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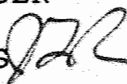
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THE WHITE HOUSE

WASHINGTON

April 9, 1986

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS 

SUBJECT: Nomination of Ted Garrish to Serve  
Concurrently in a Second PAS Position

You asked that I consider whether Ted Garrish, who currently serves as Assistant Secretary of Energy, a PAS position, may be nominated to serve concurrently as Federal Inspector of the Alaska Natural Gas Transportation System, also a PAS position. It is well-established that an individual may serve in two separate positions, so long as he is only paid for one. Accordingly, I have no objection to Garrish being nominated for a second PAS position. His pay must be the higher of the salaries fixed for the two positions.

There is nothing in the Constitution that prohibits the President from filling two separate PAS positions with the same individual, and such a restriction on Presidential appointment power should not be lightly inferred. Case law recognizes that an individual may simultaneously hold two offices separately established by Congress see Dabney v. Reagan, 559 F. Supp. 861, 866 (S.D.N.Y. 1982); United States v. Thompson, 475 F. 2d 1359, 1363 (5 Cir. 1973), and the situation has occurred not infrequently in the past, as for example when Sargent Shriver served simultaneously as Director of the Peace Corps and Director of the Office of Economic Opportunity. In addition, Federal law prohibits an individual from receiving pay for more than one position, 5 U.S.C. § 5533(a), an implicit recognition that one may serve in more than one position. (Indeed, 5 U.S.C. § 5533(a) replaced a previous statute that did prohibit dual office-holding.) Finally, the Office of Legal Counsel has determined that "an individual can concurrently hold two Federal executive offices." Memorandum Opinion for the Counsel to the President from Deputy Assistant Attorney General Larry A. Hammond (September 9, 1977), 2 OLC Ops. 368. That same opinion noted that since a Federal officer cannot legally waive a salary fixed by law, an individual in two positions must accept the higher salary, if both are fixed by law, but only the one salary, consistent with 5 U.S.C. § 5533(a).

The Department of Energy General Counsel has concluded that Garrish may serve in both positions. I have reviewed the opinion prepared by the General Counsel, and agree with its conclusion.


cc: Dianna G. Holland

THE WHITE HOUSE

WASHINGTON

April 9, 1986

MEMORANDUM FOR JOHN ROBERTS

FROM: DIANNA G. HOLLAND 

I know Dick asked you to look at the issue of a PAS serving in two PAS positions. Specifically, Ted Garrish is ready to be nominated to be the Federal Inspector of the Alaska Natural Gas Transportation System if you say that it is all right.

Thank you.



DEPARTMENT OF ENERGY  
WASHINGTON, D.C. 20585

Assistant Secretary for  
Congressional,  
Intergovernmental &  
Public Affairs

Susan —

This is the memo on dual appointments which we discussed over the phone.

Even though names have been removed, I would appreciate having it remain confidential.

A clean copy is being prepared by our General Counsel which I will have to you shortly.

Thanks,

Ted

The question has been raised whether a sitting cabinet officer, , may be appointed to serve concurrently in another cabinet position, , in the event of a vacancy in the latter office. This memorandum examines briefly the sources of authority for such a concurrent appointment, whether constitutional or statutory restrictions would foreclose such an appointment, and the means whereby such an arrangement might be accomplished.

The basic source of the President's authority to make such appointments is Article II, section 2, clause 2, of the Constitution, which provides only that the President

... shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law ....

Though elsewhere the Constitution places limitations on holding offices of foreign governments and by members and former members of Congress, neither the Appointments Clause nor any other provision of the Constitution otherwise limits the President's power to appoint an individual to serve concurrently in two offices. Nor does any provision of the Constitution impose a disability on an individual so as to prevent such concurrent service. Reading such a general disability into the Constitution--in effect augmenting the particular types of dual officeholdings specifically foreclosed by the Framers--would curtail the President's power of appointment to executive offices, and would be unwarranted. Cf. Myers v. United States, 272 U.S. 52 (1926).

