

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
NORTHERN REGION, RIGHT OF WAY

2301 PEGER ROAD, MAIL STOP 2553
FAIRBANKS, ALASKA 99709-5316
PHONE: (907) 474-2400

October 2, 1992

Re: Copper River Highway
Right of Way at Chitina

Mr. E. M. Hem Sr.
Box 72553
Fairbanks, AK 99707

Dear Mr. Hem,

On 9/28/92 you submitted documents to this office questioning the right of way status of the Copper River Highway adjoining properties you own or are planning to purchase in Chitina. I understand that your questions are a result of receiving encroachment notice from our Property Management section for a sign in the right of way which advertises your business.

Your claim as I understand it, is based upon a letter sent by Gordon N. Hizey to DOT&PF on September 19, 1972 in which he suggests that he owns the portion of the right of way for the Copper River and Northwestern Railroad which lies within U.S. Surveys No. 596, 702, 597 and 264.

DOT&PF responded to Mr. Hizey on November 14, 1974 by providing a chronological summary of the creation of the CR&NWR right of way, its relinquishment to the federal government and conversion to a right of way for the Copper River Highway and eventual transfer to the State of Alaska. The response concluded that although Mr. Hizey may have title to the fee estate for these U.S. Surveys, they were subject to a right of way for the Copper River Highway by virtue of the conversion of the railroad right of way.

I have reviewed the relevant documents for the property in question and my conclusion is in agreement with the DOT&PF 1974 response. My conclusion is based upon the following analysis:

The legislation which was the basis for the right of way grant for the CR&NW railroad was the Act of May 14, 1898 (30 Stat. 409). This act provided that any company could file with the Secretary of the Interior a preliminary survey and plat of the proposed route which would have the effect of rendering all the lands across which the preliminary survey passed subject to a right of way. The right of way would extend 100 feet on each side of the railroad centerline.

According to BLM land status records, the CR&NWR submitted application A 288 on

12/11/08 for the right of way of the proposed railroad. This application along with the location maps secured a right to which all following land entries would be subject.

A review of the BLM land status records indicate that the applications which led to the patents for U.S. Surveys 596, 702, 597, and 264 were filed on 7/13/12 by the Kaltalla Corporation. As the applications for these properties which eventually would lead to patent were filed after the CR&NWR right of way application, the patents for the U.S. Surveys would be subject to the railroad right of way as a prior existing right. The 1974 DOT&PF response to Mr. Hizey noted that patents do not necessarily cite all of the limitations or exceptions to the title being conveyed and are essentially quitclaim deeds.

The Kaltalla Corporation conveyed its interest in the previously mentioned U.S. Surveys to the Alaska Development and Mineral Company on January 6, 1919. The Alaska Development and Mineral Company subdivided the Chitina Townsite and filed the plat for record on September 28, 1919. The plat contained a dedication which in part reads as follows:

"Said Alaska Development & Mineral Company, a corporation, does hereby dedicate to the public the easement and right of way over, upon and along the several Streets, Avenues and Alleys shown upon said map or plat, to be used as public highway forever SAVING AND EXCEPTING from this dedication, however, the right in the public or any municipal, state, or national government or any person whomsoever to demand or require the right, franchise, privilege or easement of crossing in any manner the right of way, lines tracks, roadbed or property of the Copper River & Northwestern Railway Company."

Mr. Hizey's letter notes that due to this dedication, the AD&M company retained the rights in the right of way for the CR&NW railroad. I agree that the intent of the AD&M Co. was to retain control over the railroad right of way as a private right of way and in fact the logic of this dedication makes sense as the AD&M Co. was a subsidiary of Kennecott Copper Co. which was the owner of the CR&NW railroad. The Kaltalla Co. was the construction subsidiary of Kennecott which actually built the railroad. A subsequent part of the dedication also reserved to the dedicator, the right to construct, maintain, and operate utilities within the public road rights of way. Therefore at the time the Chitina Townsite plat was filed, the streets and alleys within the townsite were public rights of way subject to AD&M company's right to operate private utilities and subject to a private right of way for the Copper River & Northwestern railroad.

On September 13, 1938, the CR&NW railway company applied for permission from the Interstate Commerce Commission to abandon the operation of the entire railroad line extending from Cordova to Kennecott. 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 (55 Stat. 594). This authorized the railroad to convey to the United States all or any portion of its right of way including station and terminal grounds. The Act of July 15, 1941, required that the right of way be used as a public highway.

On March 29, 1945 the CR&NWR Co. formally relinquished all of its interest in the original

railroad right of way and on May 11, 1945, the United States accepted the relinquishment. Therefore, on that date the USA became owner of the original 200 foot wide CR&NWR right of way subject to the requirement of the Act of July 15, 1941 that the right of way be used as a public highway.

The March 29, 1945 relinquishment document described as item #7, "Right of way; amended location from station 1553+53.9 = 3685+18.7 (Wood Canyon), to station 3294+00 (Chitina)." This was the 200 foot wide right of way for the mainline railroad. Also described was item #13, "Right of way; loop line around Trout Lake (at Chitina)". Therefore, at this time the right of way for the Copper River Railroad or at least the 200 foot wide mainline right of way which was reserved as a private right of way on the Chitina Townsite plat was converted to a public highway easement.

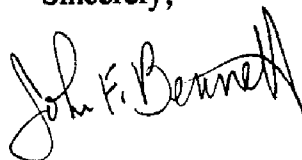
The CR&NWR right of way as depicted on the Chitina Townsite plat directly to the south of Blocks A, B, C, D, 7, 8, & 9 is labeled as being 150 wide north of the railroad centerline. As the Chitina plat did not dedicate any portion of the area noted as the railroad right of way and as the highway right of way in this area is limited to 100 feet on each side of centerline, there remains a question as to the status of the 50 foot wide strip north of the highway right of way. It is possible that Mr. Hizey or you may have a claim to this strip of land. However, as it is outside the highway right of way, DOT&PF has no interest in it.

Therefore, our position is that the area you are questioning as depicted upon right of way plan sheet number 20 of 3 for Project S-0850(6) (attached), is a correct representation of right of way that DOT&PF claims for the Copper River Highway.

You also mentioned that Mr. Hizey had stated that he had never been compensated for our acquisition of a portion of Lot 15, Block 27 of the Chitina Townsite. This was acquired as parcel number 6 of Project S-0851(26). This particular parcel was condemned as Civil Action No. 68-1081C and was finalized with an order of final judgement on February 6, 1970. The court award for the taking was \$90 and was placed in the Court Registry. Although the final judgement authorized the Clerk of the Court to pay Mr. Hizey the \$90, I have no evidence that he ever withdrew the money. Whether Mr. Hizey withdrew the money or not has no effect on the title for parcel No. 6 which was acquired by the State.

Should you desire to review any of the documents that have led to this conclusion, you may contact Janet Downing of our Property Management section at 474-2451.

Sincerely,



John F. Bennett PLS, SR/WA
Right of Way Engineering Supervisor
Northern Region

Attachments: as stated