

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

STATE OF ALASKA,

Plaintiff,

KENAI PENINSULA BOROUGH, a
Municipal Corporation,

Intervenor,

vs.

OFFSHORE SYSTEMS-KENAI, an
Alaskan Partnership,

Defendant.

Case No. 3KN-08-453 Civil

DEPOSITION OF JOHN BENNETT

Taken April 3, 2009
Commencing at 9:50 a.m.

Volume I - Pages 1 - 78, inclusive

Taken by the Defendant
at
Midnight Sun Court Reporters
511 West 9th Avenue, Suite 1
Anchorage, AK 99501

Reported by: Valerie Martinez

1 A P P E A R A N C E S

2 For Plaintiff:

3 DANA S. BURKE
4 State of Alaska - Transportation Section
5 1031 West 4th Avenue, Suite 200
6 Anchorage, AK 99501
7 (907) 269-5160

8 For Defendant:

9 RONALD BAIRD
10 Law Office of Ronald Baird
11 P.O. Box 100440
12 Anchorage, AK 99510
13 (907) 565-8818

14 Intervenor:

15 CLAY A. YOUNG
16 Delaney Wiles, Inc.
17 1007 West 3rd Avenue, Suite 400
18 Anchorage, AK 99501
19 (907) 279-3581

20 (via phone) SCOTT BLOOM
21 Kenai Peninsula Borough
22 144 N. Binkley Street
23 Soldotna, AK 99669
24 (907) 714-2120

25 Also Present:

Mike Peek

Taken by:

Valerie Martinez

BE IT KNOWN that the aforementioned deposition was taken
at the time and place duly noted on the title page
before Valerie Martinez, Notary Public within and for
the State of Alaska.

1 (Exhibits 18 through 22 marked.)

2 P R O C E E D I N G S

3 JOHN BENNETT,

4 called as a witness herein, being first duly sworn to
5 state the truth, the whole truth and nothing but the
6 truth by the Notary, testified under oath as follows:

7 EXAMINATION

8 BY MR. BAIRD:

9 Q Would you please state your full name for the
10 record, please?

11 A John Francis Bennett.

12 Q Contact address and phone number?

13 A Contact would be 3123 Penguin Lane, Fairbanks,
14 Alaska. My office phone number is 907-451-5423.

15 Q Have you had your deposition taken before?

16 A Yes.

17 Q This deposition is in the matter of State versus
18 OSK pending superior court action in Kenai?

19 A Yes.

20 Q The purpose of the deposition is for me to obtain
21 information in connection with that case. If I ask you
22 a question that you don't understand, please stop me and
23 ask me to clarify it. I'll be glad to do so. We need
24 verbal responses and we need to try to not interrupt
25 each other.

1 I'd ask you at this time to take a look at
2 what's been marked as Exhibit 18 and see if you can
3 identify that for us.

4 A Exhibit 18 is a report I prepared at the request of
5 Mr. Burke.

6 Q And I attempted to make a complete copy. Does it
7 look like I got the complete report?

8 A Yeah, it appears to all be here.

9 Q And then this morning Mr. Burke has brought some
10 additional documents relating to your retention as an
11 expert. I'd like you to go through those briefly and
12 identify those for the record.

13 A Exhibit 19 is a letter from Mr. Burke to myself
14 transmitting to me several documents related to the
15 case. It's dated January 9th, 2009.

16 Q And in your -- in Exhibit 18, it says, your opening
17 sentence -- it's a letter back to Mr. Burke; right?

18 A Yes.

19 Q And it says, "as requested." Is Exhibit 19 the
20 request that you're referring to in your report?

21 A Yes. It was in conjunction -- Exhibit 19 also
22 says, "per our recent phone conversation." So he first
23 called me to express to me the nature of this case and
24 told me he was forwarding these documents and asked me
25 to prepare a report.

1 Q So 19, then, followed those discussions?

2 A Yes.

3 Q How about the next document?

4 A Exhibit 20 is a letter from Mr. Burke to myself
5 dated February 11th, 2009. He is conveying to me
6 additional documents linked to the case.

7 Q Was that submittal of additional documents as a
8 result of any suggestions from you as to what you
9 thought you needed to see?

10 A I know we had some discussions about what materials
11 had already been produced. We talked about the nature
12 of the rights-of-way, and he said he was going to be
13 forwarding me information for me to consider.

14 Q Exhibit 21?

15 A Exhibit 21 is a memo from Elizabeth Goodwin, a law
16 office assistant per Department of Law, to myself dated
17 March 16th, 2009, requesting that I contact Mr. Burke to
18 discuss the expert report. And this is the expert
19 report that was prepared on behalf of OSK, not my
20 report.

21 Q And have you reviewed that report?

22 A Yes.

23 Q And then, finally, Exhibit 22?

24 A Exhibit 22 is an e-mail from Elizabeth Goodwin from
25 Department of Law to myself transmitting electronically

1 OSK's reply oppositions to the motion for summary
2 judgment. So this was just received just on April 1st,
3 just two days ago.

4 Q Okay. If you could turn, then, to the last page of
5 the report. It's actually the resume that's attached.

6 A Okay.

7 Q There's an explanation of your employment history
8 there?

9 A Yes. Uh-huh.

10 Q Is that a complete statement of your employment
11 history for the periods it covers?

12 A I believe that is pretty complete, yes.

13 Q Have you ever had any employment with the U.S.
14 Department of Interior?

15 A No, I have not.

16 Q Have you ever had any employment with the
17 Department of Natural Resources --

18 A No, I have not.

19 Q -- for the State of Alaska?

20 A No, I have not.

21 Q The first position that you had with DOT, you
22 mentioned, in 1986, October of 1986?

23 A Well, that is correct with DOT, but I did have
24 employment back in the early '70s with the Department of
25 Highways, its predecessor.