Dual officeholding has occurred with sufficient frequency to support the constitutional principle that there is no general

...impediment to the appointment of one individual to two offices established [through legislation] by Congress. Although some state constitutions expressly prohibit such dual appointments, there is nothing in the United States Constitution which prevents it.

United States v. Thompson, 475 F. 2d 1359, 1363 (5th Cir. 1973).

Early case law made clear that two distinct governmental offices could be held concurrently, if not otherwise prohibited by law. United States v. McCandless, 147 U.S. 692 (1893); United States v. Saunders, 120 U.S. 126 (1887). In addition, the Justice Department recognized that, it was "for the appointing power to determine whether he [i.e., the appointee] can properly and fully perform the duties of the two offices." 16 OP. ATT'Y GEN. 7, 8 (1878).

Currently, the only general statute regulating concurrent officeholdings by all officers and employees is 5 U.S.C. § 5533(a) (1982), which provides that

... an individual is not entitled to receive basic pay from more than one position for more than an aggregate<sup>1</sup> of 40 hours of work in one calendar week ...<sup>1</sup>

This provision has been viewed by the Department of Justice in a written opinion as "inferentially recogniz[ing]<sup>2</sup> the legality of dual officeholding." 2 OP. O.L.C.. 368 (1977).<sup>2</sup> And, for

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<sup>1</sup>Adopted in 1964, this provision repealed older salary limitation statutes, at least one of which also contained a prohibition against dual officeholding. Even under earlier law it was well recognized that the essential purpose of the statutes was "to prevent persons employed in government service from obtaining compensation in addition to that fixed by law for the position to which they have been appointed." 16 OP. ATT'Y GEN. 7 (1878); 34 OP. ATT'Y GEN. 490, 492 (1925).

<sup>2</sup>Nor would the statutory prohibition against Government acceptance of voluntary services (31 U.S.C. § 1342 (1982)) present any obstacle in this case. The Attorney General, in interpreting this prohibition, has drawn a distinction between "voluntary service" and "gratuitous service." "The evil at which Congress was aiming was not ... authorized services (Footnote Continued)



example, during a 17 month period from September 1964 through February 1966, R. Sargent Shriver held two Presidential appointments concurrently, Director of the Peace Corps and Director of the Office of Economic Opportunity. He was separately appointed with the advice and consent of the Senate to each of these positions.<sup>3</sup> See 2 OP. O.L.C. 368 (1977). Further, in a recent federal district court case, Dabney v. Reagan, 559 F. Supp. 861 (S.D. N.Y. 1982), the court held that the fact that the President's nominee for President of the Solar Energy and Energy Conservation Bank was and would continue to be President of the Government National Mortgage Association would not preclude his confirmation. The court noted that "[n]o statute presently prohibits dual office-holding within the executive branch," and that "[t]here are several recent examples of individuals holding

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(Footnote Continued)

without compensation [i.e., gratuitous service], but ... unauthorized services not intended or agreed to be gratuitous [i.e., voluntary service] and therefore likely to afford a basis for a future claim upon Congress. 30 OP. ATT'Y GEN. 51, 55 (1913). In other words, the statute does not prohibit appointment without compensation per se. The Comptroller General has concurred in this view. 27 Comp. Dec. 131 (1920); 27 Comp. Gen. 194 (1947); 54 Comp. Gen. 393 (1974). Moreover, the statutory restrictions on dual compensation, 5 U.S.C. § 5533 (1982), would prohibit the acceptance of a second salary in this case. (See 34 OP. ATT'Y GEN. 490, 496 (1925).)

<sup>3</sup>Shriver was appointed by the President with the advice and consent of the Senate on March 22, 1961 to serve as Director of the Peace Corps, which at that time was an agency within the Department of State. On September 22, 1961, Congress established the Peace Corps as an independent agency (Peace Corps Act, 4 Pub. L. 87-293). The Act provides that the President may appoint, by and with the advice and consent of the Senate, a Director of the Peace Corps. Shriver was appointed to that position, however, he did not have to be reconfirmed. Pub. L. 87-293, title I, sec. 16(b). Shriver served as Director of the Peace Corps until February 25, 1966. Separately, on September 23, 1964, Shriver was appointed by the President with the advice and consent of the Senate to serve as Director of the Office of Economic Opportunity (Economic Opportunity Act, Pub. L. 88-452).

more than one office at a time<sup>4</sup> in the higher echelons of the executive branch." Id. at 866.

