

IN THE SUPERIOR COURT OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

RECEIVED

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PATTON BOGGS LLP

Exxon Mobil Corporation, Operator of
The Point Thomson Unit; BP
Exploration (Alaska) Inc.; Chevron
U.S.A. Inc.; and ConocoPhillips Alaska,
Inc.,

Appellants,

v.

State of Alaska,
Department of Natural Resources,

Appellee.

Case No. 3AN-06-13751 CI
(Consolidated)

Case No. 3AN-06-13760 CI

Case No. 3AN-06-13773 CI

Case No. 3AN-06-13799 CI

Case No. 3AN-07-04634 CI

Case No. 3AN-07-04620 CI

Case No. 3AN-07-04621 CI

Case No 3AN-08-09369 CI

APPEAL FROM STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
"COMMISSIONER'S FINDING AND DECISION ON REMAND
FROM SUPERIOR COURT, POINT THOMSON UNIT"

ISSUED APRIL 22, 2008

AND

"COMMISSIONER'S DECISION ON RECONSIDERATION"

ISSUED JUNE 11, 2008

SUPPLEMENT TO APPELLANTS'
MOTION FOR PARTIAL TRIAL DE NOVO

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INTRODUCTION

Appellants supplement their Motion for Partial Trial De Novo (“De Novo Motion”) to bring before the Court new evidence relevant to the issues raised.¹ Documents provided by the Alaska Department of Environmental Conservation (“ADEC”) after Appellants’ reply was filed provide additional evidence in support of the relief requested. Appellants also conditionally supplement their request for relief.

SUPPLEMENTAL FACTS

On December 17, 2008, Appellant Exxon Mobil Corporation submitted a request to the ADEC under the Alaska Public Records Act, AS 40.25.100 *et seq.* The request sought:

[A]ll documents, including all electronically recorded data or documents, referring to or containing communications from the State of Alaska Department of Natural Resources (DNR) or between DNR and the Alaska Department of Environmental Conservation relating to permit applications submitted by Exxon Mobil Corporation after November 27, 2006 related to conducting drilling or other operations in the Point Thomson area of the North Slope of Alaska.²

On December 31, 2008, ADEC responded by delivering a set of documents that included those attached as Exhibit “A” to the Affidavit of Barat M. LaPorte, which is appended to this supplement. Exhibit “A” is a series of e-mails between DNR representatives and representatives of ADEC and other agencies relating to permit applications for drilling or other operations in the Point Thomson Unit area. These e-mails evidence a coordinated

¹To the extent that leave of court is required to submit this supplement and newly discovered evidence, Appellants hereby respectfully request such leave.

²Affidavit of Barat M. LaPorte, ¶ 8.

effort by DNR to influence and affect the permitting activities of other Alaska state agencies as part of its ongoing proprietary effort to cancel the PTUA and the PTU leases. The e-mails further provide evidence: (a) that this activity is intended to complement and support DNR's litigation effort against Appellants; (b) that it was being conducted before and during the remand hearing, and has continued thereafter; and (c) that it has been, and continues to be, directed by DNR employee Nan Thompson, who also served as DNR's Hearing Officer during the remand proceeding.

In addition to their relevance to the merits of the appeal, these documents provide evidence that the current appellate record related to this Court's review of Appellants' due process claim is not complete, particularly with respect to DNR's failure to separate its role as a party seeking cancellation of the PTUA from its role as adjudicator for the remand hearing.

CONDITIONAL REQUEST FOR SUPPLEMENTAL RELIEF

Appellants' De Novo Motion requests discovery concerning, among other matters, DNR's undisclosed *ex parte* communications with other state officials and state agencies regarding its decision to cancel the PTUA and its failure to separate its proprietary function as Appellants' litigation opponent from its regulatory function as adjudicator of Appellants' contract rights. Accordingly, the communications constituting the Exhibit "A" documents fall within the scope of the relief Appellants seek through their De Novo Motion. If the De Novo Motion is granted, the appellate record should be augmented to include the Exhibit "A" documents. To the extent necessary, however, Appellants

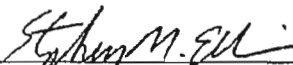
conditionally supplement the De Novo Motion to specifically request that the Court enter an order augmenting the appellate record to include the documents attached as Exhibit "A" to the Affidavit of Barat A. LaPorte appended to this supplement, and any similar documents obtained through the discovery requested.

CONCLUSION

For the reasons outlined above, and in the prior briefing on the De Novo Motion, the Court should grant Appellants' Motion for Partial Trial De Novo. Appellants also request that the Court grant this conditional request for relief to the extent necessary to permit the Exhibit "A" documents and any similar documents obtained through discovery to be included in the appellate record.

DATED at Anchorage, Alaska this 12th day of January, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of January, 2009, I caused a true and correct copy of **SUPPLEMENT TO APPELLANTS' MOTION FOR PARTIAL TRIAL DE NOVO** document to be served via U.S. Mail, postage prepaid on:

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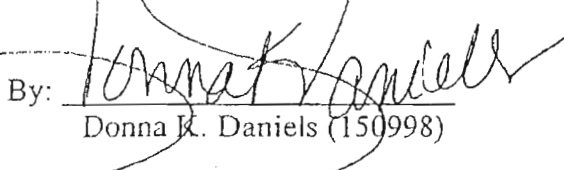
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APPEAL FROM STATE OF ALASKA

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ISSUED APRIL 22, 2008

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ISSUED JUNE 11, 2008

AFFIDAVIT OF BARAT M. LAPORTE FILED IN SUPPORT OF
SUPPLEMENT TO APPELLANTS’
MOTION FOR PARTIAL TRIAL DE NOVO

Barat M. LaPorte, being duly sworn, states as follows:

1. I am an attorney at the law firm of Patton Boggs LLP and am one of the attorneys representing Appellant ExxonMobil in this matter. I make this affidavit in support of the Supplement to Appellants’ Motion for Partial Trial De Novo. I have personal knowledge of the

facts stated herein and, if called as a witness, could and would testify competently thereto under oath.

2. On December 17, 2008, I transmitted an Alaska Public Records Act request to the Alaska Department of Natural Resources (DNR) requesting all documents, including email or other electronically recorded data, referring to or containing communications within the DNR or between the DNR and any other divisions, departments, agencies, entities or persons relating to permit applications submitted by ExxonMobil after November 27, 2006 related to conducting drilling or other operations in the Point Thomson area of the North Slope of Alaska.

3. On December 17, 2008, I also transmitted Alaska Public Records Act requests to the Alaska Department of Fish & Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the Alaska Oil & Gas Conservation Commission (AOGCC) requesting all documents, including email or other electronically recorded data, referring to or containing communications from the DNR to the aforementioned agencies or between the DNR and the agencies relating to permit applications submitted by ExxonMobil after November 27, 2006 related to conducting drilling or other operations in the Point Thomson area of the North Slope of Alaska.

4. On December 17, 2008, I also transmitted Freedom of Information Act requests to the United States Environmental Protection Agency (EPA) and the United States Fish & Wildlife Service (USFWS) requesting all documents, including email or other electronically recorded data, referring to or containing communications from the DNR to the aforementioned agencies or between the DNR and the agencies relating to permit applications submitted by ExxonMobil

after November 27, 2006 related to conducting drilling or other operations in the Point Thomson area of the North Slope of Alaska.

5. On December 18, 2008 I received an email response from ADF&G producing several letters. On December 19, 2008 I responded via email to ADF&G clarifying that my request included electronic documents, i.e. email, and suggested that ADF&G's December 18 response was incomplete. Later that same day I received a further response from ADF&G attaching additional documents including emails.

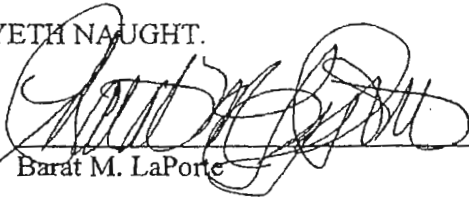
6. On December 19, 2008 I received correspondence from the DNR stating that my request "regards a matter in litigation" and that I should therefore direct the request to Mark Ashburn and Richard Todd. However, on December 17, 2008, the DNR Deputy Commissioner executed an order on behalf of the Commissioner denying Appellants' December 2, 2008 Request for Materials and Information which, in addition to other discovery requests, sought the same information as specified in the Public Records Act request. The Commissioner's Order further stated that DNR was not an adverse party and it was inappropriate for Appellants to seek discovery from DNR and no rule or regulation requires such discovery.

7. On December 22, 2008 I received correspondence from the AOGCC requesting that I execute a form stating that I was not representing a party involved in litigation with the State of Alaska or state agency.

8. On December 31, 2008 I received an email from ADEC attaching responsive documents and emails. A true and correct copy of a portion of the documents and emails received from ADEC on December 31, 2009 are attached hereto as Exhibit A. On January 7, 2009 I received a supplemental response from ADEC containing additional documents and emails.

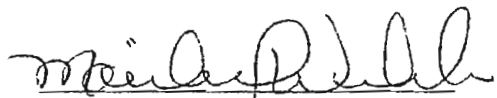
9. I have received acknowledgments from both the EPA and the USFWS indicating they have received and are processing the Freedom of Information Act Requests. In addition, the EPA has requested clarification of a portion of the request to which I am preparing a response. I am still awaiting production of documents from the EPA and the USFWS.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


Barat M. LaPorte

SUBSCRIBED AND SWORN to me this 11th day of January, 2009.




Notary Public
My Commission Expires: 11.17.09

Mendivil, Gary A (DEC)

From: Dietrick, Larry V (DEC)
Sent: Wednesday, August 08, 2007 9:42 AM
To: Mendivil, Gary A (DEC)
Cc: Dietrick, Larry V (DEC); Mattson, Bob D (DEC)
Subject: FYI: ACMP Review: ExxonMobil 07-08 Point Thomson Exploration Program
Attachments: Schorr, Betty.vcf

From: Schorr, Betty J (DEC)
Sent: Wednesday, August 08, 2007 9:31 AM
To: Dietrick, Larry V (DEC)
Subject: FW: Potential caveat to my earlier answer: ExxonMobil 07-08 Point Thomson Exploration Program

Larry, would like to discuss with you today or tomorrow. I'll mention it again at issues, but wanted to forward this email chain so you know what I know, at this point!

Thanks,

Betty

From: Miner, Lydia M (DEC)
Sent: Wednesday, August 08, 2007 8:51 AM
To: Evans, Gary P (DEC); Schorr, Betty J (DEC)
Cc: Greene, Ben A (DNR)
Subject: FW: Potential caveat to my earlier answer: ExxonMobil 07-08 Point Thomson Exploration Program

Gary and Betty - FYI.

Ben - please include Gary Evans on all Pt. Thomson related emails - he will review the c-plan if it is submitted.

Thanks.
Lydia

From: Greene, Ben A (DNR)
Sent: Tuesday, August 07, 2007 6:41 PM
To: Thompson, G (DNR)
Cc: Slemons, Jonne D (DNR); Bates, Randall W (DNR); Kruse, Kim M (DNR); Wolter, Lindsay A (LAW); Schmitz, Steven (DNR); Winters, Jack F (DNR); Bettis, Patricia K (DNR); Schultz, Gary (DNR); Byrne, Laurence C (DNR); Lynch, Leon C (DNR); Miner, Lydia M (DEC); Silfven, Laurie A (DEC)
Subject: Potential caveat to my earlier answer: ExxonMobil 07-08 Point Thomson Exploration Program

Hi Nan,

I'm Sorry for filling your In-box with so many additional details for the prospective ACMP review of ExxonMobil's Pt. Thomson Proposal.... However I do have (yet one more) important addition to my last e-mail:

I provided a "best-guess" for an ACMP review schedule, assuming that DNR/DOG was to direct me to start this review tomorrow. As I read the regulations, however, the decision to move forward would need to be in consultation with all relevant agencies. The reason I bring this up is that I do see a potentially major flaw in ExxonMobil's Plan of Operations that could make starting the ACMP review difficult: At several points, E-M states that they propose to "either do X or Y." That is to say, the ACMP review cannot very well process a proposal that isn't pretty well nailed down. So, I could start the ACMP review as I outlined in my last e-mail, but whether the review could be completed as per my best-guess, I can't say.

