combustible hydrocarbon gases, the court found it "more realistic to presume that the grant included not only hydrocarbons but other gaseous elements as well." Id. at 326. Thus, the court concluded the lease embraced helium gas deposits. The Navajo court found significant the case of Lone Star Gas Co. v. Stine, 41 S.W.2d 48, 49 (Tex. Comm'n. App. 1931), holding that a grant of "all natural gas" included all substances emerging from the well as a gas.

In Northern Natural Gas Co. v. Grounds, 441 F.2d 704 (10th Cir. 1971), the issue was whether oil and gas leases in the gas fields of the Hugoton area conveyed the helium produced with the hydrocarbon gases. After quoting the district court's definition of gas as embracing any naturally formed aeriform substance indigenous to the underlying reservoir (including helium), id. at 711, the court found the issue to be one of intent. Accepting the district court finding that the lessors had no specific intent regarding helium and concluding that helium emerges as a component of the gas produced which necessarily comes from the wellhead and into the pipeline with all the gases which make up the entire stream, the court held general intent would include in the lease all components of the gas produced from the wells. Id. at 712-14. Further, in the absence of evidence of a specific intent to the contrary, the court found the general intent to be dispositive. Id. at 714.

The Board in Lanier found that at the time of passage of the Act of July 17, 1914, carbon dioxide was recognized as an element of natural gas but regarded as an impurity, thus making it unlikely Congress had any specific intent regarding reservation of carbon dioxide since it was not considered to have commercial value. After discussing the Navajo and Northern cases the

Board found, in the absence of any evidence of specific congressional intent to exclude carbon dioxide from the gas reservation, the term "gas" must be construed to include all component parts of the gas produced from the wells and not only hydrocarbon gas. 90 IBLA at 306, 93 I.D. at 73-74.

Although the analysis provided in these cases is not conclusive regarding the intent of Congress in providing authority in section 28 of the MLA for rights-of-way for the transportation of natural gas, it supports a finding of intent to include in the term all components of the gas stream produced from a gas well in the absence of evidence of a specific intent to the contrary. Indeed, it is quite clear that at the time of passage of the MLA of 1920 the interest in gas conveyed by leases issued thereunder was considered to embrace nonhydrocarbon components of gas produced from wells. Section 1 of the MLA, which authorized the leasing of oil, gas, and other mineral deposits owned by the United States, expressly reserved to the United States the ownership of and right to extract helium from all gas produced from leased lands. MLA, ch. 85, § 1, 41 Stat. 437-38 (codified at 30 U.S.C. § 181 (1982)). As the Board noted in Robert D. Lanier, *supra* at 307-08, 93 I.D. at 74-75, it would have been unnecessary to exclude the right to extract helium (a nonhydrocarbon) under Federal oil and gas leases if nonhydrocarbons were not subject to the lease. Solicitor's Opinion, 88 I.D. 538 (1981).

Notwithstanding appellant's contention that natural gas is a term of art embracing only hydrocarbon gas, the legislative history indicates the intent of Congress in specifying natural gas in section 28 was to clarify the

applicability of the right-of-way provision to gas produced from gas wells as distinguished from artificial or manufactured gas. See Wilderness Society v. Morton, 479 F.2d 842, 855 n.30 (D.C. Cir.), cert. denied, 411 U.S. 97 (1973). The court based its conclusion on the following dialogue which occurred between Representative Mann and Representative Ferris, the latter being the sponsor of the bill and Chairman of the Committee on the Public Lands:

Mr. Mann. * * * I should like to ask one more question. You do not limit what pipe lines are to carry?

Mr. Ferris. I do not quite get the gentleman's question.

Mr. Mann. You say "for all pipeline purposes." That includes not only oil, but water, and not only natural gas, but artificial gas. It is not desirable to limit this permission to oil and natural gas pipe lines?

Mr. Ferris. The committee did not intend to do any more than that. Nothing more than that was considered.

Mr. Mann. I will offer an amendment to insert, after the words "pipe-line purposes," the words "for the transportation of oil and natural gas."

Mr. Ferris. The committee did not intend to go any further.

51 Cong. Rec. 15419 (1914), cited in 479 F.2d at 855 n.30.

Thus, the purposes of the addition of the qualifier "natural" to the term "gas" was to distinguish naturally occurring gas produced from the ground through a well from gas which was artificially manufactured. Indeed, this meaning of the term is compelled by the principle of statutory construction which dictates that a provision not be construed in a manner inconsistent with the purposes of the statute. The purpose of section 28 of the MLA

was to authorize rights-of-way to ensure oil and gas lessees would be able to transport and market the products developed from Federal oil and gas leases. In concluding that these products include nonhydrocarbon gases such as carbon dioxide, it necessarily follows that the pipeline right-of-way authority must also embrace these gases. Accordingly, we must also affirm the decision of BLM with respect to right-of-way W-87686.

We note this result is also compelled by the language of the statute and the regulation making section 28 of the MLA applicable to rights-of-way for "oil, natural gas, * * * or any refined product produced therefrom." 30 U.S.C. § 185(a) (1982) (emphasis added.) We must reject appellant's attempt to place an extremely narrow definition on the term "refine." The term "refine" is properly stated to mean "to free from impurities." Bureau of Mines, U.S. Department of the Interior, A Dictionary of Mining, Mineral, and Related Terms 907 (1968) (definition of "refine"). Hence, the decision of BLM must also be affirmed on this ground.

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

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

James L. Burski
Administrative Judge