The so-called Vacancy Act, 5 U.S.C. § 3345-49 (1982), also supports the proposition that an executive officer may serve in two positions concurrently. In the event of a vacancy resulting from, inter alia, the resignation of "the head of an Executive department," 5 U.S.C. § 3345, "the President may direct the head of another Executive department ... to perform the duties of the [vacant] office .... 5 U.S.C. § 3347.<sup>5</sup>" Thus, by implication, the Vacancy Act seems to recognize that there is no general constitutional impediment to dual officeholding.

I have, therefore, concluded that there is no legal impediment to the President's appointing the Secretary to serve concurrently as Secretary. Moreover, I believe there is authority and precedent for such an arrangement.

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<sup>4</sup>The Government brief in opposition to motions for compliance, to which the court refers, mentions, in addition to the Shriver example, Francis Keppel's concurrent service as an Assistant Secretary of the Department of Health, Education and Welfare and Commissioner of Education commencing in 1965 and James Allen's concurrent service in the same two positions commencing in 1969.

<sup>5</sup>Section 3348, however, limits the period of service of an officer designated by the President under section 3347 to "not more than 30 days." This limitation does not apply to vacancies filled during a recess of the Senate. 5 U.S.C. § 3349.



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<sup>6</sup>See 33 OP. ATT'Y GEN. 20 (1921).

<sup>7</sup>The usual restrictions relating to compensating a recess appointee would not appear to be a problem in this instance, because the individual serving in the dual capacity would already be receiving compensation based on his other position, previously confirmed by the Senate.

THE WHITE HOUSE

Office of the Press Secretary

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For Immediate Release

March 26, 1986

The President today designated Theodore J. Garrish, Assistant Secretary of Energy (Congressional, Intergovernmental and Public Affairs), as Acting Federal Inspector for the Alaska Natural Gas Transportation System.

# # #

3/24/82  
THE WHITE HOUSE  
WASHINGTON

TO: *GR*

FROM: **Richard A. Hauser** *RaH*  
**Deputy Counsel to the President**

FYI: \_\_\_\_\_

COMMENT: \_\_\_\_\_

ACTION: ☒ *pls call*

*re attached  
materials*



# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1/1Name of Correspondent: Susan Phillips☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: Assistant Secretary of Energy for  
Congressional, Intergovernmental and Public Affairs  
also serving as Federal Inspector, Alaska  
Natural Gas Transportation System.

## ROUTE TO:

## ACTION

## DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOLL		ORIGINATOR	86103120			1/1
		Referral Note:	for RATH signature			
CUAT 18		R	86103124		S	86103131
		Referral Note:				
			1/1			1/1
		Referral Note:				
			1/1			1/1
		Referral Note:				
			1/1			1/1
		Referral Note:				

## ACTION CODES:

A - Appropriate Action  
C - Comment/Recommendation  
D - Draft Response  
F - Furnish Fact Sheet  
to be used as Enclosure

I - Info Copy Only/No Action Necessary  
R - Direct Reply w/Copy  
S - For Signature  
X - Interim Reply

## DISPOSITION CODES:

A - Answered  
B - Non-Special Referral  
C - Completed  
S - Suspended

## FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer  
Code = "A"  
Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

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THE WHITE HOUSE

WASHINGTON

March 20, 1986

MEMORANDUM FOR SUSAN PHILLIPS

FROM:

AMY WEIST *AW*

SUBJECT:

Alaska Federal Inspector

Attached is the memorandum from George Jameson, in the Counsel's office, regarding Danny Boggs' designation as Acting Federal Inspector for the Alaska Natural Gas Transportation System.

