

MEMORANDUM

State of Alaska

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TO: R. Eugene King
Assistant Right of Way Agent

DATE: October 8, 1974

FILE NO: 52A-2915

TELEPHONE NO: 229

FROM: Donald T. Griffith
Title Supervisor

SUBJECT: Project No. S-0850(6)
Chitina East

Donald T. Griffith

Subject: Ownership status search concerning property claims of G.N. Hizey in Chitina Alaska Townsite and the Copper River and Northwestern Railway Company Right of Way.

Chronological Summary:

May 11, 1898*	Act of May 14, 1898 (30 Stat. 409). Original grant of right of way, station and terminal grounds. Prescribes 100 feet on each side of the centerline of railroad, and adjacent lands for station buildings, depots, machine shops, side tracks, turn-outs, water stations, terminals, and for other railroad uses not to exceed 20 acres for each station and 40 additional acres at terminals and junction points.
Dec. 11, 1908*	Juneau 0288; application by Cooper River Railway Company to build railroad; filed application and maps.
July 5-10, 1910*	Survey of Trout Lake section (Chitina) of Railroad establishing centerline.
July 13, 1912**	Entries filed under Soldiers Additional Homestead Act for parcels that were patented to the Katalla Company and surveyed as US Surveys 596, 597, 702, and 264.
Jan. 6, 1919**	Quit Claim Deed from Katalla Company to Alaska Development and Mineral Company.
July 15, 1941*	Act (55 Stat. 594) authorizing Copper River and Northwestern Railway Company to convey to US its railroad right of way and other railroad properties in Alaska, for use as a public highway, tramroad, or tramway, and for other purposes; and authorizing Secretary of Interior to accept for the US.

March 29, 1945* Relinquishment by Copper River and Northwestern
Railway Company.

May 11, 1945* Acceptance by Department of Interior.

May 29, 1956* Transfer of functions, Department of Interior
to the Department of Commerce (70 Stat. 377).

Nov. 17, 1958** Quit Claim Deed from Kennecott Copper Company
to Gordon Hizey.

June 30, 1959* Quit Claim Deed, Secretary of Commerce to
State of Alaska.

* Involves Railroad right of way, building and terminal sites.

** Involves land included in US Surveys 596, 597, 702 and/or
264.

The Problem:

The Department of Highways has not secured a right of way for the Chitina East project along the south Townsite boundary of 150 feet and the adjoining 100 feet immediately south of the Townsite boundary. The assumption has been made that this 250 foot right of way was set aside for the Copper River and Northwestern Railway right of way and, through a succession of events, the right of way has been passed on to the State for highway purposes. However, an adjacent or conflicting land owner, Mr. Gordon Hizey, contends in his letters of September 19, 1972 and August 19, 1974, that the portion of right of way within the Townsite was patented to other interests without acknowledging a prior existing easement or grant for the right of way. He shows an unbroken chain of title to him. All documents were recorded and are shown in chronological order on the attached listing together with copies of the documents.

Another problem exists in the interpretation of the wording of the Act of May 14, 1898 and in interpreting the intention of some of the areas depicted by maps filed with the application by the railroad. The Act specifies 100 feet lying on either side of the centerline of the railroad and permits selection of areas for other railroad uses of from 20 to 40 acres each. The earliest map available and on file dated November 26, 1910 and identified as the "Map of Definite Location of the Copper River and Northwestern Railway Loop Line around Trout Lake at the Town of Chitina, Alaska, Mile 0.000 to 0.58" shows the centerline to be identical to the south boundary of USS 596. It shows only a 100 foot right

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of way on either side of the centerline. A map dated September 8, 1919 and identified as "Plat of Chitina-Townsite, Alaska" shows the full 100 feet north of the centerline to be within both USS 596 and the railroad right of way. The question exists as to whether the additional 50 feet was segregated or appropriated prior to the filing of entries on this and other adjacent land by the Katalla Company on July 13, 1912.

Discussion and Conclusion:

Examination of the instruments in Mr. Hizey's chain of title indicates to me that good title was passed and no breaks exist.

Examination of the Act of May 14, 1898 and subsequent actions indicate to me that a permanent easement was authorized and the right of way was appropriated by application, filing of maps, and physical survey prior to the filing of entries by the Katalla Company. The location of those claims strongly suggest the prior existence of the railway centerline survey.

Patents do not necessarily recite all limitations affecting the land involved. They are held to be essentially quit claim deeds. Therefore, the silence of the patents on the existence of the railroad easement does not infer that the easement did not exist.

In conclusion, it is my opinion that the railroad did appropriate and use not only the 100 foot right of way in question but also the additional 50 foot strip. While Mr. Hizey does or did own the underlying fee, it is subject to a valid pre-existing right of way for highway uses.

DTG:ta

Attachments:
As stated.