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INSPECTOR GENERAL

January 2007

To: George Canelos, Federal Co-Chair

From: Mike Marsh, Esq., Inspector General

Subject: Inspection of fuel storage tank at Red Devil

FINAL REPORT

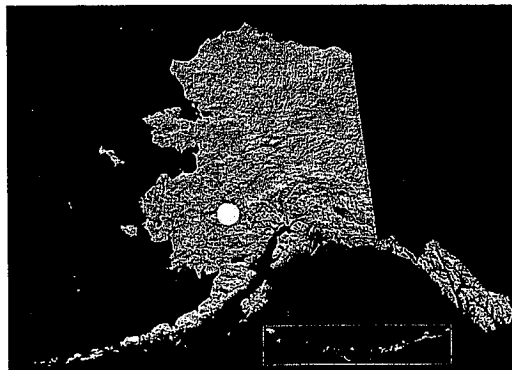
FOR PUBLIC RELEASE

On September 13, 2006, I conducted a routine inspection of the new fuel tank at the school in Red Devil, Alaska. The purpose of this inspection was to confirm (1) activity at the project site and (2) the traceability of expenditures within the total reported to the Denali Commission on OMB Form 269A.

The Commission's implementing "program partner" is the Alaska Energy Authority (AEA). AEA had reported total expenditures of around \$675,000 at Red Devil, with at least two-thirds of that amount spent on the school's fuel tank.

PROJECT BACKGROUND

The tiny, unincorporated settlement of Red Devil (estimated pop. 36) is located on the Kuskokwim River, one of Alaska's two main interior watercourses. No roads, railroads, or power grids lead to Red Devil. A barge delivers fuel during the ice-free summer. Year-round access is generally by small "bush" aircraft that land on the gravel airstrip. I had the luxury of visiting amidst scenic fall colors rather than the months of winter that can drop to -50° F.



The state demographer estimated Red Devil's population at just 36 people in 2005.¹ The U.S. Census showed 48 residents (17 households) there in 2000. The public school served a total of 11 students last year. Two phone books list 9 to 11 residential telephone numbers for Red Devil's prefix.

¹ See www.commerce.state.ak.us/dca/commdb.

The settlement was named after the Red Devil Mine, which operated for almost four decades before closing in 1971. In its prime, it was the nation's largest mercury mine.

Though sparsely populated since the mine, the social challenges of this isolated area have been recognized for decades. Twenty years after the mine's closure, one noted history of rural Alaska dedicated a full chapter to Red Devil's struggle with alcohol-related tragedies.² Indeed, on the evening after my inspection, an alcohol-related gunshot fatality occurred near neighboring Stony River.³

And state troopers issued the following news release concerning their efforts in the area about a month before my inspection:

On 8/17/2006 . . . investigators traveled by boat up the Kuskokwim River to a logging camp near the community of Red Devil. . . A search warrant was executed and a complex marijuana grow was dismantled. The investigation indicated that the suspects had been growing marijuana in two underground rooms and one commercial facility above ground. The suspects had the ability to grow up to 400 plants at a time with a complex hydroponic and lighting system uncommon for such a rural area.

The tiny settlement of Red Devil (estimated pop. 36) certainly faces its share of the challenges of America's "last frontier."

EXPENDITURE TRACEABILITY

The school's fuel tank at Red Devil was funded as part of a "lump sum" award⁴ to AEA for the Middle Kuskokwim Regional Energy Project. This project constructed facilities such as storage tanks and power plants in seven small communities along the Kuskokwim River.

Purchasing for many items was pooled, with actual expenditures often tracked for the group as a whole rather than for each individual facility. In my review of AEA's accounting records, these consolidated expenditures "rolled up" to the cumulative total reported to the Commission on OMB Form 269A.⁵

However, as I've previously reported concerning this regional project,⁶ the true cost of a facility such as this fuel tank at Red Devil is obscured by some tradeoffs associated with AEA's pooled accounting. To assign a "cost" to an individual facility, AEA used constant, capacity-based,

² See Tom Kizzia, *The Wake of the Unseen Object* (N.Y.: Henry Holt, 1991), chapter 7 ("Red Devil").

³ See Tataboline Brant, "Inebriated brothers' fight ends with death," *Anchorage Daily News*, Sept. 16, 2006, page B1.

⁴ Denali Commission award no. 148-DC-2005-I1.

⁵ As of the third quarter of federal fiscal year 2006.

