

OCT. 16 1990

Memorandum

To: Associate Solicitor, Division of Energy and Resources 9604 (720)

Through: ^{Deputy} Assistant Secretary - Land and Minerals Management /s/ James M. Hughes
OCT 16 1990

From: Director, Bureau of Land Management

Subject: Request for Opinion on Contractability of Cadastral Surveys under Public Laws 93-638 and 100-472, as Amended

During the past few weeks, members of our Division of Cadastral Survey have attended informational meetings chaired by representatives of the Bureau of Indian Affairs (BIA) and the Office of Policy, Management and Budget (PMB) on proposed regulations for implementing the above-referenced statutes. As a result of those sessions and certain additional meetings within the Bureau of Land Management (BLM), we have determined that it is necessary to request a legal opinion on whether (or to what extent) the BLM's responsibilities for surveying Indian lands at 25 U.S.C. 176 can be contracted to the several tribes pursuant to the provisions of the afore-mentioned statute. The attached October 1, 1990, memorandum from the Director, Office of Program Analysis, to Bureau Directors and Office Heads notes the responsibility of program offices to identify issues requiring legal review.

It is our belief that: 1) the Secretary's responsibilities to protect all (not only Indian) valid existing rights affected by surveys; 2) and the inherent conflict of interest in having tribes contract for surveys of their own lands preclude the surveys from being contracted by the tribes. The attached "position paper" and appendices explain this conclusion in more detail. Should you require additional information, Mr. Frank Hissong or Mr. Keith R. Williams, of the Division of Cadastral Survey, will be glad to assist you; they may be reached on 653-6798.

(sgd) John D. Tabb

Acting Assistant

2 Attachments

- 1-Memorandum-October 1, 1990
- 2-"Position Paper" and Appendices

OCT 16 1990

SD/ASD	<u>1</u>
PUB AFF	
EEO	
RESOURCES	
MINERALS	
OPERATIONS	<u>2</u>
ADMIN	
TRAINING	
IDENT FILES	
ACTION	

10/26/90

BRIEFING PAPER
CONTRACTING FOR CADASTRAL SURVEYS ON INDIAN LANDS AND
DRAFT REGULATIONS TO IMPLEMENT AMENDMENTS TO
THE INDIAN SELF-DETERMINATION AND
EDUCATIONAL ASSISTANCE ACT OF 1988 (P.L. 100-472)

This issue paper is submitted pursuant to an October 1, 1990, memorandum from the Director, Office of Policy Analysis, to Bureau Directors concerning prepublication review of draft regulations for implementing amendments to the Indian Self-Determination and Education Assistance Act of 1988. That memorandum directed a coordinated review of those issues requiring legal and policy analysis prior to the Bureaus providing substantive comments on the draft regulations. This paper outlines the position of the Division of Cadastral Survey on the matter of contracting for cadastral surveys of Indian lands.

BACKGROUND:

Pursuant to 25 U.S.C. 176, cadastral surveys of Indian lands are to be accomplished by the Bureau of Land Management (BLM). Although the Bureau of Indian Affairs (BIA) has provided the BLM with reimbursable monies to accomplish such surveys for several years, a formal Memorandum of Agreement (MOA) for the provision of surveys and survey services was not realized until 1987. The BIA's annual reimbursable funding is approximately \$1,600,000. There are over 500 federally recognized tribes who may request cadastral surveys from BLM.

In managing its reimbursable cadastral survey program, the BIA apportioned its funding among eleven of its twelve Area Offices (Juneau receives no funding) based on those offices' priority survey needs. Area Office funding allocations vary from the \$300,000 for Navajo to \$30,000 for Sacramento. Area Directors then establish intra-area priorities, obtain cost estimates for particular surveys from BLM, and fund their highest priority surveys. The BLM then accomplishes the surveys with force account and/or contract labor (the latter is used extensively with original surveys in Alaska).

In the past, BIA and the tribes have occasionally contracted with private surveyors on Indian lands. This has been done when: 1) preliminary BLM survey work has indicated a boundary location unacceptable to the Tribe/BIA; or 2) when BLM has not been able to meet the (often unrealistic) time and/or cost expectations of the tribe/BIA. Invariably, these contract surveys have been deemed inadequate by the courts, and BLM has had to then perform the surveys at additional cost. Litigation involving the Omaha Tribe's claims to the "Blackbird Bend" portion of the Missouri River is the most outstanding example of this misplaced reliance on private surveys.