As I re-read the Plan of Operations, it becomes clear to me that agency review participants (*to say nothing of the NSB*) would probably, I expect, have significant trouble staying to the schedule—In other words, there is not sufficient information provided in the materials received to date to complete a thorough ACMP consistency review.

Now, having said that, I need to clarify a point I made in one of my previous e-mails: the aforementioned 90-day requirement to finish a review does not include so-called requests for additional information. That is to say, if a review participant (including the NSB &/or agency participants) were to stop the 50-day review clock in order to request additional information from E-M, this would also stop the 90-day clock.

It's clear to me that we (I would suggest without E-M) may well need to hold a quick teleconference before just starting a review... I went ahead and copied many of the agency folk who would be in the loop for such a discussion.

-bg

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From: Greene, Ben A (DNR)
Sent: Tuesday, August 07, 2007 3:50 PM
To: Thompson, G (DNR)
Cc: Slemons, Jonne D (DNR); randy_bates@dnr.state.ak.us; kfm_kruse@dnr.state.ak.us; Wolter, Lindsay A (LAW); 'Schmitz, Steve'
Subject: RE: Clarification to my earlier answer: ExxonMobil 07-08 Point Thomson Exploration Program

Nan, Jonne,

1. Correction—Now that I've had a chance to review the materials submitted by E-M, I see that no federal permits were required for the proposed activities, nor did E-M apply for any federal permits. Therefore we don't have to look to the federal regulations, only the state regs at 11 AAC.110.200-270. This certainly simplifies things, although I'm afraid it also means the OPMP may be delinquent with regards to starting an ACMP review within the 21-day window, but it does not change the over-all timeline, i.e. that the review need be completed within 90 days of the date when the package is deemed complete or the applicant can presume consistency.
2. Nevertheless, I have some issues of determining completeness of E-M's package... 11 AAC 110.220(b) states:

*A consistency review packet is complete if

- (1) the packet meets the submission requirements of 11 AAC 110.215;
- (2) each authorizing resource agency determines that an authorization application is sufficient to begin a review under the resource agency's statutory and regulatory requirements; and
- (3) the coordinating agency, with the concurrence of each authorizing resource agency, determines

the packet is sufficient for continued processing even though additional information may be required subsequently.

(c) If the coordinating agency determines that the consistency review packet is complete, the coordinating agency shall notify the applicant and identify the start date for initiating the consistency review under 11 AAC 110.235...

According to the above guidance, the OPMP isn't to begin a review until "...with the concurrence of each authorizing resource agency, [the OPMP] determines the packet is sufficient for continued processing"

Certainly, as of last April, I was explicitly instructed not to process E-M's application without being directed to do so through your office. Therefore, I'm still not of the impression that "each authorizing resource agency has determined that [E-M's] application is sufficient to begin a review.

3. Your question: Could the OPMP complete a review within the 90 days, assuming that clock started July 12? Yes. The requisite ACMP review would be a 50-day coordinated review involving land-use permit(s), a lease plan of operations authorization, anadromous fish habitat permit(s) and temporary water-use permit(s). So, if I were to start our review, say, tomorrow, the deadline for public comments would be approximately Sept. 7; the proposed determination due about Sept 21st and the Final Determination would fall around the 28th of Sept.
4. Our AG contact is the talented Landsay Wolter.
5. Please advise if DNR/DOG advises to begin this review, and I can do.

-bg

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<http://www.alaskacoast.state.ak.us>

From: Thompson, G (DNR)
Sent: Tuesday, August 07, 2007 10:47 AM
To: Greene, Ben A (DNR)
Cc: Simons, Jonne D (DNR)
Subject: RE: Clarification to my earlier answer: ExxonMobil 07-08 Point Thomson Exploration Program

Much of the work in this area is offshore, so it probably involves the feds-I can't be sure without looking at a map. So it sounds like the first thing to do is determine if what they submitted does make the application complete, and then get out a public notice.

Are you going to be able to do a review in the remaining 60 days (if you are correct that the 90 days starts on July 12)? What is the comment period allowed after public notice?

If there is an AG that you traditionally work with that is familiar with the ACMP, they may be able to help with the deadlines.

From: Greene, Ben A (DNR)
Sent: Tuesday, August 07, 2007 9:25 AM
To: Thompson, G (DNR)

Cc: Slemons, Jonne D (DNR)

Subject: Clarification to my earlier answer: ExxonMobil 07-08 Point Thomson Exploration Program

Nan, Jonne,

Here's an additional tidbit, this time from reading the Federal regulations at § 930.60 Commencement of State agency review:

Within 30 days of receipt of the consistency certification and / or necessary data and information that was deemed missing, pursuant to paragraphs (a)(1) or (2) of this section, the State agency shall notify the applicant and Federal agency that the certification and necessary data and information required pursuant to § 930.58 is complete, the date the certification and / or necessary data and information deemed missing was received, and, that the State agency's consistency review commenced on the date of receipt. In the event of a State waiver under paragraph (2), receipt of the necessary data and information deemed missing shall not alter the date the consistency review period commenced.

To me, this regulation gives the OPMP 30 days to respond to E-M regarding their submission of additional material as requested by the OPMP and notification that we've begun a review. However, even if the OPMP has 30 days to notify E-M that a review has been started, this regulation seems to imply that the OPMP does need to start a review, with day-1 as July 12 (the additional materials were received July 11). Note further, that this reasoning, based on federal regulations, hinges, not on state authorizations needed for E-M's proposed activities, but on federal authorizations... I'm assuming, but I cannot remember for sure, that their proposal involves a corps of engineers, or other federal permit?

-bg

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Office (907) 269-7474; Fax (907) 269-3981
NEW >> ben.greene@alaska.gov << NEW
<http://www.alaskacoast.state.ak.us>

From: Thompson, G (DNR)
Sent: Tuesday, August 07, 2007 8:15 AM
To: Greene, Ben A (DNR)
Cc: Slemons, Jonne D (DNR)
Subject: RE: Seeking advise; Addn'l materials received from ExxonMobil 07-08 Point Thomson Exploration Program

I am unfamiliar with the process for ACMP review. Does there need to be a finding of completeness before the review timeline begins?

What is the effect under the regulations of the 21 days passing-is the plan automatically approved?

Was any public notice of the plan required as a part of the ACMP review?

Nan

From: Greene, Ben A (DNR)
Sent: Tuesday, August 07, 2007 7:55 AM
To: Thompson, G (DNR)

Cc: Slemons, Jonne D (DNR)

Subject: Seeking advise: Addn'l materials received from ExxonMobil 07-08 Point Thomson Exploration Program

Nan & Jonne,

As you recall (e-mails below) the OPMP responded to E-M on April 20 stating that their application package was incomplete. They responded wanting to meet with me, but unfortunately I was too busy with other projects and the meeting never occurred.

I was sorting unopened mail yesterday and was alarmed that I had missed a package received by our office on July 11, 2007 from E-M providing a coastal consistency evaluation for E-M's Pt. Thomson proposed operations—the missing piece of material needed to begin an ACMP review. Since its been awhile since I reviewed the file, I'd have to check again, but I believe I do have everything I would need to initiate an ACMP review, and, in fact our regulatory 21-day window for starting a review has passed as of the 1st of August. Please advise.

Thank you!

-bg

Ben A. Greene, PhD
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<http://www.alaskacoast.state.ak.us>

From: Nan Thompson [mailto:nan_thompson@dnr.state.ak.us]
Sent: Wednesday, April 25, 2007 8:53 AM
To: 'Ben Greene'; 'Slemons, Jonne'
Cc: 'Richard Todd'; larry_ostrovsky@law.state.ak.us; jonathan_katchen@law.state.ak.us; 'Anne Johnson'; 'Kevin R. Banks'
Subject: RE: [Fwd: Re: ExxonMobil 07-08 Point Thomson Exploration Program—Unable to start ACMP Review—Incomplete Consistency Review Packet]

Ben-

This is the way they have responded on other issues. There is nothing wrong with meeting with them when you have the time if that is something you normally would do. On the other hand, I am very skeptical that the discussions would further the state's interests. Your letter was clear about what would be necessary to make the application complete. I think EM has instructed their troops to try to create a record that the state is blocking EM's efforts to develop these leases so they can make a record in court. Posturing, rather than a sincere effort to move the project forward, is the more likely motivation.

I copied the AGs working on this case in case they have a suggestion.

When faced with a similar request to talk to them about unit formation, the Commissioner's decision was that if we have clearly stated our position, we should not meet with them to discuss changing it. If what they seek instead is clarification of our position, a discussion will make a record that we are treating them like all other applicants.

Thanks for keeping me informed.

Nan

From: Ben Greene [mailto:ben_greene@dnr.state.ak.us]
Sent: Wednesday, April 25, 2007 8:35 AM
To: G Nanette Thompson; Slemons, Jonne

Subject: [Fwd: Re: ExxonMobil 07-08 Point Thomson Exploration Program--Unable to start ACMP Review--Incomplete Consistency Review Packet]

Nan, Jonne ~

Thought I best forward this response that I received from ExxonMobil yesterday. Note that I haven't responded back to this e-mail.

I'm inclined to think their request to meet with me & "discuss" isn't, at this time, a worthwhile proposition for several reasons:

1. Until I am told that DNR is ready to proceed with ExxonMobil at Pt. Thomson, their meeting with me seems pointless;
2. Furthermore, I really do not have the time at such short notice to meet with them and educate them about ACMP...

-bg

----- Original Message -----

Subject:Re: ExxonMobil 07-08 Point Thomson Exploration Program--Unable to start ACMP Review--
Incomplete Consistency Review Packet

Date:Tue, 24 Apr 2007 09:06:24 -0800

From:rob.g.dragnich@exxonmobil.com

To:Ben Greene <ben_greene@dnr.state.ak.us>

Ben, thank you for the review and notice. We're working to address the noted item of incompleteness and are targeting to have a draft completed later today or tomorrow morning (Wednesday). I would like to meet with you briefly to discuss our planned response to be sure it is what you are looking for. I noted from your voice mail that you are in Juneau on Monday and Tuesday this week. Would you be available Wednesday afternoon or sometime on Thursday to discuss this? Thanks again.

Regards,

Rob Dragnich
907-564-3711 (office)
907-564-3789 (fax)
907-830-4796 (cell)
rob.g.dragnich@exxonmobil.com

Ben Greene
<ben_greene@dnr.state.ak.us>

04/20/2007
12:55 PM

To
Rob Dragnich
<Rob.G.Dragnich@exxonmobil.com>,
Bill Pecor
<William.C.Pecor@exxonmobil.com>,
"Aiken, Johnny"
<Johnny.Aiken@north-slope.org>,
Gordon Brower
<Gordon.Brower@north-slope.org>,
"Lohman, Tom" <tomlohman2@aol.com>,
G Nanette Thompson
<nan_thompson@dnr.state.ak.us>,
"Pexton, Scott"

<spexton@jpo.doi.gov>, "Schmitz,
Steve"
<steve_schmitz@dnr.state.ak.us>,
"Slemons, Jonne"
<jonne_slemons@dnr.state.ak.us>,
"McLean, Robert (Mac)"
<mac_mclean@dnr.state.ak.us>,
"Morris, Bill"
<william_morris@dnr.state.ak.us>,
"Winters, Jack"
<jack_winters@dnr.state.ak.us>,
Roselynn R Smith
<roselynn_smith@dnr.state.ak.us>,
"Schultz, Gary"
<gary_schultz@dnr.state.ak.us>,
"Byrne, Larry"
<larry_byrne@dnr.state.ak.us>,
"Lynch, Leon"
<leon_lynch@dnr.state.ak.us>, Kellie
M Westphal
<kellie_westphal@dnr.state.ak.us>,
"Bettis, Patricia"
<patricia_bettis@dnr.state.ak.us>,
"Fink, Mark"
<mark_fink@fishgame.state.ak.us>,
Frances E Roche
<fran_roche@dec.state.ak.us>,
"Langdon, Margaret (Mel)"
<mel_langdon@dec.state.ak.us>, Lydia
Miner <lydia_miner@dec.state.ak.us>,
"Blankenburg, Bob"
<Bob_Blankenburg@dec.state.ak.us>,
"Kruse, Kim"
<kim_kruse@dnr.state.ak.us>, Randall
W Bates
<randy_bates@dnr.state.ak.us>, NOAA
NMFS <HCD.Anchorage@noaa.gov>,
"Smith, Brad" <brad.smith@noaa.gov>,
"Hanson, Jeanne"
<Jeanne.Hanson@noaa.gov>, "Holly,
Mike"
<Michael.E.Holley@poa02.usace.army.m
il>, "Bright, Larry"
<larry_bright@fws.gov>, "Smith,
Louise" <louise_smith@fws.gov>,
"Perham, Craig"
<Craig_Perham@fws.gov>,
"Rockwell.Theodore"
<Rockwell.Theodore@epamail.epa.gov>,
"Miller, Pamela" <pam@northern.org>,
"Wainwright, Nancy" <nsw@alaska.com>
cc