⁶ Inspection report for Takotna fuel tanks (Jan. 2007).

prorated percentages to allocate pooled totals. And, in the case of Red Devil, I found continued allocation to a local electrical improvement for over a year after the Commission had cancelled that part of the project. In my review of some items charged since June, I found around \$114,000 of this spending that should have been instead identified with the school district's new fuel tank.⁷

In other words, for this regional utility project, the true cost of any individual facility is obscured by the limits of AEA's accounting. However, as I've said before, these limits on transparency do not reflect upon the efforts of AEA's quite capable and conscientious financial staff. There are always tradeoffs in the extent to which detail is tracked by any accounting system, and AEA's accountants simply recorded expenditures as allocated by the agreement between AEA and its subgrantees. To the extent that the Commission wants to more precisely monitor the true cost of an individual facility, a grant condition needs to specify that requirement.

FACILITY'S PHYSICAL STATUS

My inspection verified that a new 12,000-gallon fuel tank consistent with AEA's project records has been completed at the expected site in Red Devil. The tank has been connected to the school buildings, filled with barged fuel, and is now in operation.

I observed that the tank's plumbing was leaking at two points. Fuel had pooled in the bottom of the pump box from a leak in that area. Fuel was also visibly leaking from a valve on top of the tank that I observed from the catwalk.

AEA had planned to install a 100-gallon "day tank" as an associated accessory that would serve the school's backup generator. However, this day tank was left uninstalled and sitting outside in its packaging along the road in Red Devil (discussed further below).

My observations were consistent with the photographs that AEA has previously submitted for public display on the Commission's online project database at www.denali.gov.

CONCLUSIONS: ANALYSIS OF SEVEN CONFLICTS

The Commission uses program partner AEA to address rural electrification and fueling in some of the most challenging locations in America. The tiny settlement of Red Devil lies deep in the interior of rural Alaska and is one of those places.

Funding for facilities such as this reflects the Commission's aspiration that "*[a]ll Alaska, no matter how isolated, will have the physical infrastructure necessary to protect health and safety and to support self-sustaining economic development.*"⁸

⁷ To the extent that the Commission or AEA needs further precision at this sublevel, AEA's accounting staff would need to review the transactions recorded for task 6004-2001 after the intertie was cancelled. Post-cancellation transactions other than windup expenses would be reclassified as necessary to the associated work on other facilities.

⁸ *Denali Commission Five Year Strategic Plan (2005-2009)*, page 3 (emphasis added).

The inspected storage tank cost around \$450,000 to build for a school with about a dozen pupils, who live in a settlement of less than 50 people. Despite this limited scale, I noted seven conflicts of diverse scope that arose within the context of this project. They illustrate troubling issues, with no easy answers, that the Commission faces in providing basic facilities that the rest of the nation has long taken for granted.

Conflict 1

Coordination with state funding for rural schools

Public funding decisions are obviously never made in a vacuum, and nowhere is that cliché truer than in government support for local schools.

The Kuspuk School District operates the public school at Red Devil and is the owner of the inspected storage tank. Rural districts like Kuspuk have no tax base and are totally supported by state and federal payments.

When schools fall below 10 students, they lose their lifeblood of state funding and may need to close. Schools with less than 15 students can be in peril if a single family moves away.⁹

Last year, the state counted only 11 students at Red Devil.¹⁰ Yet the Commission chose to spend around \$450,000 to provide the school with a new fuel tank.

On the other hand, the Kuspuk School District is one of three that have jointly filed a public interest lawsuit alleging a constitutional requirement that the state spend more on their schools.¹¹ The other two suing districts are the Yupiit School District (Akiak, Akiachak, and Tuluksak) and the Bering Strait School District (Unalakleet, Brevig Mission, and 13 other villages).

The case has been pending since 2004, with closing arguments heard last month. The plaintiffs are asking for a court-supervised determination of the required funding level, with an order that the state then supply the money.

So, in effect, the Commission is funding the state (through AEA) to assist a school district that is suing the state over the latter's funding decisions. And this, of course, is not the first such suit in Alaska. For instance, back in 1999, the court ruled that rural school districts were indeed disadvantaged by a disproportionate system of state funding.¹²

It remains to be seen whether the court will order the state to increase the money sent to Red Devil's school district. However, the Commission's grants should always be carefully rationed to fill the gaps left by other funders — rather than displace their need to contribute. If

⁹ See Alex deMarban, "Tiny schools threatened by shortage of students," *Anchorage Daily News*, Sept. 11, 2006, pages B-1, B-3.

¹⁰ See the Alaska Public Schools Database at www.eed.state.ak.us/DOE_Rolodex/schools/.

¹¹ *Moore, et al v. State of Alaska*, 3AN-04-9756 Civil.

¹² *Kasayulie, et al v. State of Alaska*, 3AN-97-3782 Civil.

another entity is potentially going to fund, whether by choice or compulsion, the Commission needs to coordinate with the state education department so as to not supplant that effort.