It is my understanding this memo deals with the position only in an "Acting" capacity.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

*Contemplated by OMS and Chie (Alaska delegation and ME Clure) that a JOE (PAS) would also serve in this capacity. There is not enough work (or budget) to justify a full time appointment.*

*(Level III)*

THE WHITE HOUSE

WASHINGTON

February 27, 1986

MEMORANDUM FOR AMY WEIST  
ADMINISTRATIVE ASSISTANT  
OFFICE OF PRESIDENTIAL PERSONNEL

FROM: W. GEORGE JAMESON  
ASSISTANT COUNSEL

SUBJECT: Designation of Acting Federal Inspector for  
the Alaska Natural Gas Transportation System

As we discussed, attached is a memo that outlines the issues in designating an "Acting" Federal Inspector. The memo concludes that legal authority exists to do so, but notes that such designation may be for a limited time only pending appointment of a replacement in order to pass the test of reasonableness advised by the Justice Department. We suggest that you, as well as Department of Energy counsel, keep close tabs on this to ensure that the Boggs' tenure satisfies this requirement. Our concurrence, of course, presumes all other applicable (e.g. conflicts of interest) standards will be met. Please do not hesitate to call me (456-6257) if you have any questions or comments.

Attachment

2-27

Per Susan Phillips

"Proceed - everything  
is fine."



THE WHITE HOUSE

WASHINGTON

February 21, 1986

MEMORANDUM FOR RICHARD A. HAUSER

FROM:

W. GEORGE JAMESON *WJ*

SUBJECT:

Presidential Appointment Authority

We have been asked for our views on whether there is any problem with designating the Deputy Secretary of Energy, Danny C. Boggs, as Acting Federal Inspector of the Alaska Natural Gas Transportation System. The personnel people are of the view that, because the designee is to be "Acting" for an independent agency, the provisions of the Vacancies Act (5 U.S.C. § 3347) do not apply to impose a 30-day limitation on the time of service. It should be noted that Mr. Boggs has a nomination before the Senate "to be United States Circuit Judge for the Sixth Circuit."

I agree that the Vacancies Act provisions do not apply in this case, because by their terms those provisions are applicable to vacancies in executive or military departments. Moreover, there appears to be precedent for the view that the President is authorized to designate, on a temporary basis, someone to serve in an "Acting" capacity for a reasonable period of time until a Federal Inspector can be nominated and subsequently confirmed by the Senate. I have discussed this matter with Herman Marcuse of the Office of Legal Counsel, Department of Justice, who has confirmed to me that it is the DOJ position that such inherent authority exists. The purpose of this memorandum is to outline the issues that I believe are raised by such a designation.

The Office of the Federal Inspector for the Alaska Natural Gas Transportation System was established under Reorganization Plan No. 1 of 1979. ~~\_\_\_\_\_ who is \_\_\_\_\_~~  
~~\_\_\_\_\_ does not provide for a Deputy Federal Inspector \_\_\_\_\_~~  
~~\_\_\_\_\_~~ Accordingly, an issue is raised by the proposed designation because Article II, Section 2 of the U.S. Constitution unequivocally requires an officer to be confirmed by the Senate unless different provision is made by Congressional statute. In this case no such provision exists, so that a determination must be made whether the President has the authority to make an interim appointment without Senate approval.

The U.S. District Court for the District of Columbia in Williams v. Phillips 360 F. Supp. 1363 (DDC 1973) held that such an 'appointment' cannot be made without statutory authorization, absent 'emergency' situations. In ruling on the government's application for a stay of the decision, the Court of Appeals indicated that ~~the President would have a reasonable period of time to appoint someone to the position before the 30-day period expires.~~ Williams v. Phillips 461 F. 2d 669 (D.C. Circuit 1973). The Appeals Court suggested that the 30-day period provided for in the Vacancies Act provides an indication of what constitutes a reasonable period.

