



AGENCY RESPONSES TO LEGISLATIVE BUDGET AND AUDIT COMMITTEE

To Whom It May Concern:

On March 26, 2020, the Alaska State Legislature Legislative Budget and Audit Committee ("LB&A") advised various Commissioners of its contract with Lisa Weissler of Weissler Consulting to provide consulting services regarding the sale of BP's Alaska assets to Hilcorp (the "Sale"). On April 6, 2020, DNR Commissioner Corri Feige advised LB&A Chairman, the Hon. Chris Tuck, that DNR, as Chair of the Governor's Oversight Committee, would help expedite responses by coordinating the gathering and transmission of information between Ms. Weissler and the agencies with oversight roles in the Sale.

In the months that followed and contemporaneous with the Sale due diligence undertaken by the oversight agencies, DNR coordinated inquiries from Ms. Weissler. The responding agencies were provided with a draft of their respective agency's section of Ms. Weissler's report, wherein they offered suggested edits for clarification and factual accuracy. Some agencies provided technical notes in comment form. These comments appear in the right column of each document. Some agencies also suggested edits to the report's narrative, which appear in redline form. Sections of the draft report contained inquiries to each agency. That agency's response is indicated after the "**Response:**" prompt in blue font. In some instances, Ms. Weissler had follow-up inquiries which were responded to with e-mails and/or additional documents.

Throughout its Sale due diligence, DNR, Division of Oil & Gas, posted public documents on its Frequently Asked Questions page.¹ In the interests of transparency, the above-referenced responses and documents are provided herein.

Sincerely,

A handwritten signature in blue ink that reads "Corri A. Feige".

Corri A. Feige, Commissioner
Chair, Governor's Oversight Committee

¹ <http://dog.dnr.alaska.gov/Information/BPHilcorpSale>

**BP & HILCORP TRANSACTION –
STATE AUTHORITY AND REGULATORY PROCESS**

DRAFT – DNR SECTION

[Sections still to come: Introduction, RCA, AOGCC, DEC, AGDC]

April 13, 2020

Prepared by Lisa Weissler, Weissler Consulting

For the Alaska Legislative Budget and Audit Committee

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DEPARTMENT OF NATURAL RESOURCES

The Alaska Department of Natural Resources (DNR) is the agency responsible for implementing state oil and gas leasing laws and managing oil and gas leases. Under the Statehood Act of 1958 and the Alaska Constitution, state mineral rights cannot be sold, only leased. To that end, Article VIII, Section 12 of the state Constitution requires the state legislature to establish a system for leasing oil and gas, coal and other minerals. The first leasing laws fulfilling the constitutional mandate were enacted in the 1955 Alaska Land Act when Alaska was still a territory. In 1959, the new state enacted an amended version of the Alaska Land Act and adopted oil and gas leasing regulations and the state's first oil and gas lease form. Today's version of the Land Act vests the DNR commissioner with broad authority to establish the procedures and regulations necessary to carry out the Act, including oil and gas leasing laws.

As a general matter, oil and gas leases grant private companies the right to explore for, develop, and produce the state's publicly owned oil and gas resources. The companies use their own financial resources for costly exploration and development activities, take the financial risks of a dry hole and development cost overruns, and produce, transport and market the oil or gas if commercial quantities are found. In exchange for their efforts, companies retain a portion of the profit from the sale of the produced oil or gas. In exchange for giving a company the right to develop and profit from the state's resources, the state accrues revenue for the benefit of Alaskans through bonus bids in competitive lease sales; taxes established by law; and rent and royalty established in statute and set in contract through oil and gas leases.

While statutes and regulations can be changed through the legislative and administrative process as needed, oil and gas leases constitute a contract between the state and oil companies that can be changed only with the agreement of all the parties. This means that the lease terms

Commented [FCA(1): Technical Note: Added just for completeness...Financial risks are not just limited to dry holes.

control once a lease is signed by the state as lessor and an oil company as lessee, subject to applicable statutes and regulations as specified by the lease.

I. Oil and Gas Lease Assignments

One of DNR's primary responsibilities in the BP-Hilcorp transaction is deciding whether to approve the assignment of BP's North Slope oil and gas leases to Hilcorp. The process for this decision is largely established by DNR's oil and gas leasing regulations. Under the Alaska Land Act, there is only a very general statute addressing lease assignments from one party to another. AS 38.05.920 provides that "all contracts of purchase or lease of land or interest in land may be, on the affirmative approval of the director, assigned or subleased in whole or in part in writing by the contract holder or lessee..." This language is essentially unchanged since it was first introduced in the 1957 territorial version of the Alaska Land Act. Based on the general authority granted by AS 38.05.920, DNR has adopted oil and gas lease assignment regulations at 11 AAC 82.605 to 82.630. The regulations and relevant lease terms govern the department's process for assigning BP's North Slope oil and gas leases to Hilcorp.

Decision-making Process

11 AAC 82.605 grants the DNR commissioner the sole authority to approve or disapprove an oil and gas lease assignment. The regulation requires that the commissioner approve a transfer of an undivided interest in a lease "unless the commissioner makes a written finding that the transfer would adversely affect the interests of the state or the application does not comply with applicable regulations." The written finding denying an application must include the reasons for the denial. For a divided interest in a lease, the commissioner will disapprove a transfer unless the transfer would not adversely affect the interests of the state, and it complies with applicable regulations. The regulations include additional criteria that a divided

transfer must meet and requires a written finding stating the reasons for disapproving a transfer of a divided interest. According to DNR, there does not appear to be any time that an assignment of either an undivided or divided interest has been denied.¹

The BP-Hilcorp transaction involves assigning BP's undivided interests in oil and gas leases for Prudhoe Bay, Milne Point and Point Thomson to Hilcorp. Based on the regulation, the commissioner's decision-making is an internal process with no public notice requirements, and no written finding is required should the commissioner decide to approve the assignments. In a legislative hearing, the DNR commissioner testified that lease assignment approval is "based on a level of comfort that the lease can be operated by the entity in maintaining the state's interest in the lease." In responding to a legislator's question regarding how DNR defines the public interest, the commissioner explained that DNR looks at a broad suite of factors "including the capability of Hilcorp and their history in the state since 2011." She said, "protection of the public interest and the state's interest goes directly to royalty income that feeds the Permanent Fund and state government services," and that DNR looks at future production potential for production taxes and the property potential for future property income taxes.²

QUESTIONS FOR DNR:

1. What specific criteria will the commissioner consider in determining whether to approve the lease assignments? **Response:** The transfer of the leases involved in the transaction constitutes a fundamental change in control. Accordingly, DNR is undertaking a thorough due diligence review to ensure a proper Financial Assurances Agreement ("FAA") is in place with the parties (discussed at length in Section III, below) that adequately protects the State of Alaska from risks associated with lease and DR&R obligations. This analysis includes, but is not limited to, assessments of the assignee's current and reasonably foreseeable financial position as well as assurances from the assignor to backstop risks in the future should the transferee become unable to satisfy its obligations. DNR has contracted, through Department of Law, with outside financial experts to assist with its analysis. If an assignment(s) is approved, DNR will likely require periodic reassessments of the assignee's financial position to determine if further amendments to the financial assurances are necessary. DNR also verifies the accuracy of the legal description of the interest being transferred, evaluates the overall compliance record of the entity to whom

Commented [CP(2)]: Technical note: To correct the record, DNR has disapproved transfers in several instances. Examples include, but are not limited to, when a lease is overburdened by overriding royalty interests, a working interest owner doesn't meet the qualification requirements under Alaska law, or a party attempts to assign an interest not recognized by DNR.

Commented [FCA(3)]: Technical Note: (For completeness) -- During the hearing, public interest and State's interest were discussed several times. While this was one aspect of "State's interest" it was not the only aspect of State and public interest that DNR noted as part of the consideration. Operator's record of compliance (environmental, safety and operational), as well as financial capability to withstand an upset event were all discussed during the hearing.

the interest is being transferred, and evaluates the proposed transferee's ability to undertake the activity in which they are desiring to take and interest.

2. Will the commissioner make a written finding if the commissioner approves the BP-Hilcorp lease assignments? If so, how and when will the legislature be provided with the written finding? **Response:** Alaska law requires a written finding only if the lease assignment is disapproved. Written findings are public documents. If DNR disapproves of the transfer, the Legislature would receive a copy of the Finding as an interested party to the transaction.
3. What happens if the commissioner does not approve the assignments? **Response:** The Commissioner would issue a written finding consistent with 11 AAC 82.605.
4. Can just some of the assignments be approved if Hilcorp is found to have insufficient financial capability to assume all the leases? **Response:** As noted previously, lease transfers are not evaluated solely upon the financial capability of the transferee. Most of the leases being proposed for transfer in this transaction are held in production units. Unitization is designed, among other things, to protect the correlative rights of all interested parties. A full legal review of whether a partial transfer of leases in a unit would protect the correlative rights of all parties would be required for DNR to consider arbitrarily transferring only a subset of the leases in a unit. The Commissioner has broad authority to approve or deny lease assignments individually and has exercised that authority in the past, yet always after full consideration of all factors relevant to the State's interest.
5. Is Hilcorp's environmental record in Alaska and other states being reviewed and considered as part of the commissioner's lease assignment decision-making process? **Response:** As the agency responsible for managing state-owned land in Alaska, a lessee's environmental record is always a consideration in DNR's decision-making process; for DNR's jurisdiction, this is relevant for purposes of assessing DR&R obligations and risk, as well as the ability of the proposed transferee to meet the prudent operator standard.

Assignment Information

To initiate an oil and gas lease assignment from one company to another, 11 AAC 82.605 requires that an applicant file an application with DNR within 90 days of the final signing of the transfer by the assignor. The DNR application form specifies the information to be submitted with the application. Required information in the assignment application includes:

- Financial standing documentation such as audited financial statements for both the assignor (if the assignor is cosigning on a DR&R agreement) and assignee for the last three years (annual report, balance sheet, income statement, cash flow statement).

- Corporate structure chart for intercompany assignments.
- Unit operator resignation and unit operator successor, and/or request to transfer plans of operation.
- Easement assignment applications, and letters and applications to transfer authorizations issued by other DNR agencies.
- Purchase and sale agreement (the agreement may be held confidential under AS 38.05.035(a)(8) if applicable and requested by the applicant).
- Estimates of abandonment costs generated by the lessee or a third party, and updated production forecasts (including estimates of when abandonment may occur), if there are any improvements on the surface or subsurface.
- Reserves report if determined that additional bonding or financial assurances are required.
- Information about the transaction.
- All DNR leases, permits, and other authorizations subject to the transfer.
- Any authorized or pending applications for plans of operations, units and unit agreements.
- Current bonds and/or financial assurances posted by the current lessee to DNR.

Commented [CP(4)]: Technical note: DNR will require this for both the assignor and assignee in this transaction.

According to the application form, “DNR reserves the right to request additional information as necessary to fully analyze and evaluate the transfer and associated risks to the State.” In addition, 11 AAC 88.115 authorizes the Division of Oil and Gas director to request additional information in accordance with AS 38.05.035(a)(8) as necessary to consider an applicant’s “compliance with the statutes and regulations, including financial information, qualifications, business structure, and other information the director determines necessary.” AS 38.05.035(a)(8) identifies information that may be held confidential by DNR when requested by the person supplying the information. AS 38.05.035(a)(8)(D) specifically establishes

confidentiality for “cost data and financial information submitted in support of applications, bonds, leases, and similar items.”

QUESTIONS FOR DNR:

1. What, if any, additional information has DNR or DOG requested from the applicants?
Response: In addition to the information discussed in other responses above and below, DNR has requested additional accounting information related to Net Profit Share Leases being transferred, geological, geophysical, and engineering data, and is verifying inventories of facilities and improvements upon the subject leases. DNR reserves the right to request additional information as the need arises.
2. The application specifically states that the purchase and sale agreement is confidential under AS 38.05.035(a)(8). Is any other information required by the application classified as confidential? If so, what is the legal authority for maintaining confidentiality?
Response: In addition to “cost data and financial information submitted in support of applications, bonds, leases, and similar items,” as stated in the preceding paragraph, DNR will also keep confidential all geological, geophysical, and engineering data supplied consistent with AS 38.05.038(a)(8)(c).
3. For nonconfidential information required by the application and additional information requested by DNR or DOG, when and how can the information be provided to legislators if requested? **Response:** The information deemed public is provided on a rolling basis on DNR’s transaction FAQ website: <http://dog.dnr.alaska.gov/Information/BPHilcorpSale>. If the information you seek is not listed on this website, please contact DNR and we will determine whether it may be provided. Also, the Governor’s Oversight Committee meets periodically to discuss progress on the due diligence and review of the transaction, or if any member agency has an update or relevant information to share. Those meetings are public and are advertised under the Open Meetings Act, consistent with AS 44.62.310, et. seq.

Responsibility for Lease Obligations

Alaska’s oil and gas regulations and lease terms impose multiple obligations on a leaseholder, including paying rent and royalties, development of the resource, preventing waste of the resource, maintaining records, and providing for damages and bonds. Pursuant to 11 AAC 82.605(b) and 11 AAC 82.630, BP is liable for and responsible for the performance of all lease obligations up until a lease assignment is approved and in effect. After the effective date of the assignment, Hilcorp will be responsible and liable for all lease obligations. Lease terms mirror

this requirement, although current leases add that “All provisions of this lease will extend to and be binding upon the heirs, administrators, successors, and assigns of the state and lessee.”

If a lessee surrenders a lease, 11 AAC 82.635 requires the lessee to “place the surrendered lands in condition satisfactory to the commissioner for abandonment.” Lease terms call for the lessee to leave the surrendered lands in a condition satisfactory for “suspension or abandonment.”

Upon termination of a lease at the end of its productive life, lease terms require a lessee to deliver up the leased area “in good condition.” This obligation is often referred to as DR&R – the dismantlement, removal and restoration of leased lands. A lessee’s DR&R termination obligation generally involves removing infrastructure such as roads, surface facilities and pipelines, plugging and abandoning wells, and restoration of the land. The leaseholder at the time of termination carries the primary obligation for performing DR&R. If they are unable to satisfactorily meet this obligation, prior leaseholders up the chain remain liable for meeting DR&R obligations. In the case of the BP-Hilcorp transaction, BP is making a commitment to specifically establish an entity that will hold their secondary DR&R liability should Hilcorp be incapable of executing their obligations when the time comes.

QUESTIONS FOR DNR:

1. If Hilcorp transfers a lease that is assigned as part of the BP-Hilcorp transaction, will BP’s commitment to holding their secondary liability through an identified entity travel with the lease? **Response:** Yes. This will be clarified in an agreement between the State of Alaska and the interested parties.
2. In the BP-Hilcorp transaction, do any of the leases date back to the original 1959 DL-1 lease form? If so, as distinguished from the original DL-1 leases, the assignment provision in the current lease form includes language stating, “All provisions of this lease will extend to and be binding upon the heirs, administrators, successors, and assigns of the state and the lessee.” (See Lease Form #DOG 201503). **Response:** Yes, upon information and belief, 148 of the 176 leases involved in this transaction involve the DL-1 lease form, as revised in October 1963.

- a. Why was this language added? **Response:** This language tracks the language found in Paragraph 45 of the DL-1 leases at issue.
- b. Does the absence of this language in the original DL-1 lease form have any significance regarding an assignee's lease obligations? **Response:** This language is not absent in the DL-1 lease forms involved in this transaction. This language appears in Paragraph 45 of said leases.

II. Change of Unit Operator

When multiple companies hold leases over a single pool or field, the leaseholders, also known as working interest owners, may voluntarily or be required to combine their leases into a single unit to coordinate oil and gas development, prevent waste of the resource, and protect the rights of the leaseholders. Unit working interest owners enter a Unit Operating Agreement that defines the rights and responsibilities of each of the owners. Unitization usually requires that the working interest owners agree on a single party to operate the field under the supervision of all the working interest owners. Among other things, unit operators are responsible for submitting unit plans of development and operations to DNR for the commissioner's approval and conducting the operations in an approved plan. All working interest owners must have the capability to pay their share of unit operating costs, including cash calls to deal with any unexpected events such as a pipeline leak or other infrastructure problem.

