

**ATTORNEY'S FINAL OPINION OF COMPENSABILITY**  
**CHESTER CREEK ECOSYSTEM RESTORATION PROJECT**

The Chester Creek Ecosystem Restoration project will affect the operation and placement of two sewage lines, two POL lines, a fiber optic cable and a radio tower ground grid. This report of fact and conclusion of law relative to this project is made under the provisions of ER 405-1-12.

1. PROJECT SUMMARY: The Chester Creek Ecosystem Restoration project involves creating an open channel from Westchester Lagoon in Anchorage, Alaska, under a railroad trestle to Cook Inlet, a distance of about 1,550 feet. The purpose of the project is to provide passage for anadromous fish into Chester Creek. The cost of the project is to be shared by the U.S. Army Corps of Engineers and the Municipality of Anchorage. The non-federal sponsor will be responsible for performing, or assuring performance for relocating utilities in accordance with Section 206 of the Water Resources Development Act of 1996.

2. AFFECTED UTILITIES: The project will require the relocation of two sewer lines owned and operated by the Municipality of Anchorage; two POL lines, one owned and operated by Tesoro Alaska Petroleum Company and the other by Anchorage Fueling and Service Company (AFSC); and a radio tower ground grid owned and operated by Alaska Broadcasting Co., Inc.

The two sewer lines owned by the Municipality will be relocated from property owned by the Municipality to property that is also owned by the Municipality. The Municipality has a public obligation to continue the operation of these sewer lines.

The two POL lines, the sewers, and the fiber optic line are located in the Alaska Railroad right-of-way. The POL lines and sewers will be relocated within the right-of-way to a depth below the lowest point of the channel. The fiber optic cable is owned by Alaska Fiber Star. It will not require removal and relocation, and its function is not expected to be impacted during construction.

Of the two POL lines, the one owned by AFSC is subject to a permit issued by the Regulatory Branch of the U.S. Army Corps of Engineers, Alaska District. The permit requires them to bear the expense of removing or relocating their line. The line owned by Tesoro does not appear to be subject to the same condition

The radio tower grid is located on land originally owned by Midnight Sun Broadcasting. The land was acquired through eminent domain when the Municipality created Westchester Lagoon. Midnight Sun retained an easement for maintenance for the tower and grid. Midnight Sun was acquired by Alaska Broadcasting Co., along with the tower and grid. The Municipality confirmed the easement with the new owner. There is no requirement in the easement for Alaska Broadcasting to bear its own relocation expenses. Portions of the ground grid will be disturbed during construction and will be replaced to insure that the tower's function is not diminished by the project.

The privately owned POL lines, fiber optic cable and broadcast tower and grid are currently functioning. They will need to be replaced as a matter of practical necessity.

3. EXTENT OF GOVERNMENT'S LEGAL OBLIGATION AND COMPENSABLE INTEREST: The Fifth Amendment to the Constitution of the United States prohibits the taking of private property for public use without just compensation. This protection has

been extended to State property (and by logical extension, city property) as well. Nichols on Eminent Domain, 3d Edition, Section 2.21[4].

The fiber optic cable will not require relocation and its function is not expected to be impacted during construction. The project will not affect any easements held by Alaska Fiber Star. Therefore, Alaska Fiber Star has no compensable property interest that will be affected by the project.

The permit for the POL line owned by AFSC requires AFSC to bear the cost of relocating its line for the fish passage project. The project does not affect any easement held by AFSC. Therefore, AFSC has no compensable property interest that will be affected by the project.

The Municipality of Anchorage has a property interest in its sewer lines and is required to bear 100 percent of the costs of relocating those lines under Section 206 of WRDA 96, (33 U.S.C. 2330). However, those costs may be credited toward its portions of the shared costs of the project.

Tesoro has a property interest in its POL line. The line will have to be relocated and the local non-federal sponsor (the Municipality of Anchorage) is required to bear the cost of the relocation.

The Alaska Broadcasting Company has a property interest in its tower and ground grid. The ground grid will have to be relocated and the Municipality of Anchorage is required to bear the cost of relocating the ground grid.

The functions of these utilities are not commonly sold on the open market and the fair market value thereof is not readily ascertainable. These utilities provide both private and public service. The portions thereof that are affected by this project are part of a

larger whole and operate as such. Even if fair market value could be determined, it would be impractical to compensate the owners by providing fair market value of the portion of the utilities affected by the project. Relocation of the affected portions is necessary to avoid manifest injustice to the owners.

4. CONCLUSION: The Municipality of Anchorage must bear the cost of relocation of the sewers, ground grid and Tesoro's POL line. All of the costs of relocation may be applied to the local sponsor's share of the costs.

Dated 16 January 2004 *Toni B. London*  
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