



LEGISLATIVE ASSEMBLY OF THE

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GOVERNMENT OF THE NORTHWEST TERRITORIES
CANADA

5-60

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ATTACHMENT # 4

Yellowknife, N.W.T.,
10 July 1975.

DIRECTOR,
DEPARTMENT OF PLANNING &
PROGRAM EVALUATION:

Attention: Mr. W. Carpenter, Program Officer.

Comment on A.C.H.D. Document XIIID-180.

The difficulty in commenting on this document arises from the uncertainty as to the social and political atmosphere that will prevail at the time of construction among the population of the Mackenzie Valley.

If the document is presented on the assumption that construction will only begin when there is a clear manifestation of political support for the project - or, at the least, of formal reconciliation to it - within the Northwest Territories generally and on the part of the communities of the Mackenzie Valley in particular then the preferred planning proposal put forward in the document is well-founded. For in that case it could be assumed that the work of the proposed "Canadian Regulatory Authority" would be to co-ordinate the various functions of the agencies, institutions, and interests whose common purpose was to get the pipeline built. In this situation one could readily foresee the establishment of an authority whose board membership clearly symbolised the commitment to the project of all the socio-public interests recognised as being importantly affected by it. And equally, one could foresee the appointment of a "Head of the Regulatory Authority" fully backed by such a Board and managing efficiently the services of an array of public servants, professional consultants, and the like, drawn from the variety of political and administrative jurisdictions whose participation would be required.

reporting to min. DANNID

with...

Unfortunately the Document makes no statement of assumptions concerning the socio-political atmosphere that it thinks would be necessary within the Northwest Territories as a precondition for the success of its proposal! It is of course possible that the Document's authors feel that such a consideration is not relevant to the successful administration of the proposed "Central Regulatory Authority". But to the Government of the Northwest

Territories whose prime purpose is constitutional political development of the people at both local and territorial level, such a consideration is of paramount importance.

In the absence of any direct reference to this factor in the Document it is appropriate for the Territorial Government to consider the proposal for a "Canadian Regulatory Authority" as though the Document's author(s) were in fact basing themselves on the assumption that the political atmosphere in the Northwest Territories is not a relevant factor in appraising the proposal's potential for success. While there is no direct reference to this factor in the Document there may be an indirect but intended inference to be drawn from the remark on page seven, which reads:

"the establishment and operation of a Canadian Regulatory Authority should be more straightforward than in Alaska because of lesser jurisdictional divisions ----".

Presumably this means that in Alaska, where the people enjoy constituted political rights as a State of the American Union and where the land claims of native people have been settled in a legal agreement, the Federal Government's Regulatory Authority must co-exist with and take due accounts of the laws and agencies of the State Government and of the terms of the Alaska Native Claims Settlement Act; whereas in the Northwest Territories, where the people do not have constituted political rights as a Province of Canada and where native land claims have not been settled by legal agreement, the Federal Government is free to and should establish unilaterally the proposed "Canadian Regulatory Authority" with exclusive powers of administration, monitoring and surveillance.

On page six the Document summarises its conclusions about the Alaskan situation. Conclusion two is that

assures and recognizes the variance of interest and need.

"the government system tends to duplication of effort and over-inspection. It works in spite of itself because of the co-operative attitude of government, industry and native people, in an atmosphere of solid support of the pipeline project. This support stems from the financial benefits that will accrue to all parties when oil begins to flow"

C.F.A. herself as super power business-dominant approach without even taken recog. of divergent public interest special considerations

From conclusion one it may be clearly inferred that "the duplication of effort and over-inspection" results from

"the jurisdictional set-up in Alaska (which) is complex in the extreme as the pipeline project is superimposed on a transitional period from federal to state control of a portion of the State's land and in the wake of the Alaska Native Claims Settlement Act".