Recommended preventive measure: See Recommendation No. 1.

Conflict 2
Responsibility for connecting the new and the old

The new, 12,000-gallon, Denali-funded storage tank required the plumbing of fuel lines to the school's existing furnaces and backup generator. Conflict developed between the school district and AEA over the responsibility for these connections.

The dispute apparently started when the school district's maintenance director questioned AEA's onsite supervisor about the quality of installation work. The latter's "daily field report" for August 18, 2006 reflected the following uncharacteristic tone for this type of routine construction record:

[School district's maintenance director] tried to knock our work first thing. I told him it was better than what was there earlier and gave him examples. His response was that I had to understand: he came from the slope!

It was noteworthy that the top administrator for the school district (its superintendent) chose to personally accompany me on my trip to inspect the school's fuel tank in tiny Red Devil. After he showed me the connections of concern, he wrote the following to AEA's rural energy director and Alaska's congressional delegation:

[The district's maintenance specialist] suggests, "It looks like maybe a 4th grade class plumbed in the generator building and the school." The school and teacher housing need to have the copper tubing changed out to black iron welded pipe. The generator building is significantly more troubling as you can see in the pictures. Also there are two (2) leaks on the main tank, one on top on the dispenser line and one in the pump box of the main tank. . . Many paper gaskets still remain at this site. Painting needs to be completed. . .

All sites have received electrical valves that fail at cold temperatures. At 10 below zero they will not open. . .

It is my hope that you will be able to insure that the contractors return and complete these installations or an alternative solution is implemented to finalize a worthy investment in the Mid-Kuskokwim Region.

AEA had previously offered to send the school district whatever construction materials were needed to replumb the connections to the district's satisfaction. This was an understandable offer since the district's maintenance unit includes experienced craftsmen in the plumbing and electrical trades who have access to the district's own aircraft.

However, the head of the school district refused to accept the transfer of such a punch list task. He apparently envisions that Denali grants involve the completion of a perfected project, that is,

a turnkey relationship rather than a partnership. And this would be an understandable expectation had this been a traditional “hard bid” public works contract in which the builder must pass a final inspection before release of its final payment (owner’s “retainage”).

But this was not such an arrangement. AEA instead paid a contractor for its “time and materials” to effectuate “substantial completion.” AEA thus implicitly assumes some degree of transferred tweaking for capable grantees in remote settings.

And such expectation gaps seem rooted in communication gaps that have arisen before. A prior inspector general wrote the following in his 2003 review of a Denali-funded tank farm at Tanana:

Throughout the planning, design and construction of the project, there were numerous misunderstandings and communication problems among the grantee, AEA and the participants who were to utilize the bulk storage facility. This situation resulted in delays in critical decisions and a less than ideal working relationship between the community and AEA and its contractors. Although not readily quantifiable, the lack of cooperation among the principals surely increased both the cost and the time required to complete the project.¹³

Recommended preventive measure: See Recommendation No. 3.

Conflict 3

Liability for connecting the good and the bad

A related, and quite sensitive, issue is the connection of new code-compliant facilities to pre-existing equipment in poor condition.

During my inspection at Red Devil, the school superintendent and his maintenance specialist showed me the shed with the school’s backup generator. The Denali Commission provided a new 1,000-gallon “intermediate tank” for this generator — but did not fund repairs to the generator or the structure housing it. While assessment of technical compliance with the fire code is the province of the state fire marshal,¹⁴ suffice it to say that I saw a generator shed that was in generally poor condition. I was particularly concerned since the teacher housing was only 50 feet away (with its own new, Denali-funded, 1,000-gallon fuel tank). I have thus referred this matter to the state fire marshal for reassurance or remedy.

Beyond the obvious need to prevent the tragedies of community fires, AEA needs to assess whether it has a legal responsibility to assure that existing equipment being connected to a new facility is itself code compliant.

¹³ Office of Inspector General, Denali Commission, *Technical Review of the Bulk Fuel Storage Project at Tanana, Alaska*, Report DC 04-1 (Oct. 27, 2003), page 5.

¹⁴ Public school buildings in unincorporated rural areas are subject to the International Fire Code and the National Electrical Code. See AS 18.70.080(a)(2); 13 AAC 50.025; 8 AAC 70.025; 4 AAC 31.014.

Any potential AEA liability as a joint tortfeasor is, of course, an issue to be resolved by the state's risk manager and legal staff (not the inspector general). However, I do note that such day-to-day construction decisions would appear to be "operational" in nature¹⁵ and not warranting the "discretionary function" immunity that sometimes protects state agencies under AS 09.50.250. The answers to these questions are of concern to the Denali Commission to the extent that its grants may be chargeable for AEA legal defense and judgments.