11 AAC 83.331 requires that a unit operator be qualified to hold a lease and "must be qualified to fulfill the duties and obligations prescribed in the unit agreement." The DNR commissioner must approve the designation or change of a unit operator. The commissioner's decision to approve or disapprove a proposed change of a unit operator must be made within 30 days after the receipt of the change request. If disapproved, the basis for disapproval must be in writing.

In 1977, Prudhoe Bay became the first North Slope field to be unitized. Because the field was so large, it was decided that the field would be operated by two companies – BP Alaska Inc. was designated as the unit operator for half the leases in the unit area and the Atlantic Richfield Company was designated as operator for the other half. In the year 2000, BP became sole operator for the entire field.

Provided the other working interest owners and the commissioner approve, Hilcorp will take over BP's responsibilities as operator for the entire Prudhoe Bay Unit. This is a significant change as, for the first time, the operatorship will shift from a major subsidiary backed by an international parent corporation to an independent company, potentially with less financial capability and fewer resources to fulfill both operator and leaseholder/unit obligations.

QUESTIONS FOR DNR:

1. What is the process and criteria for the commissioner's decision on whether to approve the change in operator for Prudhoe Bay? **Response:** In addition to ministerial paperwork requirements to document the change of operator, DNR is guided by 11 AAC 83.331 in assessing whether to approve a change of unit operator. That analysis includes, but is not limited to, assessing whether the unit operator is qualified to hold a lease under Alaska law, and whether it is qualified to "fulfill the duties and obligations prescribed in the unit agreement." 11 AAC 83.331(a). Because this transaction involves a fundamental change in control, the due diligence undertaken by DNR's through the lens of the lease transfer decisions captures much of DNR's analysis regarding whether to approve the change of operator for Prudhoe Bay Unit.
2. Will the commissioner provide a written finding if the commissioner approves the Prudhoe Bay Unit operator transfer to Hilcorp? If so, how will the legislature be provided with the written finding? **Response:** Alaska law requires a written finding only if the transfer of unit operator is disapproved. Any finding issued by DNR would be a public document and would be provided to the legislature as interested parties.
3. What happens if the commissioner denies the change in operator for Prudhoe Bay? **Response:** Consistent with 11 AAC 83.331(c), the Commissioner would issue a written decision explaining the basis for her disapproval. The Unit Operating Agreement would then dictate the process by which a new Unit Operator would be selected and DNR would review the new proposed Operator for their qualifications.

4. Have the other Prudhoe Bay Unit working interest owners approved of Hilcorp taking over as operator for the entire unit? **Response:** DNR has not yet receive the official Change of Operator request document. The Unit Operating Agreement outlines the process by which the working interest owners in the unit will appoint and agree upon the new Unit Operator. Currently, BP is the Unit Operator, and both Exxon and Conoco have technical staff that work hand-in-hand with BP as Unit Operator on all aspects of unit operation. No decision that impacts the operation of PBU is made unilaterally. This structure will not change if Hilcorp becomes the Unit Operator.

III. Financial Capability

A major factor in the commissioner's determination on whether to approve the lease assignments and the Prudhoe Bay Unit operator change in the BP-Hilcorp transaction is Hilcorp's financial capability to fulfill its obligations to the state now and in the future. Hilcorp's assumption of all of BP's North Slope assets is a massive undertaking. Hilcorp entities will assume a 23.36 percent interest in the Prudhoe Bay Unit and approximately 32 percent of the Point Thomson Unit. ExxonMobil and ConocoPhillips hold the other major working interests in these units. The state Milne Point Unit and federal Liberty Unit are currently split between BP and Hilcorp and will be 100 percent leased and operated by Hilcorp when the transaction is complete. Besides the state and federal leases, Hilcorp will assume half the leases in ANWR issued by the Arctic Slope Regional Corporation. Harvest Alaska, Hilcorp's midstream entity, will acquire BP's pipeline interests in TAPS and the Milne Point and Point Thomson pipelines. These new acquisitions will be an addition to Hilcorp's responsibilities for other Alaska interests located in the Cook Inlet and North Slope regions.

Financial Assurances Agreements

The main responsibility for conducting the due diligence review necessary to assess Hilcorp's financial capability to fulfill its lease and unit obligations rests with the DNR Division of Oil and Gas Commercial section. To assist in the financial capability analysis, the State has contracted the consulting firm National Economic Research Associates (NERA). NERA's

analysis and the information it provides will help inform the state on financial assurances agreements (FAAS) it develops with Hilcorp.³

Under current lease terms, the DNR commissioner may require financial assurances as the commissioner determines necessary to ensure the lessee's ability to meet its obligations when a lease is terminated. DNR provided legislators with a primer on financial assurances agreements associated with DR&R of state oil and gas leases. According to DNR, FAAs are negotiated between DNR and the lessee "to satisfy the policy and risk management goals of DNR while also meeting the needs of the specific lessee." The policy objectives DNR seeks to balance are the return of state lands in good condition and maximizing the benefit "of Alaska's natural resources by preventing the inefficient deployment of capital" that could reduce "the probability of maximum recovery of the oil and gas resource."⁴

Using information provided by the lessee, DNR evaluates the magnitude of the DR&R obligation and the financial strength of the lessee. Based on that evaluation, a security instrument will be established in the FAA that is suitable to the identified risk to the state. Examples of security instruments include a dedicated sinking fund to secure against the risk or a guarantee from a financially capable corporate parent of a lessee. DNR says that in many cases, the department requires the lessee to obtain a third-party surety bond from a "large, well-capitalized financial institution acceptable to DNR."

In the FAA primer, DNR explains that many FAAs require the lessee to submit updated financial information on a regular basis that can be assessed against metrics and standards established in the FAA as a way to measure the lessee's financial strength throughout the life of the lease. The level of security can be changed as needed to mitigate the risk to the state. An

Commented [CP(5)]: Technical note: As stated in the responses below, the FAAs are reevaluated as the size and scope of Hilcorp's business in Alaska evolves. Changing the level of security in each FAA is a function of either mutual agreement or built-in "triggers." This is not a unilateral action from the State.

important point in DNR’s primer is that regardless of the FAA, the lessee is still obligated to pay the full cost of DR&R.

In legislative testimony, Commercial staff said that DNR currently has financial assurance agreements with Hilcorp that were first entered when Hilcorp began doing business in Alaska in 2011. The “Sixth Amended and Restated Financial Assurances Agreement” between DNR and Hilcorp was executed in December 2019. The agreements require Hilcorp to provide annual audited financial information to DNR and quarterly unaudited financials from Hilcorp. In addition to the financial statements, DNR receives proprietary oil and gas information from Hilcorp, including about their oil and gas reserves inside the state. DNR also can request and evaluate the insurance coverages that are in place to cover any assets in Alaska that are on state land. Subsequent to their financial analysis of the BP-Hilcorp transaction, DNR will renegotiate financial assurances to protect the state’s interests.⁵

QUESTIONS FOR DNR:

1. While it is clear that FAAs are used to address future DR&R obligations, how will DNR address any concerns related to Hilcorp’s financial capability to meet ongoing lease and unit obligations? Will the FAA be used for that purpose as well as DR&R? Or could the assignment or change in operator approvals be conditioned in some way to protect the state’s interests if necessary? **Response:** Execution of any additional FAA and/or amendment to the current FAA in place with Hilcorp will occur prior to the assignment of the leases subject to this transaction. FAAs are typically drafted to reference both DR&R and related risk the State may be exposed to. FAAs are scoped commensurate to the size of those combined obligations. Currently, Hilcorp Alaska, LLC is on the sixth iteration of its FAA with DNR; the size and scope of the FAA has changed consistent with the growth of Hilcorp Alaska, LLC’s business in Alaska. As part of its due diligence on this transaction, DNR is negotiating the form, size, and substance necessary in an FAA to reasonably protect the State’s interests.
2. What interests does the “Sixth Amended and Restated Financial Assurances Agreement” apply to? What other FAAs does DNR have with Hilcorp and Hilcorp entities? **Response:** The “Sixth Amended and Restated Financial Assurances Agreement” (“Sixth FAA”) between DNR, Hilcorp Alaska, LLC, and Hilcorp Energy I, LP, covers the interests Hilcorp entities currently hold in upstream Alaska assets, including, but not limited to, oil and gas leases, permits, and easements. In addition, DNR has an FAA with

Harvest Alaska, LLC, and Harvest Midstream I, LP, which covers the interests of Hilcorp entities with respect to midstream assets including, but not limited to, right-of-way leases, permits, and easements.

3. Are FAAs public documents? If not, under what legal authority are they kept confidential? If confidential, what general nonconfidential information regarding the Hilcorp FAAs can be provided to the legislature if requested? **Response:** FAAs are not public documents because they contain sensitive financial information. The lessee may request, and DNR will honor confidentiality pursuant to AS 38.05.035(a)(8), of sensitive information contained within an FAA. DNR protects the confidentiality of the Sixth FAA. Hilcorp has agreed, however, to release a redacted version of the Sixth FAA to the public or the legislature upon request.

Bonds

11 AAC 82.600 provides DNR with the authority to require a bond in mineral leases, including oil and gas leases. The regulation states, “The amount of the bond is the amount determined by the commissioner to be justified by the nature of the surface, its uses and improvements in the vicinity of the lands, and the degree of the risks involved in the types of operations to be carried on under the lease or permit.” 11 AAC 82.615(a)(4) provides that an application for a lease assignment must be accompanied by a bond, if required by the commissioner, that “clearly binds the assignee and the assignee’s surety to any unperformed obligations of the assignor.” 11 AAC 83.160 and lease terms allow for a bond in a greater amount than specified in the regulation or lease when a greater amount is justified by the nature of the surface and the uses and improvements on or in the vicinity of the leased land, and the degree of risk involved in the types of operations proposed or being conducted on the lease.

Bonds are used to help ensure that a lessee fulfills their lease obligations – if a lessee fails to meet their obligations, the bond is forfeited to the state. If an entity with a DR&R liability goes bankrupt or dissolves through some other mechanism, bonds filed with DNR for oil and gas leases and the Alaska Oil and Gas Conservation Commission for well sites can be used to cover at least some of the DR&R costs associated with a lease. These bonds are generally less than the

total cost of DR&R, potentially leaving the state on the hook for the remaining expenses, particularly if none of the prior leaseholders are still in business and are able to make good on their obligation.

QUESTIONS FOR DNR:

1. What is the relationship between bonds and FAAs? **Response:** While bonds come in many varieties, an FAA that requires bonding typically calls for a surety bond. In this context, a surety bond is an agreement between DNR, a well-capitalized financial institution vetted by DNR, and the lessee. The surety bond backstops some of the risk exposure to the State of Alaska if the lessee does not satisfy its obligations as specified in the FAA.
2. What bonds are currently in place for the leases subject to assignment in the BP-Hilcorp transaction? **Response:** For state leases currently held by BP entities, there is no FAA as most of these leases were entered into decades before DNR began a comprehensive FAA regime. However, some of the State's risk on these leases is backstopped by statewide bonding obligations held by BP, bonds specific to individual permits and easements held by BP entities, as well as bonds required by the Department of Environmental Conservation and AOGCC.
3. At what point in the process will a bond amount for leases assigned to Hilcorp be determined? Will the bonds be public information? If so, how and when will the legislature be provided with the bond information? **Response:** As part of its due diligence, DNR is negotiating the form, size, and substance necessary of the financial assurances necessary to mitigate the risk that Hilcorp Alaska, LLC and Harvest Alaska, LLC fail to complete their DR&R obligations post-transaction. This will necessarily include negotiations as to the proper level of bonding. If Hilcorp requests confidentiality regarding its bonding obligations under the finalized FAA, DNR will grant that request under AS 38.05.035(a)(8).

IV. Permitting and Authorizations

The Department of Natural Resources administers land use related permits and authorizations for activities conducted on state land. With the DNR commissioner's approval, permits and authorizations associated with the BP-Hilcorp transaction will be transferred from BP to Hilcorp.

Permits

AS 38.05.850 gives DNR the authority to issue permits for use of state land. 11 AAC 96.010 lists the activities for which a DNR land use permit is required, several of which apply to activities taken by oil and gas lessees, and includes any activity that is not specified in regulation as a generally allowed use. These permits will need to be transferred from BP to Hilcorp as part of the transaction.

11 AAC 96.040(c) provides that DNR may modify existing permit provisions or require additional provisions in the approval of an extension of a lease term or a modification proposed by the permit holder. Modifications may be done to assure compliance with law, to minimize conflicts with other uses, to minimize environmental impacts, or otherwise to be in the state's interests.

QUESTIONS FOR DNR:

1. What permits will be transferred from BP to Hilcorp? **Response:** The appropriate divisions within DNR (Division of Oil & Gas, and Division of Mining, Land, and Water) are currently compiling and verifying the list of permits involved in this transfer. DNR will follow up with an answer to this question once an accurate list is finalized.
2. What is the process for transferring the permits? Do any of the permits require public notice prior to being issued? If so, would public notice be required to transfer a permit? **Response:** DNR would update permit records to reflect the new name and effective date. Public notice is not required for this administrative change.
3. Does DNR intend to modify any permits as part of the transfer to Hilcorp? If so, what changes or types of changes are being considered? **Response:** Permits would be amended to reflect the new customer name. DNR would review the permit stipulations for accuracy and completeness and amend the stipulations where necessary.

Authorization for Plan of Operations

An oil and gas lease grants the lessee the right to conduct exploration, development and production activities. However, the lease does not authorize operations or activities to take place on the leased land. Prior to any lease activities taking place, the DNR commissioner must

approve a plan of operations. A lease plan of operations is not required for operations taking place under an approved unit plan of operations.

11 AAC 83.158 provides the process for approval of a lease plan of operations and 11 AAC 83.346 provides the process for a unit plan of operations. Under both procedures, an applicant must submit sufficient information to determine the surface use requirements and impacts directly associated with the proposed operations on the lease, including

- The schedule of the operations;
- Proposed operations, including the location and design of well sites, material sites, water supplies, solid waste sites, buildings, roads, utilities, airstrips, and all other facilities and equipment necessary for the proposed operations;
- Plans for rehabilitation of the affected lease upon completion of operations;
- Operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the leased area, including fish and wildlife habitats, historic and archeological sites, and public use areas.

In approving a plan of operations or an amendment of a plan, the commissioner has the authority to require amendments the commissioner determines are necessary to protect the state's interest. However, any amendments cannot be inconsistent with the terms of sale when a lease was first obtained or with the terms of a lease. Nor can amendments deprive a lessee of reasonable use of the leasehold. The lessee or unit operator may amend an approved plan of operations subject to the approval of the commissioner.

QUESTIONS FOR DNR:

1. What is the process for the transfer of a plan of operations? (The lease and unit plan of operations regulations do not indicate the commissioner's approval is required to transfer a plan). **Response:** [In light of the type of transaction at issue here, transferring a plan of operations involves a simple name change. Under Alaska law, neither the lease nor the unit plan of operations requires approval of the DNR Commissioner to change the operatorship.](#)

2. Will any amendments to any of the plan of operations be required or proposed prior to their transfer? If so, what amendments or types of amendments are being considered?

Response: Amendments to the existing plans of operations are not required to conduct an operatorship change.

3. Are plan of operations public documents? If not, under what legal authority are they confidential? **Response:** Very few plans of operations contain confidential information and most are available to the public. Some plans of operation may contain confidential information, such as geological, geophysical or engineering data, and those portions can be held confidential under AS 38.05.035(a)(8).

V. Pipeline Right-of-Way Leases

The Right-of-Way Leasing Act at AS 38.35 provides for the leasing of state land for pipelines to transport Alaska’s oil and natural gas resources. Within the Division of Oil and Gas, the State Pipeline Coordinator’s Section oversees implementation of the Right-of-Way Act.