Subject
ExxonMobil 07-08 Point Thomson
Exploration Program--Unable to start
ACMP Review--Incomplete Consistency
Review Packet

Reviewers ~

Please refer to attached .PDF file,

Thank you

-bg

[attachment "ACMP_Incomplete_Determination_042007.pdf" deleted by Rob G Dragnich/B/U-Houston/ExxonMobil] (Embedded image moved to file: pic21862.gif)

—
Ben A Greene, PhD

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ben_greene@dnr.state.ak.us
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Mendivil, Gary A (DEC)

From: Greene, Ben A (DNR)
Sent: Friday, August 10, 2007 8:25 AM
To: Mendivil, Gary A (DEC)
Subject: RE: ExxonMobil Point Thomson Exploration Proposal, 2008-2009, Start of 50-day ACMP Review - State ID NO. AK0708-02OG

Hi Gary,

I understand your confusion on the Pt. Thomson issues—and, although I'm probably not "supposed" to be doing any explaining of the situation on behalf of DNR (& am certainly not in any position to be doing so!), nevertheless, I'm put in an awkward place since I've been given direction to start a review that's clearly surrounded by more questions than answers... So here's all I know:

1. In March, E-M submitted applications to do winter exploration drilling from ice-pads. All of us in DNR were given direction not to process the application materials because it is DNR's position that all of the leases that Exxon held in the former Point Thomson unit have expired;
2. At the same time, we were given direction that we still "needed to follow our regulations." In the case of the ACMP, our regulations include timelines. Specifically there is a regulation that states that if the OPMP does not complete its review of a proposal within 90 days from when a complete package is received, the applicant can "presume" consistency with the ACMP. E-M filed the last required ACMP document with the OPMP in mid-July, so the date when E-M could arguably presume consistency would be mid-October;
3. The attorneys working on the Point Thomson litigation agreed that they didn't want to see E-M gain ACMP consistency for their proposed exploration by operation of law—so they directed me to start the review;
4. I expect the attorneys will signal at which point in the ACMP review process to raise the land ownership issue;
5. E-M (and the other former leaseholders) have appealed DNR's Pt. Thomson lease terminations. An administrative appeal is currently pending before Commissioner Irwin, and a decision should be issued this fall...

There you have it. Is this consistency review for real? Probably not, but what do I know??

-bg

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NEW >> ben.greene@alaska.gov << NEW
<http://www.alaskaconst.state.ak.us>

From: Mendivil, Gary A (DEC)
Sent: Thursday, August 09, 2007 6:43 PM
To: Greene, Ben A (DNR)
Subject: RE: ExxonMobil Point Thomson Exploration Proposal, 2008-2009, Start of 50-day ACMP Review - State ID NO. AK0708-02OG

I am a little confused here. From what little I know of this issue, Exxon is not longer the leaseholder at Point Thompson or at least their ownership is in limbo...the last I heard DNR had regained ownership.. Unfortunately, I am out of the office until Monday... can someone explain to me what is going on?

From: Greene, Ben A (DNR)

Sent: Thu 8/9/2007 3:22 PM

To: Rob.G.Dragnich@exxonmobil.com; William.C.Pecor@exxonmobil.com

Cc: Bessie.O'Rourke@north-slope.org; brad.smith@noaa.gov; Anders, Bruce F (DNR); Godsey.Cindi@epa.gov; Craig_Perham@fws.gov; meyer.dan@epa.gov; DRICE@jpo.doi.gov; david.johnston@mms.gov; Lefebvre, Richard A (DNR); Myllus, Richard H (DNR); Soderlund.Dianne@epamail.epa.gov; Perrin, Don J (DNR); Fogels, Edmund J (DNR); edward.itta@north-slope.org; Mendivil, Gary A (DEC); Schultz, Gary (DNR); Evans, Gary P (DEC); egaris@ak.blm.gov; Schultz, Gary (DNR); glenn@glenngrey.net; gordon.brower@north-slope.org; Harry.Brower@north-slope.org; kcas.natural@barrow.com; Winters, Jack F (DNR); JHelfinstine@CGAlaska.USCG.mil; james.lima@mms.gov; johnny.aiken@north-slope.org; jschoen@audubon.org; Slemmons, Jonne D (DNR); Bittner, Judith E (DNR); Moore, Kara E (DNR); Sheehan-Dugan, Kathy (DNR); Keith.Q.Gordon@poa02.usace.army.mil; Howard, Kerry M (DNR); Banks, Kevin R (DNR); Kruse, Kim M (DNR); larry_bright@fws.gov; Byrne, Laurence C (DNR); Silfven, Laurie A (DEC); Layla.Hughes@north-slope.org; Lynch, Leon C (DNR); Wolter, Lindsay A (LAW); Byrne, Laurence C (DNR); Silfven, Laurie A (DEC); Layla.Hughes@north-slope.org; Lynch, Leon C (DNR); Miner, Lydia M (DEC); Fink, Mark J (DFG); Rader, Matthew W (DNR); mfrank@trustees.org; Rutherford, Martha K (DNR); Pexton, Scott R (JPO); mthompso@jpo.doi.gov; Pexton, Scott R (JPO); mthompso@jpo.doi.gov; louise_smith@fws.gov; nsw@alaska.com; Thompson, G (DNR); Tomlohman2@aol.com; rockwell.theodore@epa.gov; Taquik.Hepa@north-slope.org; Schmitz, Steven (DNR); ssenner@audubon.org; Tomlohman2@aol.com; rockwell.theodore@epa.gov; Taquik.Hepa@north-slope.org; Schmitz, Steven (DNR); ssenner@audubon.org; Ludwig, Stefanie L (DNR); Bettis, Patricia K (DNR); Greene, Ben A (DNR)
Subject: ExxonMobil Point Thomson Exploration Proposal, 2008-2009, Start of 50-day ACMP Review - State ID NO. AK0708-02OG

Reviewers -

Please refer to the attached four PDF documents:

1. ACMP Start-up letter for the above referenced project
2. ACMP Public Notice for the above referenced project
3. ExxonMobil's Consistency Evaluation for the above referenced project
4. Maps for the above referenced project

Thank you,

-bg

Ben A. Greene, PhD
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<http://www.alaskacoast.state.ak.us>

Mendivil, Gary A (DEC)

From: Easton, Dan (DEC)
Sent: Tuesday, August 28, 2007 3:57 PM
To: Mendivil, Gary A (DEC); Hartig, Lawrence L (DEC)
Subject: FW: ExxonMobil Point Thomson Exploration Proposal, 2008-2009, Start of 50-day ACMP Review - State ID NO. AK0708-020G

Suffice it to say that I have no idea of "what is going on." I thought Dick's note worthy of your attention since you may have seen some of the earlier e-mail traffic. (I know Gary has.) -- Dan.

-----Original Message-----

From: Lefebvre, Richard A (DNR)
Sent: Tuesday, August 28, 2007 3:46 PM
To: Greene, Ben A (DNR)
Cc: Fogels, Edmund J (DNR); Easton, Dan (DEC); Irwin, Tom E (DNR); Rutherford, Martha K (DNR)
Subject: RE: ExxonMobil Point Thomson Exploration Proposal, 2008-2009, Start of 50-day ACMP Review - State ID NO. AK0708-020G

What is going on -there is not to be anything involving PT go out w/o approval. Talk to Marty about this asap

-----Original Message-----

From: "Greene, Ben A (DNR)" <ben.greene@alaska.gov>
To: "Rob.G.Dragnich@exxonmobil.com" <Rob.G.Dragnich@exxonmobil.com>;
"William.C.Pecor@exxonmobil.com" <William.C.Pecor@exxonmobil.com>
Cc: "Bessie.O'Rourke@north-slope.org" <Bessie.O'Rourke@north-slope.org>;
"brad.smith@noaa.gov" <brad.smith@noaa.gov>; "Anders, Bruce F (DNR)"
<bruce.anders@alaska.gov>; "Godsey.Cindi@epa.gov" <Godsey.Cindi@epa.gov>;
"Craig_Perham@fws.gov" <Craig_Perham@fws.gov>; "meyer.dan@epa.gov" <meyer.dan@epa.gov>;
"DRICE@jpo.doi.gov" <DRICE@jpo.doi.gov>; "david.johnston@mms.gov" <david.johnston@mms.gov>;
"Lefebvre, Richard A (DNR)" <richard.lefebvre@alaska.gov>; "Mylius, Richard H (DNR)"
<dick.mylius@alaska.gov>; "Soderlund.Dianne@epamail.epa.gov"
<Soderlund.Dianne@epamail.epa.gov>; "Perrin, Don J (DNR)" <donald.perrin@alaska.gov>;
"Fogels, Edmund J (DNR)" <ed.fogels@alaska.gov>; "edward.itta@north-slope.org"
<edward.itta@north-slope.org>; "Mendivil, Gary A (DEC)" <gary.mendivil@alaska.gov>; "Schultz,
Gary (DNR)" <gary.schultz@alaska.gov>; "Evans, Gary P (DEC)" <gary.evans@alaska.gov>;
"egarisk@ak.blm.gov" <egarisk@ak.blm.gov>; "Schultz, Gary (DNR)" <gary.schultz@alaska.gov>;
"glenn@glenngray.net" <glenn@glenngray.net>; "gordon.brower@north-slope.org"
<gordon.brower@north-slope.org>; "Harry.Brower@north-slope.org" <Harry.Brower@north-
slope.org>; "icas.natural@barrow.com" <icas.natural@barrow.com>; "Winters, Jack F (DNR)"
<jack.winters@alaska.gov>; "JHelfinstine@CGAlaska.USCG.mil" <JHelfinstine@CGAlaska.USCG.mil>;
"james.lima@mms.gov" <james.lima@mms.gov>; "johnny.aiken@north-slope.org"
<johnny.aiken@north-slope.org>; "jschoen@audubon.org" <jschoen@audubon.org>; "Slemons, Jonne
D (DNR)" <jonne.slemons@alaska.gov>; "Bittner, Judith E (DNR)" <judy.bittner@alaska.gov>;
"Moore, Kara E (DNR)" <kara.moore@alaska.gov>; "Sheehan-Dugan, Kathy (DNR)"
<kathy.dugan@alaska.gov>; "Keith.Q.Gordon@poa02.usace.army.mil"
<Keith.Q.Gordon@poa02.usace.army.mil>; "Howard, Kerry M (DNR)" <kerry.howard@alaska.gov>;
"Banks, Kevin R (DNR)" <kevin.banks@alaska.gov>; "Kruse, Kim M (DNR)" <kim.kruse@alaska.gov>;
"larry_bright@fws.gov" <larry_bright@fws.gov>; "Byrne, Laurence C (DNR)"
<larry.byrne@alaska.gov>; "Silfven, Laurie A (DEC)" <laurie.silfven@alaska.gov>;
"Layla.Hughes@north-slope.org" <Layla.Hughes@north-slope.org>; "Lynch, Leon C (DNR)"
<leon.lynch@alaska.gov>; "Wolter, Lindsay A (LAW)" <lindsay.wolter@alaska.gov>; "Byrne,
Laurence C (DNR)" <larry.byrne@alaska.gov>; "Silfven, Laurie A (DEC)"
<laurie.silfven@alaska.gov>; "Layla.Hughes@north-slope.org" <Layla.Hughes@north-slope.org>;