Recommended preventive measure: See Recommendation No. 2.

Conflict 4

Contract protests by barge companies

Red Devil was one of seven communities along the Kuskokwim River that were involved in this regional energy project. AEA used several barge companies to move equipment and materials among the various facilities under construction. Those barge companies differed considerably in their capacity, watercraft, and availability as construction progressed to the places and time periods where their services would be needed. AEA used a solicitation process to collect information on these factors as well as what the companies would charge.

As construction progressed, two of the six available barge companies protested that they were not receiving more of AEA's shipping business. One of the protests arose in the context of a U.S. senator's constituent casework, and was then forwarded on to AEA's management for resolution. The company in the other protest retained an Anchorage law firm that presented AEA with the following demand:

Unless AEA provides adequate written assurances (within 24 hours) that AEA will utilize [client barge company] for providing freight transportation on the project, in order to cure AEA's breach and/or anticipatory repudiation of remaining aspects of the contract, than [client] will consider AEA to remain in breach and/or to have repudiated the remaining aspects of the contract. . . . However, even if written assurances are provided, [client] reserves the right to obtain compensation for damages incurred to date and/or which are incurred in the future.

[Client] will hold AEA responsible for all damages incurred to date, as well as any additional damages incurred by [client].

In AEA's responses to both protests, the procurement officers explained that this was a solicitation for a pool of term contractors to be used for "freight transportation on an as-needed and as-available basis." Per AEA's responses, factors beyond the lowest price were critical in accomplishing the work, and AEA planned to make each shipping choice in the context of a particular need.

For instance, in the procurement officer's response to the law firm, she explained:

¹⁵ See *Planchich v. State*, 693 P.2d 855 (Alaska 1985).

The six companies with which AEA contracted have vessels with different capacities, ranging from 60 tons to 1500 tons freight capacity. [Client's] vessel is the smallest, at 60 tons, and it operates with winches and skids as support equipment, while other vessels have loaders and cranes. Your interpretation of the [price] ranking as controlling the selection of vessels would lead to a conclusion that AEA must use [client] to make 25 trips to haul 1500 tons between two points, when [competitor] could haul this amount with its larger vessel in a single trip.

Neither of the two protests has so far been pursued further. However, this dispute indicates the need for the Commission's management to understand the river-based transportation system that supports many of its projects. As I've recommended before,¹⁶ the Commission's management should at some point accompany such vendors on their rounds for useful insights concerning their operating environment.¹⁷

Conflict 5 Lodging dispute

An AEA engineer negotiated an arrangement for itinerant construction workers to stay at a local lodge in Red Devil. His one-page, hand-written agreement promised to pay \$100 per night for "a guaranteed 100 minimum nights stay" [underlining in original]. AEA was assuming a need to house workers that would be employed to construct a power line intertie from a generator in Sleetmute to users in Red Devil.

AEA's quarterly report¹⁸ to the Denali Commission initially praised this lodging arrangement:

[Lodge's co-owners] of Red Devil have been gracious hosts to the project and, although they are not a grantee, have offered AEA a discounted lodging rate. [Lodge owner's] knowledge of the region and its people has been helpful . . . [He] has made travel around the region both fun and efficient.

However, the power line to serve Red Devil was eventually cancelled due to a cost overrun. During my inspection, the lodge owner estimated that she lost \$40,000 in revenue from unused vacancies that she kept in a state of readiness for the workers who never came.

Her disappointment seems rooted in a remark in the engineer's handwritten agreement to expect an "average of 4 per night / on-off." While AEA considers this ambiguity to promise only 100 nights of lodging, the lodge insists upon four times that amount ($\$100 \times 100 \text{ nights} \times 4 \text{ workers per night} = \$40,000$).

¹⁶ Inspection report for Stony River fuel tanks (Jan. 2007).

¹⁷ For instance, see the video *Alaska's River Highway: Supply Season of the Yukon* (KUAC, Univ. of Alaska Fairbanks, 2000).

¹⁸ Report for quarter ending June 30, 2005.

The claim remains in dispute, with AEA having paid the lodge only \$10,000. And only \$6,400 of that amount was for nights actually used. AEA sent the lodge owners a check for \$3,600 to cover the nights not used.

But the lodge owners declined this \$3,600 payment until AEA agreed in writing that their right to pursue their full claim remained intact. AEA provided that assurance and, in effect, gave them \$3,600 of grant funds for nothing in return. There was no settlement of their claim — and no use of the beds.

Red Devil was only one of seven communities receiving facilities under this regional project covering the “Middle Kuskokwim.” Changes in scope are a realistic possibility in any complex public works effort with numerous pieces. Unfortunately, one such change was deletion of the planned power line between Sleetmute and Red Devil. And, unfortunately, the engineer’s crudely-drafted, one-page agreement didn’t contemplate this construction contingency.