In our view the Document's reasoning may here be faulty. "Duplication of effort and over-inspection" are to be attributed to political development (the "transitional period" following on devolution of political authority and settlement of land claims), but the "atmosphere of solid support" to which the above the Document credits the fact that the system works "in spite of itself" is to be attributed solely to "financial benefits that will accrue to all parties when oil begins to flow". Is it not at least possible that both the negative and the positive conclusions derive from the factor that the political development preceded the economic development? That the duplication and over-inspection is a political price paid for economic development? *It is the price paid for failing to resolve political situations whereby there is collective agreement over economic goals.*

Indeed, is it not possible to conclude that the attribution of cause in these conclusions is precisely the opposite of that made? That the "atmosphere of solid support" derives from the satisfaction of the Alaskans' (including native) political rights and of the economic consequences which flow from them while the "duplication of effort and over-inspection" derive from the fears of "all parties" that financial benefits will not accrue to them unless they make their own effort and their own inspections? *In short, this has not been assured, i.e. political settled.*

Perhaps the Document intends to draw an analogy between the Northwest Territories and Alaska in attributing financial benefit as a motivation for support of the pipeline? In that case the "single central authority" which it proposes for the Mackenzie Valley project would need only to hold out the same prospect of financial benefits to all parties in the Northwest Territories as does the "complex jurisdictional set-up" to all parties in Alaska for the same solid support to be forthcoming from government, industry, and native people in the Northwest Territories. Such reasoning about the Northwest Territories would probably prove to be mistaken. All the evidence at hand to date is that the "native people" at least (far from offering "solid support") would withhold all support and refuse any co-operation in the project unless a legal settlement of their land claims had preceded the decision to build the pipeline.

As to the Government of the Northwest Territories (including in that concept the Territorial Council) the Document may have been written upon the assumption that as it is a constitutionally subordinate body to the Minister of Indian and Northern Affairs it is not formally a "party" to the planning and implementation process in the pipeline project. That its position is necessarily the position put forward by any officers of the Department of Indian & Northern Affairs deemed to be of higher rank than the Commissioner of the Northwest Territories. That through the establishment of the Berger Commission the Federal

recognized

Territorial Council

Government has provided for the native people (who are thus recognised as a "party" of interest in the project) to participate in the planning process.

The ~~population~~ of the Northwest Territories citizens to the total population of Canada is very nearly the same as that of Alaskan citizens to the total population of the United States. This paper has surmised that Alaskan support for the Trans-Alaska Pipeline could not have been secured without the recognition of the rights of the Alaskan people in the legal and constitutional developments of land claims settlements and statehood. The recognition of the same rights - de facto if not de jure - in the Northwest Territories is surely as necessary. It is perhaps possible to establish a Central Authority which could get a pipeline built in total disregard either of the native people of the Northwest Territories or of the Territorial Government and Council. But to do so would surely incur at the very least the sullen opposition (and it is prudent - not alarmist - to think of worse) of the native people of the Mackenzie Valley and a good measure of pessimistic cynicism on the part of Public Servants in the Northwest Territories who suppose themselves to be working for constitutional political development.

In essence, then, we can do no other than to recommend that the construction of the pipeline be seen as an issue inseparably bound up with legal-constitutional questions involving the rights of the people of the Northwest Territories; that de facto recognition be given to the Council and Government of the Northwest Territories as the body which stands in analogy to the State of Alaska in the securing of these rights; and that the settlement of native land claims be seen as a necessary adjunct to - if not a foundation of - a successful pipeline construction project.

- (a) Brotherhood (?)
- (b) official position of Dept of I.G.
- (c) Press?
- (d) recommendations @ inc. political devtmt

R. A. Creery
 R. A. Creery,
 Director,
 Department of
 Local Government.

- (c) See prob. of Commissioner in Synovate
- (f) Eric Courleau. recommendation / response - cc of this letter
 - ⊙ implications are the status of NWT and land claims both need recognition before pipeline.
 - ⊙ equal representative voice necessary in econ. financial