The authority for a temporary appointment appears to derive from Article II, Section 3 of the Constitution which provides that ~~the President shall take care that the laws be faithfully executed.~~ Mr. Marcuse indicated that Presidents have exercised inherent authority to make temporary appointments even prior to the enactment of the Vacancies Act. The Justice Department's view is that the Court of Appeals decision provides a sound basis to argue that ~~inherent Presidential authority to fill vacancies in non-emergency situations.~~ To ensure that temporary appointments are not perceived as attempts to circumvent the nomination process, formal nominations should be submitted within a reasonable time, and ~~the President should not appoint someone to the position until the nomination has been submitted to the Senate.~~ Moreover, Mr. Marcuse indicated that he previously became aware of the problem with respect to the Alaska Natural Gas Transportation System, ~~and that he had intended to object to the appointment of the Acting Federal Inspector.~~

Notwithstanding the foregoing conclusion that supports the proposed designation, I think there are several points that you ought to note before this proceeds further. First, the Article II, Section 2 provision requiring Senate confirmation is a fairly clear constitutional mandate. That Article also provides for recess appointments in order to permit the President to keep the Government running if the Senate is not in session and unable to act upon a nomination. No constitutional provision is made for interim appointments. Second, ~~the reorganization plan establishing the position of Federal Inspector makes no provision for someone to act in his absence.~~ Some may argue that such an omission must be deemed intentional. The district court in Williams took that view with respect to the designation of an Acting Director of OMB. Finally, if the President has inherent constitutional authority to make interim appointments, but the Vacancies Act limits to 30 days the time that such an appointment may last, questions are raised about the constitutional validity of the Vacancies Act.

In conclusion, it appears that the Justice Department would be willing to support an interim designation pending Senate confirmation of the ultimate nominee. It should be noted that the background investigation is currently being conducted on a potential nominee. Such a course would be a reasonable approach and clearly not designed to circumvent the confirmation process. Because there is no definitive case law on this point, a temporary appointment could be subject to challenge as technically flawed although entirely reasonable. Nevertheless, I believe the reasonableness of this action proposed would meet with the approval of the Williams Court of Appeals, and I am prepared to advise that this proposal may proceed.

THE WHITE HOUSE

WASHINGTON

February 6, 1986

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT H. TUTTLE

SUBJECT: Nomination of Theodore John Garrish  
as Federal Inspector of the  
Alaska Natural Gas Transportation System

Donald T. Regan and I recommend you nominate Theodore John Garrish as Federal Inspector, Alaska Natural Gas Transportation System. Mr. Garrish currently serves as Assistant Secretary for Congressional, Intergovernmental and Public Affairs at the Department of Energy, a position he has held since May of 1985. Mr. Garrish served at the Department as General Counsel (May, 1983 to May, 1985) and Special Assistant to the Secretary (January, 1983 to May, 1983). Prior to joining the Department of Energy, Mr. Garrish was Legislative Counsel, Department of the Interior (March, 1981 to December, 1982); and a partner in the law firm of Deane, Snowdon, Shutler, Garrish and Gherardi (July, 1978 to March, 1981). In addition, Mr. Garrish held several positions in the Nixon and Ford Administrations.

A life-long Republican, Mr. Garrish's most recent political activities include Campaign Event Operations, Reagan-Bush '84; Consultant to the White House Office of Presidential Personnel (1981); Deputy Executive Director, Presidential Inaugural Committee (1981); and Advanceman, Reagan-Bush Committee (1980).

Mr. Garrish was educated at the University of Michigan from which he received his A.B. in 1964 and the Wayne State University, J.D., cum laude, 1968.

Upon your approval of this nomination, legislative and FBI clearances will be initiated. Mr. Garrish will not be announced or nominated until they have been completed.