Skilled procurement professionals have a repertoire of contractual arrangements that prevent this type of dispute. They routinely structure agreements to balance the vendor’s availability and the uncertainty as to what quantity a project will ultimately require. (The bargaining term contracts, discussed above, are classic examples of such draftsmanship.) They may also include clauses alerting vendors of the government’s right to “terminate for convenience” whenever uncertainties such as funding necessitate a course correction (with the vendor’s relief limited up front).

As a fundamental of basic business law, ambiguity in the quantity term can be fatal to judicial enforcement of a contract. However, this possible defense from a legal technicality would not change the feelings of ill will that the vendor expressed about AEA during my inspection. Nor does it change the fact that unskilled drafting resulted in the agency’s payment of \$3,600 in Denali funds for beds never slept in.

This conflict is symptomatic of the much larger issue as to whether the Denali Commission or a traditional competitive bidder should bear the risk of construction uncertainties. At the meeting that originally approved this regional project,¹⁹ the commissioner from the Associated General Contractors explicitly noted his reservation that the Commission was assuming all risk under AEA’s plans for construction management. However, I won’t attempt to resolve this complex issue in the anecdotal context of a lodging dispute.

Conflict 6

Salvage of unwanted technology

AEA had planned to install a 100-gallon “day tank” as an accessory that would serve the school’s backup generator. However, this day tank was left uninstalled and sitting outside in its packaging along the road in Red Devil. The school district considers the device (cost ≈ \$6,000) to be impractical at tiny Red Devil (11 students) given the complexity of operation.

¹⁹ Denali Commission meeting held November 30, 2004.

AEA anticipates that the fate of this unwanted technology will probably be onsite cannibalization for parts. However, if the device isn't desired at Red Devil, I recommend that the Commission's management explore the potential for AEA to transfer it intact to another project.

Recommended preventive measure: See Recommendation No. 3.

Conflict 7
Post-construction cleanup

A punch list dispute of a less technical nature appears in an August 11, 2006 daily field report by AEA's onsite supervisor:

Janitor for school in Red Devil fussing that we dirtied school. She brought her concerns to school district. I told them I would hire her on force account labor and pay her for 8 hrs. to make this go away. [emphasis added]

Such basic cleanup seems a feasible community contribution that AEA could expect in many communities. The school district's position to the contrary, again, seems rooted in the assumption of a turnkey arrangement with a right to a perfected project.

Economizing and community contributions were especially desirable in hindsight. To complete the rural energy projects at Red Devil and several other locations, AEA had to return to the Commission a year ago for additional funding to cover an anticipated overrun of up to \$1 million.²⁰ This is particularly ironic for Red Devil since its planned power line intertie was a key component that the Commission had to cut from the project in the strategy to cope with the overrun.

As in the case of the lodging dispute, prevention of such conflict through advance agreements would be preferable to after-the-fact settlement payments to local complainants. And, for any in-kind contributions, the grant agreement needs to be specific as to what a party will provide, rather than leave it to further negotiation as the project progresses.

The grant agreement for this facility²¹ lists the following in-kind contributions: "*As capable: lodging, coordination, meeting time and space, resources.*" While the Commission no doubt appreciates that it won't be charged for the grantee's "meeting time," noncommittal vagueness ("as capable," "coordination," "resources") obviously defers negotiation until after the project begins — if ever.

As I've noted before in other inspection reports, long-run national support for this program may be encouraged to the extent that projects are perceived more as partnerships and community "barn raisings" — and less as seasonal cash injections and entitlements.

Recommended preventive measure: See Recommendation No. 3.

²⁰ Resolution No. 06-02 (Oct. 19, 2005).

²¹ AEA grant agreement no. 2195215 (Kuspuk School District), Appendix 4.

RECOMMENDATIONS

Recommendation No. 1

The Commission's program managers should semiannually coordinate school-related projects with the state's school finance director.

The school is often the dominant structure and the dominant employer in rural settlements. Some Commission projects have a direct relation to the local school, such as generators, fuel tanks, and teacher housing. Other projects, such as community centers and clinics, could potentially be physically joined to the school if properly coordinated.

Facilities that are physically collocated with the school may be more sustainable over the long run than separately maintained, stand-alone structures. Such collocation may also assure some acceptable public use for a Denali-funded facility if the planned use ceases for some reason.

The Commission's program managers should semiannually meet with the state's school finance director to review the following five coordination issues:

- Potential economies of scale from simultaneous mobilization for separate projects in the same community.
- Potential collocation of Commission projects within new or remodeled schools.
- School consumption of electricity or fuel from Commission-funded facilities for the community.
- Schools with less than 15 students that risk closure from discontinued state funding.
- Coverage of any anticipated court-ordered funding increases.