1

EXHIBIT A
Page 15 of 44

Exc. 001059

"Lynch, Leon C (DNR)" <leon.lynch@alaska.gov>; "Miner, Lydia M (DEC)" <lydia.miner@alaska.gov>; "Fink, Mark J (DFG)" <mark.fink@alaska.gov>; "Rader, Matthew W (DNR)" <matt.rader@alaska.gov>; "mfrank@trustees.org" <mfrank@trustees.org>; "Rutherford, Martha K (DNR)" <marty.rutherford@alaska.gov>; "Pexton, Scott R (JPO)" <spexton@jpo.doi.gov>; "mthompso@jpo.doi.gov" <mthompso@jpo.doi.gov>; "Pexton, Scott R (JPO)" <spexton@jpo.doi.gov>; "mthompso@jpo.doi.gov" <mthompso@jpo.doi.gov>; "louise_smith@fws.gov" <louise_smith@fws.gov>; "nsw@alaska.com" <nsw@alaska.com>; "Thompson, G (DNR)" <nan.thompson@alaska.gov>; "Tomlohman2@aol.com" <Tomlohman2@aol.com>; "rockwell.theodore@epa.gov" <rockwell.theodore@epa.gov>; "Taquilik.Hepa@north-slope.org" <Taquilik.Hepa@north-slope.org>; "Schmitz, Steven (DNR)" <steve.schmitz@alaska.gov>; "ssenner@audubon.org" <ssenner@audubon.org>; "Tomlohman2@aol.com" <Tomlohman2@aol.com>; "rockwell.theodore@epa.gov" <rockwell.theodore@epa.gov>; "Taquilik.Hepa@north-slope.org" <Taquilik.Hepa@north-slope.org>; "Schmitz, Steven (DNR)" <steve.schmitz@alaska.gov>; "ssenner@audubon.org" <ssenner@audubon.org>; "Ludwig, Stefanie L (DNR)" <stefanie.ludwig@alaska.gov>; "Bettis, Patricia K (DNR)" <patricia.bettis@alaska.gov>; "Greene, Ben A (DNR)" <ben.greene@alaska.gov>
Sent: 8/9/07 3:22 PM
Subject: ExxonMobil Point Thomson Exploration Proposal, 2008-2009, Start of 50-day ACMP Review - State ID NO. AK0708-020G

Reviewers ~

Please refer to the attached four PDF documents;

1. ACMP Start-up letter for the above referenced project
2. ACMP Public Notice for the above referenced project
3. ExxonMobil's Consistency Evaluation for the above referenced project
4. Maps for the above referenced project

Thank you,

-bg

Ben A. Greene, PhD
Oil, Gas & Energy Projects Manager
Alaska Coastal Management Program
Office of Project Management & Permitting 550 W. 7th Ave., STE 705 Anchorage, AK 99501 Office
(907) 269-7474; Fax (907) 269-3981 NEW >> ben.greene@alaska.gov
<mailto:ben_greene@dnr.state.ak.us> << NEW

<http://www.alaskacoast.state.ak.us> <<http://www.alaskacoast.state.ak.us/>>

Mendivil, Gary A (DEC)

From: Greene, Ben A (DNR)
Sent: Friday, August 31, 2007 11:50 AM
To: Greene, Ben A (DNR); Rob.G.Dragulich@exxonmobil.com; William.C.Pecor@exxonmobil.com
Cc: Bessle.O'Rourke@north-slope.org; brad.smith@noaa.gov; Anders, Bruce F (DNR); Godsey.Cindi@epa.gov; Craig_Perham@fws.gov; meyer.dan@epa.gov; DRICE@jpo.doi.gov; david.johnston@mms.gov; Lefebvre, Richard A (DNR); Mylius, Richard H (DNR); Soderlund.Dianne@epamail.epa.gov; Peirln, Don J (DNR); Fogels, Edmund J (DNR); edward.lita@north-slope.org; Mendivil, Gary A (DEC); Schultz, Gary (DNR); Evans, Gary P (DEC); glenn@glenngray.net; gordon.brower@north-slope.org; Harry.Brower@north-slope.org; icas.natural@barrow.com; Winters, Jack F (DNR); JHeifinstine@CGAlaska.USCG.mil; James.lima@mms.gov; johnny.aitken@north-slope.org; jschoen@audubon.org; Slemons, Jonne D (DNR); Bittner, Judith E (DNR); Moore, Kara E (DNR); Sheehan-Dugan, Kathy (DNR); Keith.Q.Gordon@poa02.usace.army.mil; Howard, Kerry M (DNR); Banks, Kevin R (DNR); Kruse, Kim M (DNR); larry_bright@fws.gov; Byrne, Laurence C (DNR); Silfven, Laurie A (DEC); Lynch, Leon C (DNR); Wolter, Lindsay A (LAW); Byrne, Laurence C (DNR); Silfven, Laurie A (DEC); Layla.Hughes@north-slope.org; Lynch, Leon C (DNR); Fink, Mark J (DFG); Rader, Matthew W (DNR); mfrank@trustees.org; Rutherford, Martha K (DNR); Pexton, Scott R (JPO); mlthompso@jpo.doi.gov; louise_smith@fws.gov; nsw@alaska.com; Thompson, G (DNR); Tomlohman2@aol.com; rockwell.theodore@epa.gov; Taquilk.Hepa@north-slope.org; Schmitz, Steven (DNR); ssenner@audubon.org; Tomlohman2@aol.com; rockwell.theodore@epa.gov; Taquilk.Hepa@north-slope.org; Ludwig, Stefanie L (DNR); Bettis, Patricia K (DNR); Todd, Richard J (LAW); Bates, Randall W (DNR); McLean, Robert F (DNR); Ludwig, Stefanie L (DNR); icas.executive@barrow.com; pam@northern.org
Subject: ExxonMobil Point Thomson Exploration Proposal, 2008-2009_TERMINATION OF ACMP REVIEW, 08-31-07
Attachments: ExxonMobil Point Thomson Exploration Proposal, 2008-2009_TERMINATION OF ACMP REVIEW, 08-31-07.pdf; PTU Lease Ops denial by DNR-DOG 08-30-2007.pdf

Reviewers ~

Please refer to the attached PDF documents:

1. ExxonMobil Point Thomson Exploration Proposal, 2008-2009_TERMINATION OF ACMP REVIEW, 08-31-07
2. Alaska Department of Natural Resources, Division of Oil and Gas -- Permit denial letter

Thank you,

-bg

Ben A. Greene, PhD
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NEW >> ben.greene@alaska.gov << NEW
<http://www.alaskacoast.state.ak.us>

Mendivil, Gary A (DEC)

From: Pearson, Leslie A (DEC)
Sent: Wednesday, December 26, 2007 4:13 PM
To: Schorr, Betty J (DEC)
Cc: Mendivil, Gary A (DEC); Easton, Dan (DEC)
Subject: FW: Point Thomson C-Plan

Betty,

Please keep me informed on any legal advise Laurie obtains from Nan Thompson.

Thanks,
Leslie

-----Original Message-----

From: Mendivil, Gary A (DEC)
Sent: Wednesday, December 26, 2007 4:04 PM
To: Pearson, Leslie A (DEC); Easton, Dan (DEC)
Subject: RE: Point Thomson C-Plan

Back in August, DNR started the ACMP consistency review process on Exxon Mobil's Exploration proposal. The ACMP review process was then terminated, based on a letter from the Division of Oil and Gas to Exxon Mobil denying the operations permit because they no longer owned the leases.

The leases were declared in default back in 2006 and that decision was appealed to the acting DNR Commissioner, who upheld the denial. Court Judge Sharon Gleason is expected to make a decision by the end of the year on the DNR denial. It is expected that Exxon will also appeal to the Alaska Supreme Court, if Judge Gleason's decision does not go in their favor.

Exxon is acting as if they still own the leases and are acting as Laurie notes below as the the "conscientious developer". The difficulties we must watch out for are statutory or regulatory requirements to finish a permit or review within a specific length of time. If we put a decision on the back burner and the time period expires (ACMP is 90 days) then they could get their permit or decision approval by default....

-----Original Message-----

From: Pearson, Leslie A (DEC)
Sent: Wednesday, December 26, 2007 3:07 PM
To: Easton, Dan (DEC); Mendivil, Gary A (DEC)
Subject: FW: Point Thomson C-Plan

FYI- Either of you hear anything on this matter?

-----Original Message-----

From: Schorr, Betty J (DEC)
Sent: Wednesday, December 26, 2007 2:40 PM
To: Pearson, Leslie A (DEC)
Subject: FW: Point Thomson C-Plan

Leslie, fyi. Have you heard anything from the CO about Point T lately?

-----Original Message-----

From: Silfven, Laurie A (DEC)
Sent: Wednesday, December 26, 2007 2:08 PM
To: Silfven, Laurie A (DEC); Evans, Gary P (DEC); Gould, Greg M (MVA); Schorr, Betty J (DEC)
Subject: RE: Point Thomson C-Plan

Hey All,

Kevin Banks at ADNR let me know that the Point Thomson unitization status remains unchanged. ExxonMobil is waiting a decision from the court, which would be followed by a decision on whether or not to terminate their leases. He thought it was interesting that they were still bumping along with the permit process. He thinks they're trying to establish a record of being a conscientious developer, trying to create an arguable case. He also asked me to contact Nan Thompson since she's the ADNR contact point for litigation. She may have advice regarding how State agencies can respond/ behave rationally and consistently during this process. She's out of the office this week, but I sent her a short e-mail and will contact her next week. Let me know if one of you prefers to contact her. In the past (~Aug), we were given direction not to spend any time with ExxonMobil's c-plan until the lease situation was resolved. It appears nothing has changed.

Laurie

Laurie Silfven
Ph: (907) 269-7540

-----Original Message-----

From: Silfven, Laurie A (DEC)
Sent: Wednesday, December 26, 2007 11:31 AM
To: Evans, Gary P (DEC); Gould, Greg M (MVA); Schorr, Betty J (DEC)
Subject: RE: Point Thomson C-Plan

Gary,

I haven't heard a think about it either! I have a phone call out to Kevin Banks, who closed the unit earlier this year, to see what's going on.

Laurie Silfven
Ph: (907) 269-7540

-----Original Message-----

From: Evans, Gary P (DEC)
Sent: Monday, December 24, 2007 7:30 AM
To: Gould, Greg M (MVA); Schorr, Betty J (DEC)
Cc: Silfven, Laurie A (DEC)
Subject: FW: Point Thomson C-Plan

Looks like I'm going to be looking at the point T plan again soon. Has anyone heard anything from DNR on their who-do with ExxonMobil. Last I heard the permits were being pulled because they wanted to long to do anything?

G

-----Original Message-----

From: rob.g.dragnich@exxonmobil.com [mailto:rob.g.dragnich@exxonmobil.com]
Sent: Friday, December 14, 2007 1:41 PM
To: Evans, Gary P (DEC)
Subject: Point Thomson C-Plan

Gary, it's been a while since we've visited and I note from your voice mail message you'll be out quite a bit the rest of the year, as well I. We're formally kicking off our C-Plan planning process for the proposed Point Thomson drilling program and would like to begin interactions with you/ADEC early in the process. I would like to set a date for late January to review our initial thoughts and plans and obtain your feedback/insights. Our schedules are currently flexible; would something around January 23 or 24 work for you?

Thanks. Have a great holiday and I look forward to meeting and working with you on this plan next year.