DISCUSSION:

Operationally, the issue of Indian tribes utilizing the provisions of Public Law 93-638 and Public Law 100-472, as amended, to contract for delivery of cadastral survey services surfaced in Fiscal Year 1990 when the Cherokee, Chickasaw, and Choctaw Tribes of Oklahoma proposed contracting for cadastral surveys of the bed of the Arkansas River. Negotiations between the tribes and the BLM New Mexico State Office resulted in the tribes agreeing to have BLM perform the survey, with the proviso that the BLM "indirect cost" assessment of 18 percent be eliminated; the tribes also reserved the right to contract for cadastral surveys in subsequent years. A more recent request for information on the contracting of cadastral surveys has been submitted by the Maniilaq Association in Alaska (attached).

The Division of Cadastral Survey does not believe that the provision of cadastral surveys and cadastral survey services is a contractable function. That belief is based on three points.

The first point involves the existence of several statutes which specify that authority to conduct surveys is vested solely with the BLM. More specifically, with regard to Indian lands, 25 USC 176 provides that BLM shall be responsible for conducting surveys of Indian lands.

The second point involves the potential conflict of interest in having a tribe contract for surveys of its own boundaries. In executing its statutory responsibilities, Cadastral Survey is charged with protecting all valid existing prior rights. By its very objectivity and reliance on a substantial body of survey law and widely accepted procedures and practices, Cadastral Survey is able to protect the rights of parties on both sides of a given boundary line. These guarantees could not be afforded through tribal contracts for cadastral surveys.

The third point centers on a number of administrative and managerial concerns. The BIA's present method for establishing priorities among competing survey needs would appear to be severely compromised (if not vitiated) via tribal contracting for surveys. With more than 500 federally recognized tribes authorized to request cadastral survey services, BLM's limited number of survey crews would be able to respond to only a very few requests for survey services.

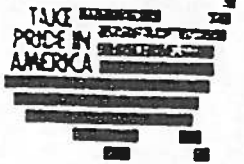
RECOMMENDATION:

It is in the best interest of the United States, the general public, and the Indians (who are the beneficial owners of some 54,000,000 acres of land held in trust for them by the United States) that cadastral surveys be exempted from the list of contractible services being developed for inclusion in the Public Law 93-638 regulations.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



Memorandum

To: Bureau Directors
Office Heads

From: Director, Office of Program Analysis *Thomas W. ...*

Subject: Meeting to discuss development of regulations implementing Amendments to the Indian Self-Determination and Education Assistance Act

On September 26, 1990, a meeting was held with representatives of the various bureaus and offices within the Department to discuss the process to be used to review and further refine draft regulations being developed to implement Amendments to the Indian Self-Determination and Education Assistance Act. The purpose of this memorandum is to confirm the results of that meeting.

The meeting was jointly conducted by Ben Nuvamsa who is the Bureau of Indian Affairs (BIA) Pub. L. 93-638 Amendments Project Coordinator, and Ken Reinfeld who is a policy analyst in the Office of Program Analysis (PPA). A brief overview of the latest draft was provided for each subpart and there was some discussion of associated issues. BIA agreed to to prepare and distribute an executive summary of the regulations for the benefit of the participants.

Participants were informed that a proposed memorandum prepared for the signature of the Secretary is currently being circulated and reviewed within the Department. If approved, a Departmental Review Team (consisting of bureau and office representatives) and a Departmental Indian Self-Determination Policy Group (consisting of the Solicitor and Assistant Secretaries) would be established as part of a specified clearance process to be used in promulgating the proposed rulemaking.

At the meeting, it was agreed that Dr. Reinfeld would serve as a contact person for the Department as well as a liaison between bureaus and offices within the Department and the BIA. It was also agreed that participants would identify legal and policy issues within two weeks by completing a suggested form and providing it to Dr. Reinfeld. Upon receiving completed forms, Dr. Reinfeld would initiate and facilitate activity to address bureau and office concerns and resolve conflicts which may exist in an efficient, effective, and expeditious manner.

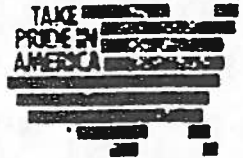
The next meeting of the Departmental Review Team is scheduled to be held between 1 PM on November 5, 1990, to 5PM on November 8, 1990. Arrangements are currently being made by BIA to find a location for the meeting in the Washington, D.C. area. The purpose of the meeting will be to begin to address bureau and office concerns. Additional information regarding the location and agenda of the meeting will be provided to bureau and office representatives when arrangements have been completed.

Please do not hesitate to contact Dr. Ken Reinfeld at (202) 208-4950 should you have any questions.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
222 W. 7th Avenue, #13
ANCHORAGE, ALASKA 99513-7599



9600 (923)

J.PINKS
C.S.
R.H.