1 Q In what capacity?

2 A Four seasons in construction, staking and location
3 staking, which is the preliminary design surveys.

4 Q As a part-time employee or a seasonal employee?

5 A Seasonal employee.

6 Q What years was that?

7 A That would have been between '72 and '75.

8 Q Prior to your obtaining your PLS designation?

9 A Yes.

10 Q So were you field crew then?

11 A The majority of the time, yes, field crew.

12 Q How about the rest of the time?

13 A The rest of the time, there were some stints when I
14 would work in the office reducing field notes and such.
15 And there were some periods of the time working for
16 Department of Highways, so I did construction
17 inspection.

18 Q Any other work for the -- well, when did the
19 Department of Highways become DOT?

20 A I'm not going to be able to shoot from the hip and
21 tell you that. I believe it was sometime in the early
22 '80s.

23 Q Prior to your getting there in 1986?

24 A That's correct.

25 Q So when I say any other prior work for the

1 department, I'm referring to either DOT or Highways.

2 A Okay. Yes.

3 Q So have we covered all of your employment then?

4 A We have. My seasonal employment between '72 and
5 '75 and then my permanent employment from October of
6 1986 onward till today.

7 Q What were your responsibilities as engineering
8 supervisor from 1986 to 1999?

9 A In that capacity, I had a staff that prepared title
10 reports and prepared plans for acquisition for airports
11 and highways primarily. So we -- in the early stages,
12 we did not -- the field crews were a separate section
13 and so my staff was pretty much -- did the office
14 mapping, if you will, for right-of-way acquisition.

15 Q When you say prepared title reports, was that
16 arranging for their preparation by a title company or
17 you had your own title examiners?

18 A It would be both. We had one staff title examiner
19 and then one -- when the demand required, we would hire
20 a commercial title company to prepare reports.

21 Q Did you -- the title examiner was somebody that
22 worked for you?

23 A Yes.

24 Q Did you have any prior experience in title
25 examination?

1 A My title examination prior to that was limited to
2 my work as a surveyor. That is, I did not actually go
3 prepare title reports myself, but I would accept title
4 reports and use that as a basis for the surveys. That's
5 essentially it, yes. I would use the title reports.

6 Q Were you -- so you were supervising -- with respect
7 to the property descriptions and platting, you were
8 preparing -- you were supervising others' work?

9 A Yes.

10 Q And by platting we mean the drawing that is
11 typically prepared for Right of Way to go out and make
12 an acquisition?

13 A Yes, exactly. That was our primary role. We would
14 also have a secondary role in property management. Say,
15 for example, land disposals. They would require
16 exhibits and legal descriptions to dispose of
17 properties. So we would involve ourselves in anything
18 that required mapping, the preparation of property
19 description, interpretation of surveys, and
20 interpretation of title reports.

21 Q Were you ever involved in platting in compliance
22 with -- well, let me back up here. The 1986 position
23 through the present has always been through the
24 Fairbanks office?

25 A That's correct, yes.

1 Q Were you ever involved in any platting that was for
2 submittal to the Fairbanks North Star Borough?

3 A Yes. In order to comply with the local platting,
4 Title 17, there were requirements as to how we would
5 present our projects to the platting board. So, yes, in
6 that context, I represented the department before the
7 platting board quite often.

8 Q And how about with respect to -- well, would that
9 be in connection with the right-of-way acquisition plats
10 that are done in connection with eminent domain suits?

11 A Well, I guess everything can lead to eminent
12 domain, but even if they do not lead to eminent domain,
13 the borough would have a requirement saying that if we
14 were to make a partial acquisition, that they wanted
15 documentation as to how the monuments had changed and
16 how the boundaries had moved and therefore they had
17 certain requirements for our right-of-way plans before
18 we could submit them. But it also involved eminent
19 domain, too. Eventually some parcels would be
20 condemned.

21 Q Any other responsibilities beyond what is stated in
22 that line item there for '86 through 1999?

23 A During that period, I did act quite often as the
24 acting right-of-way chief. When we were in transition
25 for several months and did not have a permanent

1 right-of-way chief, I would act in that capacity. I was
2 also first in line designated acting for the
3 right-of-way chief, you know, when that person might be
4 on vacation or out of the office.

5 Q Anything else?

6 A Probably too many to number, but that was generally
7 it. I pretty much supported all the other units within
8 the Right of Way Section.

9 Q Did your -- should I refer to it at that level as a
10 department; division? What was it?

11 A Well, Regional Right of Way Engineering Supervisor.
12 I was the engineering supervisor for the Northern
13 Region, DOT.

14 Q I'm going to just refer to it as your unit, the
15 people that you were responsible for. Was your unit
16 involved with reviewing any patents proposed for
17 issuance by the Department of Natural Resources?

18 A You know, the Department of Natural Resources, as a
19 matter of practice, forwards to DOT Right of Way a
20 number of transactions for our comment, whether they be
21 for temporary land use, for DNR land that just happens
22 to adjoin the right-of-way, or in any way impacts the
23 right-of-way.

24 We get an awful lot of transactions. I haven't
25 seen a review for a patent in recent years, but I

1 believe I have reviewed some. Generally, it would be a
2 case of ensuring that they had adequately specified and
3 reserved DOT right-of-way in the patent.