Regards,

Rob Dragnich
907-564-3711 (office)
907-564-3789 (fax)
907-830-4796 (cell)
rob.g.dragnich@exxonmobil.com

Mendivil, Gary A (DEC)

From: Brudle, Nina M (DNR)
Sent: Thursday, August 14, 2008 4:18 PM
To: Schmitz, Steven (DNR); Rader, Matthew W (DNR); Havelock, Brian E (DNR); Lynch, Leon C (DNR); Schultz, Gary (DNR); Byrne, Laurence C (DNR); Winters, Jack F (DFG); Mendivil, Gary A (DEC); Maunder, Thomas E (DOA)
Cc: Bettis, Patricia K (DNR); Thompson, Nan G (DNR); Katchen, Jonathan W (LAW)
Subject: FW: letter templates
Importance: High

All-
See below. If you need to amend the suggested language to better fit your normal permitting process, please run it by Nan Thompson before sending. I will close the file for the ACMP review after I receive a letter of denial from DOG.
Thank you,
Nina
334-2563

From: Thompson, Nan G (DNR)
Sent: Thursday, August 14, 2008 3:00 PM
To: Brudle, Nina M (DNR)
Cc: Bettis, Patricia K (DNR); Katchen, Jonathan W (LAW)
Subject: letter templates

Nina-
This the language the agencies can use to send to permit applications for activities on the lands formerly known as the Point Thomson Unit. It has been reviewed by the attorneys defending DNR in the litigation filed by EM and others over termination of the PTU. This language can be added to whatever other response the agency normally sends, or sent on appropriate letterhead by itself.
Patricia was waiting for it, so I have copied her. I know you have a list compiled of all of the other affected agencies and I would appreciate it if you would forward this.
Nan

Dear [Permit Applicant-subsurface use]

You have applied for a permit to conduct subsurface operations. The oil and gas lease which conveys the right to operate below the surface of the land affected by your proposed use has been terminated. Therefore, your application will not be processed and your permit application is denied.

[Agency signature]

Dear [Permit Applicant-surface use]

You have applied for a permit to conduct activities related to oil and gas development on state land. Forty-four of the forty-five leases in the former Point Thomson Unit have been terminated. The Department of Natural Resources will not authorize any subsurface activity without a valid lease. Any surface activities you undertake are entirely at your own risk. The State of Alaska will not be responsible for any costs incurred. Any improvements you make to the land are for the sole benefit of the State of Alaska.

Because the underlying drilling activity will not be permitted, we assume that you are not interested in obtaining a permit for related surface use. We will therefore suspend processing of your application.

[Agency signature]

Mendivil, Gary A (DEC)

From: Winters, Jack F (DFG)
Sent: Wednesday, August 20, 2008 1:34 PM
To: Dragnich, Rob
Cc: Betts, Patricia K (DNR); Bright, Larry; Briddle, Nina M (DNR); gordon.brower@north-slope.org; Easton, John R (DNR); Ben Greene; Hayelock, Brian E (DNR); Howard, Kerry M (DFG); Lynch, Leon C (DNR); Morris, William A (DFG); Ott, Alvin G (DFG); Rader, Matthew W (DNR); Schmitz, Steven (DNR); Schultz, Gary (DNR); Weaver, Aaron A (DNR); Mendivil, Gary A (DEC); Maunder, Thomas E (DOA); Thompson, Nan G (DNR)
Subject: ExxonMobil Point Thomson Fish Habitat Permit Processing Suspension
Attachments: ExxonMobil review suspension letter.pdf

Attached is the signed letter suspending processing of fish habitat permits for ExxonMobil's proposed Point Thomson multi-well drilling program.

EXHIBIT A
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Exc. 001067

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF HABITAT

SARAH PALIN, GOVERNOR

1300 COLLEGE ROAD
FAIRBANKS, AK 99701-1551
PHONE: (907) 459-7289
FAX: (907) 459-7303

August 20, 2008

Mr. Craig A. Haymes
ExxonMobil Production Company
P.O. Box 196601
Anchorage, Alaska 99519-6601

Dear Mr. Haymes:

RE: Request for Fish Habitat Permits, Point Thomson Drilling Program, North Slope, Alaska

You have applied for permits to conduct activities related to oil and gas development on state land. Forty-four of the forty-five leases in the former Point Thomson Unit have been terminated. The Department of Natural Resources will not authorize any subsurface activity without a valid lease. Any surface activities you undertake are entirely at your own risk. The State of Alaska will not be responsible for any costs incurred. Any improvements you make to the land are for the sole benefit of the State of Alaska.

Because the underlying drilling activity will not be permitted, we assume that you are not interested in obtaining a permit for related surface use. We will therefore suspend processing of your application.

Sincerely,

Denby S. Lloyd, Commissioner



BY: Robert F. McLean, Regional Supervisor
Division of Habitat
Alaska Department of Fish and Game

ecc: Leon Lynch, ADNR, Fairbanks
Gary Schultz, ADNR, Fairbanks
Larry Bright, USFWS, Fairbanks
Steve Schmitz, ADNR, Anchorage
Al Ott, ADF&G, Fairbanks

Nina Brudie, OPMP, Anchorage
Gordon Brower, NSB, Barrow
Patricia Bettis, ADNR, Anchorage
Nan Thompson, ADNR, Anchorage
Bill Morris, ADF&G, Fairbanks

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Exc. 001068

Mr. Craig A. Haymes

2

August 20, 2008

Matt Rader, ADNR, Anchorage
John Easton, ADNR, Anchorage
Gary Mendivil, ADEC, Juneau
Ben Greene, NSB, Barrow

Brian Havelock, ADNR, Anchorage
Aaron Weaver, ADNR, Anchorage
Tom Maunder, AOGCC, Anchorage
Rob Dragnich, ExxonMobil, Anchorage

RFM/jfw

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EXHIBIT A
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Exc. 001069

Mendivil, Gary A (DEC)

From: Slemons, Jonne (DNR sponsored)
Sent: Wednesday, August 20, 2008 2:33 PM
To: Brudle, Nina M (DNR)
Cc: Thompson, Nan G (DNR); Banks, Kevin R (DNR); Lynch, Leon C (DNR); Schultz, Gary (DNR); Ott, Alvin G (DFG); Bettis, Patricia K (DNR); Morris, William A (DFG); McLean, Robert F (DFG); Rader, Matthew W (DNR); Havelock, Brian E (DNR); Easton, John R (DNR); Schmitz, Steven (DNR); Weaver, Aaron A (DNR); Maunder, Thomas E (DOA); Mendivil, Gary A (DEC); gordon.brower@north-slope.org; Ben Greene
Subject: With Attachments – FW: Exxon Mobil Applications
Attachments: XOM Geophysical Denial of Permit Application 08.20.08.pdf; XOM Denial of Plan of Operation Application 08.20.08.pdf

My apologies. Here are the attachments.

From: Slemons, Jonne (DNR sponsored)
Sent: Wednesday, August 20, 2008 2:27 PM
To: Brudle, Nina M (DNR)
Cc: Thompson, Nan G (DNR); Banks, Kevin R (DNR); Lynch, Leon C (DNR); Schultz, Gary (DNR); Ott, Alvin G (DFG); Bettis, Patricia K (DNR); Morris, William A (DFG); McLean, Robert F (DFG); Rader, Matthew W (DNR); Havelock, Brian E (DNR); Easton, John R (DNR); Schmitz, Steven (DNR); Weaver, Aaron A (DNR); Maunder, Thomas E (DOA); Mendivil, Gary A (DEC); gordon.brower@north-slope.org; Ben Greene
Subject: Exxon Mobil Applications

Please see attachments.

Jonne Slemons
Petroleum Land Manager
Division of Oil and Gas
Alaska Department of Natural Resources
550 W. 7th Ave., Ste. 800
Anchorage, AK 99501
Ph: 907-269-8775
Fx: 907-269-3484

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL & GAS

SARAH PALIN, GOVERNOR

550 WEST 7TH AVENUE, SUITE 1100
ANCHORAGE, ALASKA 99501-3560
PHONE: (907) 269-8800
FAX: (907) 269-8938

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 20, 2008

Craig Haymes
Alaska Production Manager
ExxonMobil Production Company
P.O. Box 196601
Anchorage, AK 99519-6601

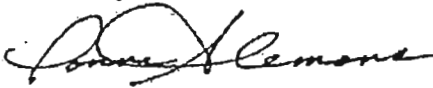
RE: **Geophysical Permit Application**
Point Thomson Vertical Seismic Profiles

Dear Mr. Haymes,

You have applied for a permit to conduct activities related to oil and gas development on state land in a geophysical permit application, received July 10, 2008. Forty-four of the forty-five leases in the former Point Thomson Unit have been terminated. The Department of Natural Resources will not authorize any subsurface activity without a valid lease. Any surface activities you undertake are entirely at your own risk. The State of Alaska will not be responsible for any costs incurred. Any improvements you make to the land are for the sole benefit of the State of Alaska.

Because the underlying drilling activity will not be permitted, we assume that you are not interested in obtaining a permit for related surface use. We will therefore suspend processing of your application. The \$250.00 filing fee submitted with your application will be refunded to you.

Sincerely,



Jonne Slemons
Petroleum Land Manager

cc: Nina Brudie, ADNRC/DCO
Kevin Banks, ADNRC/DO&G
Nan Thompson, ADNRC/DO&G/Units
Matt Rader, ADNRC/DO&G/Permitting
Steve Schmitz, ADNRC/DO&G/Permitting

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

EXHIBIT A
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Exc. 001071

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL & GAS

SARAH PALIN, GOVERNOR

550 WEST 7TH AVENUE, SUITE 1100
ANCHORAGE, ALASKA 99501-3560
PHONE: (907) 269-8800
FAX: (907) 269-8938

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 20, 2008

Rob Dragnich
ExxonMobil Production Company
P.O. Box 196601
Anchorage, Alaska 99519-6601

Re: Lease/Unit Plan of Operations Application dated July 9, 2008
Point Thomson Drilling Program, North Slope, Alaska

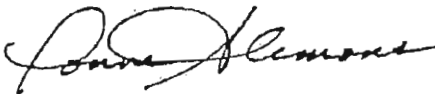
Dear Mr. Dragnich:

Exxon Mobil Corporation, as Operator and on behalf of the Point Thomson leaseholders, submitted the subject Plan of Operations Application for activities related to oil and gas development on state land. Forty-four of the forty-five leases in the former Point Thomson Unit have been terminated. None of the proposed activities are located within the boundaries of ADL 390310, the remaining active lease.

The subject Plan of Operations Application is not approved. The Department of Natural Resources will not authorize any subsurface activity without a valid lease. The \$250 fee submitted with your Plan of Operations Application submittal will be refunded to you.

Any surface activities you undertake are entirely at your own risk. The State of Alaska will not be responsible for any costs incurred. Any improvements you make to the land are for the sole benefit of the State of Alaska.

Sincerely,



Jonne Slemons
Petroleum Land Manager

cc: Nina Brudie, DNR/DCOM
Kevin Banks, DNR/DO&G
Nan Thompson, DNR/DO&G/Units
Matt Rader, DNR/DO&G/Permitting
Steve Schmitz, DNR/DO&G/Permitting

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Exc. 001072

Mendivil, Gary A (DEC)

From: Winters, Jack F (DFG)
Sent: Monday, August 25, 2008 8:50 AM
To: Thompson, Nan G (DNR)
Cc: Brudle, Nina M (DNR); Bettis, Patricia K (DNR); Lynch, Leon C (DNR); McLean, Robert F (DFG); Mendivil, Gary A (DEC); Schmitz, Steven (DNR); Schultz, Gary (DNR); Rader, Matthew W (DNR); Ott, Alvin G (DFG); Howard, Kerry M (DFG)
Subject: Exxon's Request to Continue Point Thomson Permit Processing
Attachments: ExxonMobil request for permits.pdf; ExxonMobil review suspension letter.pdf

Nan,

We have received from ExxonMobil the attached response to our letter suspending processing of their fish habitat permit application for the Point Thomson drilling program. Please advise on how the legal team would like us to respond to their latest request. Thanks.