MAY 08 1990

Ms. Marie N. Greene
President, Maniilaq Assoc.
P.O. Box 256
Kotzebue, Alaska 99752

RECEIVED
REGIONAL SOLICITOR, USDI

MAY 09 1990

ANCHORAGE, ALASKA

Dear Ms. Greene:

Your letter of March 23, 1990, to the Bureau of Indian Affairs, requesting cadastral survey contracts, has been turned over to BLM for a response. The proper way for you to make such a request would be to submit a proposal for a self-determination contract to the Bureau of Land Management, Division of Cadastral Survey, stating which survey projects you would be interested in contracting.

We will, at that time, outline the legal and professional requirements for such a contract and seek to determine if Maniilaq Association has, at the present, or can acquire that type of technical expertise. If not, BLM may be able to offer some assistance.

If we find that Maniilaq Association has the necessary abilities and professional staff, or can acquire them, we would lay out the scope of the project(s), the time schedules that would be necessary and the accuracy standards and final record's preparation that is required. If Maniilaq Association can meet all of these requirements and a satisfactory cost proposal can be reached, we believe that a self-determination contract could be awarded.

However, we must tell you that the project you mention contracting in 1990 (Ambler/Kobuk/Shungnak) has already been completely prepared for BLM to perform with its own cadre of surveyors. We plan to commence the project within a matter of a few days. It would be impossible for us to go through the procedure outlined above & still complete the project and expend the funds in 1990.

The 1991 project that you mention (Deering/Kotzebue) is non-existent. There was a Deering 14(c) survey accomplished in 1989 and the only other survey programmed in that area prior to 1992 is the Kotzebue Townsite, which we also plan to survey with BLM surveyors in 1990.

The Kotzebue/Noatak/Kivalina project, presently scheduled for 1992, would be the first project, in your area, that feasibly could be performed under a self-determination contract. This would consist primarily of 350 Native Allotments in the vicinity of the three named villages. No Regional Corporation survey work is planned in this project, nor is there any State Selection. There are also no townsite surveys or 14(c) planned for the project at this time.

The 1993 Buckland/Deering project, listed in your letter, consists of about 83 (numbers may change slightly) Native Allotment parcels. If one of your more experienced surveyors could come into our office in Anchorage, we would be glad to attempt to show him/her the scope of either one of these projects, based on the information we have presently. Just please notify us when we might expect them so that we will be prepared and have the material available.

In the meantime, if I can be of any further help, please don't hesitate to write or call. The person to call for additional information would be Horace Sanders, Chief of our Planning Section, at 271-3197 or Jerry Pinkerton, Chief of Survey Preparation, at 271-3852.

/s/ ROBERT W. ARNDORFER

Robert W. Arndorfer
Deputy State Director
for Cadastral Survey

cc: Jerry Pinkerton (AK-923)
Charlie Bunch - BIA
Roger Hudson - Regional Solicitor's Office
Robert Arndorfer (AK-920)

923:JPinkerton:X5506:sr:5/3/90

memorandum

DATE: March 30, 1990

REPLY TO
ATTN OF: Superintendent, Nome Agency

SUBJECT: Maniilaq Association Request to Contract BLM Cadastral Survey Work

TO: Acting Area Director, Juneau Area Office

RECEIVED
APR 06 1990

BUREAU OF INDIAN AFFAIRS
OFFICE OF THE AREA DIRECTOR

Enclosed is Maniilaq Association's request to contract for BLM Cadastral Survey Work (letter enclosed). We responded and forwarded their request to you for action (letter enclosed). We shall await your instruction.



Nettie Peratrovich

cc: Division of Trust Service
638 Contracting

RECEIVED
APR 6 1990

BUREAU OF INDIAN AFFAIRS
DIVISION OF TRUST SVCS.



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan



UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS
Nome Agency
P.O. Box 1108
Nome, Alaska 99762

March 30, 1990

Marie Greene, President
Maniilaq Association
P.O. Box 256
Kotzebue, AK 99752

Dear Ms. Greene:

We are in receipt of your letter dated March 23, 1990, requesting to contract BLM Cadastral Survey Work.

Your request is being forwarded this date to Division of Trust Services, 638 Contracting and Area Director. Procedural steps of receiving this contract shall be outlined to you after we receive response from Area.