Under AS 38.35.120(a)(9), a transfer of a right-of-way lease for a pipeline valued at one million dollars or more is subject to the authorization of the DNR commissioner, unless the transfer is to another owner of the pipeline. In approving a transfer, the commissioner is charged with considering the protection of the public interest – including whether the proposed transferee is fit, willing, and able to perform transportation “in a manner that will reasonably protect the lives, property, and general welfare of the people of Alaska.” The commissioner may not unreasonably withhold consent to a transfer or assignment.

BP’s interests in three pipelines will transfer to a Hilcorp entity as part of the BP-Hilcorp transaction: the Milne Point Pipeline, 50%; the Point Thomson Export Pipeline, 32%; and BP’s approximate 48.4% interest in TAPS.

The transfer of TAPS from BP to a Hilcorp entity is a significant component of the transaction. The Department of Law and DNR are working to understand the legal and factual

Commented [CP(6)]: Technical note: The Hilcorp entity for this portion of the transaction has been identified as Harvest Alaska, LLC.

issues related to the transfer. The team is being assisted by outside counsel with 40 years of TAPS experience.⁶

QUESTIONS FOR DNR:

1. Are BP's interests in the ROW subject to the transfer authorization requirement under AS 38.35.120(a)(9)? If not, why not? **Response:** Yes.
2. What is the process for transferring BP's ROW lease interests to Hilcorp entities?
Response: DNR undertakes a thorough fit, willing, and able analysis as part of its due diligence, and has retained, through Department of Law, outside experts to assist with that due diligence. If DNR is satisfied that Harvest Alaska, LLC is fit, willing and able to operate its share of the above-listed pipelines, the ROW transfer(s) will be approved.
3. Do the public notice and hearing requirements required by AS 38.35.070 and 35.080 for an initial ROW lease application apply to a ROW lease transfer? **Response:** No.
4. How do the ROW leases associated with the transaction address DR&R of the pipelines?
Response: Each ROW lease requires that the lessee submit either an unconditional or parental guaranty to DNR promising that all conditions of the leases will be upheld. Each lease further states that additional or new forms of guaranty may be required from the lessee under a variety of conditions as established by each of the leases.
5. Does DNR have enforcement authority over the DR&R of the pipelines? If not, who does? **Response:** Yes. Each ROW lease requires that the lessee submit a plan for rehabilitating the leasehold to a condition the DNR commissioner finds acceptable, including information pertaining to the DR&R of the pipeline.
6. Will BP remain liable for any of the ROW lease obligations following the transfer of the leases, including their interest in the TAPS lease? **Response:** A BP entity will remain secondarily liable for DR&R obligations.
7. What is the role of DNR and the State Pipeline Coordinator's Office in the Regulatory Commission of Alaska's (RCA) transfer process for TAPS, Milne Point and Point Thomson? **Response:** Please see response to question 2, above. Additionally, the State Pipeline Coordinator's Office is a part of DNR and assists in the fit, willing, and able analysis as well as executing the transfer(s), if approved.

¹ House and Senate Resources Joint Committee Meeting, December 16, 2020, 29.

² House and Senate Resources Joint Committee Meeting, December 16, 2020, 29, 32.

³ House and Senate Resources Joint Committee Meeting, December 16, 2020, 16.

⁴ Letter from Corri A. Feige, Commissioner, Department of Natural Resources to Senator Micciche and Representatives Lincoln and Tarr, March 11, 2020.

⁵ House and Senate Resources Joint Committee Meeting, December 16, 2020, 18-19.

⁶ House and Senate Resources Joint Committee Meeting, December 16, 2020, 20-21.

From: [Caltagirone, Peter \(DNR\)](#)
To: [Lisa Weissler](#)
Cc: [Feige, Corri A \(DNR\)](#); [Ptacin, John M \(LAW\)](#)
Subject: Responses - RCA Questions
Date: Thursday, June 4, 2020 6:17:37 PM

Good evening, Lisa:

Hope you are well. As you'll recall, and to the best of my knowledge, because RCA is a quasi-judicial body, it is withholding comment and responses on the BP/Hilcorp transaction outside of the decisions it has / will issue under its jurisdiction in the deal. Nonetheless, out of professional comity, DNR's attorney, Chief AAG John Ptacin, has endeavored to prepare some responses to your questions based upon his expertise on RCA's process, where appropriate. That is attached here for your consideration.

Bear in mind, DNR does not speak for RCA. Please let me know of any questions.

Warm regards,

Peter

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**BP & HILCORP TRANSACTION –
STATE AUTHORITY AND REGULATORY PROCESS**

DRAFT – RCA SECTION

[Sections still to come: Introduction, AOGCC, DEC, AGDC]

May 1, 2020

Prepared by Lisa Weissler, Weissler Consulting

For the Alaska Legislative Budget and Audit Committee

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REGULATORY COMMISSION OF ALASKA

The Regulatory Commission of Alaska regulates public utilities and pipelines throughout Alaska, including their rates, classifications, rules, regulations, practices, services and facilities. The commission has a long history in the state, beginning with establishment of the Alaska Public Service Commission in 1959; evolving to the Alaska Public Utilities Commission in 1970; and then reenacted in 1999 as the Regulatory Commission of Alaska (RCA).¹

Regulatory authority over oil and gas transportation pipelines was first instituted in 1972, four years after the discovery of a major oil field on the North Slope. The Alaska Pipeline Commission Act established a three-member commission to regulate pipeline facilities and pipeline carriers in the state, to regulate access to information concerning pipeline facilities and carriers, and to represent the interests of the state in any pipeline related proceedings affecting the interests of the state. In conjunction with the Alaska Public Utilities Commission, the legislature sought to promote and ensure “nondiscriminatory, efficient, and economical oil and gas pipeline transportation at reasonable rates.” The Alaska Pipeline Commission received wide-ranging authority to regulate intrastate pipelines, including the soon-to-be-built Trans Alaska Pipeline.²

In 1981, the Alaska Pipeline Commission merged with the Alaska Public Utilities Commission, creating one regulatory body to oversee both public utilities and pipelines and pipeline carriers in the state. Those duties now reside with the Regulatory Commission under the Pipeline Act at AS 42.06.055 to AS 42.06.640. The Act defines regulated pipelines or pipeline facilities to mean all the facilities of a total system of pipe “in this state used by a pipeline carrier for transportation, for hire and as a common carrier, of oil, gas, coal, or other mineral slurry for delivery, storage, or further transportation...”³

The RCA is housed within the Department of Commerce, Community, and Economic Development and consists of five commissioners appointed by the governor and confirmed by the legislature. Commissioners must meet specific education or experience criteria to qualify for an appointment. The commission is a quasi-judicial body with the authority to conduct investigations and hearings, to issue subpoenas, and to compel the attendance of witnesses and production of testimony, records and other documents. The commission's decision-making process resembles a court proceeding with regulations governing motions, pleadings, discovery, and the hearing procedure. Unlike a court proceeding, the public often has an opportunity to comment on pending commission decisions.⁴

I. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

A key element of the RCA's regulatory authority is the Certificate of Public Convenience and Necessity (CPCN). No transportation of oil or gas by pipeline, or construction or extension of pipeline facilities, or acquisition or operation of any pipeline facility may take place without the commission issuing a CPCN. A certificate will be issued if it is found that the service is required by present or future public convenience and the carrier is found to be able and willing to properly do the acts and perform the service proposed and to conform with RCA regulations. A CPCN describes the authority granted, including the services involved, and includes a description of the authorized service area and the scope of operations of the pipeline facility. The commission may attach terms and conditions to a CPCN and require the issuance of securities it considers necessary for the protection of the environment and for the best interest of the oil or gas pipeline facility and the general public.⁵

RCA approval is required for the transfer of a CPCN to a new owner. The transfer process begins with an application from the companies seeking a transfer. The commission analyzes a

transfer application using the same criteria as an original application – that an applicant is able and willing, will conform with legal requirements, and the service is required. In addition, the commission must find that the transfer is in the best interest of the public.⁶

BP-Hilcorp Transaction – CPCN Transfer Applications

On September 27, 2019, BP Pipelines (Alaska) Inc. (BPPA) and Hilcorp Alaska's midstream subsidiary, Harvest Alaska, LLC (Harvest Alaska), jointly filed with the RCA three separate applications for approval of the transfer of the Certificate of Public Convenience and Necessity for the following pipeline interests:

- BPPA's entire interest in the Trans-Alaska Pipeline System (TAPS), and all operating authority. The ownership interest consists of 48.4% in TAPS and 47.58% of the Valdez Marine Terminal tankage. CPCN No. 311. (Docket No. P-19-017).
- BPPA's 100% stock ownership interest in BP Transportation (Alaska) Inc. that owns 50% membership interest in Milne Point Pipeline, LLC; CPCN Nos. 329 and 638. (Docket No. P-19-016.).
- BPPA's 100% stock owner interest in BP Transportation (Alaska) Inc. that owns 32% membership interest in PTE Pipeline, LLC (Point Thomson); CPCN No. 746. (Docket No. P-19-015).

In making the case for why Harvest Alaska is qualified and that the proposed transfers are in the best interest of the public, the applications each make the same following points:

- Harvest Alaska is a willing owner. The joint applications state, “the commission has previously held that it is in the best interest of the public if a pipeline is owned by a company ‘which is willing to do so.’”⁷
- Harvest Alaska is fit and able to own BPPA's pipeline interests because
 - In addition to their own experience operating and managing several Cook Inlet and North Slope oil and gas pipeline systems, Harvest Alaska's parent company Hilcorp Alaska provides operational support to Harvest Alaska. In turn, Hilcorp Alaska is backed by its parent company Hilcorp Energy I, LP which is a general partner of Hilcorp Energy Company based in Houston, Texas. Two other experienced Hilcorp pipeline entities in Alaska provide additional support – Harvest Midstream and Harvest Midstream Company.

- The commission has previously determined that Harvest Alaska is financially and operationally capable of owning and operating the several Cook Inlet and North Slope pipelines that Harvest currently operates and owns through subsidiaries.
- Harvest Alaska's recent two years of unaudited financial statements together with Hilcorp Alaska's and Harvest Midstream's most recent two years of audited financial statements demonstrate that the three companies have substantial assets and are financially strong enough to support Harvest Alaska's ownership of BPPA's pipeline interests.
- There is no expected change to the day-to-day operations of any of the three pipelines as a result of the proposed transfer. The pipeline interests will continue to be operated safely, reliably, efficiently, and in compliance with all legal requirements.
- There is an ongoing need for the continued operation of each of the three pipelines; and the continued operation of each "is in the best interest of its shippers and Alaska."

The applications conclude that approving each application will ensure that the specified pipeline interest "will continue to be owned and operated by a qualified company that is able and willing to operate the system efficiently and compliantly over the long term at no added cost to ratepayers" and that each proposed transfer is "consistent with and promotes the best interest of the public interest and should be approved."

Commission's Decision

The commission's decision regarding the CPCN transfer application is pending. On April 2, 2020, the commission issued an order requiring a response from the applicants to a number of questions. The applicants' response is due by May 4, 2020.⁸

Having determined the joint CPCN transfer applications complete, the commission's questions relate to the determination of whether the applicant is able and willing to properly perform the proposed service and whether the proposed service is required by the present or future public convenience and necessity. In addition, as required by AS 42.06.305(b), the commission's decision must be based on the best interest of the public.

The commission put forward questions relating to the TAPS, Milne Point, and Point Thomson pipeline operations including work plans and budgeting, insurance to cover unanticipated incidents, and a request for pipeline operating agreements and a history of past incidents such as reportable spills or material pipeline damage. The commission asked how Hilcorp entities will fund any large or unusual amounts requested by Alyeska for TAPS expenses.

Several questions reflect the current pandemic crisis including whether recent changes in the financial markets have impacted the Hilcorp entities access to the capital necessary to fund the BP-Hilcorp transaction, and if so, how Hilcorp entities plan to address the issue. If not, the commission seeks an explanation of the sources of capital for the acquisition. Other questions relate to the companies' ability to fund Alaska operations.

The commission is seeking information about the Financial Assurances Agreements Hilcorp entities have with the Department of Natural Resources and any insurance bonding or security DNR has required under its right-of-way leases. The commission asked whether any BP right-of-way lease obligations survive the transfer or expiration of the lease; and the applicants' view on their lease obligations regarding indemnity requirements for damage on state, federal or private land.

The commission has multiple questions regarding the dismantlement, removal, and restoration (DR&R) of the three pipelines. Of particular interest are issues related to TAPS DR&R, including: DR&R costs and funding; whether there is a BP "backstop" for Harvest Alaska's DR&R liability and if so, who can enforce the backstop; and whether it is BP's position that the RCA will have jurisdiction over BPPA's affiliate BP Corporation North America (BPCNA). The commission asks the applicants to provide "a schedule showing the extent to

which BP or its affiliates have assumed responsibility for DR&R liabilities associated with former TAPS carriers that no longer own a share of TAPS (e.g., Unocal Pipeline Company).”

Answers to the questions posed by the RCA will likely be of interest to legislators and the public.

QUESTIONS FOR RCA:

1. Will the answers to the questions in the April 2 order be subject to public disclosure? If so, how will the answers be made available to legislators if requested?

Response: As noted during testimony before the Joint Resources Committee, the Regulatory Commission of Alaska is a quasi-judicial agency in the midst of making determinations on Harvest’s fitness to own and operate all or portions of the Milne Point Pipeline, the Point Thomson Exploration Pipeline and the TransAlaska Pipeline. See Generally Dockets P-19-015; P-19-016; and P-19-017. The Regulatory Commission of Alaska’s processes must be respected. Thus, John M. Ptacin, Chief of the Oil and Gas Section, is providing these responses and he has not corresponded with the Regulatory Commission of Alaska in preparing these responses.

In orders P-19-015(7), P-19-016(7), and P-19-017(7), the Regulatory Commission of Alaska sought additional information from Harvest and other parties in furtherance of its decisionmaking process. On May 4, Harvest and British Petroleum submitted responses on a confidential basis. The Regulatory Commission of Alaska will now decide whether to grant the request for confidentiality. In the event the Regulatory Commission of Alaska denies some or all the request for public disclosure, the Alaska Legislature would have access to the information.

2. What is DNR and DOL’s role in the CPCN transfer proceedings?

Response: Pursuant to Alaska Statute 38.35.120(a)(9), Department of Natural Resources has to make determinations similar to that of the Regulatory Commission of Alaska in order to accept the proposed transfer of the right-of-ways. Department of Law is assisting DNR in this process, which is both independent and overlapping of the Regulatory Commission of Alaska processes. The State of Alaska submitted a brief comment in P-19-017.

3. What are the next steps in the CPCN transfer process once the applicants’ response is received?

Response: The Regulatory Commission of Alaska will continue its analysis on whether to accept the transfer. As part of this determination, the Regulatory Commission of Alaska may seek additional materials from the requestors and potentially other parties.

NOTE: This section will be revised based on the response to the questions, assuming the responses are public and that the response is filed by May 4 and before the report is complete.

II. WAIVER OF AUDITED FINANCIAL STATEMENTS

Regulations adopted by the RCA specify the information required to be submitted with pipeline carrier applications, including the transfer of a CPCN. For existing businesses, 3 AAC 48.625(a)(7) requires an applicant to provide their “most recent audited financial statements for the two most recent fiscal years preceding the date of the application.” If the required audited statements are not available, the applicant can request a waiver of the requirement. A waiver request must include (1) a certification that independent audits are not performed; (2) financial statements consisting of, at a minimum, comparative balance sheets, income, and cash flow statements for the two most recent fiscal years preceding the date of the application, verified and certified for accuracy; and (3) a description of how the public convenience and necessity requires the service.⁹

BP-Hilcorp Transaction – Waiver Requests

On September 27, 2019, as part of their CPCN transfer applications, Harvest Alaska filed its 2017 and 2018 unaudited financial statements and the 2017 and 2018 audited financial statements of its current parent, Hilcorp Alaska, and expected future parent, Harvest Midstream. In conjunction with the applications, Harvest Alaska filed motions requesting a waiver of the regulatory requirement regarding submission of audited financial statements and that the RCA accept Harvest’s unaudited financial statements and its parent companies audited statements. The motions argued that waiver requirements were met because

- Harvest Alaska certified it does not perform independent audits.
- The unaudited and audited financial statements each include comparative balance sheets, income, and cash flow statements, and other information.
- Harvest Alaska’s unaudited financial statements have been verified and certified for accuracy.