APPROVE \_\_\_\_\_

DISAPPROVE \_\_\_\_\_

WASHINGTON

MEMORANDUM FOR DONALD T. REGAN

FROM: SUSAN E. PHILLIPS

POSITION

\_\_\_\_\_ Federal Inspector concurrently  
 \_\_\_\_\_ Assistant Secretary  
 \_\_\_\_\_ Public Affairs,  
 \_\_\_\_\_

The Federal Inspector of the Alaska Natural Gas Transportation System (ANGTS) interacts with the Design and Engineering Board - the private sponsors of the pipeline system - and with the Congress and appropriate offices of the Executive Branch. ANGTS was created in 1979 when there was a natural gas shortage. The Office of the Federal Inspector is responsible for coordinating all Federal activities directly related to the construction of the 4,790-mile Alaska Natural Gas Transportation System. In addition to serving as the Federal focal point for this project, the Office of the Federal Inspector is charged with enforcing all Federal laws and permits which apply to ANGTS. The franchise for the project was issued to the Northwest Alaskan Pipeline Company. Phase I, comprising 32% of the total ANGTS system, was completed in 1982 at a cost of \$2.4 billion and is now transporting gas from Alberta, Canada to the U.S. west coast and mid-west. Given the current energy market, it is expected that there will be a delay of several years before the next phase of construction will begin.



[REDACTED] is, therefore, 1 [REDACTED] ce  
of the Federal Inspector. [REDACTED] e

[REDACTED] order to 1) protect the interests of the franchisees who have already invested \$800 million in Phase II of the project, and 2) to prevent unnecessary regulatory delay should the need for natural gas increase dramatically over the next couple of years.

The House and Senate appropriations bills for Fiscal Year 1986 place the Office of the Federal Inspector within the Department of Energy for administrative purposes. The F.Y. 1986 budget is \$500,000 and the request for F.Y. 1987 is \$221,000. The [REDACTED]

#### CANDIDATE RECOMMENDATION

The candidate of the Office of Presidential Personnel is Theodore John Garrish. Mr. Garrish currently serves as Assistant Secretary for Congressional, Intergovernmental-- and Public Affairs at the Department of Energy, a position he has held since May of 1985. Mr. Garrish served at the Department as General Counsel (May, 1983 to May, 1985) and Special Assistant to the Secretary (January, 1983 to May, 1983). Prior to joining the Department of Energy, Mr. Garrish was Legislative Counsel, Department of the Interior (March, 1981 to December, 1982); and a partner in the law firm of Deane, Snowdon, Shutler, Garrish and Gherardi (July, 1978 to March, 1981). Mr. Garrish served in the Nixon and Ford Administrations as General Counsel, Consumer Product Safety Commission (October, 1976 to July, 1978); Assistant to the Secretary of Interior (May, 1976 to October, 1976); Deputy General Counsel, Office of Consumer Affairs, Department of Health, Education and Welfare (February, 1975 to May, 1976); Assistant to the Special Counsel, The White House (March, 1974 to October 1974); Senior Trial Attorney and Chief of Advertising Evaluation Section, Federal Trade Commission (March, 1973 to March, 1974); and Supervisory Trial Attorney, Department of Justice (December 1969 to January 1972).

A life-long Republican, Mr. Garrish's most recent political activities include Campaign Event Operations, Reagan-Bush '84; Consultant to the White House Office of Presidential Personnel (1981); Deputy Executive Director, Presidential Inaugural Committee (1981); and Advanceman, Reagan-Bush Committee (1980).






THE WHITE HOUSE

WASHINGTON

February 3, 1986

MEMORANDUM FOR MAUREEN ZATARGA

FROM: SUSAN F. PHILLIPS 

SUBJECT: Talking Points

Theodore John Garrish Federal Inspector  
Alaska Natural Gas Transportation  
System

\*\* The office of the Federal Inspector is responsible for coordinating all Federal activities directly related to the construction of the 4,790-mile Alaska Natural Gas Transportation System.

° Mr. Garrish currently serves as Assistant Secretary for Congressional, Intergovernmental and Public Affairs at the Department of Energy, a position he has held since May of 1985.

° Formerly, Mr. Garrish served as General Counsel, Department of Energy (May, 1983 to May, 1985).

° If nominated, Mr. Garrish will perform the duties of the Federal Inspector concurrently with those of his current post.