Sincerely,

Nettie Peratrovich,
Agency Superintendent

Ma.iiłaq Association

P.O. Box 256
Kotzebue, Alaska 99752
(907) 442-3311

March 23, 1990

Nettie Peratrovich, Superintendent
Bureau of Indian Affairs
Nome Agency
P.O. Box 1108
Nome, AK 99762

RECEIVED

MAR 23 1990

BIA NOME AGENCY

Dear Nettie:

The Northwest Arctic Borough is scheduled for BLM cadastral survey work for 1990, 1991, 1993 and 1994. Maniilaq's Realty Program is interested in contracting this service in all areas: The State of Alaska entitlements; mineral surveys; the Regional and Villages Corporation entitlements; and the individual Native Allotments and townsites; etc.


Maniilaq's Realty Program is working with individual allottees to help insure that their land is properly surveyed. We have the following areas already scheduled for survey:

In 1990, Ambler/Kobuk/Shungnak	- 143 parcels
In 1991, Deering/Kotzebue	- 30 parcels
In 1992, Kotzebue Area	- 358 parcels
In 1993, Buckland/Deering	- 98 parcels
	<hr/>
	626 parcels

This would be a great economic boost to the area. We would be able to employ a number of our residents in the area who have already gone through the surveying courses offered at the Kotzebue Technical Center under the direction of licensed BLM-approved surveyors.

We would appreciate your assistance in getting this project started. We understand that such a contract has not been previously undertaken and we seek your help to identify the necessary steps to get the process underway.

Sincerely,


Marie N. Greene
President

cc: Helen Bolen, Realty Officer

REALTY/1/TXTSTARR

MEMBER VILLAGES

Arpaarpat Nuvatchuaq Iovatchuaq Kavook Kivalina Louvuk Qikiataenik Nuvaga Nuunik Akulieaq Isinnaq

§ 450e-1. Grant and cooperative agreements

The provisions of this Act shall not be subject to the requirements of chapter 63 of Title 31: Provided, That a grant agreement or a cooperative agreement may be utilized in lieu of a contract under sections 450f and 450g of this title when mutually agreed to by the appropriate Secretary and the tribal organization involved.

(Pub.L. 93-638, § 9, as added Pub.L. 98-250, § 1, Apr. 3, 1984, 98 Stat. 118.)

References in Text. This Act, referred to in text, is the Indian Self-Determination and Education Assistance Act, which is Pub.L. 93-638, Jan. 4, 1975, 88 Stat. 2203. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables volume.

Codification. In text, "chapter 63 of Title 31" was substituted for "the Federal Grant and Coop-

erative Agreement Act of 1977 (Public Law 95-224; 92 Stat. 3) [41 U.S.C.A. § 501 et seq.] on authority of Pub.L. 97-258, § 4(b), Sept. 1, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Legislative History. For legislative history and purpose of Pub.L. 98-250, see 1984 U.S. Code Cong. and Adm. News, p. 319.

§ 450f. Self-determination contracts

(a) Request by tribe; authorized programs

(1) The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, including construction programs—

(A) provided for in sections 452 to 457 of this title;

(B) which the Secretary is authorized to administer for the benefit of Indians under sections 13 and 52a of this title, and any Act subsequent thereto;

(C) provided by the Secretary of Health and Human Services under sections 2001 to 2004b of Title 42;

(D) administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and

(E) for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed.

(2) If so authorized by an Indian tribe under paragraph (1) of this subsection, a tribal organization may submit a proposal for a self-determination contract to the

LEGISLATIVE HISTORY
SENATE REPORT NO. 100-274

[page 25]

This section clarifies that tribes are eligible to contract for any program or function operated by either Secretary for the benefit of tribes, regardless of whether such specific programs or functions are operated locally. For example, a tribe may need to conduct a natural resources planning and management program under a self-determination contract. The fact that natural resources planning and management is not operated locally by the Bureau of Indian Affairs agency office should not prevent the Secretary from entering into a contract with that tribe. Furthermore, the fact that the Secretary has decided to allocate funds to a local agency in a particular manner should not bar the tribe from contracting for functions, such as criminal investigation, for which funds have not been allocated to that particular agency.

The Committee intends for section 102(a)(2) as amended to authorize tribes to enter into contracts with the Secretary to carry out trust related functions. Clearly, the Secretary of the Interior continues to maintain a trust responsibility for tribal resources when the tribe operates a program under a self-determination contract. Section 102(a)(2) allows tribes to contract for trust functions including but not limited to real estate appraisals, soils inventories, water resources studies, lease permits, land use zoning studies, forestry management and fire suppression, minerals inventories, environmental quality assessments, archeological resource studies, fish and game studies, cadastral surveys, land title and records management, lease compliance, trust fund investment and accounting services, facilities maintenance and repair. The intent of the law is to enable tribes to improve the protection of trust resources by operating the technical functions relating to the trust responsibility while preserving the Federal Government's obligations as trustee for Indian lands and resources.