The Federal Co-Chair should arrange these meetings (1) when the school finance division is planning its upcoming construction season and (2) shortly after the legislature has passed the capital budget.

Response by Denali Commission's management:

The full response of the Federal Co-Chair is attached as an appendix. He indicates that "[w]e have conferred with Eddy Jeans, the State's school finance director, and will continue regular coordination with him in planning future energy projects, and considering collocating schools with other community projects."

Recommendation No. 2

The state's attorney general should be asked for an opinion as to AEA's potential liability for connecting Denali-funded improvements to pre-existing conditions.

Above I note the need for AEA to assess whether it has a legal responsibility to assure that existing equipment being connected to a new facility is itself code compliant. I raise the issue of AEA's potential joint liability with the owner in the event the existing disrepair causes injury. This is of concern to the Denali Commission (and its inspector general) because AEA's project-related legal expenses and judgments could potentially be charged to the grant.

This issue of potential liability should be set to rest through an opinion from the state's attorney general. The Governor functions as the Commission's State Co-Chair, and the Federal Co-Chair should request her to obtain this opinion from her attorney general.

Response by Denali Commission's management:

The response of the Federal Co-Chair is attached as an appendix. He indicates the following:

This was an isolated case: AEA does not normally make any connection to existing non-code compliant facilities.²² In this case the previous system was destroyed by project construction, connections had to be made so the school could operate going into winter.

Recommendation No. 3

The Federal Co-Chair should add a "rural ombudsman" to his staff.

The Denali Commission exemplifies downsized, contracted-out, reinvented government (today's "hollow state"). It distributes an annual budget of around \$130 million with less than 20 employees of its own. However, some gaps in the work of this very lean staff should be resolved by appointment of a "rural ombudsman."

The ombudsman²³ is a familiar resource to Alaskans. The state ombudsman was established by the legislature 30 years ago. Another statute creates an ombudsman that specializes in Alaskans' problems with long-term care. And for the Municipality of Anchorage, the city charter itself provides for a local ombudsman.

²² Underlining in original.

²³ Readers should rest assured that the term "ombudsman" is gender neutral. Women currently hold the top positions of "ombudsman" at both the State of Alaska and the Municipality of Anchorage.

Service-conscious federal agencies have also instituted an ombudsman service. The Federal Reserve Board is an example of a specialized federal agency with an ombudsman function that is distinct from its inspector general function.²⁴ And the Denali Commission now coordinates its funding with the IRS version of the ombudsman, known as that agency's "taxpayer advocate."

In the federal context, the distinguishing feature of the ombudsman position is its role in *mediating*, rather than *investigating*, the individual conflicts that arise with day-to-day services. Systemic studies of agency performance and investigations of wrongdoing continue to be the focus of other players, such as outside reviewers and inspector generals.

Because Alaskans have developed several decades of confidence in the ombudsman function, I recommend that the Commission use that specific designation. Diluting the position into an agent for "customer service," "fulfillment," or the like, would be counterproductive. Such positions carry the stigma of being problem screeners more than problem solvers. The "customers" instinctively assume their goal is to sidestep the screener and work their way up to the manager with the real authority to give them what they seek.

The inherent nature of the ombudsman structure is to mediate operational "red tape" and, like the inspector general, directly provide the agency head with unfiltered feedback. I thus recommend that the Federal Co-Chair not depart from this long tradition. Existing liaisons from agencies such as RuralCap and USDA already report directly to the Federal Co-Chair, and they may thus be suitable (and agreeable) to be detailed as the rural ombudsman (or even co-ombudsman).

It is this important direct organizational link between the agency head and the ombudsman that distinguishes the latter from the various support positions that are embedded in the Commission's program staff.

Three troublesome gaps in the Commission's staffing seem initially ripe for assignment to its ombudsman: (1) "polarized casework;" (2) identification of missing project partners and in-kind contributors; (3) routine follow-up calls and coordination of support during the post-construction "year of disappointments."

Polarized casework

"Polarized casework" addresses those diverse project details that seem, by default, to be either unnecessarily elevated to the congressional delegation — or addressed by nobody at all (i.e., the polarity). Even in the context of tiny Red Devil, both a school superintendent and a business owner resorted to Alaska's congressional delegation in their frustration over a Denali-funded project.

An in-house ombudsman should reduce the public's perceived need for congressional intervention in construction details like those in the above conflicts. And, in the case of the unaddressed, the ombudsman might find a better home than the scrap parts bin for that \$6,000 displaced digital "day tank."

²⁴ See www.federalreserve.gov.

