



IN REPLY REFER TO:

## United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240



August 18, 1999

## MEMORANDUM

To: Charles G. Groat, Director, U.S. Geological Survey, Reston, Virginia

From: Justin P. Patterson, Assistant Solicitor, Branch of Procurement and Patents, Division of General Law

Subject: U.S. Geological Survey authority to enter MOUs with International Ground Stations for distribution of Landsat 7 data

The Department of State (State) has asked for Solicitor's Office concurrence regarding your letter of March 3, 1999, requesting transfer of Circular 175 authority from the National Oceanic and Atmospheric Administration (NOAA) to the U.S. Geological Survey (USGS) to enter into Memoranda of Understanding (MOUs) with International Ground Stations (IGSs) for data collection from the Landsat 7 satellite. Before issuing a revised Circular 175, State is seeking our opinion that USGS has such authority. After reviewing the relevant authorities, we agree with your position that USGS has the authority to enter into such MOUs, which will be coordinated with State through the Circular 175 process.

As we understand it, NOAA can no longer meet any of its historic operational responsibilities, including entering into and administering the MOUs. Therefore, key purposes of the Land Remote Sensing Policy Act of 1992 (1992 Act)—such as unfettered distribution of unenhanced Landsat imagery to various entities, including foreign countries, and the offsetting of certain costs by charging for the cost of fulfilling data requests—are not being met.

We are aware that, by letter of January 25, 1999, USGS, NOAA, and the National Aeronautics and Space Administration (NASA) requested that the Office of Science and Technology Policy revise existing Presidential Decision Directive (PDD) NSTC-3 of May 5, 1994, to reflect a transfer of Landsat 7 operational responsibility from NOAA to USGS. We are informed that while there was no objection from any quarter to the clarification of USGS's responsibilities in a revised PDD, its issuance has been delayed due to the unresolved budgetary issue of how the Landsat 7 flight operation costs now being paid by NASA will be met in Fiscal Year 2001.

We do not see USGS's present ability to enter into MOUs with the IGSs as being linked to this budgetary issue. Whether or from what source Landsat 7 flight operations remain funded beyond Fiscal Year 2000 is one issue—they are funded through Fiscal Year 2000. What is done with the Landsat 7 data while these operations are ongoing, whatever their funding source, is entirely another issue. We also are not addressing the issue of USGS's present authority or ability to assume *all* operational responsibilities formerly held by NOAA, but only whether USGS has authority to enter into MOUs with IGSs for data collection from the Landsat 7 satellite.

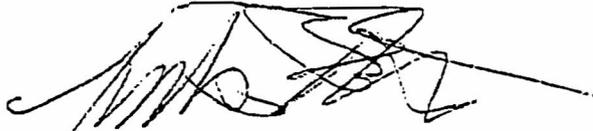
Under PDD NSTC-3, the Department of Commerce is responsible for performing the following duties: "Operate the Landsat 7 spacecraft and ground system in cooperation with the Department of the Interior" and "Seek to offset operations costs through use of access fees from foreign ground stations."<sup>1/</sup> Since NOAA is no longer performing these functions as relates to entering into and performing under the MOUs, Interior, as a responsible copartner in the administration of these MOUs, must ensure that these tasks are continued in order to carry out the purposes of the 1992 Act. In further support of this, under the PDD, Interior was designated as part of "Landsat Program Management," which, under the 1992 Act, is responsible for meeting all objectives of the Landsat program including its data distribution policies.

As a concurrent basis for entering into these MOUs, USGS has authority for and a long history of entering into international agreements having objectives related to Landsat 7 data distribution. Under 43 U.S.C. § 31, USGS can examine "geological structures" outside of the U.S. when this is in the national interest (under the MOUs, the IGSs are receiving images of their own countries). Under 43 U.S.C. § 44, USGS is authorized to furnish cartographic or other data to various entities including foreign governments. Under 43 U.S.C. § 45, USGS may "produce and sell on a reimbursable basis to interested persons . . . photographic or photostatic reproductions of records in the official custody of [USGS] at such prices [as are] not less than the estimated cost of furnishing such copies or reproductions." In addition, there is general authority for U.S. government agencies to perform such "technical or other services as such agency may be competent to render for the government of another country." 22 U.S.C. § 1457. This applies to scientific and technical activities under the jurisdiction of the Department of State. *Id.* at § 1440; 22 U.S.C. § 2656d(a)(1). This is also consistent with the obligation of participating agencies to consult with the Department of State on "all matters affecting international obligations" under the 1992 Act. 15 U.S.C. § 5657(b).

---

<sup>1/</sup> Interior, through USGS, has sole responsibility for archiving all Landsat 7 data received from foreign as well as domestic ground stations. USGS participation in the MOUs is directly supportive of this mission.

In light of the foregoing, we conclude that USGS has present authority to enter MOUs to provide the IGSs the ability to collect Landsat 7 satellite data. We recommend that you advise OSTP of our determination. Please call me or Jim Weiner, at (202) 208-6201, if you have any questions.

A handwritten signature in black ink, appearing to read 'Justin P. Patterson', with a long horizontal line extending to the right.

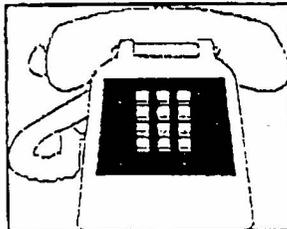
Justin P. Patterson

cc: Evan T. Bloom  
Office of the Legal Advisor  
U.S. Department of State

Associate Solicitor, Division of General Law

**U.S. DEPARTMENT OF THE INTERIOR**

Branch of Procurement and Patents  
Division of General Law  
Office of the Solicitor  
1849 C Street NW, MS 6531  
Washington, D. C. 20240-1050

**\* \* \* TRANSMISSION NOTICE \* \* \***

TO: Larry Pettinger/Greg Snyder

FAX No. (703) 648-4722

OF: U.S. Geological Survey

FROM: **JAMES L. WEINER** 202/208-6201; *FAX 202/219-1790 or 202/208-3230*

PAGES: Four DATE: August 19, 1999  
(incl. cover sheet)

RE: Memorandum to Director Groat re USGS Landsat MOU Authority

Larry/Greg,

Ray Byrnes asked me to give you the "heads up" in his absence when our memorandum concurring that USGS has authority to enter into the MOUs was on its way to Director Groat. The executed memo is attached and the original will go out in today's interdepartmental mail. We are also faxing a copy at the same time to the State Department legal office that is, as we understand it, ready to give C-175 negotiating authority to USGS upon our concurrence—which you now have.

Jim Weiner