Under the Committee's amendment, the Secretary of the Interior remains responsible for the protection of Indian trust resources. The quality of that trust responsibility, however, is dependent upon the quality of the supportive documentation, research and analysis, options and recommendations. Indian tribes are most often the "front line of defense" in protecting tribal trust assets. Consequently, tribes often are in the best position to provide the technical services that will afford the best possible protection of trust resources by the Secretary.

The protection and management of tribal trust resources should be viewed as a joint effort of the tribe and the Secretary. If tribal contracting of trust-related functions is to be declined, the Secretary's burden of proof is to demonstrate that a tribal organization's operation of those functions will lead to inadequate protection of trust resources.

The Secretary is authorized by Section 102(a)(4) to allow tribes to consolidate two or more mature contracts into a single contract. This amendment simplifies contract administration, including authority for tribes to consolidate letter of credit functions and advance payment system functions, and authority for tribes to submit consolidated quarterly financial reports and a consolidated annual report, rather than having to unnecessarily duplicate reporting requirements. The Committee understands that tribes and the Secretary may want to consolidate funding for purposes of administra-

April 30, 1990
Cadastral Survey 920B

Breakdown of Survey work as requested by Solicitor.
(Projects as shown in Maniilaq Association letter of March 20, 1990.)

- (1). 1990 Ambler/Kobuk/Shungnak
PP Window No. 923.
- BLM is doing this work with inhouse crews in 1990.
- (2). Deering/Kotzebue 1991
- BLM does not have a Patent Plan Window by this name for 1991. I believe they are talking about the Deering 14(c) which was surveyed in 1989 & the Kotzebue Townsite, which we are field surveying in 1990.
- (3). Kotzebue/Noatak/Kiralina 1992
PP Window 954.

This is scheduled 1992 work providing funding is available.

Regional Corporation: NANA

- No new Regional Corporation Survey work is planned.

Inholding parcels for survey:

- Approx. 358 parcels to survey
(Nat. Allots., 350; 3e's; 5; 14h(1)'s, 3)

State Lands:

- No new State surveys are planned in this window.

14(c) Work: None is planned.

- Kotzebue is being done in 1990 as noted above.
- Noatak & Kiralina 14(c) work is not ready yet.

Townsites:

- All townsite work is in progress or has been completed.

4. Buckland/Deering 1993

PP Window #1887.

This is scheduled 1993 work providing funding is available.

Village Corporations involved:

Buckland
Deering

Regional Corporation: NANA

No new Regional Corporation survey work is planned at this time.

Inholding parcels to survey:

Approx. 83 parcels to survey. Details of this future work are still being worked out so numbers will change some.

State Land:

No rectangular survey is planned with this window.

14(c) Work:

Deering 14(c) was field surveyed in 1989.
Buckland 14(c) work is not ready yet.

Townsites:

All townsite work has been completed.

COPY

memorandum

DATE: April 6, 1990

REPLY TO ATTENTION OF: Director, Division of Trust Services

BUREAU OF INDIAN AFFAIRS

JUNEAU AREA OFFICE

SUBJECT: John Bennett - Chiet Cadastral Survey

TO: New Mexico state office

81-476-6334

Nome Agency,

~~Have~~ have dealt with issue - will forward any related correspondence should follow in next week. Solicitor was involved.


George A. Walters

Attachments

cc: Acting Area Director, Juneau Area Superintendent, Nome Agency Manillaq Association

PL 100-472

- Roger

I'll leave this for you to read. See note below.

Larry Evans
BCLM Cadastral Sur.

X 3185

COPY

UNITED STATES GOVERNMENT

memorandum

DATE: April 6, 1990

REPLY TO
ATTN: Director, Division of Trust Services

SUBJECT: Manillaq Request to Contract BLM Cadastral Survey Work

BUREAU OF INDIAN AFFAIRS
JUNEAU AREA OFFICE

TO: Director, ANCSA Projects Office

Attached is a copy of a memorandum from the Superintendent, Nome Agency,
and a letter from Manillaq Association on the above subject.

Please contact BLM and find out what procedures Manillaq should follow in
order to contract for these services.


George A. Walters

Attachments

cc: Acting Area Director, Juneau Area
Superintendent, Nome Agency
Manillaq Association

PL 100-472

APR 10 1990
JUNEAU AREA OFFICE