Jack

Jack Winters
Habitat Biologist
Alaska Department of Fish and Game
Division of Habitat
1300 College Road
Fairbanks, Alaska 99701
907-459-7285
jack.winters@alaska.gov

EXHIBIT A
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Exc. 001073

Mendivil, Gary A (DEC)

From: Thompson, Nan G (DNR)
Sent: Monday, August 25, 2008 9:18 AM
To: Katchen, Jonathan W (LAW)
Cc: Brudie, Nina M (DNR); Bettis, Patricia K (DNR); Lynch, Leon C (DNR); McLean, Robert F (DFG); Mendivil, Gary A (DEC); Schmitz, Steven (DNR); Schultz, Gary (DNR); Rader, Matthew W (DNR); Ott, Alvin G (DFG); Howard, Kerry M (DFG); Winters, Jack F (DFG)
Subject: RE: Exxon's Request to Continue Point Thomson Permit Processing

Jon-
Call me after you have had the opportunity to read this. This same letter will probably be coming into all of the agencies with pending permit applications.
Nan

-----Original Message-----

From: Winters, Jack F (DFG)
Sent: Monday, August 25, 2008 8:50 AM
To: Thompson, Nan G (DNR)
Cc: Brudie, Nina M (DNR); Bettis, Patricia K (DNR); Lynch, Leon C (DNR); McLean, Robert F (DFG); Mendivil, Gary A (DEC); Schmitz, Steven (DNR); Schultz, Gary (DNR); Rader, Matthew W (DNR); Ott, Alvin G (DFG); Howard, Kerry M (DFG)
Subject: Exxon's Request to Continue Point Thomson Permit Processing

Nan,

We have received from ExxonMobil the attached response to our letter suspending processing of their fish habitat permit application for the Point Thomson drilling program. Please advise on how the legal team would like us to respond to their latest request. Thanks.

Jack

Jack Winters
Habitat Biologist
Alaska Department of Fish and Game
Division of Habitat
1300 College Road
Fairbanks, Alaska 99701
907-459-7285
jack.winters@alaska.gov

Mendivil, Gary A (DEC)

From: Lynch, Leon C (DNR)
Sent: Wednesday, September 03, 2008 8:51 AM
To: Thompson, Nan G (DNR); Katchen, Jonathan W (LAW)
Cc: Brudie, Nina M (DNR); Bettis, Patricia K (DNR); McLean, Robert F (DFG); Mendivil, Gary A (DEC); Schmitz, Steven (DNR); Schultz, Gary (DNR); Rader, Matthew W (DNR); Ott, Alvin G (DFG); Howard, Kerry M (DFG); Winters, Jack F (DFG)
Subject: RE: Exxon's Request to Continue Point Thomson Permit Processing

Nan,

I just wanted to add that the Exxon application for a 5 year general off road travel permit is also pending (LAS 26938). This permit would authorize off road travel on all state land between the Colville and Canning rivers. It is not specific to Pt. Thomson or the cancelled leases. For instance, Exxon could use this permit to access contaminated sites they have on slope like Bullen Point. We also have an application for ice roads specific to Pt. Thomson (LAS 26937). Once we get direction from you we will draft a letter to Exxon regarding both permits.

-----Original Message-----

From: Thompson, Nan G (DNR)
Sent: Monday, August 25, 2008 9:18 AM
To: Katchen, Jonathan W (LAW)
Cc: Brudie, Nina M (DNR); Bettis, Patricia K (DNR); Lynch, Leon C (DNR); McLean, Robert F (DFG); Mendivil, Gary A (DEC); Schmitz, Steven (DNR); Schultz, Gary (DNR); Rader, Matthew W (DNR); Ott, Alvin G (DFG); Howard, Kerry M (DFG); Winters, Jack F (DFG)
Subject: RE: Exxon's Request to Continue Point Thomson Permit Processing

Jon-

Call me after you have had the opportunity to read this. This same letter will probably be coming into all of the agencies with pending permit applications.

Nan

-----Original Message-----

From: Winters, Jack F (DFG)
Sent: Monday, August 25, 2008 8:50 AM
To: Thompson, Nan G (DNR)
Cc: Brudie, Nina M (DNR); Bettis, Patricia K (DNR); Lynch, Leon C (DNR); McLean, Robert F (DFG); Mendivil, Gary A (DEC); Schmitz, Steven (DNR); Schultz, Gary (DNR); Rader, Matthew W (DNR); Ott, Alvin G (DFG); Howard, Kerry M (DFG)
Subject: Exxon's Request to Continue Point Thomson Permit Processing

Nan,

We have received from ExxonMobil the attached response to our letter suspending processing of their fish habitat permit application for the Point Thomson drilling program. Please advise on how the legal team would like us to respond to their latest request. Thanks.

Jack

Jack Winters

Habitat Biologist
Alaska Department of Fish and Game
Division of Habitat
1300 College Road
Fairbanks, Alaska 99701
907-459-7285
jack.winters@alaska.gov

Mendivil, Gary A (DEC)

From: Bettis, Patricia K (DNR)
Sent: Wednesday, September 03, 2008 9:35 AM
To: Lynch, Leon C (DNR); Thompson, Nan G (DNR); Katchen, Jonathan W (LAW)
Cc: Brudie, Nina M (DNR); McLean, Robert F (DFG); Mendivil, Gary A (DEC); Schmitz, Steven (DNR); Schultz, Gary (DNR); Rader, Matthew W (DNR); Ott, Alvin G (DFG); Howard, Kerry M (DFG); Winters, Jack F (DFG)
Subject: RE: Exxon's Request to Continue Point Thomson Permit Processing

Nan,

The same for the temporary water use applications, they are not specific to Pt. Thomson or the cancelled lease. The water may be use for site remediation or other purposes on the North Slope.

Patricia

-----Original Message-----

From: Lynch, Leon C (DNR)
Sent: Wednesday, September 03, 2008 8:51 AM
To: Thompson, Nan G (DNR); Katchen, Jonathan W (LAW)
Cc: Brudie, Nina M (DNR); Bettis, Patricia K (DNR); McLean, Robert F (DFG); Mendivil, Gary A (DEC); Schmitz, Steven (DNR); Schultz, Gary (DNR); Rader, Matthew W (DNR); Ott, Alvin G (DFG); Howard, Kerry M (DFG); Winters, Jack F (DFG)
Subject: RE: Exxon's Request to Continue Point Thomson Permit Processing

Nan,

I just wanted to add that the Exxon application for a 5 year general off road travel permit is also pending (LAS 26938). This permit would authorize off road travel on all state land between the Colville and Canning rivers. It is not specific to Pt. Thomson or the cancelled leases. For instance, Exxon could use this permit to access contaminated sites they have on slope like Bullen Point. We also have an application for ice roads specific to Pt. Thomson (LAS 26937). Once we get direction from you we will draft a letter to Exxon regarding both permits.

-----Original Message-----

From: Thompson, Nan G (DNR)
Sent: Monday, August 25, 2008 9:18 AM
To: Katchen, Jonathan W (LAW)
Cc: Brudie, Nina M (DNR); Bettis, Patricia K (DNR); Lynch, Leon C (DNR); McLean, Robert F (DFG); Mendivil, Gary A (DEC); Schmitz, Steven (DNR); Schultz, Gary (DNR); Rader, Matthew W (DNR); Ott, Alvin G (DFG); Howard, Kerry M (DFG); Winters, Jack F (DFG)
Subject: RE: Exxon's Request to Continue Point Thomson Permit Processing

Jon-

Call me after you have had the opportunity to read this. This same letter will probably be coming into all of the agencies with pending permit applications.

Nan

-----Original Message-----

From: Winters, Jack F (DFG)
Sent: Monday, August 25, 2008 8:50 AM

To: Thompson, Nan G (DNR)
Cc: Brudie, Nina M (DNR); Bettis, Patricia K (DNR); Lynch, Leon C (DNR); McLean, Robert F (DFG); Mendivil, Gary A (DEC); Schmitz, Steven (DNR); Schultz, Gary (DNR); Rader, Matthew W (DNR); Ott, Alvin G (DFG); Howard, Kerry M (DFG)
Subject: Exxon's Request to Continue Point Thomson Permit Processing

Nan,

We have received from ExxonMobil the attached response to our letter suspending processing of their fish habitat permit application for the Point Thomson drilling program. Please advise on how the legal team would like us to respond to their latest request. Thanks.

Jack

Jack Winters
Habitat Biologist
Alaska Department of Fish and Game
Division of Habitat
1300 College Road
Fairbanks, Alaska 99701
907-459-7285
jack.winters@alaska.gov

Evans, Gary P (DEC)

From: Evans, Gary P (DEC)
Sent: Thursday, November 06, 2008 10:53 AM
To: Thompson, Nan G (DNR)
Subject: Point T DNR contact

Nan

Are you the DNR contact for all Point T issues? I.e. since we are reviewing their plan will you be on my cc list or someone else.

thanks

Gary Evans
Environmental Specialist
SPAR/IPP
Anchorage Ak, 99501
907-289-7536 phone
907-289-7887 Fax

Evans, Gary P (DEC)

From: Evans, Gary P (DEC)
Sent: Monday, December 08, 2008 8:43 AM
To: 'Carol Fries'
Cc: Munson, Dianne R (DEC)
Subject: FW: Invitation: NSB C-Plan Review Meeting (Dec 10 09:00 AM YST In AIO Large Conference Room/Anchorage@xom)
Attachments: ATT5092695.htm; c112201.lcs

Carol

I thought I would forward this invite to you to keep you in the loop with where I'm at in the process. I don't think you want to send anyone as it may send a mixed message to these folks however; the NSB guys will be well represented and if you do want to send someone you can either contact Rob yourself or I can email and ask for another seat for whoever you send.

Your call, please advise if I need to do anything.

Thanks
Gary

From: rob.g.dragnich@exxonmobil.com [mailto:rob.g.dragnich@exxonmobil.com]
Sent: Monday, December 08, 2008 8:22 AM
To: Brian.Person@north-slope.org; brian.s.smith@exxonmobil.com; Munson, Dianne R (DEC); Evans, Gary P (DEC); Gordon.Matumeak@north-slope.org; John.Nichols@north-slope.org; lmfner@slrcorp.com; planning@alaskadeanseas.org; rklieforth@slrcorp.com
Subject: Invitation: NSB C-Plan Review Meeting (Dec 10 09:00 AM YST In AIO Large Conference Room/Anchorage@xom)

Description

For those desiring to participate by telephone, the call-in info is:

Call-in number 1-800-966-7914

Attendee Passcode: 8722560

Please ensure that you press the # key after inputting the passcode

Please note we've reserved the conference room for 4 hours to ensure adequate time for discussion. We anticipate ExxonMobil's discussion/presentation to last about 1 to 1-1/2 hours and are willing to discuss issues, concerns or questions for as long as desired. We'll plan to have lunch brought in and work through lunch as necessary.

The current list of attendees follows: please advise if we're missing anyone:

North Slope Borough = Gordon Matumeak, John Nichols, Brian Person (telecon), Susan Harvey
ADEC - Gary Evans, Dianne Munson
ACS - Lee Majors
SLR - Bob Klieforth, Lydia Miner
ExxonMobil - Mike Barker, Rob Dragnich, Brian Smith, Tim Mashinski (telecon)

Evans, Gary P (DEC)

From: Carol Fries [carol.fries@alaska.gov]
Sent: Monday, December 08, 2008 8:54 AM
To: Evans, Gary P (DEC)
Subject: Re: Invitation: NSB C-Plan Review Meeting (Dec 10 09:00 AM YST in AIO Large Conference Room/Anchorage@xom)

OK, thanks. I can't imagine we'll attend but I appreciate the info.
Thanks.
Carol

On Dec 8, 2008, at 8:43 AM, Evans, Gary P (DEC) wrote:

Carol

I thought I would forward this invite to you to keep you in the loop with where I'm at in the process. I don't think you want to send anyone as it may send a mixed message to these folks however; the NSB guys will be well represented and if you do want to send someone you can either contact Rob yourself or I can email and ask for another seat for whoever you send.

Your call, please advise if I need to do anything.

