

MEMORANDUM

State of Alaska ⁵⁸
Department of Law

To: John Bennett
ROW Section
Fairbanks, DOT&PF

Date: January 20, 1995

AG File No:

Telephone No: 269-5163

Subject: McCarthy to Kennecott ROW

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Northern Region DOT & PF


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

As per our discussion earlier, enclosed are the Right of Way documents pertaining to the McCarthy to Kennecott Right of Way.

If you have any questions, please call me at 269-5163.

RAK/dky

Enclosures: ROW docs

MCCARTHY TO KENNECOTT, ALASKA
RIGHT-OF-WAY WIDTH

- 14 May 1898 Act of May 14, 1898, ch. 299, 30 Stat. 409, an act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes (maps filed under the Act). [See A.G. Memo, 4/18/89.]
- Section 2.: That the right of way through the lands of the United States in the District of Alaska is hereby granted to any railroad company, . . . to the extent of **one hundred feet on each side of the center line of said road**; also the right to take from the lands of the United States adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad
- 1906-1911 Construction of the rail line was completed, extending easterly from Cordova to the mouth of the Copper River, approximately 30 miles; thence northerly along that river to Chitina, approximately 100 miles; and thence easterly along the Chitina River to Kennecott, approximately 65 miles. [See Report No. 375, p. 2.]
- 13 Sep. 1938 Copper River and Northwestern Railway Company applied for a certificate of public convenience and necessity permitting abandonment. [See ICC Finance Docket No. 12164, 4/21/39.]
- 21 Apr. 1939 Interstate Commerce Commission Decision, Finance Docket, No. 12164 - Copper River and Northwestern Railway Company terminated operations of its line between Cordova and **Kennecott**, Alaska.
- 27 Mar. 1941 House Joint Memorial No. 21, - Converting the roadbed of the discontinued Copper River and Northwestern Railroad into a highway.
- 31 Mar. 1941 S. 1289, Bill, authorizing the Copper River and Northwestern Railway Company to convey to the United States its railroad right-of-way and other railroad properties in Alaska, for use as a public highway, tramroad, or tramway, and for other purposes.

26 May 1941 Report No. 375, to accompany S. 1289, Letter to the President of the United States, dated March 13, 1941, from the Acting Secretary of the Interior, A. J. White:

The railroad was constructed from Cordova to Kennecott by the Copper River & Northwestern Railway Co. during the period 1906 to 1911. In all there are 195.2 miles of right-of-way.

. . . The right-of-way between Copper River Crossing and Chitina will be used as a highway. For the time being no highway or tramway is contemplated on the portion of the right-of-way between Chitina and Cordova. The area which would be served by the combined highway-tramway running from Chitina to Kennecott is of great scenic attraction and is also the location of a number of operating mines. It is considered essential that the proposed transportation facilities be provided.

-- from the Report:

Section 3 of the bill states that the provisions of the act of March 8, 1922 (42 Stat. 414) "shall not affect the right-of-way, or any portion thereof, or any other lands or properties donated, granted, or conveyed to the United States pursuant to the authorization contained in this Act."

The purpose of section 3 is to insure the possession of the United States of the property so to be acquired for use for public highway purposes.

[30 Jun. 1940] [Fiscal recommendations: Chitina-McCarthy Road & McCarthy-Canadian Boundary Road; see A.G. Memo, 4/18/89.]

15 July 1941 Act of July 15, 1941, P.L. 176, ch. 300, 55 Stat. 594, enacted by Congress

29 Mar. 1945 Relinquishment - pursuant to Act of May 14, 1898, 30 Stat. 409, for railroad purposes in Alaska, (maps filed under the Act). [See A.G. Memo, 4/18/89.]

9. Right-of-way; original definite location from station 2131+00, to station 1020+30 (Lakina River), Chitina branch line. Map approved February 21, 1914, Juneau 01361.

10. Right-of-way; original definite location from station 1020+30 (Lakina River), to station 493+33.3 (Swamp Creek). Map approved February 21, 1914, Juneau 01422.

11. Right-of-way; amended location from station 493+33.3 (Swamp Creek), to station 35+70 (Kennecott Glacier). Map approved February 21, 1914, Juneau 01420.

11 May 1945 Decision, Copper River & Northwestern Railway Company's relinquishment was accepted by the Department of the Interior.

[1946] [Fiscal year 1946 - Local Systems, McCarthy Tram and Road Systems, total of 90 miles; see A.G. Memo, 4/18/89.]

[1950] [Fiscal year 1950 - 57J, McCarthy-Kennecott Road, total cost to 6/30/50, \$1,772.70 - road under construction; see A.G. Memo, 4/18/89.]