- The continued operation of each of the pipelines is required for the current and future public convenience and necessity.

Commission's Decision

On March 12, 2020, the commission granted Harvest Alaska's motions for waiver. The commission found that Harvest Alaska satisfied the regulatory requirements for a waiver and accepted Harvest's unaudited financial statements along with the audited financial statements of their parent companies.¹⁰

III. CONFIDENTIAL TREATMENT OF FINANCIAL INFORMATION

Under AS 42.06.445(a), information submitted to the commission is "open to public inspection at reasonable times." Subsection (d) of the statute provides the opportunity for a person to file a written objection to public disclosure of information obtained by the commission as part of its proceedings. The commission is required to withhold the information from public disclosure "if the information adversely affects the interest of the person making written objection and disclosure is not required in the interest of the public."

A petition to treat records as confidential must meet the requirements of 3 AAC 48.045. Under subsection (a) of the regulation, the petition must identify the record to be protected and set out "good cause, including facts, reasons, or other grounds, for the commission to classify that record as confidential." Subsection (b) provides that a showing of good cause includes (1) disclosure of the record to the public might competitively or financially disadvantage or harm the person with a confidentiality interest or might reveal a trade secret; and (2) the need for confidentiality outweighs the public interest in disclosure.

AS 42.06.445(c) provides another exception to public disclosure. The statute addresses documents filed with the commission that relate to the finances or operations of a pipeline

subject to federal jurisdiction and that are not required to be filed with the appropriate federal agency. Documents that meet these criteria are “open to inspection only by an appropriate officer or official of the state for relevant purposes of the state.”

BP-Hilcorp Transaction – Petitions for Confidential Treatment of Information

Purchase and Sale Agreement

In a filing dated December 23, 2019, Harvest Alaska and BP Pipelines (Alaska) petitioned for confidential treatment of the Purchase and Sale Agreement (PSA) dated August 26, 2019. According to the petitioners, the reasons that good cause exists to protect the PSA as confidential include the following:

- The PSA reflects a negotiated transaction containing information and terms of agreement on a variety of subjects that each party desires and have agreed to keep confidential.
- The information in the PSA goes far beyond information related to the regulated pipeline infrastructure at issue in the transfer applications, including the terms and conditions of the entire transaction under which BP is exiting Alaska.
- Companies like the petitioners regularly engage in acquisitions and divestitures. For these companies, the terms of any given transaction are considered and treated as confidential and proprietary, including confidentiality provisions in the agreements.
- There is concern that if the terms of any given transaction are disclosed, parties with whom the petitioners engage in subsequent negotiations will take selected portions of the agreement and expect the same treatment or use the terms of a prior agreement to demand the same economic value; and so weaken the disclosing party’s bargaining position.
- Disclosure of even a redacted version of the PSA would harm the petitioners and their affiliates’ competitive and financial interests and undermine competition.
- The petitioners view the information in the PSA as confidential and proprietary information that constitutes trade secrets.
- The BP-Hilcorp transaction is primarily focused on upstream production interests not subject to commission regulation. The PSA reflects consideration and terms appropriate to these upstream interests, disclosure of which would adversely affect the petitioners’ and their affiliates’ financial and competitive interests.

- The PSA contains competitively sensitive financial and other information for largely nonregulated operations.¹¹

In reference to a 2012 order, the petitioners point out that the commission ruled under analogous circumstances that the need to maintain the confidentiality of a purchase and sale agreement outweighed the public interest in disclosure and should be protected.¹²

Commission's Decision

On February 11, 2020, the commission granted the petition for confidential treatment of the purchase and sale agreement. The commission determined that disclosure of the purchase and sale agreement might competitively harm the applicants; that the need for confidentiality outweighed the public interest in disclosure; and that there could be competitive harm in disclosing the agreement “due to the negotiated nature of these agreements in a climate where multiple entities seek to acquire and relinquish oil and gas assets under the most favorable terms available.” The commission agreed with the applicants that disclosure of the terms of one transaction might weaken the disclosing party’s position in regard to other unrelated transactions. The commission noted that no entity had requested access to the purchase and sale agreement or otherwise articulated a public interest in its disclosure.¹³

QUESTIONS FOR RCA:

1. Regarding the commission’s statement that no entity had articulated a public interest in disclosure of the PSA, what about all the public comments opposing confidential treatment of the applicants’ information?

Response: The Regulatory Commission of Alaska is a quasi-judicial agency and the Department of Natural Resources is not privy to the decision making processes underlying any of their decisions.

2. Could the commission have disclosed information related to the pipeline transfer applications under their jurisdiction while redacting other sensitive information?

Response: The Regulatory Commission of Alaska has the authority to provide for partial public disclosure of filings.

Financial Statements

On September 27, 2019, in conjunction with the CPCN transfer applications, Harvest Alaska, Hilcorp Alaska and Harvest Midstream petitioned for confidential treatment of

- Harvest Alaska's 2016-2017 and 2017-2018 unaudited financial statements;
- Hilcorp Alaska's 2016-2017 and 2017-2018 audited financial statements; and
- Harvest Midstream's 2016-2017 and 2017-2018 audited financial statements.¹⁴

On December 23, 2019, Hilcorp Energy I and Hilcorp Energy Company petitioned for confidential treatment of

- Hilcorp Energy I 2016-2017 and 2017-2018 audited financial statements; and
- Hilcorp Energy Company's 2016-2017 and 2017-2018 audited financial statements.¹⁵

Also on December 23, BP Pipelines (Alaska) (BPPA) petitioned for confidential treatment of BP Corporation North America's (BPCNA) 2016-2017 and 2017-2018 audited financial statements.¹⁶

The petitioners explain that the Hilcorp entities are privately held and do not disclose their financial information to the public. They argue that good cause exists to protect their financial statements as confidential because disclosure of the companies' financial position, resources, revenues and costs could place them at a competitive disadvantage. The petitioners state that competitors and potential contractors could use the currently private information in the financial statements to develop pricing and bidding strategies that would damage their business, give competitors an unfair advantage, and unfairly advantage potential contractors, especially where competitors or contractors do not make their own financial information public.

For Harvest Midstream and BPCNA, the petitioners explain that much of the oil and gas business they participate in is unregulated and highly competitive. They argue that making the

companies' financial information public will damage their ability to be competitive in their unregulated businesses and would potentially be anti-competitive.

The petitioners point out that the commission previously ruled that the audited financial statements of Hilcorp Alaska and its parent Hilcorp Energy I should be protected under the regulations. They identified five previous commission orders finding that the potential competitive harm to Hilcorp companies by disclosure of their financial information outweighed the public interest in disclosure of the financial statements; and that good cause existed to classify the information as confidential.

Commission's Decision

In an order issued on February 11, 2020, the commission required the petitioners to supplement their petitions for confidential treatment of financial statements with more information about the statements and an explanation of the specific harm that would result from their disclosure. The commission stated, "While we understand the applicants' belief that the petitions for confidential treatment presented an adequate showing of competitive harm based on our recent precedent, we believe the magnitude of the current acquisitions and the public's stated interest in disclosure warrant additional explanation regarding the competitive harm that could result from disclosure of financial information."¹⁷

In regard to the petitioners' argument that prior commission decisions granted confidential treatment for Hilcorp financial statements, the order noted that the prior petitions were not opposed, while in the current proceedings "numerous members of the public have expressed interest in disclosure of the financial statements to assess the ability of the applicants to operate TAPS and the Valdez marine terminal and tankage." The commission also distinguished the prior cases as having involved specific pipelines while the current case

involves the “acquisition of assets on a much larger scale and that carries with it both greater performance expectations and increased potential financial risk should a catastrophic event occur.”

The commission also sought information regarding the applicability of AS 42.06.445(c) – the statute that precludes the commission from disclosure of documents related to the financing or operations of a pipeline subject to federal jurisdiction if the document is not required to be filed with a federal agency with jurisdiction. The commission asked that the petitioners provide an explanation regarding whether any of the financial statements were required to be filed with a federal agency, and how and whether they related to the finances or operations of the pipelines subject to the transaction.

The petitioners fulfilled the commission’s request for the requested information on February 18, 2020. In their response, the petitioners explained their financial statements should be kept confidential as mandated by AS 42.06.445(c) because the pipelines at issue are subject to federal jurisdiction and the appropriate federal agency, the Federal Energy Regulatory Commission, had not required any of the financial information submitted as part of the state RCA proceedings.¹⁸

In the consolidated order issued on March 12, 2020, the commission found the requirements of AS 42.06.445(c) to be applicable. The commission ruled that “the financial statements are documents related to the finances and operations of pipelines subject to federal jurisdiction,” and that the documents were not required by the appropriate federal agency. With that finding, the commission determined they were required to treat the financial statements for all Hilcorp entities and BP Corporation North America as confidential as a matter of law.¹⁹

Commissioner Stephen McAlpine dissented from the commission's decision. In his written dissent, McAlpine referenced an April 2000 commission order addressing documents qualifying for confidential treatment pursuant to AS 42.06.445(c). In that order, the commission said that a petition did not need to be filed under 3 AAC 48.045, stating, "The only requirement for classifying pipeline carrier information confidential under AS 42.06.445(c) is that it be filed with a legend stating 'Confidential Pursuant to AS 42.06.445(c).'" The commission further stated, "If a pipeline carrier does not affix the legend, the protections of AS 42.06.445(c) are deemed waived."²⁰

Commissioner McAlpine argued that in the filings made for the BP-Hilcorp transaction, the petitioners failed to note on the application that they sought the protection of AS 46.02.445(c). McAlpine stated

I take the former Commission's guidance at its word and would have deemed the protection to have been waived. At Petitioners' own request, I would have applied a balancing test. With this in mind, I believe that airing these documents publicly and subjecting the entire transaction to intense debate far outweighs the petitioners' interest in keeping them confidential. Instead, Hilcorp has invited an unnecessary public relations nightmare over what may come of the lifeblood of our state. Now public scrutiny may well be based on speculation as to what the documents may or may not say rather than a complete airing of the facts as they exist.

The March 12 order that McAlpine dissented from included a discussion of the filing requirement as part of a response to comments submitted by the City of Valdez relating to the same issue. The commission explained that the requirement to file documents with a legend stating, "Confidential Pursuant to AS 42.06.445(c)" was to avoid an applicant having to file a petition requesting confidential treatment under 3 AAC 48.045 "when the requirements of AS 42.06.445(c) are straightforward and need no detailed explanation." The order states, "This accommodation was never intended to prevent filing a petition for confidential treatment under 3 AAC 48.045 or to place a pipeline carrier in the position of losing the protection of

AS 42.06.445(c) if it chooses to file a petition.” A majority of the commission ruled that the petitioners did not waive the protection of AS 42.06.445(c) by failing to include the legend on its filings. The order stands and the financial statements remain confidential.

QUESTIONS FOR RCA:

1. How will this ruling impact public disclosure of other documents submitted to the commission separate from the financial statements and purchase sale agreement?

Response: The Department of Natural Resources cannot speak for the Regulatory Commission of Alaska. But as a matter of due process, the Regulatory Commission of Alaska must weigh each request for confidential treatment on its own merits and will be looking to make subsequent determinations consistent with prior determinations.

IV. PUBLIC NOTICE AND PUBLIC COMMENTS

The commission issued public notices of the joint CPCN transfer applications, petitions for confidential treatment of information, and the waiver motions on October 4, 2019, October 23, 2019, and November 15, 2019. Comments were initially due October 25, 2019, but because of public requests, the commission extended the comment period twice – first until November 8, 2019 and then to December 13, 2019. The commission received over 200 public comments before the close of the comment period. Many commenters opposed either the waiver requests, the petitions for confidential treatment of information or both.²¹

QUESTIONS FOR RCA:

1. Will there be other opportunities for public comment?

Response: Further public comment is at the discretion of the Regulatory Commission of Alaska.

¹ Chapter 199 SLA 1959; Chapter 156 SLA 1960; Chapter 113 SLA 1970; Chapter 25 SLA 1999.

² Chapter 139 SLA 1972.

³ Chapter 110 SLA 1981.

⁴ AS 42.04.010, AS 42.04.020, AS 42.05.141, 3 AAC 48.151-160; AS 42.06.140.

⁵ AS 42.06.240; AS 42.06.270.

⁶ AS 42.06.305.

⁷ The previous holding that the applicants reference was in regard to the transfer of an owner’s interest in TAPS. The commission stated that in addition to it being in the best interest of the public that financially responsible and

technically proficient entities operate TAPS, it “is also in the best interest of the public that TAPS be operated by entities willing to do so.” Order P-03-014(1), February 27, 2004, pages 12-13.

⁸ “Order Requiring Filing,” Docket Nos. P-19-015, 016, 017, Order No. 7, April 2, 2020.

⁹ 3 AAC 48.625(a)(7)(C) and (D).

¹⁰ “Order Granting Motions for Waiver; Denying Motion to Strike and Motion for Expedited Consideration; Declaring Financial Statements Confidential Under AS 42.06.445(c); Finding Request for Confidential Treatment of Financial Statements Under 3 AAC 48.045 Moot; and Addressing Timeline for Decision,” Docket Nos. P-19-015, 016, 017, 019, March 12, 2020. In addition to the TAPS, Milne Point, and PTE transfers, the order also applies to a transfer from ExxonMobil Pipeline Company to BP Transportation (Alaska), a 100% subsidiary of BPPA, of a 5% portion of Exxon’s 68% interest in the Point Thomson pipeline (Docket No. P-19-019)).

¹¹ “Harvest Alaska LLC and BP Pipelines (Alaska) Inc.’s Petition for Confidential Treatment of Purchase and Sale Agreement, Docket Nos. P-19-015, 016, 017, December 23, 2019.

¹² The petitioners cite to Order U-16-012(14), April 21, 2016, p.2, regarding a joint request for Municipal Light & Power and Chugach Electric to acquire ConocoPhillips Alaska’s interest in the Beluga River Unit.

¹³ “Order Granting Petition for Confidential Treatment of Purchase and Sale Agreement, Extending Deadline to Rule on Petitions for Confidential Treatment of Financial Statements and Motions for Waiver, and Requiring Filing,” Docket Nos. P-19-015, 016, 017, February 11, 2020, pgs 8-9.

¹⁴ “Harvest Alaska, LLC, Hilcorp Alaska, LLC, and Harvest Midstream I, LP’s Petition for Confidential Treatment of Financial Statements,” Docket No. P-19-017, September 27, 2019; “Harvest Alaska, LLC, Hilcorp Alaska, LLC, and Harvest Midstream I, LP’s Petition for Confidential Treatment of Financial Statements,” Docket No. P-19-016, September 27, 2019.

¹⁵ “Hilcorp Energy I, LP and Hilcorp Energy Company’s Petition for Confidential Treatment of Financial Statements,” Docket Nos. P-19-015, 016, 017, December 23, 2019.

¹⁶ BPPA’s Petition for Confidential Treatment of Financial Statements,” Docket Nos. P-19-015, 016, 017, December 23, 2019.

¹⁷ “Order Granting Petition for Confidential Treatment of Purchase and Sale Agreement, Extending Deadline to Rule on Petitions for Confidential Treatment of Financial Statements and Motions for Waiver, and Requiring Filing,” Docket Nos. P-19-015, 016, 017, February 11, 2020.

