

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities

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TO: Ross A. Kopperud
Assistant Attorney General
Transportation Section, Anchorage

DATE: February 2, 1995

FILE NO:

TELEPHONE NO: 474-2413

FROM: John F. Bennett, PLS
Right of Way Engineering Supervisor
Northern Region

SUBJECT: McCarthy/Kennicott ROW

Thank you for the documents and summary relating to the McCarthy road right of way status. Although I did not see anything new, several of the documents were much better copies than we have had available in our files.

I noted that you did not make a statement as to your own conclusions on the railroad right of way and am curious whether you agree with McGee's opinion. Jack wrote that opinion in support of the Copper River Highway Toll Feasibility Study that we prepared in 1989. At the time, I had the opportunity to discuss the issues with him while he was writing the opinion. Unfortunately, neither of us considered all of the issues brought about by the 1993 IBLA decision regarding the McCarthy road right of way.

I noted in your summary, a patent from DNR to the University of Alaska which is subject to the "Copper River and Northwestern Railroad Right-of-Way (ADL 60291)". I ran that ADL on their database and it referred me to a file called "OSL 366". This file cites the basis of the right of way as the 1959 Omnibus Act QCD. I also found a 1967 memo between DNR and DOT which questions the basis of the railroad right of way. I was hoping to find some other document or basis for suggesting that the railroad right of way was relinquished to the federal government and conveyed to the state intact. However, I believe that DNR as well as several other private parties have just been accepting the interpretation that DOT&PF has held for the past several decades.

I have attached the above noted DNR memo, the IBLA decision and a couple of transmittal memos from John Athens. Along with the McCarthy airport, we are also currently working on a project to construct a footbridge across the Kennicott river at McCarthy as well as a location study for the entire McCarthy road. All of these projects require that we reach a conclusion as to the nature and width of the right of way. This leaves me with the pre-IBLA McGee opinion, the post-IBLA Athens opinion and unclear as to which way you might go.

If you have the time, please read through the IBLA decision and tell me what you think. Possibly you might want to discuss this with Athens and McGee. If you deem it necessary, maybe we should request an updated or new AGO written opinion with regard to the McCarthy road right of way. Thanks for your help.