Post-construction feedback and support coordination

Three years ago, a prior inspector general reviewed local dissatisfaction with the Denali-funded tank farm at Tanana. His concluding paragraphs recommended designation of a “*Denali Commission representative to serve as liaison with grantees to provide a supplemental means of communication*” as well as to “*periodically contact grantees and other stakeholders to determine the community’s assessment of the project.*”²⁵ However, the Commission responded with neither the customary written reply — nor any appointment of the recommended position.

The focus of an overly lean program staff is understandably to “keep the money moving.” In the absence of a complaint about a program partner, they have little time to look back and randomly check with the recipients of recently completed projects. However, I have previously noted²⁶ the need for coordination with support services, like RUBA and cooperative extension, during the shakedown year after tiny settlements get the keys to their new facilities.

Calls during the “year of disappointments,” and even field visits when necessary, seem a good match for the Commission’s rural ombudsman. As far as I can tell, the Commission has never had a position that regularly phoned recipients to see how their projects were working out in practice.

Identification of missing project partners
and in-kind contributors

I have cautioned the Commission to be alert for the opportunities it’s leaving behind, that is, contributions to be sought from other entities and insistence upon local in-kind. For instance, for capable grantees, the solution to punch list “expectation gaps” should be negotiated up front as an in-kind contribution specified in the grant agreement. As seen in one of the above conflicts, even the basic post-construction cleanup may fall into this category.

However, the Faustian bargain of anorexic staffing leaves little time for the Commission to explore such nuances, and any such efforts are by default left to the implementing “program partners.”

Those program partners face the pressure of expediting construction in short seasons and remote locations. Amidst this, communities have learned to expect local purchases of everything conceivable as a basic benefit of government assistance. Such purchases inherently smooth the residents’ cooperation and communication with contractors, who are to some degree a captive audience for the construction season. In this setting, it’s much easier to pay the locals than negotiate their in-kind contributions.

In short, it may be unrealistic to expect the same program partner to simultaneously pursue both cooperation and contributions. But the ombudsman’s detached, up-front exploration of potential contributors, both agency and in-kind, would seem a valuable route to the understanding needed by that position for later mediation and follow-up.

²⁵ Office of Inspector General, Denali Commission, *Technical Review of the Bulk Fuel Storage Project at Tanana, Alaska*, Report DC 04-1 (Oct. 27, 2003), page 18.

²⁶ Inspection report for Stony River fuel tanks (Jan. 2007).

And it's critical that the ombudsman's negotiations for contributions occur before the commissioners vote to approve a project. I've given the Federal Co-Chair the following advice in a previous inspection report:²⁷

The Commission simply needs to hire additional in-house talent that is dedicated to the detection of "hidden" opportunities. . . And once a creative staff has spotted potential players, the commissioners themselves may need to directly broker the cooperation of the missing. While this will be a new role for the commissioners, it seems quite consistent with the impressive "think tank" of statewide experts that Congress assembled in the enabling act.

Appointment of a rural ombudsman would facilitate this more creative role of the commissioners as coordinators.

Response by Denali Commission's management:

The full response of the Federal Co-Chair is attached as an appendix. He indicates the following:

I agree fully that the Commission needs better methods to obtain feedback, and to ensure that recipients and rural residents are satisfied with our undertakings. This is the primary reason I launched our major Program Evaluation, which is now being conducted by a third party contractor, The McDowell Group.

I will take your suggestion and consider it with the formal feedback we will receive in the coming weeks from the McDowell Group.

ANCILLARY REPORTS

This is the first inspection of this facility by the Commission's inspector general.

These facilities have not been the subject of any audit reports issued by Congress' Government Accountability Office (GAO) or the state's Division of Legislative Audit. AEA does not have an internal auditor.

Program partner AEA is a state agency and annually obtains a single audit for itself from a CPA firm. Neither the latest audit report (for the state's FY06) nor the associated management letter signal any matters of concern to the Denali Commission. The CPA firm considered AEA to be a low-risk auditee for purposes of federal OMB Circular A-133.

INSPECTION PROCESS

My inspection was conducted in accordance with section 2 of the Commission's standard grant assurances, section C(1) of the subgrantee's agreement with AEA, sections 4(a) and 6(a) of the Inspector General Act, and the *Quality Standards for Inspections* issued by the federal Executive

²⁷ Inspection report for Sterling Landing tank farm (Jan. 2007).

Council on Integrity and Efficiency. An “inspection” is narrower in scope and procedures than the classic financial “audit.”

The head of the school district (superintendent) and its maintenance specialist accompanied me during my inspection at Red Devil.

One of the Commission’s prior inspector generals also accompanied me during my inspection, and I appreciated the insights derived from his many years of experience.