4 Q So in this first position, you believe you did do
5 that on one or many occasions?

6 A I believe so, yes.

7 Q Who was your immediate supervisor in this position?
8 What was their title?

9 A Chief of Right of Way, Northern Region, DOT.

10 Q And then the next level beyond that would be?

11 A It changed over time. At one point it was the
12 director of design and construction and then we had a
13 reorganization and I now directly report to the person
14 referred to as the preconstruction engineer.

15 Q In July of 1999, Exhibit 18 says you became chief
16 of Right of Way. We've already had a little bit of
17 discussion of what that involved. How many additional
18 employees, then, came under your supervision in that
19 position?

20 A We also have field crews, seasonal field crews. So
21 if we had all of our positions filled at one time, it
22 would be in the neighborhood of 35 staff.

23 Q What units in addition to the unit that you had
24 been supervising were then under your supervision?

25 A Well, we have our negotiations, which are the

1 agents who go out and make an offer on property and
2 negotiate to get a deed signed essentially.

3 We have relocation. It has been usually
4 associated with another section like property management
5 or negotiations. But they're responsible -- when we end
6 up having to acquire a home or a business and we have to
7 relocate the homeowner or business, they would be
8 responsible for making that -- go through the process.

9 We have a pre-audit unit that has, you know,
10 gone from a couple people to now one person. They
11 effectively are -- say internal review, quality control,
12 and then a financial person.

13 Property management is kind of our operation
14 sides of things where we need to issue the permits for
15 signs, the permits for driveways, or dispose of land or
16 otherwise enforce the rights-of-way because of
17 encroachments and such. They would handle that.

18 We did bring in -- at one time we only had the
19 right-of-way engineering that we referred to, which was
20 our mapping section. We then supplemented that by
21 bringing into the fold the actual field surveyors, the
22 field crews.

23 And then we moved -- we also adopted the
24 utilities engineering section who were responsible for
25 issuing utility permits for utilities in the

1 right-of-way and also preparing relocations agreements
2 when we have to move a utility out of the right-of-way.

3 And property management -- we used to have a
4 full staff of appraisers. We now have the only
5 appraiser left in State service. So we still do some of
6 our own appraisal work, but most of that work gets
7 contracted.

8 I think that pretty much sums up the various
9 units we have in Right of Way.

10 Q You are not a licensed engineer; correct?

11 A Absolutely not.

12 Q So to the extent that there are engineering
13 questions arising from your -- well, actually, that's --
14 the engineering to determine what right-of-way is needed
15 by the project is something that's done outside of your
16 units?

17 A It's kind of a two-fold process. We allow the
18 engineers to make the first cut, showing us what it is
19 they require for a new road, to take into consideration
20 clear zones, the adequate width for snow storage for
21 utilities and such. Then they deliver that line to us
22 and we're going to take a look at trying to make the
23 proposed lines conform to existing property lines as
24 much as possible and also adopt as much uniformity in
25 the right-of-way line just to simplify the boundary both

1 of our own operations and for the adjoining property
2 owner. So it's a two-step process.

3 Q Do you understand the word "dialectic," back and
4 forth?

5 A It's very much that. Very much that.

6 Q What knowledge do you have of department -- and
7 when I use the term "department" I'm referring to either
8 DOT or Department of Highways. What knowledge did you
9 have of department right-of-way procedures prior to your
10 employment in 1986?

11 A Well, my knowledge, I would say, as a practicing
12 surveyor before I went to work in 1986, most every
13 property that you're going to survey is going to bound
14 on either an existing right-of-way or you're going to
15 create a new right-of-way. To the extent that it bounds
16 on an existing right-of-way, we would have to go
17 research the existing right-of-way at the Department of
18 Highways, or Department of Transportation, and then work
19 with them. And so I had some exposure too in that
20 context.

21 But as far as my experience and knowledge as to
22 procedures before I got there in '86, we -- you know,
23 we're probably the largest public information portal for
24 the department to the public and to the professional
25 engineers and surveyors and such. You know, we

1 keep all -- archive all of our documents. And when
2 people are asking us, you know, what is the boundary
3 between the right-of-way and their property, we're the
4 people who are going to analyze the historical
5 information and provide them assistance in that. And so
6 I've had a lot of experience, a lot of time, researching
7 the old rights-of-way in trying to make sense of them.

8 Q So that would be, then, a document review of
9 right-of-way documents related to specific
10 rights-of-way?

11 A Yeah, that's pretty much it.

12 Q How about any internal procedures of the department
13 with respect to right-of-way matters?

14 A Yeah, we -- I still collect and try to retain as
15 much of the old procedures manuals that I can. If I
16 need to look back and see how were things done, you
17 know, 20 years ago to see if it will help me clarify
18 some of the issues.

19 And we still have a lot of archival documents
20 relating back to the Bureau of Public Roads days, to the
21 Alaska Road Commission days, that can from time to time
22 shed some light on why something was done or how
23 something was done. So, yes, I've had exposure to those
24 types of documents.

25 Q Have you reviewed any of those in connection with

1 the assignment that Mr. Burke gave you?

2 A Well, specific documents, I'll have to say that
3 I've reviewed some documents that relate to the Alaska
4 Road Commission days, you know, maps, title documents
5 and such. So, you know, I have looked at some of the
6 old documents relating to this project.

7 Q How about a more generic operations and
8 procedural-type manuals?

9 A Operations and procedural-type manuals with respect
10 to this particular assignment? No.

11 Q Do such things exist? And I'm interested in
12 anything that might exist as far ago as, say, 1966.

13 A I think I do have one of the earlier surveying
14 manuals, and I believe it was in the neighborhood of
15 '66, plus or minus a couple of years. So we do have
16 access to some things like that, yes.