Thanks

Gary

From: rob.g.dragnich@exxonmobil.com [mailto:rob.g.dragnich@exxonmobil.com]
Sent: Monday, December 08, 2008 8:22 AM
To: Brian.Person@north-slope.org; brian.s.smith@exxonmobil.com; Munson, Dianne R (DEC); Evans, Gary P (DEC); Gordon.Matumeak@north-slope.org; John.Nichols@north-slope.org; lmliner@slrcorp.com; planning@alaskacleanseas.org; rklieforth@slrcorp.com
Subject: Invitation: NSB C-Plan Review Meeting (Dec 10 09:00 AM YST in AIO Large Conference Room/Anchorage@xom)

Description

For those desiring to participate by telephone, the call-in info is:

Call-in number 1-800-966-7914
Attendee Passcode: 8722560

Please ensure that you press the # key after inputting the passcode

Please note we've reserved the conference room for 4 hours to ensure adequate time for discussion. We anticipate ExxonMobil's discussion/presentation to last about 1 to 1-1/2 hours and are willing to discuss issues, concerns or questions for as long as desired. We'll plan to have lunch brought in and work through lunch as necessary.

The current list of attendees follows: please advise if we're missing anyone:

North Slope Borough -- Gordon Matumcak, John Nichols, Brian Person (telecon), Susan Harvey
ADEC -- Gary Evans, Dianne Munson
ACS -- Lee Majors
SLR -- Bob Klieforth, Lydia Miner
ExxonMobil -- Mike Barker, Rob Dragnich, Brian Smith, Tim Mashinski (telecon)

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Carol Fries
Exxon Valdez Oil Spill Liaison, Project Manager
Alaska Department of Natural Resources
550 W. 7th. Ave., Suite 1400
Anchorage, AK 99501
carol.fries@alaska.gov
907-269-8425

Evans, Gary P (DEC)

From: Evans, Gary P (DEC)
Sent: Wednesday, October 08, 2008 9:02 AM
To: Thompson, Nan G (DNR)
Cc: Schorr, Betty J (DEC); Munson, Dianne R (DEC)
Subject: Point Thomson plan submittal

Nan

Thanks for the update on the ExxonMobile lease issue this a.m.. As I stated on the phone Rob has left me a voice msg asking me to get with him as they intend on submitting a C-Plan for oil operations in the Point T area with-in the next few days. I have already sat in several meeting with him in midsummer and informed him at that time what the ADEC permit approval process looked like.

As I understand the situation, ExxonMobile has not yet regained their control on the lease they want to perform drilling operation in and the State of Alaska is not moving forward with plan approvals if it entails operations such as drilling. I would like to make sure I have understood this correctly before I contact Rob and let him know I cannot accept his plan and move forward with it through the approval process. Would you please provide me with some guidance to keep me on track with this situation.

Thanks for your assistance Nan.

Be blessed

Gary

Environmental Specialist
SPAR/IPP
Anchorage Ak, 99501
907-269-7538 phone
907-269-7687 Fax

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PROJECT MANAGEMENT & PERMITTING

SARAH PALIN, GOVERNOR

650 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3850
PHONE: (907) 269-8431
FAX: (907) 269-2078

December 23, 2008

Gary Evans
Environmental Program Specialist
Department of Environmental Conservation
Division of Spill Prevention and Response
Industry Preparedness Program
555 Cordova Street
Anchorage, AK 99501

RE: Oil Discharge Prevention and Contingency Plan, Point Thomson Drilling Program North Slope, Alaska, ADEC Plan #08-CP-5097

Dear Mr. Evans,

DNR offers the following comments on the Oil Discharge Prevention and Contingency Plan, Point Thomson Drilling Program North Slope, Alaska, ADEC Plan #08-CP-5097 October 2008, Public Review Draft:

The Division of Oil and Gas, the state agency responsible for managing the development of oil and gas resources on state lands, has not approved the "Point Thomson Drilling Program" referenced in ExxonMobil's October 2008 filing.

ExxonMobil submitted a Plan of Operations for a Point Thomson Drilling Program earlier this year that was denied by the Division of Oil and Gas. ExxonMobil requested reconsideration of that decision. The Commissioner of Natural Resources granted reconsideration and consolidated that permit denial proceeding with the two other permit denials in the Point Thomson area for which ExxonMobil has requested reconsideration.

On August 4, 2008 the Director of the Division of Oil and Gas sent notice to ExxonMobil that thirty-one leases in the former Point Thomson Unit area were terminated because they were beyond their primary terms. ExxonMobil and other companies who had leasehold interests in this area have appealed those decisions and a hearing is before Commissioner Thomas Irwin beginning January 12, 2009. At that hearing he will decide whether the Director's decision was correct after considering the evidence and arguments provided by the Appellants.

Until the status of the leases is resolved, no permits for subsurface activity will be issued on these lands. Review and approval of any spill contingency plan designed to accommodate a drilling program may be premature before the drilling program is approved.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

EXHIBIT A
Page 40 of 44

Exc. 001084

Thank you for the opportunity to comment. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Carol Fries
Large Project Coordinator

cc: Nan Thompson, Division of Oil and Gas
Richard Vanderhoek, Office of History and Archaeology
Clark Cox, Division of Mining, Land and Water
Marty Rutherford, Deputy Commissioner

EXHIBIT A
Page 41 of 44

Blankenburg, Robert J (DEC)

From: Thompson, Nan G (DNR)
Sent: Thursday, September 04, 2008 3:46 PM
To: Atkinson, Thomas A (DNR); Schmitz, Staven (DNR); Rader, Matthew W (DNR); Schultz, Gary (DNR); Lynch, Leon C (DNR); 'Godsey.Cindi@epamail.epa.gov'; 'julia.a.woodke@usace.army.mil'; Maunder, Thomas E (DOA); 'herczeg.bryan@epamail.epa.gov'; Blankenburg, Robert J (DEC); Winters, Jack F (DFG); Smith, Roselynn R (DNR); Biltner, Judith E (DNR); Kruse, Kim M (DNR); Bates, Randall W (DNR)
Cc: Banks, Kevin R (DNR); Taylor, Cammy O (DNR); Katchen, Jonathan W (LAW)
Subject: EM permitting issues

I will be out of the office and not monitoring email beginning tomorrow until September 29. Kevin Banks has agreed to work to keep track of permitting issues, ably assisted by Cammy Taylor and Jonathan Katchen. If (more likely when) something happens on the permits for the rest of the month, please send me an e-mail, but also add Kevin, Cammy and Jonathan who will be monitoring and responding in my absence.

There are 3 letters for which a response is pending: 8/26 letter from Haymes to Slemons, 8/28 letter from Haymes to Atkinson and 8/22 letter from Haymes to McLean. You will see drafts of those from Jonathan or Cammy.

Blankenburg, Robert J (DEC)

From: Brudie, Nina M (DNR)
Sent: Friday, August 15, 2008 1:00 PM
To: Blankenburg, Robert J (DEC); Roche, Frances E (DEC)
Subject: letter templates for Pt Thomson permit review

Importance: High

From: Brudie, Nina M (DNR)
Sent: Thursday, August 14, 2008 4:18 PM
To: Schmitz, Steven (DNR); Rader, Matthew W (DNR); Havelock, Brian E (DNR); Lynch, Leon C (DNR); Schultz, Gary (DNR); Byrne, Laurence C (DNR); Winters, Jack F (DFG); Mendivil, Gary A (DEC); Maunder, Thomas E (DOA)
Cc: Bettis, Patricia K (DNR); Thompson, Nan G (DNR); Katchen, Jonathan W (LAW)
Subject: FW: letter templates
Importance: High

All-
See below. If you need to amend the suggested language to better fit your normal permitting process, please run it by Nan Thompson before sending. I will close the file for the ACMP review after I receive a letter of denial from DOG.
Thank you,
Nina
334-2563

From: Thompson, Nan G (DNR)
Sent: Thursday, August 14, 2008 3:00 PM
To: Brudie, Nina M (DNR)
Cc: Bettis, Patricia K (DNR); Katchen, Jonathan W (LAW)
Subject: letter templates

Nina-
This is the language the agencies can use to send to permit applications for activities on the lands formerly known as the Point Thomson Unit. It has been reviewed by the attorneys defending DNR in the litigation filed by EM and others over termination of the PTU. This language can be added to whatever other response the agency normally sends, or sent on appropriate letterhead by itself.
Patricia was waiting for it, so I have copied her. I know you have a list compiled of all of the other affected agencies and I would appreciate it if you would forward this.
Nan

Dear [Permit Applicant-subsurface use]

You have applied for a permit to conduct subsurface operations. The oil and gas lease which conveys the right to operate below the surface of the land affected by your proposed use has been terminated. Therefore, your application will not be processed and your permit application is denied.

[Agency signature]

Dear [Permit Applicant-surface use]

You have applied for a permit to conduct activities related to oil and gas development on state land. Forty-four of the forty-five leases in the former Point Thomson Unit have been terminated. The Department of Natural Resources will not authorize any subsurface activity without a valid lease. Any surface activities you undertake are entirely at your own risk. The State of Alaska will not be responsible for any costs incurred. Any improvements you make to the land are for the sole benefit of the State of Alaska.

Because the underlying drilling activity will not be permitted, we assume that you are not interested in obtaining a permit for related surface use. We will therefore suspend processing of your application.

[Agency signature]

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

EXXON MOBIL CORPORATION,
Operator of the Point Thomson Unit;
BP Exploration (Alaska) Inc.,
Chevron U.S.A., Inc.; and
ConocoPhillips Alaska, Inc.,

Appellants,

v.

STATE OF ALASKA, Department of
Natural Resources,

Appellee

)
)
)
)Case No. 3AN-06-13751 CI
) (Consolidated)
)Case No. 3AN-06-13760 CI
)Case No. 3AN-06-13773 CI
)Case No. 3AN-06-13799 CI
)Case No. 3AN-07-04634 CI
)Case No. 3AN-07-04620 CI
)Case No. 3AN-07-04621 CI
)Case No. 3AN-08-09369 CI

ORDER DENYING MOTION FOR PARTIAL TRIAL DE NOVO

Before the court is the Appellants' Motion for Partial Trial De Novo. The Appellants assert that DNR failed to afford the Appellants due process during the remand proceedings before the agency. The Appellants maintain that in order for this court to be able to properly evaluate their due process claim, the Appellants should be accorded leave to conduct discovery on certain topics and then augment the existing appellate record. Their proposed order identifies the following six areas for discovery and augmentation:

- (1) Communications relating to the preparation and use of the PetroTel Report [a consultant's report prepared for the State that relates to the Point Thomson Unit];
- (2) The PetroTel Report;

- (3) Communications among Commissioner Irwin, Hearing Officer Thompson (and agents) and third-parties, including the Governor's Office and members of the Legislature (and agents), relating to the subject matter of the remand proceedings;
- (4) Communications among Commissioner Irwin, Hearing Officer Thompson (and agents) and DNR staff and agents participating in the prosecution of DNR's claim for termination of the PTUA relating to the subject matter of the remand proceedings;
- (5) Reports, memoranda, letters, e-mails, other written or electronic documents relating to the value of the [Appellants'] leases and potential economic benefit to the State resulting from termination of the PTUA; and
- (6) Communications between Commissioner Irwin and either his staff or third-parties concerning the potential economic benefit to the State resulting from termination of the PTUA and the PTU leases.¹

The Appellants further maintain that this discovery, together with the existing administrative record, "will establish their right to a plenary trial de novo in this Court or, in the alternative, remand to an independent hearing officer."²

The Appellants have noted that many of their asserted procedural flaws in DNR's remand proceeding are apparent in the existing appellate record.³ But, citing to several federal cases, they assert that the record in this administrative appeal should be expanded and "must include all documents and evidence on which the agency might have relied in reaching its decision."⁴

A review of the cited cases indicates that federal courts have demonstrated considerable reluctance to permit discovery or augmentation in administrative appeals. The Appellants cite to *Thompson v. U.S. Dept. of Labor*,

¹ Appellants' Proposed Order at 1-2.

² Appellants' Memo. at 4, n.6.

³ *Id.* at 9.