On December 12, 2006, the Federal Co-Chair was provided a draft of this report and invited to comment on my proposed conclusions and recommendations. He was encouraged to consult his staff, AEA, and any other parties as desired in the preparation of his response. AEA was provided a copy of my draft report for this purpose.

The Federal Co-Chair’s response was received on January 23, 2007 and is attached as an appendix.

The Commission’s implementation of recommendations will be summarized in my semiannual report filed with Congress under the Inspector General Act.

Mike Marsh

Mike Marsh, Esq.
Inspector General

Appendix

Federal Co-Chair's Response



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January 23, 2007

Mike Marsh
Inspector General
Denali Commission
510 L Street, Suite 410
Anchorage, Alaska 99501

Re: Response to draft inspection report of Red Devil bulk fuel storage facility

Dear Mr. Marsh:

Thank you for the recent inspection report on the Denali Commission (Commission) funded Red Devil bulk fuel storage facility. The project received construction funding in 2004 under the Middle Kuskokwim Regional Energy Project (MKREP) on which you have provided two other reports, Takotna and Stony River. This letter is provided for your consideration in completing your final, public report on the Red Devil project.

In preparing this response we met with Alaska Energy Authority (AEA) staff to discuss the issues you raise, and to consider their response. We are proud to have the AEA as a partner agency to deliver the Energy Program. Your recent reviews of energy projects provide many recommendations that will further strengthen this partnership.

Certainly a charge erroneously made to the cancelled Red Devil-Sleetmute intertie instead of to the Red Devil bulk fuel, should be reconciled in the project accounting as soon as possible. If you have not provided detail on that transaction to the AEA, I request that you do so immediately. The Commission met with the finance officer of AEA last week to ensure that progress is made in these areas. Our Director of Administration has already updated our policies and procedures in these areas in order to maintain strict accountability of funding and expenditures.

Recommendation No 1. The Commission's program managers should semi-annually coordinate school-related projects with the state's school finance director.

Coordination with state government is essential to the successful collaboration for which the Commission is well-known. The Department of Education has a capital projects list available to the Commission and its program partners. Evaluation of planned infrastructure or other new projects anticipated in a community are part of the assessment and design process.

We have conferred with Eddy Jeans, the State's school finance director, and will continue regular coordination with him in planning future energy projects, and considering co-locating schools with other community projects. Because the school construction project

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priority list is provided by the Education Department to the Legislature, who decides which projects to actually fund, dates of funding availability and project construction in a specific community may not always mesh with other project priorities. Mr. Jeans also confirmed the state does not consider pending lawsuits when updating the priority list. At the time this project was proposed for funding, neither we nor AEA was aware of the pending case you reference; but I do not believe it should be a normal consideration of the Commission in granting project funds if we are not party to such a suit.

As Federal Co-Chair, I will be meeting with the Commissioner of Education in the near future, and will emphasize the need to work more closely together.

Recommendation No 2 The state attorney general should be asked for an opinion as to AEA's potential liability for connecting Denali-funded improvements to pre-existing conditions.

This was an isolated case: AEA does not normally make any connection to existing non-code compliant facilities. In this case the previous system was destroyed by project construction, connections had to be made so the school could operate going into winter.

Recommendation No 3 The federal Co-Chair should add a "rural ombudsman" to his staff.

You recommend that I add an ombudsman position to identify and mediate disputes or disagreements that arise in the course of Denali Commission projects. I agree fully that the Commission needs better methods to obtain feedback, and to ensure that recipients and rural residents are satisfied with our undertakings. This is the primary reason I launched our major Program Evaluation, which is now being conducted by a third party contractor, The McDowell Group.

I will take your suggestion and consider it with the formal feedback we will receive in the coming weeks from The McDowell Group.

Overall Comment

Upon reflection, I take issue with your description in many of your draft IG reports of calling many of Alaska's smaller rural communities as "micro-settlements." As a federal agency, we need to be careful with our definition of terms. Most of these locations are more accurately described as "small Native villages." Not only does this term humanize the analysis, it more closely follows federal definitions. Your inquiry should include such questions as:

- Does the village have a federally recognized tribe?
- Does the tribe have an active membership roll?
- Does the tribe have a land base?
- Is the village part of the Alaska Native Claims Settlement Act?
- Does it contain either an ANCSA village corporation, or is it part of a larger ANCSA regional corporation?
- Does the tribe receive federal funding for small and needy tribes from the Bureau of Indian Affairs?

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I appreciate the opportunity to comment on your observations and recommendations from your site visit to Red Devil this past September. Your candor and obvious desire to assist the Denali Commission in making a positive and measurable difference in the lives of rural Alaskans benefits all Alaskans.

Sincerely,



George Cannelos
Federal Co-Chair