17 Q Now, this controversy, as you know, relates to
18 Nikishka Beach Road and the property of OSK along the
19 shore of Cook Inlet that is either at the end or is
20 traversed by Nikishka Beach Road, depending on our
21 respective positions. I don't want to get hung up on
22 you admitting or me admitting our position, but you
23 understand what the area is of the -- the physical area
24 is of the controversy?

25 A I believe I do, yes.

1 Q Do you have any personal knowledge of the history
2 of that area?

3 A The only knowledge I have of the area is based on
4 the documents that I was presented.

5 Q Did you participate in a visit of the property with
6 DOT personnel last year?

7 A No. I have never been to Nikishka Beach Road.

8 Q How old would you have been in 1966?

9 A Well, in 1966 I would have been 13 years old.

10 Q You don't have any personal knowledge of any of the
11 instruments of title or the circumstances surrounding
12 the instruments of title dating from 1966?

13 A Well, I guess I would admit that I was not
14 interested in title issues in 1966. I am much more
15 interested in title issues relating to 1966 now.

16 Q Right. That was not a well-phrased question. I'm
17 just trying to establish that your knowledge of these
18 instruments is based upon your review of the instrument,
19 not other knowledge about their circumstances and so
20 forth based on your personal involvement with any of
21 them.

22 A That would be true, yes.

23 Q And that would extend to the 1980 State patent as
24 well?

25 A Yes. My exposure is just to the documents.

1 Q As I understand it, then, and as reflected in
2 Exhibits 19 and 20, your review was limited to materials
3 supplied to you by Mr. Burke?

4 A That's probably 99.5 percent correct. There
5 were -- I had occasion to, say, pull up over the
6 Internet a copy of the master title plat, the federal
7 master plat, just because I can get clearer images doing
8 it that way.

9 I also have some records of the Alaska Road
10 Commission that had been extracted from, say, the
11 National Archives on previous investigations I've done.
12 And often it's a shotgun approach, so they send me much
13 more than I need.

14 And to the extent that they sent me some
15 documents relating to Central Region, or the Kenai area,
16 I just took a quick look to see if I had anything that
17 would be relevant. So I did look a little bit in the
18 piles that I had in my office, but I really didn't go
19 out of the office to look for additional...

20 Q Did you discover anything in the office files you
21 just described that was relevant to your inquiry?

22 A I believe what I did find was that -- I think it
23 was referred to as the four-weekly report that spoke to
24 construction staking for Nikishka Beach Road Number 2.

25 Q And you provided that to Mr. Burke?

1 A That's correct. Yes.

2 MR. BAIRD: I believe I have that.

3 MR. BURKE: Yeah.

4 BY MR. BAIRD:

5 Q Directing your attention back to Exhibit 18, at the
6 outset there, it says, "I have reviewed the historical
7 and title information." What did you mean by historical
8 information?

9 A To the extent that the documents that were
10 delivered to me outlined the history of the issue and of
11 the chain of title, I reviewed those documents.

12 Q Did you conduct any interviews with any persons
13 having or claiming to have personal knowledge of any of
14 the title instruments that you reviewed?

15 A No, I did not.

16 Q When you referred to title information in Exhibit
17 18, that would, again, be the information supplied to
18 you by Mr. Burke?

19 A That's correct.

20 Q You did not undertake your own title examination?

21 A No, I did not.

22 Q And you did not retain anybody else to do so?

23 A No, I did not.

24 Q Are you aware of anybody else at the department
25 undertaking such a title examination previously or at

1 this time?

2 A As far as a title examination, I'm not aware of. I
3 suspect there were people at Central Region Right of Way
4 Engineering Office that may have been involved to some
5 degree, but I haven't seen their work product.

6 Q You indicated that you personally have not seen the
7 property. Was anyone under your supervision given the
8 task of doing any field work regarding your assignment?

9 A No one else in Northern Region has had any
10 involvement with this project.

11 Q How about in -- is it Central Region?

12 A That would be Anchorage, the Central Region. And
13 I -- just through Mr. Burke, he mentioned that a staff
14 member at Central Region Right of Way had been involved
15 in it, Johann Mueller.

16 Q Are you aware of any field survey work being done
17 at any time by DOT in connection with this case?

18 A No, I'm not aware of any.

19 Q Are you aware of any plans to do any prior to the
20 trial in this matter?

21 A I'm not aware of any.

22 Q Are you aware of any projects contemplated in this
23 area for which the department might require surveys
24 being under way at this time?

25 A No, I'm not.

1 Q There was -- I'll represent to you that the -- that
2 a report was prepared, a memorandum was prepared by
3 Marcus Mueller of the Kenai Peninsula Borough. Have you
4 ever seen that report?

5 A I don't believe I have seen that.

6 Q I'll show you what I'll represent to be a copy of
7 the report as produced by the Kenai Peninsula Borough
8 and just ask if you've ever seen it?

9 A I think I can say I've seen pretty much all of the
10 documents attached to this memo, but I don't recall off
11 the top of my head whether I've seen this memo. This
12 just does not look familiar.

13 MR. BURKE: You may want to refer to the
14 letters to refresh his recollection, if you want to go
15 that route. I don't think he saw it.