¹⁸ “Applicants’ Joint Response to Order No. 5,” Docket Nos. P-19-015, 016, 017, February 18, 2020.

¹⁹ “Order Granting Motions for Waiver; Denying Motion to Strike and Motion for Expedited Consideration; Declaring Financial Statements Confidential Under AS 42.06.445(c); Finding Request for Confidential Treatment of Financial Statements Under 3 AAC 48.045 Moot; and Addressing Timeline for Decision,” Docket Nos. P-19-015, 016, 017, 019, March 12, 2020.

²⁰ “Dissenting Statement of Commissioner McAlpine,” Docket Nos. P-19-015, 016, 017, 019, March 12, 2020; “Order Finding that Information Contained in TAPS Settlement Methodology Disks or Derived from them is Confidential and Denying Request for Nonconfidential Treatment,” Docket No. P-97-4, Order No. 76, April 7, 2000, pgs 12-13.

²¹ “Order Granting Petition for Confidential Treatment of Purchase and Sale Agreement, Extending Deadline to Rule on Petitions for Confidential Treatment of Financial Statements and Motions for Waiver, and Requiring Filing,” Docket Nos. P-19-015, 016, 017, February 11, 2020, pg. 3.

From: [Caltagirone, Peter \(DNR\)](#)
To: [Lisa Weissler](#)
Cc: [Feige, Corri A \(DNR\)](#)
Subject: AGDC Responses
Date: Monday, June 15, 2020 1:08:29 PM

Good afternoon, Lisa:

Attached are AGDC's responses to your inquiries. You'll notice, in addition to responses to your inquiries, AGDC offered some suggested revisions to your narrative text in redlined format. The responses and edits were drafted by AGDC president Frank Richards; I respectfully recommend reaching out to him directly if you have questions.

In response to your question: **"[h]as Hilcorp given any indication about its interests in developing a North Slope gas project?"**, I offer that while DNR cannot speak for Hilcorp, in our conversations with their principals they have consistently maintained their openness to explore a project that is economically viable.

Please let me know of questions.

Warm regards,

Peter

Peter J. Caltagirone, Esq.

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State of Alaska, Department of Natural Resources

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**BP & HILCORP TRANSACTION –
STATE AUTHORITY AND REGULATORY PROCESS**

DRAFT – AGDC

June 2, 2020

Prepared by Lisa Weissler, Weissler Consulting

For the Alaska Legislative Budget and Audit Committee

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ALASKA GASLINE DEVELOPMENT CORPORATION

The Alaska Gasline Development Corporation (AGDC) is an independent, public corporation primarily responsible for leading the state's efforts in developing the transportation infrastructure needed to move North Slope natural gas to local and international markets. AGDC is governed by a board of directors consisting of five public members appointed by the governor and confirmed by the legislature, and two people designated by the governor that are the head of a principal department of the state, except not the commissioners of natural resources or revenue. The corporation is housed in the Department of Commerce, Community, and Economic Development solely for administrative purposes and is a separate entity distinct from Alaska state government.

Starting from the 1970s, AGDC is the latest in a long series of attempts by private sector developers and the State of Alaska to construct a natural gas pipeline and associated infrastructure for transporting North Slope gas to market. For a variety of reasons, each effort faded, failed or merged into the next strategy.

In 2002, Alaska voters passed a ballot initiative that established the Alaska Natural Gas Development Authority to build a gas pipeline from Prudhoe Bay to tidewater on Prince William Sound. In 2006, the administration negotiated a contract under the Stranded Gas Development Act (SGDA) of 1998 that authorized the Department of Revenue commissioner to negotiate tax and royalty rates and other fiscal terms with a gas pipeline project sponsor. The 2006 contract mostly focused on establishing acceptable fiscal terms for pipeline construction by the three major North Slope producers – BP, ConocoPhillips and ExxonMobil. This was followed in 2007 by the Alaska Gasline Inducement Act (AGIA) that offered state financial subsidies to induce an

independent pipeline company to perform certain pipeline pre-development and authorization work in advance of gas sales and shipping commitments from the producers.

Under the auspices of AGIA, the independent pipeline company TransCanada Alaska began taking steps to construct an overland gas pipeline through Canada to North American markets. In 2010, the Alaska Housing Finance Corporation was authorized to study a pipeline for transporting gas from the North Slope to Fairbanks and Southcentral Alaska.¹

In 2013, the Alaska Gasline Development Corporation was created to advance the Alaska Stand Alone Pipeline Project (ASAP) – a state-sponsored project to construct a pipeline to transport North Slope natural gas for instate use. Meanwhile, the economic feasibility of the overland pipeline project under AGIA was diminishing due to the fracking boom that was glutting the North American market with gas. Along with BP, ConocoPhillips and ExxonMobil, the state and TransCanada began shifting from the overland project to consideration of a liquefied natural gas (LNG) export project. LNG projects are more complex than natural gas transportation projects and entail significant additional upfront costs and coordination among all parties.²

In early 2014, the State of Alaska, AGDC, TransCanada Alaska and the three major North Slope gas producers entered into a “Heads of Agreement” (HOA) that established the guiding principles and potential terms for a joint venture to pursue a new project titled “Alaska Liquefied Natural Gas Project (AKLNG).” The proposed project included a gas treatment plant on the North Slope, a pipeline to a tidewater LNG ~~treatment~~ facility, a marine terminal for transport to Asian markets, and up to five offtake points along the pipeline for distribution of gas instate.³

The state, through a complicated arrangement with TransCanada Alaska, would own 25 percent of AKLNG pipeline and gas treatment facilities, and through AGDC would own 25

percent of the liquefaction facility, with ExxonMobil, BP and ConocoPhillips owning the rest.

Following up on the HOA, the 2014 legislature passed legislation sanctioning the state administration moving forward with taking an ownership interest in the AKLNG project and authorizing AGDC to enter a Pre-Front End Engineering and Design Joint Venture Agreement (Pre-FEED JVA) and other commercial agreements related to the state's role as a pipeline owner.⁴

In 2015, the legislature authorized AGDC to buy out TransCanada's share of the AKLNG project. The next year, falling LNG prices in the Asian market led the three North Slope producers to ~~pull out~~ complete their obligations under the Pre-FEED JVA of AKLNG and provide AGDC unencumbered rights to advance the project. Transition of the project to AGDC leadership was completed in in-late 2016 and AGDC filed an application with the Federal Energy Regulatory Commission (FERC) pursuant to Section 3 of the Natural Gas Act on April 17, 2017 for authorization to construct and operate the project. The state continued commercial development efforts to advance the project and in 2017, AGDC entered a nonbinding agreement with three Chinese firms that included ~~China buying~~ purchase of up to 75 percent of the project's liquified natural gas and ~~providing~~ provided 75 percent of the project financing. The agreement ~~was scrapped~~ expired in 2019, ~~and AGDC is once again changing course~~.

AGDC entered into an Alaska LNG Cost Sharing Agreement with BP and ExxonMobil in March 2019. The agreement is effective through June 30, 2020 and provides support from BP and ExxonMobil through direct funding and access to subject matter experts for major permitting and cost reduction efforts to de-risk and improve the economics of the project.

AGDC's Current Activities

Under its broad authority to develop natural gas pipelines for the benefit of the people of the state, AGDC is continuing to look for ways to develop transportation infrastructure for North Slope gas. In testimony before the House Resources Committee in January 2020, AGDC's interim president Joe Dubler informed legislators that in 2019, AGDC began updating cost ~~factor~~estimates to determine whether the AKLNG project could be competitive on the world market and ~~was worked~~working to complete the ~~Federal Energy Regulatory Commission~~ (FERC) regulatory process ~~and other major permitting and approval activities.~~ FERC subsequently published the final Environmental Impact Statement for the project on March 6, 2020. Following that testimony, in May 2020, FERC ~~amnd~~ issued its ~~authorization~~ formal Section 3 ~~Order authorizing~~ for the project on May 21, 2020.⁵

~~Dubler said that~~ AGDC is continuing efforts to find third parties to invest in, own, build, and operate the AKLNG project. AGDC's role ~~would~~will not be as the project's sponsor, but rather as a representative for the state's interests including representing the state in commercial negotiations. ~~He anticipates anticipated that if~~ if the project cost projections are favorable, AGDC believes that third parties will become equity investors and participate in the project and AGDC's role would be relatively limited with the third parties taking the lead and most of the risk of project construction and operations.

QUESTIONS FOR ADGC:

1. Please provide any updates to AGDC's current activities.

Response: On April 9, 2020, AGDC's Board of Directors approved AGDC's Strategic Plan in Resolution 2020-02. The Strategic Plan recognizes that AGDC formed key strategic relationships in 2019, collectively referred to as the "Strategic Parties" who have expressed interest in the Project and whom AGDC is collaborating with closely. Funding is being provided by BP and ExxonMobil through June 2020. AGDC's focus is on moving the Alaska LNG Project

forward through regulatory de-risking and cost reduction and extension of Strategic Party agreements are planned. The objectives of the approved Strategic Plan include the following:

- a. Maintain the maximum value of State of Alaska investment in the Alaska LNG Project, while minimizing ongoing AGDC spend.
- b. Improve the economic viability of the Alaska LNG Project through June 30, 2020 as the designated Project Sponsor providing overall coordination for the Project.
- c. Determine the feasibility of Project economics in association with Strategic Parties.
- d. Effect the designation of a new Project Sponsor(s) by December 31, 2020.
- e. Achieve a positive transition by June 30, 2021 based on a FEED Stage Gate Decision Support Package (DSP), including a defined equity structure, defined financing structure, transition to the new Project Sponsor(s), and funding for ongoing WP&B, as appropriate.
- f. Manage alternative scenarios systematically, such as ongoing state equity participation, Project suspension/archive, and/or AGDC wind-down.

AGDC has completed a Class 4 Cost Estimate update with support from Fluor Corporation and the approved project cost estimate has been provided to the joint commercial modeling team with Strategic Parties for economic evaluation. The results of the updated economic modeling will be presented at the June 2020 AGDC Board of Directors meeting.

3.2. What is the status of the state's 25% share of the pipeline envisioned by the HOA and SB 138? Is there still an intent for the state to maintain some sort of partial ownership in the project?

Response: AGDC is currently the sole owner and leading the development of the project but State of Alaska participation in equity or other aspects of the project has not been defined to date. AGDC's Strategic Plan assumes AGDC and the Strategic Parties will continue to identify Alaska LNG Project interest from others, develop the optimal project structure, and identify a designated new Project Sponsor by December 31, 2020. The AGDC Board of Directors and key State of Alaska stakeholders (Executive and Legislative) will define an acceptable role, if any, in the project during this process. The objective is to achieve a positive transition by June 30, 2021 based on a FEED Stage Gate Decision Support Package (DSP), including a defined equity structure, defined financing structure, transition to the new Project Sponsor(s), and funding for ongoing Work Program & Budget, as appropriate.

BP-Hilcorp Transaction – North Slope Natural Gas Projects

The success of any North Slope gas project requires the cooperation and participation of the major oil and gas producers because they hold the rights to develop and produce the gas that would come mainly from the Point Thomson and Prudhoe Bay fields. With the BP-Hilcorp

Transaction, Hilcorp will be stepping into BP's shoes and joining ExxonMobil and ConocoPhillips as a major gas producer from these fields.

In March 2019, AGDC signed an Alaska LNG Cost Sharing Agreement ~~a collaboration agreement~~ with BP and ExxonMobil to work together on finding ways to advance the Alaska LNG project. BP and ExxonMobil agreed to provide up to \$10 million each to fund AGDC's ongoing efforts to ~~analyze AKLNG~~ de-risk the project ~~costs~~ through regulatory approval and cost reduction. They also provided technical assistance with ~~the EIS~~ regulatory and technical review and analysis; and are assisting with evaluation of potential cost reduction opportunities.

QUESTIONS FOR ADGC:

1. In legislative testimony, BP Alaska LNG, LLC (BPALL) is described as owning one-third of outstanding limited liability company interest in AKLNG. Apparently, this interest will transfer to Hilcorp. Please provide a clear explanation of what will be Hilcorp's role in AKLNG following the transfer of BPALL and completion of the BP-Hilcorp Transaction.

Response: The original Pre-FEED JVA parties retain joint ownership rights to JVA deliverables issued to four parties in 2016. AGDC created additional project data, content, and regulatory permits and approvals since 2016 in which it holds 100% ownership. Through holding entities such as BPALL mentioned above, BP, ExxonMobil, and ConocoPhillips additionally hold one-third interest each in Alaska LNG, LLC. This LLC is separate from "the project" and was formed by the Producers in the initial stages of the AKLNG project to purchase and maintain real property in Nikiski for the LNG Facility, and to conduct select regulatory filings outside of the Pre-FEED JVA. AGDC is not a member of the LLC but is progressing a purchase option agreement that will consolidate real property required for construction of the project and be part of an overall venture structure.

Hilcorp has publically stated that it intends to sell natural gas to the project. Venture participation beyond June 30, 2020 has not been defined for any participant, including Hilcorp. AGDC cannot speak to Hilcorp's future plans.

2. Is the collaboration agreement between AGDC and BP and ExxonMobil public? If so, please provide the document as part of the response to questions for this report.

Response: The Alaska LNG Cost Sharing Agreement is a confidential agreement.

3. What is the status of BP's payment for AGDC operations?

Response: BP is fully meeting its obligations to date under the Alaska LNG Cost Sharing Agreement.

4. Has Hilcorp given any indication about its interests in developing a North Slope gas project?

Response: AGDC is not a party to the Hilcorp acquisition. AGDC cannot speak to Hilcorp's intentions with regards to the AKLNG project.

¹ Chapter 104 SLA 1998; Chapter 22 SLA 2007; 2002 Ballot Measure No. 3; Chapter 7 SLA 2010.

² Chapter 11 SLA 2013.

³ "Heads of Agreement" by and Among the Administration of the State of Alaska, Alaska Gasline Development Corporation, TransCanada Alaska Development Inc., ExxonMobil Alaska Production Inc, ConocoPhillips Alaska, Inc, BP Exploration (Alaska) Inc. For the Alaska LNG Project, January 14, 2014.

⁴ "Memorandum of Understanding," between TransCanada Alaska Company LLC, Foothills Pipe Lines LTD, TransCanada Alaska Development Inc., and the State of Alaska, December 12, 2013; Chapter 14 SLA 14.

⁵ House Resources Committee Minutes January 22, 2020.

**BP & HILCORP TRANSACTION –
STATE AUTHORITY AND REGULATORY PROCESS**

DRAFT – DEC SECTION

June 2, 2020

Prepared by Lisa Weissler, Weissler Consulting

For the Alaska Legislative Budget and Audit Committee

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The Alaska Department of Environmental Conservation (DEC) is broadly charged with implementing the laws and promulgating and enforcing the regulations that address environmental quality issues throughout the state, including air and water quality, land and subsurface land pollution, oil spill prevention, solid waste management, pesticides and hazardous substances control, pollution prevention, public health, and food safety.

Part of the reason for the department's creation in 1971 was the need to balance increasing oil and gas activities in the state with protection of Alaska's other natural resources. In his transmittal letter for the original legislation creating the department, Governor Bill Egan highlighted the environmental challenge of the construction of the Trans Alaska Pipeline System, stating "By authorizing the department to set the environmental standards for the construction and operation of the pipeline, this legislation enables the government of the State to promote the most rapid development of our rich petroleum resources while assuring the protection and conservation of the Alaskan environment."¹

With the first flow of oil from the North Slope to Valdez in June 1977 came increased concerns about the risk of spills from oil transportation, exploration and production operations. In 1980, Alaska enacted comprehensive legislation giving DEC the authority necessary to prevent and mitigate the discharge of oil and other hazardous substances on land and in the state's waters. A key component of the legislation was making the discharger responsible for maintaining sufficient resources and capability to contain and cleanup discharges of oil and to cover the cost of damages for those injured by a discharge. A decade later, following the devastation of the Exxon Valdez oil spill in Prince William Sound, new legislation strengthened

the requirements for oil discharge prevention and contingency plans and established response planning standards.²

Under current law, DEC’s primary authorities involved in the BP-Hilcorp Transaction are requirements for companies engaged in oil and gas operations in the state to prepare oil discharge prevention and contingency plans and to provide proof of financial responsibility. The department is also overseeing ~~BP’s continuing~~ liability for clean-up of sites that were contaminated prior to the Transaction.