° Mr. Garrish has the support of Secretary of Energy John S. Herrington, the entire Alaskan Congressional delegation and the Committee on Energy and Natural Resources Chairman, Senator McClure.


° A life-long Republican, Mr. Garrish's most recent political activities include Consultant to the White House Office of Presidential Personnel (1981); Deputy Executive Director, Presidential Inaugural Committee (1981); and Advanceman, Reagan-Bush Committee (1980).

THE WHITE HOUSE

WASHINGTON

December 19, 1985

MEMORANDUM FOR SUSAN PHILLIPS  
ASSOCIATE DIRECTOR  
PRESIDENTIAL PERSONNEL

FROM: H. LAWRENCE GARRETT, II   
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Federal Inspector for the Alaska  
Natural Gas Transportation System

This responds to your request concerning whether the President may designate someone to act as the Federal Inspector for the Alaska Natural Gas Transportation System after the incumbent retires.

The President may, pursuant to the provisions of 5 U.S.C. § 3347, detail an officer of an Executive department, whose appointment is vested in the President, by and with the advice and consent of the Senate (PAS), to perform the duties of the Federal Inspector until a successor is appointed.

We have been advised informally by the Office of Legal Counsel, Department of Justice that under the Reorganization Plan of 1979, and Executive Order No. 12142, the ~~Federal Inspector for the Alaska Natural Gas Transportation System~~. We are also advised that the 30-day limit on details imposed by the Vacancy Act (5 U.S.C. § 3348) does not apply; however, following their standard advice, OLC advised that if filled on an "acting" basis, the appointment should not be allowed to extend much beyond 30 days in keeping with the spirit of the Vacancy Act.

THE WHITE HOUSE

WASHINGTON

December 12, 1985

MEMORANDUM FOR THE PRESIDENT

FROM: ROBERT H. TUTTLE

SUBJECT: Designation of Danny Julian Boggs  
as Acting Federal Inspector of the  
Alaska Natural Gas Transportation System

Donald T. Regan and I recommend you designate Danny Julian Boggs as Acting Federal Inspector, Alaska Natural Gas Transportation System. Mr. Boggs, the current Deputy Secretary, Department of Energy, has been nominated by you to serve as Circuit Judge, United States Court of Appeals for the Sixth District but will continue to serve as Deputy Secretary until confirmed. Prior to his current appointment, Mr. Boggs served in the White House Office of Policy Development as Assistant Director and Special Assistant to the President (from 1982 to 1983) and Senior Policy Advisor (from 1981 to 1982). Mr. Boggs was a practicing attorney with the firm of Bushnell, Gage, Reizen & Byington (from 1979 to 1980); Deputy Minority Counsel, Senate Committee on Energy and Natural Resources (from 1977 to 1979); Assistant to the Chairman, Federal Power Commission (from 1975 to 1977); and Assistant to the Solicitor General of the United States (from 1973 to 1975).

A lifelong Republican, Mr. Boggs served as Deputy Campaign Coordinator, Kentucky Republican Campaign (1979); Republican candidate to the Kentucky State Legislature (1975); and Legal Counsel and Chief Researcher, Kentucky Republican Campaign (1972).

Mr. Boggs was educated at Harvard University from which he received his A.B., cum laude, in 1965 and the University of Chicago Law School, J.D., 1968.

Upon your approval of this designation, Mr. Boggs will assume the responsibilities of the Acting Federal Inspector, Alaska Natural Gas Transportation System.

APPROVE \_\_\_\_\_ DISAPPROVE \_\_\_\_\_

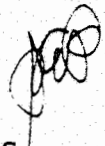
THE WHITE HOUSE

WASHINGTON

December 11, 1985

MEMORANDUM FOR DONALD T. REGAN

THROUGH: ROBERT H. TUTTLE

FROM: SUSAN E. PHILLIPS 

SUBJECT: Danny Julian Boggs  
Acting Federal Inspector  
Alaska Natural Gas Transportation System  
Full-time, PAS, Level III (\$73,600)

POSITION

The position of Federal Inspector of the Alaskan Natural Gas Transportation System (ANGTS) will become vacant on December 27, 1985 with the resignation of John Rhett. The Federal Inspector is the chief operating official of the agency.