16 MR. BAIRD: Yeah, thank you, Counsel.

17 BY MR. BAIRD:

18 Q Exhibits 19 and 20 don't list it as one of the
19 documents being provided to you. So is it safe to say
20 then that --

21 A Yeah. I believe -- it doesn't look familiar. Like
22 I said, all the attachments look familiar but the actual
23 memo doesn't look familiar to me.

24 Q All right. Are you aware that the State has
25 produced approximately 462 pages of documents in

1 connection with this case?

2 A I don't know the number of documents. I suspect
3 it's quite a few.

4 Q You haven't reviewed -- I think that's probably
5 asked and answered.

6 MR. BURKE: I don't mind. Find out what you
7 need to.

8 BY MR. BAIRD:

9 Q You haven't reviewed any binder of documents
10 consecutively numbered DOT State of Alaska 1 and then
11 carry on?

12 A I know just by looking at the size of the binder
13 that I do not have that full number of documents. I can
14 also say that I looked at the documents and looked at
15 the numbering scheme and all the various motions and I
16 was -- I told myself, I don't think I've got everything,
17 but maybe there's a reason for that.

18 Q All right. That's fine.

19 Turning to the second page of Exhibit 18. This
20 does have a DOT number on it, 405. And I'm just trying
21 to confirm that what is here is not something you
22 obtained from your own files but is something that was
23 provided by Mr. Burke.

24 A That's correct. Yes.

25 Q Your report addresses the effect of Public Land

1 Order 601, 757, 1613, and Departmental Order,
2 Secretarial Order, 2665?

3 A That's correct.

4 Q Are you an attorney?

5 A No, I am not.

6 Q Have you -- are you aware that the Alaska Supreme
7 Court has addressed the effect of those -- let me back
8 up. I'm going to use the term "public land orders" to
9 include the secretarial and departmental order. And for
10 my edification, is it referred to as Secretarial Order
11 or Departmental Order 2665?

12 A Yes.

13 Q Both ways?

14 A I've seen it in a number of documents both ways.

15 Q But there is only one order that we're talking
16 about?

17 A There is only one order.

18 Q So I'm going to group those generally as public
19 land orders with that qualification.

20 A Yes.

21 Q Are you aware that those public land orders have
22 been reviewed in Alaska Supreme Court cases concerning
23 those orders?

24 A Yes.

25 Q Have you reviewed any of those cases in connection

1 with preparing your report?

2 A Yes. I would admit to rereading many of those key
3 cases almost on a monthly basis because -- not directly
4 related to this case, but just on all the issues that we
5 deal with.

6 Q But not specifically in connection with this
7 report?

8 A No, even in specific connection with this, I've
9 read through -- when I see a reference in one of the
10 motions to one of those documents, I would grab it and
11 skim through it and see what the connections were.

12 Q Do you recall which cases you looked at?

13 A Alaska Land Title most definitely. Keener. I
14 can't remember if Highways v. Green was actually
15 referenced or it's just one I looked at in reference to
16 PLOs.

17 Q How about 823 square feet versus State?

18 A Yeah. That's related to Green, and so yes.

19 Q Your report makes reference to State versus
20 Harrison, a federal district court case, A94-0464.

21 A Yes.

22 Q Was that provided to you by Mr. Burke or were you
23 aware of that?

24 A I was aware of that back when it was issued.

25 Q Did you review any treatises -- do you understand

1 what that term means?

2 A Uh-huh.

3 Q Did you review any treatises in connection of
4 preparing your report?

5 A I have a copy of the Bruce and Ely on easements
6 that I refer to occasionally. And so that -- among
7 other seminar papers, if you will, that I may have
8 collected over the years. I would refer to those.

9 Q Directing your attention to page four of your
10 letter, which is Exhibit 18, the second paragraph. It
11 says, "To determine whether a full width right-of-way
12 attached to a road, it is necessary to review the
13 chronology of title and physical activity for the lands
14 crossed by the road."

15 Now, chronology of title would be the documents,
16 the title documents?

17 A It would include both title documents and quite
18 often evidence of factual construction.

19 Q And how about physical activity? Your conclusions
20 about physical activity are based on the documents that
21 were provided to you?

22 A That's essentially correct. Or the one document
23 that I mentioned relating to staking that I provided
24 Mr. Burke.

25 Q Then on the next page you state a chronology, which

1 in several places relates to specific title instruments.
2 Are those the ones that -- were simply the ones provided
3 to you or those were the ones that you regarded as
4 significant in reaching your opinion?

5 A They were essentially just the ones that were
6 provided to me. I just laid it all out and then I'd go
7 back and review it.

8 Q On the bottom of page five, there's a reference to
9 an appraisal report?

10 A Yes.

11 Q What was the significance of that appraisal report
12 for you?

13 A The significance was the statement in it that
14 though this property was traversed by Nikishka Number 2
15 State Road, which offers a road approach to the beach.

16 Q What weight did you place on that report in forming
17 your opinion?

18 A A couple things I look at in situations like this.
19 One is to try and cross-reference names, because quite
20 often roads will be referred in a different manner. And
21 so just to see that they're referring to Nikishka Number
22 2 Road and that I had seen that in reference to this
23 road also kind of tied it together that these were
24 documents that were clearly related to the issue.

25 And "offers a road approach to the beach," well

1 one of the issues is whether this road continues on to
2 the beach, so I thought that was important.

3 Q Turning then to the next page, there's a reference
4 to a State of Alaska DNR lease number. Do you see that
5 at the very top there?

6 A Yes.

7 Q And it's in reference to 02844?

8 A That's correct.

9 Q And your footnote at 16 says that's defendant's
10 motion for summary judgment, Exhibit 5.

11 A Okay.

12 Q I'll show you what I'll represent to be my file
13 copy of a motion for summary judgment and ask you if
14 that's what you had a copy of?