I. OIL DISCHARGE PREVENTION AND CONTINGENCY PLANS

Among other things, AS 46.04.030 requires a DEC approved oil discharge prevention and contingency plan prior to the operation of oil terminal facilities, pipelines, exploration or production facilities, and tankers and barges in the state or within the waters of the state. Contingency plans detail how a company will prevent and respond to oil spills for which the company is responsible. Pursuant to DEC regulation, a contingency plan is prepared by the responsible company and must contain a Response Action Plan that provides “sufficient detail to clearly guide responders in an emergency event” for discharges of any size. A contingency plan must also contain a Prevention Plan that is a “detailed description of all oil discharge prevention measures and policies employed at the facility, vessel, or operation, with reference to the specific oil discharge risks involved.” A supplemental information section provides background and verification information; another section addresses the use of best available technology; and a fifth section requires a “calculation of the applicable response planning standards” – state established spill volumes and timeframes applicable to response planning for each regulated operation.³

Commented [PE1]: Based on information provided by Hilcorp and BP Exploration (Alaska), Inc. (BPXA) to date, DEC’s understanding is that the Transaction will involve Hilcorp purchasing BPXA stock (acquiring BPXA) and then, subsequently renaming the entity. Consequently, we do not expect that BPXA will exist as a separate entity post-transaction. This understanding colors DEC’s responses provided below.

To change the owner or operator of a facility or operation with an approved contingency plan, 18 AAC 75.414 requires the new owner or operator to submit an application as a plan amendment. Alternatively, an owner or operator with an existing contingency plan that is taking on new facilities may apply for a plan amendment to add new physical locations to its existing plan. Pursuant to 18 AAC 75.415, ~~DEC classifies plan amendments as major or minor. W~~hen a plan amendment ~~change in owner or operator application~~ is submitted, DEC determines whether the change will be reviewed as a major or minor amendment.

The process for minor amendments is minimal – the applicant must provide all copies of the amendment to DEC; and provide copies of the final version of the plan to DNR, the Department of Fish and Game, regional citizen’s advisory councils, and other persons designated by DEC.⁴

The process for a major amendment includes a public comment period from 30 to 45 days depending on the complexity of the application package or whether DEC determines a longer comment period is in the public interest. Public and agency comments may include requests for additional information. If the department determines additional information is needed to review the plan, DEC will notify the applicant no later than 90-days after the end of the initial public comment period and may set a deadline for submittal of the information. Once the applicant fulfills the original additional information request and any subsequent requests by the department, a minimum 10-day public comment period is opened for review of the additional information. A public hearing will be held if the department determines good cause exists. The department has seven working days from the end of the public comment period to determine whether the application package is complete; and then 65-days to approve, approve with conditions or disapprove an application package.⁵

If aggrieved by the department's decision, the applicant or any person who submitted timely comments on the application may request an informal review or adjudicatory hearing. When the process is complete, a DEC contingency plan approval is valid for a term of five years from the date it is issued unless the department specifies a shorter term in the approval letter and certificate of approval.⁶

BP-Hilcorp Transaction – Contingency Plan Approval

Hilcorp has an existing regional contingency plan for their current North Slope operations. BP has an oil discharge prevention and contingency plan for the Greater Prudhoe Bay Unit. ~~Hilcorp submitted a change of owner amendment application for the Prudhoe Unit. The change was applied for as a major amendment to Hilcorp's North Slope Production plan which is currently in review. That amendment will add the Prudhoe Bay oilfields to their current and approved plan. DEC is reviewing the application as a major amendment.~~ The public comment commenced on February 7, 2020.

QUESTIONS FOR DEC:

1. When was the amendment application submitted?

Response: The major amendment application was submitted on January 21, 2020.

2. What is the current status and timing of the amendment application?

Response: The major milestones during the review process to date are as follows:

Event/Action	Date
Pre-application meetings	11/20/19 & 12/18/19
Application received	1/21/2020
Sufficient for review determination	1/30/2020
Start of comment period	2/7/2020
End of comment period	3/23/2020
1 st Request for additional information (RAI) issued	5/8/2020
Response to 1 st RAI received	5/29/2020

On June 10th, SPAR began a ten-day public comment period on the additional information received from Hilcorp on May 29. That public comment period closes on June 19th.

3. The Transaction entails a transfer from a large international company to an independent company with potentially fewer resources. How will DEC assess whether Hilcorp has sufficient resources and financial capability to fulfill contingency plan requirements for both its existing assets and the newly acquired Prudhoe Bay assets? What happens if it is

determined that the company does not have the necessary resources and financial capability?

Response: Under AS 46.04.030, a person may not operate a facility except in compliance with a DEC-approved contingency plan. 18 AAC 75.425(c)(3) requires that the contingency plan contain a statement signed by an individual with appropriate authority, committing the oil discharge prevention and response resources necessary to implement the plan. Pursuant to 18 AAC 75.445, DEC will not approve a plan unless it contains sufficient personnel, equipment, and procedures to respond to a spill. If DEC determines that a plan does not include those resources, DEC will not approve the plan, and the applicant may not lawfully operate the facility.

As described below, under AS 46.04.040, a person may not operate a facility unless DEC has approved the person's proof of financial responsibility. Thus, if DEC, in applying the regulations in Article 2 of 18 AAC 75, determines an entity has insufficient financial responsibility for the associated response planning standard, it may not lawfully operate the facility.

II. PROOF OF FINANCIAL RESPONSIBILITY

AS 46.04.040 requires the owner or operator of an oil terminal facility, a pipeline or an exploration or production facility, or a tanker or barge in the state to have a DEC approved "Proof of Financial Responsibility" to ensure the company has the financial resources to respond to an oil discharge. The amount is based on the company's facility with the highest financial responsibility requirement – each facility is not required to have a separate proof of financial responsibility. The maximum proof required for any facility except tankers is \$93.5 million. Proof of financial responsibility may be by self-insurance, insurance, surety, guarantee, letter of credit approved by the department, or other proof approved by the department. Proof of financial responsibility requires annual DEC approval.

Losses that may be compensated through the proof of financial responsibility statute include the full amount of actual damages caused to the state by oil discharges, reckless or negligent operation of a tank vessel and ballast water discharge; liability for the release of hazardous substances; civil penalties for discharges of oil or crude oil; liability in a civil action for violations of DEC laws and regulations; or civil penalties for a failure to comply with an

approved or modified contingency plan, failure to have access to the resources identified in the plan, or failure to respond to a spill with those resources in the shortest possible time.⁷

To add facilities to its proof of financial responsibility, an owner or operator must submit a letter to DEC requesting an amendment to the application. The letter must include documents that verify to the department's satisfaction that the additional operation is covered by the current approved proof of financial responsibility.⁸

Records received by the department related to proof of financial responsibility, including financial responsibility applications, operations files, and proof of financial ability to respond to a spill are subject to the Public Record Disclosures Act that opens public records of all public agencies to the public unless exempted.⁹

BP-Hilcorp Transaction – Proof of Financial Responsibility

BP's proof of financial responsibility cannot be transferred as part of the Transaction. Hilcorp has demonstrated proof of financial responsibility for the maximum \$93.5 million for its current assets, primarily using commercial insurance policies. Before the Transaction closes, Hilcorp must apply for DEC approval to include the newly acquired facilities under its existing proof of financial responsibility.

QUESTIONS FOR DEC:

1. Has Hilcorp submitted an application requesting an amendment to its existing proof of financial responsibility?

Response: Hilcorp submitted the financial responsibility application related to their acquisition of the BPXA facilities to DEC on June 16. DEC will review the application expeditiously and anticipates that the financial responsibility will be in place by the time of the transaction.

2. Are the application and associated documents available for public review?

Response: Neither the financial responsibility application nor supporting documents are posted on the DEC website. As provided in 18 AAC 75.237, any person may request the application and supporting documents through a public record request under AS

40.25.120. Once DEC has these materials, we can provide these documents to LB&A if desired.

3. Is there any opportunity for public comment in the course of DEC's decision-making process regarding proof of financial responsibility?

Response: There is no public review or public comment structure in regulations regarding the financial responsibility review and approval process.

III. CONTAMINATED SITES LIABILITY

Alaska law imposes strict liability for the release of hazardous substances. Strict liability means that a person who owns or operates a facility at which is responsible for a spill-spill occurs must contain and clean up the spill and compensate those for damaged-damages caused by the spill, even if the person did not intentionally cause the spill or act negligently when the spill occurred without the necessity for a showing that the person was negligent or intended harm. The reason foring behind strict liability is the high risk of harm that results from a release of hazardous substances such as oil, which creates this is that those who handle hazardous substances such as oil have a heightened duty to exercise extreme caution because the risk of harm from a release is so high.

Alaska law also AS 46.03.822 establishes imposes strict joint and several liability for on owners and shippers of oil or other hazardous substances for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village associated with an unpermitted release of oil or hazardous substances. The combination of strict liability and joint and several liability means that each owner or operator of a facility or vessel This means that two or more parties can be held independently liable for the full amount of damages from a spill, regardless of their respective degrees of fault.

Commented [n2]: Note to Lisa: We thought it important to show that strict liability is different from joint and several liability, and that both of them combine to create the liability regime that owners and operators are subject to

BP-Hilcorp Transaction – Responsibility for Contaminated Sites and Clean-up

NOTE: The following is from the December 16, 2019 Joint Resources Committee Hearing.

Prepared by Lisa Weissler, Weissler Consulting
June 2, 2020

DRAFT

For contamination existing at the time of the BP-Hilcorp Transaction, BP and Hilcorp will both be held liable. Moving forward from the sale, Hilcorp will be liable for contamination it contributes to or causes. While BP will continue to be responsible for contamination existing prior to the Transaction, Hilcorp will likely undertake cleanup activities or do the long-term monitoring or implementation of institutional controls.

On the Greater Prudhoe Bay Unit, there are both active contaminated sites and cleanup that is complete and subject to institutional controls. Cleanup subject to institutional controls are sites with contamination that remains in place for natural diminution over time. This is used when there is the potential to cause more environmental harm from removal of the contamination or where complete cleanup is infeasible at the site due to the presence of buildings or infrastructure. Cleanup with institutional controls means getting to a standard of cleanup level of cleanup and site characterization such that the release no longer causes significant risk to human health or the environment as long as the contamination is managed appropriately. approved by the state and to the satisfaction of DEC.

Commented [PE3]: Based on more recent information provided by Hilcorp and BPXA, DEC's understanding is that the Transaction will involve Hilcorp purchasing BPXA stock (acquiring BPXA) and then, subsequently renaming the entity. Consequently, we do not expect that BPXA will exist as a separate entity post-transaction. DEC is working with the companies to better define the responsibilities for existing contamination going forward.

QUESTIONS FOR DEC:

1. How will DEC ensure that Hilcorp has the resources and financial capability to take on cleanup activities for both its current and acquired assets?

Response: AS 46.04.040(i) provides that the proof of financial responsibility that Hilcorp must provide to DEC could be used to address contaminated sites. If Hilcorp is unable to clean up a release they cause, the liability for that cleanup may fall to the landowner or other responsible parties. For acquired assets, where Hilcorp is unable to comply, DEC may pursue other responsible corporate entities.

Known contaminated sites and areas of suspected contamination (well houses for example) are included in the Resource Conservation and Recovery Act (RCRA) Administrative Order on Consent between BPXA and U.S Environmental Protection Agency.

2. How will DEC hold BP accountable for ongoing obligations for cleanup of contaminated sites existing prior to the Transaction?

Response: Hilcorp will assume these obligations as part of acquiring BPXA. Based on communications with Hilcorp and BPXA to date, DEC does not anticipate that BPXA will exist as a separate entity post-transaction. BPXA has always been responsive to DEC requests and we anticipate working with Hilcorp in a similar manner post-transaction. Should Hilcorp fail to continue honoring these obligations, DEC would refer the case to the Department of Law who would engage with Hilcorp and other potentially responsible parties to reach a settlement or other agreement short of litigation, if possible.

3. How many sites require continuing action that will be undertaken by Hilcorp?

Response: There are 20 sites in active status and 26 sites with institutional controls that may require long-term management. It should be anticipated that, even after the Transaction is completed, DEC could identify additional contaminated sites that existed before the Transaction, and thus may also be the responsibility of BPXA.

IV. OTHER PERMITS

Permits that will transfer as part of the Transaction are wastewater, air quality and dredge and fill permits. BPXA currently holds seven wastewater discharge permits ~~that will transfer to Hilcorp~~ and several different types of air quality permits ~~that will transfer~~. Certain of BPXA's eleven dredge and fill permits ~~certificates of reasonable assurance (CRAs) will also require a name change.~~

QUESTIONS FOR DEC:

1. What is the process for the permit transfers?

Response: In anticipation of Hilcorp's reorganization after acquiring BPXA, DEC's Water Division is working with the companies to submit a single request that covers all of the APDES authorizations as well as the dredge and fill CRAs. The Division plans to provide a spreadsheet with each of the transfer items and request the necessary updates to responsible parties, facility contacts, and billing contacts to be submitted with the single request. Because this is a requested transfer, it can be expedited (transferred in less than 30 days without a public notice).

Commented [PE4]: This section should also include requirements for solid waste sites (permitted facilities, Inactive Reserve Pits, and the EPA RCRA Order).

Drilling Waste Sites – These include permitted and active drilling waste treatment facilities, and long-term storage sites, as well as inactive and closed facilities. These facilities have financial assurance responsibilities. Solid Waste facilities require permitting under AS 46.03.100-120 and 18 AAC 60. Financial assurance for closure and post-closure care and monitoring is required under 18 AAC 60.265.

Solid waste items that will be transferred to Hilcorp's control include:

- 3 active permits, 1 inactive facility, and financial assurance for each of these
- 2 previously permitted facilities in post-closure monitoring that may require corrective action

DEC staff will work with Hilcorp on transferring the solid waste permits and has already been working with Hilcorp on the financial assurance requirements. There is no public notice or comment process associated with these changes.

Inactive Reserve Pits (IRPs) - These are legacy drilling waste disposal sites that were in use during the earlier years of oil and gas development. These sites were primarily in use prior to ADEC requiring permitting for such facilities. Solid Waste regulations require closure of IRPs under 18 AAC 60.440.

IRP items that BP (BP Remediation Management) will retain includes: long-term liability for closed exploration IRPs

IRP items that will be transferred to Hilcorp's control include:

- 17 working pads in the Western Operating Area of the Prudhoe Bay Unit that include reserve pits that remain to be excavated and closed At the end of pad life, ADEC and Hilcorp will enter into an agreement for the closure of these facilities, including financial assurance for each.
- 93 closed production and exploration IRP sites will become Hilcorp's responsibility for long term liability and corrective action, if required

Commented [PE5]: DEC isn't sure where 11 comes from. DEC Water Division is currently coordinating with Hilcorp/BP on which of the nine "active" dredge and fill certificates of reasonable assurance (CRA) will be transferred. There were 13 total with one expired and three NWP's leaving nine to consider.

Commented [PE6]: DEC does not issue the dredge and fill permits; those section 404 permits are under the purview of the Army Corps of Engineers. Instead, under section 401 of the Clean Water Act, DEC issues certificates of reasonable assurance which assess whether operations pursuant to the federal permit will comply with state requirements.

The process for updates will be similarly minor for air permits. To change the company name or responsible official for specific permits, Hilcorp/BPXA will submit a form (available at <http://dec.alaska.gov/air/air-permit/info/>) which DEC will process administratively. This does not take significant staff time and is generally turned around in a few days depending on staff workload.