RESPONSIBILITIES

The Federal Inspector of the Alaska Natural Gas Transportation System (ANGTS) interacts with the Design and Engineering Board - the private sponsors of the pipeline system - and with the Congress and appropriate offices of the Executive Branch. ANGTS was created in 1979 when there was a natural gas shortage. The Office of the Federal Inspector is responsible for coordinating all Federal activities directly related to the construction of the 4,790-mile Alaska Natural Gas Transportation System. In addition to serving as the Federal focal point for this project, the Office of the Federal Inspector is also charged with enforcing all Federal laws and permits which apply to ANGTS. The franchise for the project was issued to the Northwest Alaskan Pipeline Company. Phase I, comprising 32% of the total ANGTS system was completed in 1982 at a cost of \$2.4 billion and is now transporting gas from Alberta, Canada to the U.S. west coast and mid-west. Given the current energy market, it is expected that there will be a delay of several years before the next phase of construction will begin. There is, therefore, little current work for the Office of the Federal Inspector. A decision to eliminate the office was rejected by the Office of Management and Budget in order to 1) protect the interests of the franchisees who have already invested \$800 million in Phase II of the project and 2) to prevent unnecessary regulatory delay should the need for natural gas increase dramatically over the next couple of years.

The House and Senate appropriations bills for Fiscal Year 1986 place the Office of the Federal Inspector within the Department of Energy for administrative purposes. The F.Y. 1986 budget is \$500,000 and the request for F.Y. 1987 is \$221,000. The Federal Inspector manages a staff of three.

~~The current Federal Inspector has worked with the~~  
~~affairs of the Department of Energy and the Department~~  
members of Congress concerning the transfer of leadership of this office to the Deputy Secretary of the Department of Energy. The position of Federal Inspector is established as a PAS, Level III. The position of Deputy Secretary was selected as home for this responsibility because of its level, PAS, Level II. The current Deputy Secretary, Danny Boggs, has the expertise in the field to assume the responsibilities of Federal Inspector as does the President's tentatively selected nominee to succeed Mr. Boggs, William Flynn Martin.

#### CANDIDATE RECOMMENDATION

The candidate of the Office of Presidential Personnel is Danny Julian Boggs. Mr. Boggs, the current Deputy Secretary, Department of Energy, has been nominated to serve as Circuit Judge, United States Court of Appeals for the Sixth District but will continue to serve as Deputy Secretary until confirmed. Prior to his current appointment, Mr. Boggs served in the White House Office of Policy Development as Assistant Director and Special Assistant to the President (from 1982 to 1983) and Senior Policy Advisor (from 1981 to 1982). Mr. Boggs was a practicing attorney with the firm of Bushnell, Gage, Reizen & Byington (from 1979 to 1980); Deputy Minority Counsel, Senate Committee on Energy and Natural Resources (from 1977 to 1979); Assistant to the Chairman, Federal Power Commission (from 1975 to 1977); and Assistant to the Solicitor General of the United States (from 1973 to 1975).

A lifelong Republican, Mr. Boggs served as Deputy Campaign Coordinator, Kentucky Republican Campaign (1979); Republican candidate to the Kentucky State Legislature (1975); and Legal Counsel and Chief Researcher, Kentucky Republican Campaign (1972).

Mr. Boggs has the support of the entire Alaskan delegation and the Committee on Energy and Natural Resources Chairman, Senator McClure.

Mr. Boggs was educated at Harvard University from which he received his A.B., cum laude, in 1965 and the University of Chicago Law School, J.D., 1968.



Additional biographical material is attached at TAB A.

A statement regarding other final candidates considered for this position is attached at TAB B.

DECISION

To designate Danny Julian Boggs as Acting Federal Inspector, Alaska Natural Gas Transportation System.

APPROVE \_\_\_\_\_ DISAPPROVE \_\_\_\_\_