15 A Well, this is one of many motions that I had a copy
16 of.

17 Q And is that what you're referring to in footnote
18 16?

19 A I believe it is.

20 Q If you could turn to Exhibit 5 to that memorandum.

21 A Okay. Yes.

22 Q If I could see it, also. Exhibit 5 purports to be
23 a lease and it's -- the first line of it says, "Made and
24 entered into August 17, 1966."

25 A Yes.

1 Q My question is: Is the date that you've given here
2 for that lease, is that an error?

3 A Yes. Yes, I see that this was the initial lease
4 and then I said the lease was extended -- well, no, it
5 was extended to 55 years. Let me take a quick look and
6 see if that's exactly what's happening here. For a term
7 of 55 years commencing on 17th of August, 1966. Okay.
8 I believe that's correct.

9 Q So the document that you're referring here is --
10 there isn't some other document that's dated February
11 15th, 1962, that is a 55 year lease; is there?

12 A You said it's dated 1962?

13 Q That's my confusion.

14 A Oh, I see. I see what you're saying. I see what
15 you're saying. I apologize there.

16 No. I can see there that the date that I have
17 of February 15th, 1962, and then I'm citing this lease,
18 that those appear to be an error.

19 Q And just so we're straight then, the lease that
20 you're referring to there is the lease that I now have
21 in front of you?

22 A Yes.

23 MR. BURKE: Counsel, can I look at that lease
24 so I can make sure I'm tracking with you?

25 MR. BAIRD: Sure.

1 MR. BURKE: I think I'm with you.

2 THE WITNESS: I said, well, this must be an
3 error. But the way I've stated it here, it's as if I'm
4 looking at an initial lease dated February 15th, 1962,
5 and then I'm just saying that and this lease was
6 extended, you know, on August 17th, 1966. Now, I don't
7 have my copy of all the documents that were forwarded to
8 me, so I'm not sure if maybe there was an initial lease
9 dated February 15th, 1962.

10 BY MR. BAIRD:

11 Q Well, I'll direct your attention to -- I guess I
12 won't. Let's go, then, to the entry at April 7th, 1964,
13 in your report. Do you see that?

14 A Yes.

15 Q And again, there's a reference to an ADL number,
16 21879. And it's stating that the lease was extended to
17 55 years on August 17th, 1966. And then your footnote
18 19 is to Exhibit 6 of the defendant's motion. Do you
19 see that?

20 A Yeah.

21 Q If I could show you Exhibit 6 to the memorandum and
22 ask you to look at the first line, which gives a made
23 and entered date.

24 A Yes. Made and entered 17th, August, 1966,
25 ADL 21879.

1 Q So again, my question is: Is the date given in
2 your report incorrect?

3 A I don't believe it is. I believe my intention in
4 doing this was to -- my focus in my report was not so
5 much on the leases. So rather than list the initial
6 lease and extension of the lease, an assignment of the
7 lease, you know, for all the same property, I just
8 collectively stated April 7th, 1964, is the initiation
9 of the lease and then commented that it was subsequently
10 extended, it was subsequently reassigned, and so on.

11 Q And your understanding of the two instruments that
12 we do have here today that are footnoted in your report
13 is that those are extensions of a lease?

14 A Yes, they are.

15 Q Now, it's your understanding, as stated in this
16 report, that Nikishka Beach Road is a, quote, local
17 road, closed quote, within the meaning of the, again,
18 PLOs taken generically?

19 A Yes. Because otherwise it would have to have been
20 specifically named.

21 Q And the width of the right-of-way and your
22 understanding of the PLOs that's established for a local
23 road is what?

24 A Generally, it's 100 feet, 50 feet each side of
25 center line on the physical road.

1 Q And it's your understanding of those PLOs that
2 Nikishka Beach Road then had -- is a local road with a
3 50-foot right-of-way on each side of the center line?

4 A Yes.

5 Q What is your understanding of whether a
6 right-of-way under the PLOs could be established on
7 lands reserved for school purposes?

8 A My understanding is -- I will look at any prior
9 existing rights, whether it was a reservation for school
10 purposes, an entry for a homestead, location of a mining
11 claim, all those are relevant.

12 The public land orders were specifically made
13 subject to prior existing rights. It didn't prevent
14 them from being impressed. It just prevented them from
15 being the senior right at the time. So my opinion was
16 that the public land order right-of-way applied, but it
17 was subject to that prior existing right.

18 Q And the prior right that you're referring to there
19 is the federal statute from 1915 that reserved lands
20 within Alaska for school purposes?

21 A That's correct, yes.

22 Q Have you seen the opinion of the attorney general's
23 office on that issue in this case?

24 A You're speaking of 1966 or '64 opinions that were
25 written as a part of the North Kenai Road project?

1 Q Correct.

2 A Yes, I have seen those.

3 Q When did you see those?

4 A When Mr. Burke forwarded them to me.

5 Q Before or after your report?

6 MR. BURKE: Objection to the form of the
7 question. You need to refer him to the letters so that
8 he can get an accurate answer.

9 BY MR. BAIRD:

10 Q After counsel's suggestion to the letters, does it
11 help you to answer that question?

12 A In the memo dated January 9th, 2009, paragraph
13 eight refers to internal memoranda from the 1960s
14 discussing the application of the PLOs as interpreted at
15 the time.

16 Q Do you -- based on your understanding, do you have
17 any reason to disagree with the conclusions stated in
18 that memorandum?