2. Do any of the permit transfers require public notice or public notice and comment?

Response: These types of administrative actions do not require public notice or comment.

¹ Senate Journal, January 27, 1971, pg. 73.

² Chapter 116 SLA 1980; Chapter 191 SLA 1990.

³ 18 AAC 75.425.

⁴ 18 AAC 75.415(h); 18 AAC 75.408(c)(5).

⁵ 18 AAC 75.455.

⁶ 18 AAC 75.460; 18 AAC 15.185; 18 AAC 15.200.

⁷ AS 46.04.040(i); AS 46.03.760(d); AS 46.03.740 to .750; AS 46.03.822; AS 46.03.58-.760(a); AS 46.04.030(g).

⁸ 18 AAC 75.205 to .290.

⁹ 18 AAC 75.205 to .290.

From: [Lisa Weissler](#)
To: [Caltagirone, Peter \(DNR\)](#)
Cc: [Hauke, Aurora \(LEG\)](#)
Subject: DEC Follow-up
Date: Monday, June 22, 2020 11:45:20 AM

Hi Peter. I have a couple of follow-up questions for DEC:

1. I'd like to see the public comments received for Hilcorp's Oil Discharge Prevention and Contingency Plan amendment for both comment periods - one that closed on March 23 and one that closed on June 19. If it's not possible to provide access electronically, I'd appreciate knowing the number of comments submitted, who submitted them and the main issues raised by the comments.

2. I was a bit confused by DEC's notes regarding contaminated sites responsibility and want to make sure I got things right. I've attached the contaminated sites section with the troubling bit highlighted.

I'm hoping to wrap up the report this week so would greatly appreciate a response as soon as possible. Thank you! Lisa

From: [Caltagirone, Peter \(DNR\)](#)
To: [Lisa Weissler](#)
Cc: [Hauke, Aurora \(LEG\)](#); [Feige, Corri A \(DNR\)](#)
Subject: RE: DEC Follow-up
Date: Friday, June 26, 2020 10:54:00 AM

Lisa:

Please see attached from DEC in response to your follow up. DEC offered the attached redlines to your highlighted section, and there was only one comment received during the public comment periods, also attached.

I trust this satisfies your follow up request, but please let me know if not.

One request from our end – are you able to offer an updated timeline on when you will submit your report to the legislature? DNR, in the interests of transparency, has been placing public documents related to the transaction on our FAQ page. As I mentioned earlier, we'd like to post DNR's responses to your inquiry, but didn't want to get ahead of you in your report to the legislature, so we are waiting for you to finalize your report before we make our posting.

Warm regards,

Peter

Peter J. Caltagirone, Esq.
Senior Legal & Policy Advisor

State of Alaska, Department of Natural Resources
Commissioner's Office
907.269.8431
peter.caltagirone@alaska.gov

From: Caltagirone, Peter (DNR) <peter.caltagirone@alaska.gov>
Sent: Monday, June 22, 2020 11:48 AM
To: Lisa Weissler <lisaweissler@gmail.com>
Cc: Hauke, Aurora (LEG) <aurora.hauke@akleg.gov>
Subject: RE: DEC Follow-up

Lisa – Acknowledged. I'll circulate and get back to you ASAP.

Peter

Peter J. Caltagirone, Esq.
Senior Legal & Policy Advisor

State of Alaska, Department of Natural Resources
Commissioner's Office
907.269.8431

peter.caltagirone@alaska.gov

From: Lisa Weissler <lisaweissler@gmail.com>

Sent: Monday, June 22, 2020 11:43 AM

To: Caltagirone, Peter (DNR) <peter.caltagirone@alaska.gov>

Cc: Hauke, Aurora (LEG) <aurora.hauke@akleg.gov>

Subject: DEC Follow-up

Hi Peter. I have a couple of follow-up questions for DEC:

1. I'd like to see the public comments received for Hilcorp's Oil Discharge Prevention and Contingency Plan amendment for both comment periods - one that closed on March 23 and one that closed on June 19. If it's not possible to provide access electronically, I'd appreciate knowing the number of comments submitted, who submitted them and the main issues raised by the comments.

2. I was a bit confused by DEC's notes regarding contaminated sites responsibility and want to make sure I got things right. I've attached the contaminated sites section with the troubling bit highlighted.

I'm hoping to wrap up the report this week so would greatly appreciate a response as soon as possible. Thank you! Lisa

III. CONTAMINATED SITES LIABILITY

Alaska law imposes strict liability for the release of hazardous substances. Strict liability means that a person who owns or operates a facility at which a spill occurs must contain and clean up the spill and compensate for damages caused by the spill, even if the person did not intentionally cause the spill or act negligently when the spill occurred. The reason for strict liability is the high risk of harm that results from a release of hazardous substances such as oil, which creates a heightened duty to exercise extreme caution.

Alaska law also imposes joint and several liability on owners and shippers of oil or other hazardous substances for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village associated with an unpermitted release of oil or hazardous substances. The combination of strict liability and joint and several liability means that each owner or operator of a facility or vessel can be held independently liable for the full amount of damages from a spill, regardless of their respective degrees of fault.

BP-Hilcorp Transaction – Responsibility for Contaminated Sites and Clean-up

On the Greater Prudhoe Bay Unit, BPXA is responsible for both active contaminated sites and cleanup that is complete and subject to institutional controls. Cleanup complete with institutional controls are sites with contamination that remains in place for natural diminution over time. This is used when there is potential to cause more environmental harm from removal of the contamination or where complete cleanup is not feasible at the site due to the presence of buildings or infrastructure. Cleanup with institutional controls means getting to a level of cleanup and site characterization such that the release no longer causes significant risk to human health or the environment as long as the contamination is managed appropriately. There are 20 contaminated sites in active status and 26 sites with institutional controls that may require long-

term management. It should be anticipated that, even after the Transaction is completed, DEC could identify additional contaminated sites that existed before the Transaction, and so may also be the responsibility of BPXA.

DEC's understanding is that the Transaction will involve Hilcorp purchasing BPXA stock and so acquiring BPXA – the entity will be renamed Hilcorp North Slope, LLC. Consequently, DEC does not expect that BPXA will exist as a separate entity post-transaction. Hilcorp will assume ongoing obligations for cleanup of contaminated sites existing prior to the Transaction as part of acquiring BPXA. ~~DEC is working with the companies to better define the responsibilities for existing contamination going forward.~~

According to DEC, BPXA has always been responsive to DEC requests and the department anticipates working with Hilcorp in a similar manner post-transaction. Should Hilcorp fail to continue honoring these obligations, DEC would refer the case to the Department of Law who would engage with Hilcorp and other potentially responsible parties to reach a settlement or other agreement short of litigation, if possible.

AS 46.04.040(i) provides that the proof of financial responsibility that Hilcorp must provide to DEC could be used to address contaminated sites. If Hilcorp is unable to clean up a release ~~for which they cause, the liability are liable, for~~ that cleanup may fall to the landowner or other responsible parties. ~~For acquired assets, where Hilcorp is unable to comply, DEC may pursue other responsible corporate entities.~~

Huelskoetter, Victoria L (DEC)

From: T. B. <yahwehshalljudge@gmail.com>
Sent: Monday, March 23, 2020 2:35 PM
To: Huelskoetter, Victoria L (DEC)
Subject: Comment Period Extension

Hi Victoria, I have been very occupied with some issues. 😊 I think it would be appropriate at this time, to ask for a comment period extension. 😊 I would like to research Hilcorps, oil spill and contingency amendment, in order to find out, whether it is for their corporate special interest or specifically for the interest of preventing adverse environmental impacts, to North Slope Alaska's tundra and soil, (wetlands, gravel, clay) and water quality and quantity. Shouldn't an oil field contingency plan, regarding oil spills, really be called an inevitable tundra, soil and surface and subsurface water pollution, mitigation plan? I like to do research before I make a comment, so if you give me more time, I would be happy to respond with a more informed comment. I am uninformed regarding their amendment, and I would like to know if it is an environmentally friendly amendment or an "I don't give a damn" amendment, regarding oil field development, drilling rig operational oil spills and or pipeline oil spills and their subsequent contingency plans. Are North Slope tundra areas, soil, clay, gravel, permafrost areas and wet lands and surface water and or subsurface aquifers reclaimable, AFTER crude oil discharge, from rig and or pipeline oil spills? To the best of my knowledge, I don't think so and if so, in how many decades or centuries? But I'm willing to listen. 😊 Peacefully listen...☐ 😊 😊 . I believe that profiteering for profits sake, recklessly and carelessly, will most likely not produce an acceptably sustainable North Slope Region environment or an environmentally friendly, oil spill contingency plan. Thank you for this opportunity to comment. Respectfully submitted, @ 2:35 PM, AST, Monday, March 23, 2020. Sincerely, Theodore D.M. Bartko ☹☐

**BP & HILCORP TRANSACTION –
STATE AUTHORITY AND REGULATORY PROCESS**

DRAFT – AOGCC SECTION

May 21, 2020

Prepared by Lisa Weissler, Weissler Consulting

For the Alaska Legislative Budget and Audit Committee

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ALASKA OIL AND GAS CONSERVATION COMMISSION

The Alaska Oil and Gas Conservation Commission (AOGCC) is an independent quasi-judicial agency with jurisdiction over subsurface oil and gas operations on all public and private lands and waters throughout the state except in the Denali National Park and Preserve. To prevent waste of the resource and maximize oil and gas recovery, the commission regulates the drilling, production and plugging of wells; involuntary unitization; well spacing; the disposal of oil field wastes; and the prevention of blowouts and other accidents at well sites. The commission's responsibilities also include protecting the property rights among owners of oil and gas interests; protecting underground freshwater resources in oil and gas operations; and maintaining confidentiality of well data and information that companies are required to file with the commission.

Creation of the AOGCC has the distinction of being the first law specifically written to deal with oil and gas development and production in Alaska. In 1955, two years before the discovery of oil in commercial quantities, Territorial Representative Irene Ryan was convinced of Alaska's oil potential. Ryan grew up around the booming oil fields of Texas and Oklahoma. As a reporter for the oil section of a small-town Texas newspaper, she saw firsthand the Texas Railroad Commission's efforts to establish the laws that put an end to the drilling chaos and waste that plagued the country's first big oil rush.¹

Representative Ryan recognized that Alaska would soon face the same challenges as other oil producing states. Working with the commissioner of the Territorial Department of Mines, Ryan drafted the original legislation that established the Alaska Oil and Gas Conservation Commission. The three-member commission consisted of the governor, the territorial highway engineer and the Department of Mines commissioner and was charged with preventing waste of

the resource and providing for the orderly development of Alaska's oil and gas fields. The bill passed unanimously in both the House and the Senate with what could be considered lightning speed in the legislative process, taking just 34 days from introduction to Governor Frank Heintzleman's signature in March 1955.²

Ryan's 1955 legislation had staying power. Though many provisions have been modified and added to over the years, elements of the original law remain. Today's commission consists of three commissioners appointed by the governor and confirmed by the legislature. One commissioner must be a certified petroleum engineer and another a certified geologist, or someone that meets certain education requirements in the respective fields. The third member must have some relevant oil and gas experience but is not required to meet any specific educational requirements. The AOGCC is currently located for administrative purposes in the Department of Commerce, Community and Economic Development.³

There are two main AOGCC authorities that require commission approval in the course of the transfer of well operations from one company to another – (1) the designation of a new operator and (2) bonding. In addition, a Notice of Ownership form that identifies a new owner when a leased property is assigned or transferred must be filed with the commission; however, AOGCC approval of this change is not required.⁴

QUESTIONS FOR AOGCC:

1. Please identify and describe any other AOGCC authorizations or permits that need to be transferred to a new owner or well operator including whether they require AOGCC approval. **Response:** All existing valid permits, orders, etc. automatically transfer to the new operator when a property is sold. The AOGCC may revisit some of these if deemed necessary.

I. DESIGNATION OF OPERATOR

A “Permit to Drill” must be approved by the AOGCC before any oil or gas well can be drilled or re-drilled anywhere in the state. The application requires submission of extensive technical information for the proposed well and must include the identity of the designated well operator. Under 20 AAC 25.990, an operator is the designated person “who is responsible for drilling, development, production, injection, disposal, storage, abandonment, and location clearance.” An operator can be the owner of a property to which the owner has the right to drill and develop oil and gas or a person authorized by the owner.⁵

AOGCC approval is required when a new operator is designated for a well. A new operator must furnish a bond and, if required, a security. The commission’s acceptance of the new operator’s bond releases the former operator’s bonding obligation.⁶

QUESTIONS FOR AOGCC:

1. Please describe the AOGCC process and criteria for approving a new operator.
 - **Response:** The AOGCC’s process and criteria are to ensure that the proposed operator has sufficient bonding in place based on the number of permitted wells and that the current owners submit designation of new operator forms with appropriate signatures and contact information.
2. Has a designated operator approval ever been denied? If so, what were the reasons for denial?
 - **Response:** No.
3. Is there any opportunity for public comment in the designated operator approval process? If so, please describe the process and anticipated timeline.
 - **Response:** No.

BP-Hilcorp Transaction – Designation of Operator

NOTE: There is no information available online regarding the designation of operator applications for the BP-Hilcorp transactions, leaving just questions for this section.

QUESTIONS FOR AOGCC:

1. How many wells are being transferred as part of the BP-Hilcorp transaction? Is BPXA the operator of record for all wells being transferred?
 - **Response:** No wells are being transferred as part of the transaction. BPXA is currently the operator of record of 1,776 wells in the Prudhoe Bay Unit. The ownership of BPXA is changing from BP to Hilcorp. After the transaction concludes, BPXA will be renamed, yet it will still be the same corporate entity.
2. According to legislative testimony, BPXA is expected to remain the operator of record as a wholly owned subsidiary of Hilcorp though the name will be changed to Hilcorp. Will AOGCC still require the submission and approval of a designation of new operator? If not, please explain the procedural difference between a new operator taking over operation of an asset versus a new operator taking over the company that operates the asset.
 - **Response:** No, a designation of operator form will not be needed. The AOGCC's statutes deal with who owns and operates a property, not who owns the company that is the owner and/or operator. As we understand the transaction, Hilcorp Alaska, LLC will buy BPXA outright and rename it Hilcorp North Slope, LLC. Hilcorp will have two operating companies in Alaska, the existing Hilcorp Alaska (which currently operates and will continue to operate all of the Cook Inlet properties, Endicott, Milne Point, and Northstar) [they also operate Liberty but that is a 100% federal OCS project so it is beyond the jurisdiction of the AOGCC] and Hilcorp North Slope, LLC (which will operate all the wells BPXA is currently operating). The change from BPXA to Hilcorp North Slope, LLC is not a change of operator or ownership by our statutes or regulations, thus no designation of operator or notice of ownership forms will be required. Hilcorp North Slope, LLC will be required to furnish a bond in its name and the AOGCC will need to process new bonding forms for that change. Hilcorp North Slope, LLC must provide proof of the name change to the AOGCC so that well records may be updated with the proper name of the operator.
 - A notice of ownership form for the Milne Point leases will be required as that field is owned 50/50 by Hilcorp Alaska, LLC and BPXA. AOGCC's understanding is that after the transaction is complete, Milne Point will be 100% Hilcorp Alaska, LLC property, thus a 10-417 showing that the current 50% owned by BPXA is transferring to Hilcorp Alaska, LLC instead of Hilcorp North Slope, LLC will be needed.
 - In summary, a Designation of Operator (Form 10-411) will not be required, a Notice of Ownership (Form 10-417) will only be required for Milne Point, a new bond in Hilcorp North Slope, LLC's name will need to be filed with the AOGCC, and proof of the name change from BPXA to Hilcorp North Slope, LLC will be required to update AOGCC records.
3. Hilcorp Alaska has a history of non-compliance with AOGCC regulations, prompting the commission to write in a 2015 letter to the company, "The disregard for regulatory

compliance is endemic to Hilcorp's approach to its Alaska operations and virtually assured the occurrence of the incident at MPU J-08A. Hilcorp's conduct is inexcusable."