16 Oct. 1951 Order No. 2665 [PLO 601]: Rights-of-way for highways in Alaska. [See A.G. Memo, 4/18/89.]

Sec. 2., Width of Public Highways. (a) The width of the public highways in Alaska shall be as follows:

(1) For through roads:

The Alaska Highways shall extend 300 feet on each side of the center line thereof.

(2) For feeder roads:

. . . each shall extend 100 feet on each side of the center line thereof.

(3) For local roads:

All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

29 Jun. 1956 Federal-Aid Highway Act of 1956 (70 Stat. 374, 377), the Bureau of Public Roads, U.S. Dept. of Commerce, assumed jurisdiction over the abandoned former right of way of the Copper River and Northwestern Railroad

11 Dec. 1957 Arrangement of Settlement Pertaining to Rails on Abandoned Right-of-Way of the Copper River and Northwestern Railway Between Cordova and Kennecott, Alaska

- 30 Jun. 1959 Quitclaim Deed, Secretary of Commerce, U.S. Dept. of Commerce, to State of Alaska - Section 21 of Act, June 25, 1959:
Schedule A - Highways, consisting of 60 pages
- 1 Jul. 1959 State of Alaska, Approved Federal-Aid System [FAS], Primary, Secondary "A", Secondary "B", recorded in 11 recording districts:
Secondary System
Class "A" - Principal secondary roads serving as main arteries and requiring improvements within the foreseeable future.
Class "B" - Secondary roads of the type normally constructed and maintained by states or counties.
Page 11, 850, From junction with FAS Route 851 at Chitina easterly to McCarthy - Class "A" Routes
Page B-29, **8501 McCarthy Roads** - Class "B" Routes:
McCarthy-Dan Creek Road -- From the Village of McCarthy west to Kennecott River. Length 20.0 mile.
McCarthy-Kennecott River -- From the Village of McCarthy west to Kennecott River. Length 0.5 mile.
Chititu Branch -- From a point on FAS Route 8501 approx. 14 miles southeast of McCarthy, southeast to Nizina. Length 6.5 miles.
McCarthy-Kennecott -- From McCarthy north to Kennecott. Length 6.0 miles.
- 19 Dec. 1960 Letter, BLM, Alfred P. Steger to Director, SOA, Division of Lands,
Our records show that the W 1/2 NW 1/4, Section 17, Township 5 South, Range 14 East, Copper River Meridian is **traversed by the old Copper River and Northwestern Railroad and the Kennecott-McCarthy Road.**
The SW 1/4, Section 20, Lots 1 and 2, Section 30, is traversed by an existing local road.
- 6 Jan. 1961 U.S. Patent, No. 1216188, U.S to SOA, Section 17, Lot 2, W 1/2 NW 1/4

15 Aug. 1984 Quitclaim Deed, SOA to Univ. of Alaska:

Section 17: Lot 2.

W 1/2 NW 1/4 **EXCLUDING THE COPPER RIVER AND
NORTHWESTERN RAILROAD RIGHT-OF-WAY (ADL
60291)**.

Subject to: Kennecott-McCarthy Road right-of-
way. Existing trails.

18 Apr. 1989 A.G. Opinion, Jack B. McGee re Right-of-way of
Copper River Highway

Page 2:

The abandonment of the operation of the Copper River Railroad by its owners created a legal problem. What was to become of the 200-foot railroad right-of-way? Under the terms of the act of March 8, 1922, Pub. L. 163, ch. 94, 42 Stat. 414 (1922), upon the voluntary relinquishment of the railroad right-of-way by the Copper River and Northwestern Railway Company, all right, title, and interest of the United States in the right-of-way would vest in the patentees to lands over which the railroad passed, where such patentees took their patents prior to the voluntary relinquishment. Because it was thought that there was significant public interest in maintaining a highway right-of-way along the route of the railroad right-of-way, Congress enacted the Act of July 15, 1941, Pub. L. 176, ch. 300, 55 Stat. 594 (1941), . . .

Page 4:

In discussing the effect of PLO 601 and D.O. 2665 on the Copper River Highway [abandoned CR & NW Railroad], it should be kept in mind that, whatever the size of the easement created by these land orders, the **original 200-foot right-of-way** for the entire Copper River Highway, as it is described in appendix 4, remained intact and unaffected by the public land orders. So, the new construction requirement of section 3(c) of D.O. 2665, while relevant in determining what portions of the Copper River Highway have a 300-foot-wide right-of-way, has nothing to do with the pre-existing 200-foot right-of-way that was created by the 1898 Act and accepted by the federal government on May 11, 1945.

3 Apr. 1992

Order on Motion for Partial Summary Judgment, Ahtna v. State, 3AN-91-6957 CI, signed by Judge Karl S. Johnstone:

The State of Alaska acquired through quit-claim deed from the federal government a 300 foot wide easement through the lands [**Copper River Highway**] which are the subject matter of the plaintiff's complaint.