19 A I believe if I was faced with the same information
20 at the time that memorandum was issued, I would have
21 agreed with it at that time.

22 Q You go on in your letter then to come to the
23 conclusion that, in your understanding, Chapter 182 of
24 session laws 1978 -- I believe you used the phrase, as a
25 result of that legislation, the right-of-way easement

1 was no longer subject to a prior right and came into
2 full effect. Do you see that language?

3 A What page is that?

4 Q Top of page eight.

5 A Yes, that's correct.

6 Q And then you go on to discuss the State versus
7 Harrison case?

8 A That's correct.

9 Q Are there any other bases for your understanding
10 that the reservation of the lands for school purposes
11 was no longer effective as of the enactment of Chapter
12 182 in 1978?

13 A So you're asking if there's any other basis for my
14 reaching that conclusion. And essentially, it was my
15 reading of Harrison, my belief in my 25 years of
16 experience that this is how it would act in a similar
17 situation, and the release of the school lands
18 reservation provided by the legislation.

19 Q In the next paragraph marked merger of title,
20 there -- well, what is your understanding of the term
21 "merger of title"?

22 A My understanding of the term "merger of title" is
23 that you can't hold fee title and an easement for your
24 benefit that crosses your fee title because it's
25 essentially meaningless at that point. If you own the

1 whole bundle of sticks, there's no reason to have an
2 easement interest there and therefore that easement
3 interest merges with fee title and effectively goes
4 away.

5 Q If you could hold that thought, I forgot to ask you
6 something about the previous section. Are you aware of
7 the department -- of either the Department of Highways
8 or the Department of Transportation ever taking the
9 position that the school lands reservation provided by
10 the federal 1915 statute did not make the subsequent
11 PLOs applicable to those school lands?

12 A You mean other than those 1960s AG's opinions?

13 Q Have you encountered the question of whether the
14 PLOs established a right-of-way on school lands in any
15 context other than this case?

16 A I don't really recall having dealt with the school
17 lands and PLO issues.

18 Q This is your first time?

19 A I believe so.

20 Q Now we'll skip back to your discussion of merger.
21 Did you have an understanding of the merger of title
22 doctrine prior to your preparation of this report?

23 A Yes.

24 Q How did you have that understanding?

25 A Well, we have had situations in the past in the

1 Northern Region where title to a small portion of one of
2 our highway rights-of-way was put at risk because of a
3 misinterpretation of what the highway right-of-way was
4 by DNR. And the issue was raised by someone at that
5 point as to whether we even had a highway right-of-way,
6 that maybe it didn't exist by virtue of merger of title.
7 And so, you know, we started considering that issue and
8 considered it and reached the conclusion that it would
9 not apply.

10 Q Did you obtain any advice from the attorney
11 general's office concerning that?

12 A We actually -- we did have one of our assistant
13 attorney generals involved at the time, but it never
14 really -- it was more phone advice. It never really
15 went to any litigation or really any more formal
16 discussions with the Department of Natural Resources.
17 It just --

18 Q Did it generate a memorandum from the attorney
19 general's office?

20 MR. BURKE: Objection. Attorney-client
21 privilege.

22 You're not to give him the substance of any
23 communications or legal advice on that subject and if
24 there are questions that say did you get a memorandum on
25 a subject that reveals the subject matter. So I'm going

1 to ask you to follow my advice and not answer questions
2 that either obliquely or directly ask for attorney
3 advice or information about attorney advice. To the
4 extent that you can answer that question without doing
5 that -- if you want to rephrase the question, you can
6 take a shot at it.

7 BY MR. BAIRD:

8 Q You understood that my question related to other
9 instances besides this case where the issue was
10 presented? And I understood you to be referring to a
11 completely different instance where the issue came up.
12 Don't understand the question?

13 THE WITNESS: Well, we're talking about
14 attorney-client privileged communications without regard
15 to which case it was involved in; right?

16 MR. BURKE: Exactly.

17 MR. BAIRD: And my question was directed at
18 this other matter.

19 THE WITNESS: Right.

20 MR. BURKE: And the attorney-client privilege
21 would still apply.

22 MR. BAIRD: And you're asserting the privilege
23 as to attorney-client memorandums that may have been
24 sent to the department in that other matter?

25 MR. BURKE: Yes.

1 BY MR. BAIRD:

2 Q Are you aware of any memorandums that may have been
3 provided to persons outside the department, the public,
4 that relate to that issue coming from the attorney
5 general's office?

6 A No, I am not.

7 Q Are you aware of any instances in which the
8 question of the effect of the school lands reservation
9 on subsequent PLOs was raised in other regions?

10 A No.

11 Q And how about with respect to the merger doctrine?
12 Are you aware of that doctrine becoming an issue in
13 other situations outside the Northern Region?

14 A I believe -- you know, we will occasionally have a
15 Right of Way chief's meeting. We'll just get together
16 and talk about issues, you know, that are of common
17 interest. And I'm sure at one time or another we talked
18 about the issue of merger of title between DOT and DNR.

19 Q And in those -- do you recall from those
20 discussions any specific controversies or instances that
21 were stated by your cohorts from other regions?

22 A I recall, and I don't have any documents to support
23 this, but someone suggesting that, you know, maybe 15,
24 20 years ago someone at DNR might suggest to us that we
25 should apply for a right-of-way permit from DNR for a

1 road that was clearly established under PLO and conveyed
2 to the State under the quitclaim deed. And as far as I
3 can tell, you know, DOT has dismissed those requests.