- How many decisions has the commission issued finding Hilcorp in violation of AOGCC regulations? Please provide a short description of each violation.
 - i. **Response:** Through May 31, 2020, the AOGCC has taken 43 total enforcement actions against Hilcorp Alaska, LLC. 34 of these were notices of violation and 9 were civil penalties. The violations broadly fall into the categories of failing to test equipment as required, failure to provide the AOGCC notice to witness tests that were conducted, defeated safety valve and blowout prevention equipment, using equipment ill-suited for the job, using unapproved custody transfer metering equipment, failure to get AOGCC approval to change permitted work, failure to submit required reports, and injection of fluids not approved for injection.
 - Is the commission able to consider Hilcorp's past performance as part of the designation of operator approval process? If not, why not? If so, is past performance being considered and if yes, how is it factored into the decision?
 - i. **Response:** No, there is no designation of operator application for the AOGCC to approve, and more generally, the AOGCC does not have the authority to consider anything other than adequacy of bonding when reviewing a designation of operator application. However, a permit to drill may be denied due to non-compliance.
 - If past performance is a factor in the approval of a designation of operator, and if AOGCC is not requiring approval of a new operator designation due to BPXA remaining the operator of record, does this create a loophole for Hilcorp to take over well operations while avoiding consideration of their past performance?
 - i. **Response:** Past performance is not a factor in approving designation of operator of record or designation of owner of record.
4. Can conditions besides bonding be included as part of the designation of operator approval?
- **Response:** Other conditions may not be included without a change to AOGCC statutes and/or regulations.
5. What would happen if the commission did not approve the designation of Hilcorp as a new operator?
- **Response:** AOGCC does not have the statutory or regulatory authority to withhold approval of Hilcorp North Slope, LLC as a new operator. And, this is a moot issue since there is no designation of operator application required for this transaction.

II. BONDING

AS 31.05.030(d)(4) authorizes the commission to require a “reasonable bond with sufficient surety conditions for the performance of the duty to plug each dry or abandoned well or the repair of wells causing waste.” The commission recently replaced 20 AAC 20.025, the bonding regulation originally adopted in 1980 and last amended in 1999. Unchanged is that bonds must be either a surety bond issued in favor of the AOGCC; or a personal bond of the operator accompanied by a security guaranteeing the operator’s performance.

The level of bonding is the major change to the regulation. The old regulation required a bond and if required, a security, in the amount of \$100,000 for one well and a minimum of \$200,000 for a “blanket bond” covering all of the operator’s wells in the state. The estimated average cost for plugging and abandoning wells is considerably more. The new regulation adopted in May 2019 establishes a five-tier schedule for bonds and securities guaranteeing the operator’s performance. Operators with up to ten wells must post \$400,000 per well; for 11 to 40 wells, \$6 million total; 41 to 100 wells, \$10 million; 101 to 1000 wells, \$20 million; and for over 1,000 wells, a \$30 million bond is required.

For operators with a bond in place with AOGCC on May 18, 2019, the regulations provide for an installment plan with four payments due in August of each year. The first installment was due on August 16, 2019; the second installment is due on August 16, 2020, the third August 16, 2021, and the final payment is due August 16, 2022. Each of the first three installment payments must be a minimum of \$500,000 or a specified portion of the difference between the operator’s existing level of bonding and, if required, the level of security, whichever is greater. The final installment must be the full amount of difference between the operator’s existing level of bonding and security if required.

Another addition to the revised regulations is that the commission will not approve a permit to drill application from an operator that is out of compliance with the bonding requirements.

QUESTIONS FOR AOGCC:

1. What is the estimated average cost of plugging and abandoning a North Slope well?

Response: AOGCC engaged in due diligence through the development of the new bonding regulation related to plugging and abandoning of wells. It was determined that the average cost to plug and abandon a well in the state is approximately \$400,000. The cost to plug and abandon a well on the north slope varies widely based on type of well, location, whether extra work like casing removal is involved, and access.

BP-Hilcorp Transaction – Bonding

In a letter dated March 2, 2020, the commission informed legislators that both BP and Hilcorp Alaska are compliant with the updated bonding regulation. According to the letter, BP Exploration Alaska (BPXA) operates approximately 1,776 wells and Hilcorp Alaska operates approximately 1,042. Each company is currently required to maintain \$30 million in bonding by August 16, 2022. Currently, AOGCC has a surety bond from BPXA and a surety bond from Hilcorp for their separate operations. Both bonds are in the amount of \$7.65 million with the next installment of \$7.45 million due August 16, 2020.

QUESTIONS FOR AOGCC:

1. Once the transfer is complete, what will be the amount due for each future installment payment by Hilcorp?

- **Response:** The next installment of \$7,450,000 is due in August 2020 for each operator of record with more than 1,000 wells. Hilcorp Alaska, LLC and Hilcorp North Slope, LLC will be considered separate operators by the AOGCC. Each company will have to comply with the bonding regulations and have \$30 million of bonding in place by August 2022 (provided neither company drops below 1,000 wells in the interim).

2. If the transaction concludes after the August 16, 2020 payment date and BP and Hilcorp each make their respective payments when due, would AOGCC give BP a partial refund of their payment?
 - **Response:** No, BPXA and Hilcorp Alaska, LLC are two different operators and each operator is required to provide a bond. That requirement does not change after the transaction is complete. When the deal closes, bonding furnished by BPXA will need to be converted to a bond in the name of Hilcorp North Slope, LLC.
3. Are any wells that are being transferred currently scheduled for plugging and abandonment? If so, will BP or Hilcorp be responsible for the work?
 - **Response:** Yes, plugging and abandonment liability will continue with the current operator being the responsible party. Wells plugged before the sale is completed will be plugged by BPXA, and wells that get plugged after the sale is completed will be plugged by Hilcorp North Slope, LLC.
4. What happens if Hilcorp or a future operator lacks the financial resources to plug and properly abandon wells in the future, and the bonds and any additional security is insufficient to cover the costs? Can BP or other prior operators be held responsible for the costs?
 - **Response:** The other working interest owners are responsible parties if the operator is not financially capable of plugging and abandoning the wells. Ultimately, the plugging and abandonment liability could fall to the landowner as the responsible party (in this case – the State of Alaska). AOGCC does not have authority to hold a prior operator responsible for plugging liability if the current operator lacks the financial resources.
5. Will Hilcorp or BP be liable should any of BP's prior plugged wells fail in the future?
 - **Response:** BP would be liable. Commission approval of the abandonment of a well does not relieve an operator of further claim by the commission after the abandonment, see 20 AAC 25.026.

¹ Irene Ryan, Unpublished Autobiography (Archives, University of Alaska, Fairbanks).

² Chapter 40 SLA 1955.

³ Effective February 13, 2019, AOGCC was transferred from the Department of Administration to the Department of Commerce, Community and Economic Development for the purpose of "efficient administration" that would "provide for appropriate and effective performance of administrative functions." Office of Governor Mike Dunleavy, Administrative Order No. 307, February 13, 2019.

⁴ 20 AAC 25.020; 20 AAC 25.025; 20 AAC 25.022.

⁵ AS 31.05.090; 20 AAC 25.005; 20 AAC 25.990(46); AS 31.05.170(10); 20 AAC 25.990(52).

⁶ 20 AAC 25.020.

From: [Lisa Weissler](#)
To: [Caltagirone, Peter \(DNR\)](#)
Cc: [Feige, Corri A \(DNR\)](#); [Hauke, Aurora \(LEG\)](#)
Subject: Re: AGDC Responses
Date: Tuesday, June 16, 2020 11:29:51 AM

Thank you Peter. I have a couple of follow-up questions for AOGCC:

1. I asked that AOGCC identify and describe any other authorizations or permits to be transferred. AOGCC responded that existing permits, orders, "etc." automatically transfer to the new operator when a property is sold and that AOGCC "may revisit some of these if deemed necessary." I would still like to know what these permits and orders are, and what might cause AOGCC to "revisit" some.

2. I'd appreciate a more complete explanation for why AOGCC is not requiring a Designation of Operator form subject to approval under 20 AAC 25.020. They say that AOGCC statutes deal with who owns and operates a property, not who owns the company that is the owner and/or operator. AOGCC asserts that since Hilcorp is buying BPXA outright, there is no change of operator or ownership of the property – that BPXA remains the same corporate entity with the new name "Hilcorp North Slope, LLC." This ignores that the owner and operator for the property will be entirely new. BPXA is a subsidiary of a major corporation headquartered in London; Hilcorp North Slope will be a subsidiary of an independent company headquartered in Texas. In effect, nothing will be left of the original owner/operator company. This strikes me as a significant change that would warrant a designation of new operator. Again, I'd appreciate an explanation to help me better understand AOGCC's decision.

Thanks again. Best regards, Lisa

On Jun 15, 2020, at 1:08 PM, Caltagirone, Peter (DNR)
<peter.caltagirone@alaska.gov> wrote:

Good afternoon, Lisa:

Attached are AGDC's responses to your inquiries. You'll notice, in addition to responses to your inquiries, AGDC offered some suggested revisions to your narrative text in redlined format. The responses and edits were drafted by AGDC president Frank Richards; I respectfully recommend reaching out to him directly if you have questions.

In response to your question: **"[h]as Hilcorp given any indication about its interests in developing a North Slope gas project?"**, I offer that while DNR cannot speak for Hilcorp, in our conversations with their principals they have consistently maintained their openness to explore a project that is economically viable.

Please let me know of questions.

Warm regards,

Peter

Peter J. Caltagirone, Esq.

Senior Legal & Policy Advisor

State of Alaska, Department of Natural Resources

Commissioner's Office

907.269.8431

peter.caltagirone@alaska.gov

<BP Hilcorp Report AGDC DRAFT 6-2_AGDC Edits and Responses.docx>

From: [Caltagirone, Peter \(DNR\)](#)
To: [Lisa Weissler](#)
Cc: [Feige, Corri A \(DNR\)](#); [Hauke, Aurora \(LEG\)](#)
Subject: RE: AGDC Responses
Date: Thursday, June 18, 2020 11:20:30 AM

Lisa:

Good morning. Answers to your follow-up questions to AOGCC are below in red. Please let me know of any questions. For now, I believe this closes out the agency responses we are coordinating for you, but if I've missed anything please let me know.

Warm regards,

Peter

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From: Lisa Weissler <lisaweissler@gmail.com>
Sent: Tuesday, June 16, 2020 11:30 AM
To: Caltagirone, Peter (DNR) <peter.caltagirone@alaska.gov>
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Subject: Re: AGDC Responses

Thank you Peter. I have a couple of follow-up questions for AOGCC:

1. I asked that AOGCC identify and describe any other authorizations or permits to be transferred. AOGCC responded that existing permits, orders, "etc." automatically transfer to the new operator when a property is sold and that AOGCC "may revisit some of these if deemed necessary." I would still like to know what these permits and orders are, and what might cause AOGCC to "revisit" some.

The permits are any currently active (not expired, withdrawn, or cancelled) drilling permits or sundry activity permits that the AOGCC has issued to BPXA that have not been completed as of the time the sale is closed. BPXA currently has about 10 permits to drill and probably 20 to 30 sundry activity permits that fall into this category. Additionally, any conservation order or injection order that the AOGCC has issued to BPXA will remain in effect after the sale closes. These include pool rules and area/disposal injection orders for all of the pools in Prudhoe Bay. It also includes downhole commingling authorizations and spacing exceptions. Additionally, other authorizations that the AOGCC has granted to BPXA, such as GOR waivers for reservoir data collection purposes and modifications to custody transfer metering systems will also remain in effect after the sale closes. If, during the course of its oversight duties, the AOGCC sees

something that Hilcorp was doing that is in accordance with the any of the orders/authorizations that we issued to BPXA that we think needs to be changed based on differences between how Hilcorp and BPXA operate we will reopen that order/authorization on our own initiative and make any necessary changes. Likewise, if Hilcorp finds anything they want to change about the any of the existing orders/authorizations they can apply to the AOGCC to have the pertinent orders/authorizations (for example: Hilcorp has already begun discussions with the AOGCC, DNR, and DOR about the possibility of changing the well testing and allocation requirements for Prudhoe Bay and a formal application will likely be submitted shortly after the sale closes).

2. I'd appreciate a more complete explanation for why AOGCC is not requiring a Designation of Operator form subject to approval under 20 AAC 25.020. They say that AOGCC statutes deal with who owns and operates a property, not who owns the company that is the owner and/or operator. AOGCC asserts that since Hilcorp is buying BPXA outright, there is no change of operator or ownership of the property – that BPXA remains the same corporate entity with the new name "Hilcorp North Slope, LLC." This ignores that the owner and operator for the property will be entirely new. BPXA is a subsidiary of a major corporation headquartered in London; Hilcorp North Slope will be a subsidiary of an independent company headquartered in Texas. In effect, nothing will be left of the original owner/operator company. This strikes me as a significant change that would warrant a designation of new operator. Again, I'd appreciate an explanation to help me better understand AOGCC's decision.

When BPXA was required to divest of Arco Alaska to complete their purchase of Arco the deal was structured in such a way that Phillips Petroleum Company was purchasing Arco Alaska, the company, from Arco and then renamed it Phillips Alaska. When Conoco and Phillips merged a few years later Phillips Alaska was renamed to ConocoPhillips Alaska. Looking at incorporation records from the State of Delaware they still indicate the company was incorporated as Arco Alaska and has since been renamed twice, but the same original corporate entity still exists. The AOGCC did not require a designation of operator form to be submitted for either of these transactions since the same legal entity, albeit with a new name and new parent company, was still the owner/operator. We did require them to submit proof (in the form of documentation from Delaware and the DCCED's corporations and business licensing section) of the name change so that we could then update our records system. Since the BPXA/Hilcorp transaction is being structured the same way, in that the legal entity that is currently BPXA will still be the legal entity that owns and operates Prudhoe Bay after the Hilcorp/BP transaction is complete, and that they're then going to change the name of the company we feel following the precedent (to not require submittal of a designation of operator form) that was set with the Arco Alaska/Phillips Alaska/ConocoPhillips Alaska chain of transactions should be followed here.

The owner and operator of the property will not be entirely new, it will just have a new name. Our regulatory authority only extends to the level of the company that is operating the field, not up the corporate structure to whoever may own the company that we deal with. For example, Glacier Oil & Gas owns both Cook Inlet Energy and Savant Alaska, but we treat these two operating companies as two completely independent entities and require them to have their own bonds in place and bill them for the regulatory cost charge separately even though there's a lot of overlapping and

intertwining of staff between the three companies. Similarly, since Furie Operating Alaska is being bought out of bankruptcy as a corporate entity instead of Furie's assets being sold off as far as we're going to be considered from a regulatory point of view Furie was and will continue to be the operator even though everything about the company is changing.

Will Hilcorp North Slope operate differently than BPXA did? Obviously yes, but when you get right down to it they'll be the same legal corporate entity that exists today, just with different people steering the ship and a different name. There is a part of the transaction where they will have to do more than just submit notification of a name change and that's for the Milne Point Unit. Currently the Hilcorp Alaska and BPXA each own just under 49% of the unit with Hilcorp Alaska being the operator, but after the sale the share that is currently owned by BPXA will be end up in the hands of Hilcorp Alaska instead of Hilcorp North Slope. They will have to submit a notice of sale and designation of operator for this part of the transaction since the assets (the leases and facilities of the MPU) will be going from one corporate entity to another instead of just changing names. Having not communicated with the other working interest owners, we're assuming ConocoPhillips and ExxonMobil (who own more than 70% of Prudhoe) support Hilcorp as the operator. If that is not the case, we would require a designation of operator for whoever would be the operator.

Thanks again. Best regards, Lisa