

U.S. Fish and Wildlife Serv., Interior

§ 29.21-4

Regional Director, U.S. Fish and Wildlife Service, 1101 E. Tudor Road, Anchorage, Alaska 99503.

[31 FR 16026, Dec. 15, 1966, as amended at 42 FR 43917, Aug. 31, 1977; 44 FR 42976, July 23, 1979; 48 FR 31655, July 11, 1983]

§ 29.21-3 Nature of interest granted.

(a) Where the land administered by the Secretary is owned in fee by the United States and the right-of-way is compatible with the objectives of the area, permit or easement may be approved and granted by the Regional Director. Generally an easement or permit will be issued for a term of 50 years or so long as it is used for the purpose granted, or for a lesser term when considered appropriate. For rights-of-way granted under authority of section 28 of the Mineral Leasing Act of 1920, as amended, for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, the grant may be for a term not to exceed 30 years and the right-of-way may not exceed 50 feet, plus the area occupied by the pipeline and its related facilities unless the Regional Director finds, and records the reasons for his finding, that, in his judgment, a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, etc. However, a temporary permit supplementing a right-of-way may be granted for additional land needed during construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

(b) Unless otherwise provided, no interest granted shall give the grantee any right whatever to remove any material, earth, or stone for construction or other purpose, except that stone or earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

[31 FR 16026, Dec. 15, 1966, as amended at 42 FR 43918, Aug. 31, 1977]

§ 29.21-4 Terms and conditions.

(a) Any right-of-way easement or permit granted will be subject to outstanding rights, if any, in third parties.

(b) An applicant, by accepting an easement or permit agrees to such terms and conditions as may be prescribed by the Regional Director in the granting document. Such terms and conditions shall include the following, unless waived in part by the Regional Director, and may include additional special stipulations at his discretion. See § 29.21-8 for special requirements for electric powerlines and § 29.21-9 for special requirements for oil and gas pipelines.

(1) To comply with State and Federal laws applicable to the project within which the easement or permit is granted, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(2) To clear and keep clear the lands within the easement or permit area to the extent and in the manner directed by the project manager in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such a manner as to decrease the fire hazard and also in accordance with such instructions as the project manager may specify.

(3) To prevent the disturbance or removal of any public land survey monument or project boundary monument unless and until the applicant has requested and received from the Regional Director approval of measures the applicant will take to perpetuate the location of aforesaid monument.

(4) To take such soil and resource conservation and protection measures, including weed control on the land covered by the easement or permit as the project manager in charge may request.

(5) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near, lands to be occupied under the easement or permit area, including making available such construction and maintenance forces as may be reasonably

obtainable for the suppression of such fires.

(6) To rebuild and repair such roads, fences, structures, and trails as may be destroyed or injured by construction work and upon request by the Regional Director, to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(7) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the easement or permit, except where the easement or permit is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages. Where the easement or permit involves lands which are under the exclusive jurisdiction of the United States, the holder or his employees, contractors, or agents of the contractors, shall be liable to third parties for injuries incurred in connection with the easement or permit area. Grants of easements or permits involving special hazards will impose liability without fault for injury and damage to the land and property of the United States up to a specified maximum limit commensurate with the foreseeable risks or hazards presented. The amount of no-fault liability for each occurrence is hereby limited to no more than \$1,000,000.

(8) To notify promptly the project manager in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States in advance of construction such sum of money as the project manager may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(9) That all or any part of the easement or permit granted may be terminated by the Regional Director, for

failure to comply with any or all of the terms or conditions of the grant, or for abandonment. A rebuttable presumption of abandonment is raised by deliberate failure of the holder to use for any continuous 2-year period the easement or permit for the purpose for which it was granted or renewed. In the event of noncompliance of abandonment, the Regional Director will notify in writing the holder of the easement or permit of his intention to suspend or terminate such grant 60 days from the date of the notice, stating the reasons therefor, unless prior to that time the holder completes such corrective actions as are specified in the notice. The Regional Director may grant an extension of time within which to complete corrective actions when, in his judgment, extenuating circumstances not within the holder's control such as adverse weather conditions, disturbance to wildlife during breeding periods or periods of peak concentration, or other compelling reasons warrant. Should the holder of a right-of-way issued under authority of the Mineral Leasing Act, as amended, fail to take corrective action within the 60-day period, the Regional Director will provide for an administrative proceeding pursuant to 5 U.S.C. 554, prior to a final Departmental decision to suspend or terminate the easement or permit. In the case of all other right-of-way holders, failure to take corrective action within the 60-day period will result in a determination by the Regional Director to suspend or terminate the easement or permit. No administrative proceeding shall be required where the easement or permit terminates under its terms.

(10) To restore the land to its original condition to the satisfaction of the Regional Director so far as it is reasonably possible to do so upon revocation and/or termination of the easement or permit, unless this requirement is waived in writing by the Regional Director. Termination also includes permits or easements that terminate under the terms of the grant.

(11) To keep the project manager informed at all times of his address, and, in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.

(12) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(13) That the grant of the easement or permit shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the land affected thereby. The applicant agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the easement of permit area not actually occupied for the purpose of the granted rights to the extent that it does not interfere with the full and safe utilization thereof by the holder. The holder of an easement or permit also agrees that authorized representatives of the United States shall have the right of access to the easement or permit area for the purpose of making inspections and monitoring the construction, operation and maintenance of facilities.

(14) That the easement or permit herein granted shall be subject to the express covenant that any facility constructed thereon will be modified or adapted, if such is found by the Regional Director to be necessary, without liability or expense to the United States, so that such facility will not conflict with the use and occupancy of the land for any authorized works which may hereafter be constructed thereon under the authority of the United States. Any such modification will be planned and scheduled so as not to interfere unduly with or to have minimal effect upon continuity of energy and delivery requirements.

(15) That the easement or permit herein granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easement or permit area unless approved in writing by the Regional Director.

[31 FR 16026, Dec. 15, 1966, as amended at 42 FR 43918, Aug. 31, 1977]

§ 29.21-5 Construction.

(a) If construction is not commenced within two (2) years after date of right-of-way grant, the right-of-way may be canceled by the Director of the U.S. Fish and Wildlife Service at his discretion.

(b) Proof of construction: Upon completion of construction, the applicant shall file a certification of completion with the Regional Director.

[42 FR 43919, Aug. 31, 1977]

§ 29.21-6 Disposal, transfer or termination of interest.

(a) *Change in jurisdiction over and disposal of lands.* The final disposal by the United States of any tract of land traversed by a right-of-way shall not be construed to be a revocation of the right-of-way in whole or in part, but such final disposition shall be deemed and taken to be subject to such right-of-way unless it has been specifically canceled.

(b) *Transfer of easement or permit.* Any proposed transfer, by assignment, lease, operating agreement or otherwise, of an easement or permit must be filed in triplicate with the Regional Director and must be supported by a stipulation that the transferee agrees to comply with and be bound by the terms and conditions of the original grant. A \$25 nonreturnable service fee must accompany the proposal. No transfer will be recognized unless and until approved in writing by the Regional Director.

(c) *Disposal of property on termination of right-of-way.* In the absence of any agreement to the contrary, the holder of the right-of-way will be allowed 6 months after termination to remove all property or improvements other than a road and useable improvements to a road, placed thereon by him; otherwise, all such property and improvements shall become the property of the United States. Extensions of time may be granted at the discretion of the Regional Director.

[31 FR 16026, Dec. 15, 1966, as amended at 42 FR 43919, Aug. 31, 1977]