⁴ *Id.* at 12.

a case in which the Ninth Circuit noted that the "whole" administrative record, therefore, consists of all documents and materials directly or indirectly considered by agency decision-makers.⁵ In *Thompson*, the existing record indicated that the Administrative Law Judge had considered settlement correspondence in determining the underlying dispute. As such, the Ninth Circuit held that the correspondence constituted part of the "whole administrative record" that should have been included in the record on appeal.⁶ But that court also held that "[g]enerally, judicial review of agency action is limited to review of the record on which the administrative decision is based."⁷

The Appellants also cite to the following sentence from a decision from the Eastern District of Virginia: "[t]he record is incomplete if it fails to provide a court with all of the documents, memoranda, and other evidence that was considered directly or indirectly by the agency."⁸ Yet in that administrative appeal, the reviewing court upheld the federal magistrate's decision which had denied in its entirety the appellant's motion to compel the depositions of administrative officials and undertake other extensive discovery. The district court held that "judicial review of agency action should be based on an agency's stated justification, not the predecisional process that led up to the final articulated decision."⁹ That same federal court cited with approval the Third Circuit's statement in *NVE, Inc. v. Dept. of Health & Human Services*: "[t]here is a strong

⁵ *Thompson v. U.S. Dept. of Labor*, 885 F.2d 551, 555 (9th Cir. 1989); Appellants' Memo. at 11.

⁶ 885 F.2d 551, 555.

⁷ *Id.*

⁸ *Tafas v. Dudas*, 530 F. Supp. 2d 786, 795 (E.D. Va. 2008); Appellants' Memo. at 11.

⁹ *Id.* at 794; (citation omitted); see also Appellants' Reply at 17.

presumption against discovery into administrative proceedings born out of the objective of preserving the integrity and independence of the administrative process.¹⁰

The Appellants also cite to *Portland Audubon Society v. Endangered Species Committee*¹¹ in support of their request for discovery and augmentation.¹² But in that case, the request for discovery on appeal was denied as inappropriate. Instead, after determining that *ex parte* contacts were prohibited in that APA appeal, the reviewing court remanded the case to the agency with the directive that the agency conduct an evidentiary hearing on the scope of any alleged *ex parte* communications.

*Buckingham Township v. Wykle*¹³ is another federal district court case cited by the Appellants.¹⁴ That case, however, did not involve any request for discovery from an agency. But the court did discuss the standard for review of an administrative decision pursuant to the APA. In that regard, the court notes that "the ultimate question is whether the Record supports [the agency's] decision and not whether a different decision would have been better or might have been made with more information."¹⁵ In reviewing the agency's decision, the court held, "if the record before the agency does not support the agency action, or if the agency has not considered all the relevant factors, or if the

¹⁰ 530 F. Supp.2d at 794; citing *NVE, Inc. v. Dept of Health & Human Servs.*, 438 F.3d 182, 195 (3rd Cir. 2008)(see also State's Opp. at 20, n.63)

¹¹ *Portland Audubon Society v. Endangered Species Committee*, 984 F.2d 1534 (9th Cir. 1993).

¹² Appellants' Memo. at 11.

¹³ 157 F. Supp.2d at 466.

¹⁴ Appellants' Memo. at 11.

¹⁵ 157 F. Supp. at 466.

reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, a court should remand to the agency for additional investigation or explanation.¹⁶

The Appellants also cite to *Amfac Resorts, LLC v. U.S. Dept. of the Interior*,¹⁷ in support of their request for discovery and augmentation. In that case, the D.C. District Court held that the discovery at the administrative appeal stage was not merited because the appellants had failed to make the requisite "substantial showing that the existing record was incomplete"¹⁸ for purposes of appellate review. The federal court also held, "the mere fact that certain information is not in the record does not alone suggest that the record is incomplete ... [L]arge categories of information are routinely excluded from the record."¹⁹ Specifically, the federal district court noted that "deliberative intra-agency memoranda and other such records are ordinarily privileged, and need not be included in the record."²⁰

DNR responds to the Appellants' legal arguments by asserting that a partial trial de novo in the form of discovery and augmentation is unwarranted in this appeal.²¹ DNR's determinations must be supported by substantial evidence in the record as a whole, and DNR is obligated not to rely upon evidence that is not in the record.²² But there is a strong presumption that an administrative

¹⁶ 157 F. Supp.2d at 467, citing *Society Hill Towers Owners' Ass'n v. Rendell*, 20 F.Supp.2d 855, 862 (E.D. Pa. 1998).

¹⁷ 143 F. Supp.2d 7 (D.D.C. 2001); Appellants' Memo. at 12.

¹⁸ 143 F. Supp.2d at 12.

¹⁹ 143 F. Supp.2d at 13.

²⁰ *Id.*

²¹ State's Opp. at 14.

²² *Olson v. State, DNR*, 799 P.2d 289, 294 (Alaska 1990).

agency has properly designated the entire administrative record, and a party appealing an administrative decision should be required to show clear evidence to the contrary to obtain discovery.²³ DNR asserts that this presumption has not been overcome with respect to any of the requested topics of discovery.

From this legal perspective, this court now turns to each of the requested areas of discovery and augmentation. Although both DNR and the Appellants have devoted extensive briefing to the merits of the alleged due process violations, this court finds that resolution of the merits of those issues can and should be reserved until briefing is completed with respect to the entire appeal and this court has had the opportunity to review the entire agency record of the remand proceedings. As discussed below, for purposes of the Appellants' motion for partial trial de novo now before the court, this court finds that the existing record is sufficient to proceed to a determination of the merits of the appeal on remand.

Discovery of the PetroTel Report and related communications.

In 2007, DNR contracted with PetroTel Inc. "to perform geologic and engineering evaluation of the Pt. Thomson sands reservoir."²⁴ A 15-page "Summary of Findings" of PetroTel's evaluation that was prepared by DNR staff and dated May 16, 2008 was publicly released. Thereafter, in July 2008, Chevron made a public records request for the PetroTel study. In a letter dated

²³ See *NVE, Inc. v. Dept. of Health and Human Servs.*, 436 F.3d 182, 195 (3rd Cir. 2006); see also *Treacy v. Municipality of Anchorage*, 91 P.3d 252, 270 (Alaska 2004).

²⁴ Ex. G, to Appellants' Memo. at 2.

August 18, 2008, Commissioner Irwin denied the request. In that letter, the Commissioner indicated that "[t]he PetroTel study was not relied on in any manner in the administrative process underlying this appeal and is not relevant to the action before the court."²⁵ Instead, the Commissioner indicated that the study "was commissioned by the executive branch to assist in developing policy and the decision-making process under AGIA."²⁶

The Appellants assert that there are "direct parallels between the Report's conclusions and the Commissioner's decision."²⁷ As a result, they maintain that they "should not have to blindly accept the bald statements of its litigation adversary that the Report had no effect."²⁸ Instead, the Appellants seek complete discovery concerning the PetroTel Report, including the Report itself as well as "all letters, e-mails, other written or electronic documents, and conversations between DNR personnel involved directly or indirectly in the decision-making process and PetroTel personnel."²⁹

The Commissioner's decisions on remand contain no reference to the PetroTel Report. And Commissioner Irwin has unequivocally indicated that "the PetroTel study was not relied on in any manner in the administrative process underlying this appeal."³⁰ "Administrative agency personnel are presumed to be honest."³¹ The fact that the PetroTel study relates to Point Thomson is not, in itself, a basis to order its production in this administrative appeal. This court

²⁵ Ex. H to Appellants' Memo. at 2.

²⁶ *Id.* at 1.

²⁷ Appellants' Memo. at 15.

²⁸ *Id.*

²⁹ *Id.* at 16.

³⁰ Ex. H at 2.

³¹ *AT&T Alascom v. Orchilt*, 161 P.3d 1232, 1246 (Alaska 2007).

agrees with the State's analysis that in order to obtain discovery of the PetroTel Report and related documentation, the Appellants must make a substantial showing, on the basis of the agency's written decisions, that the Commissioner may have relied on that report.³² This the Appellants have failed to do. Accordingly, the Appellants' request to augment the record to include the PetroTel Report and related documentation is denied.

Discovery regarding communications between Commissioner Irwin, Hearing Officer Thompson, and DNR staff, litigation counsel, and third parties, including the Governor's office, legislators, and legislative staff.

The Appellants maintain that due process requires that DNR separate personnel responsible for advocacy from decision-makers performing a judicial role.³³ They seek discovery in an effort to prove that the Commissioner may have had extensive contact with personnel responsible for advocacy. The State maintains that "the remand proceedings were an agency hearing before the Commissioner – not an adversary proceeding."³⁴ As such, the State maintains that communications by the Commissioner with DNR staff, litigation counsel, and third parties during the course of the remand proceedings are not prohibited.

Discovery and/or augmentation of the record on this issue at this time is unnecessary. Based on the representations in DNR's opposition to the Appellants' motion, for purposes of this appeal it is undisputed that the Commissioner has been advised by DNR staff and litigation personnel during the

³² State's Opp. at 23.

³³ Appellants' Memo. at 20.

³⁴ State's Opp. at 4.

remand proceedings, including the same staff and personnel who defended the original appeal.³⁵ It is also undisputed that the Commissioner has conferred with members of the legislative and executive branches with respect to Point Thomson.³⁶ At issue is the legal question of whether the communications that DNR has acknowledged took place are consistent with the requirements of due process to which the Appellants are entitled. Discovery as to the specific nature of the communications is unnecessary to resolve this legal question. If these communications are prohibited, then their specific content is irrelevant.³⁷ Likewise, if these communications are permitted, then the Appellants are not entitled to explore their content. The legal issue can be resolved on the current record.

Discovery regarding DNR's financial incentive to cancel the PTUA.

The Appellants seek to "develop a full record regarding the nature and extent of DNR's pecuniary interest in the outcome of the remand proceeding."³⁸ The Appellants maintain that "DNR's direct pecuniary interest in terminating the PTUA is a factor that this Court must consider in deciding the due process issues presented."³⁹

The existing record contains a DNR Memorandum dated November 17, 2006 which concludes that "re-leasing the PTU acreage would provide the State

³⁵ State's Opp. at 30, n. 99.

³⁶ See, e.g., Prehearing Transcript at 52-54, cited at Appellants' Memo. at 18.

³⁷ See, e.g., *In re Robson*, 575 P. 2d 771 (Alaska 1978).

³⁸ Appellants' Memo. at 21.

³⁹ *Id.* at 22-23.

with much greater value – approximately \$3 billion – compared with allowing the current owners to retain the leases.⁴⁰ Clearly, the existing record demonstrates that DNR has a substantial pecuniary interest in the outcome of the remand proceeding. The Appellants assert that they should be able to evaluate the “full nature and extent of the conflict in this particular case” through additional discovery on this issue.⁴¹ But for purposes of this administrative appeal, this court does not find that there is a basis to require further augmentation with respect to the exact nature and extent of DNR’s pecuniary interest in the outcome of the remand proceeding beyond what is already in the record.

Conclusion

“There is a strong presumption against discovery into administrative proceedings born out of the objective of preserving the integrity and independence of the administrative process.”⁴² For the reasons set forth above, this court finds that discovery and augmentation of the record is not warranted at this time. Accordingly, the Appellants’ motion for partial trial de novo is denied.⁴³

On January 12, 2009, the Appellants filed a Supplement to Appellants’ Motion for Partial Trial de Novo. This court will treat that supplement as a distinct

⁴⁰ PTU Rec 0016619.

⁴¹ Appellants’ Memo, at 23.

⁴² *NVE Inc., v. Dep’t of Health & Human Serv.*, 436 F.3d at 195.

⁴³ In so ruling at this preliminary stage of this appeal on remand, this court is not now deciding whether a remand to an independent hearing officer or a trial de novo may be warranted, but only that Appellants have not established that further discovery and augmentation is necessary to determine those issues. See Appellants’ Memo, at 4, n.6. See also *Treacy v. Municipality of Anchorage*, 91 P.3d at 270; *Southwest Marine, Inc. v. State*, 941 P.2d 166, 179-180 (Alaska 1997).

motion to supplement the record, and accord to DNR the opportunity to file any opposition to that motion within the time frame specified by court rules.

Dated this 13th day of January, 2009.

Sharon Gleason
Sharon Gleason
Judge of the Superior Court

I certify that on 1-13-09 a copy of the above was mailed to each of the following at their address of record (list name if not an agency)

OSEB AG PD DA

[Signature]
Deputy Clerk

mailed to: Ellis
AG Todd

mailed to: Ashburn
Creskey
Kitchley
Sordabely
Wozell
dawn
ballew
[unclear]
[unclear]
[unclear]