4 And my discussions at the time -- and this was,
5 say, 15 years ago -- with some of DNR's management was
6 that, no, you know, you will not have to be applying for
7 additional rights-of-way for existing rights-of-way that
8 were conveyed under the omnibus quitclaim deed.

9 Q On page eight of your memorandum, you reference a
10 State statute, a couple of them, and then there's a
11 citation to the Law of Easements and Licenses by Bruce
12 and Ely. Are there any bases for your conclusion that
13 the merger doctrine does not apply to DOT for managed
14 rights-of-way other than what is set forth on page
15 eight?

16 A I think I laid out -- pretty much laid out on page
17 eight my knowledge and my opinions regarding the merger
18 of title issue. That's pretty much the sum total of it.

19 Q And towards the bottom there, there's a sentence
20 that reads, "These provisions clearly distinguish the
21 authorities for DNR and DOT&PF to acquire, manage, and
22 dispose of lands such that the land interests in their
23 respective inventories would be protected from merger
24 due to their separate representative capacities." Do
25 you see that sentence?

1 A Yes.

2 Q What is your understanding of what -- well, what
3 did you mean by inventory as it relates to DNR?

4 A Well, DNR's inventory, you know, relates to the
5 30-some percent of the State of Alaska that was to be
6 granted to the State of Alaska and was received from the
7 federal government. When I talk about Department of
8 Transportation's inventory, I'm talking about the State
9 highway system.

10 Q And if a parcel of State land -- is it possible for
11 a parcel of State land to both be within the inventory
12 of DNR and DOT at the same time?

13 A Sometimes those lines do get blurred. Say, for
14 example, on RS 2477 trail rights-of-way. I think the
15 regulations state that the management of those trails
16 will be by DNR unless that specific trail is listed on
17 the State highway system. So sometimes we make
18 transfers in that sense. But when it comes down to
19 identifying on a specific trail or a specific piece of
20 property, we can usually identify that it is one agency
21 or the other.

22 In addition, we acquire new rights-of-way from
23 DNR under a right-of-way permit. We do have to avoid a
24 conflict of management, you know, say, for example, if a
25 third-party lease was requested within the highway

1 right-of-way. You know, we've reached a memoranda of
2 understanding with DNR that it would be impractical and
3 totally confusing to have two agencies manage the same
4 piece of property, and so they have deferred to the
5 Department of Transportation for the management of any
6 third-party interests within these highway rights-of-way
7 that we obtained from DNR.

8 Q And if you could direct your attention back to --
9 off record for just a second.

10 (Off the record.)

11 BY MR. BAIRD:

12 Q Before our break, you had made reference to
13 right-of-way permits being issued by DNR. Directing
14 your attention to what was marked as Exhibit 3 in a
15 previous deposition of State representatives, have you
16 seen that document before?

17 A I believe that's one of the documents that came
18 associated with the documents that came up at the
19 right-of-way plans. I don't know if it's specified in
20 the...

21 MR. BURKE: Counsel, just to help move things
22 along, he has seen my -- one of the things that my
23 documents -- my letters transfer is the State's summary
24 judgment motion papers with exhibits. And so if we were
25 to dissect that, I think we'd find that this was in

1 there at a minimum. We can do that if we need to, but I
2 don't --

3 MR. BAIRD: I don't have my pleading file with
4 me.

5 BY MR. BAIRD:

6 Q If you could just quickly look through Exhibit 3
7 and see if it looks like what you've previously seen.

8 A Yes. I believe that's the right-of-way permit for
9 it.

10 Q Now, I recognize that you weren't employed by DOT
11 in 1966, but has something roughly similar to this been
12 issued? Have you had occasion to deal with permits of
13 this nature being issued by DNR during your employment
14 with DOT?

15 A Yes, continuously. This is a very typical type of
16 right-of-way permit that we would require from DNR for
17 our highway rights-of-way.

18 Q And is permits of this type the device in your
19 understanding whereby Department of Transportation and
20 the Department of Natural Resources attempt to segregate
21 their responsibilities?

22 A Yes. It's essentially -- you might say it allows
23 us to transfer management of State land from Department
24 of Natural Resources to Department of Transportation.

25 Q We've seen several land leases here.

1 A Yes.

2 Q The department -- what's your understanding of the
3 Department of Natural Resources' responsibility for the
4 administration of leases of that type?

5 A My understanding of it? I mean, I understand that
6 they administer them, they manage them. I'm not sure
7 what your question is.

8 Q That's fine. DOT doesn't manage those leases?

9 A No. However, as I mentioned, with the agreement
10 between DOT and DNR, if we had excess right-of-way --
11 say, for example, we have in the Nenana Canyon area
12 where we have a large tract of excess land that we had
13 originally acquired under a similar type of permit. And
14 then we have -- DOT has subsequently leased it out to a
15 private RV operation. So in that context, DOT has
16 managed the lease of State lands that was incorporated
17 under a right-of-way permit like this.

18 Q So in that scenario, the permit proceeds the lease
19 and the lease pertains to the same land or a portion of
20 the same land described in the permit?

21 A That's correct.

22 Q Does DOT have its own lease form for those
23 situations?

24 A Yes. Probably it's not as consistent in format as
25 DNR's have been over the years, but we do have a lease

1 form.

2 Q Directing your attention to a sentence close to the
3 bottom of page eight. It says, "As a matter of practice
4 and contrary to an application of the merger doctrine,
5 DNR recognizes and reserves Omnibus Act highways when
6 issuing patents." Do you see that sentence?

7 A Yes.

8 Q We had a short discussion about your personal
9 experience with this. And let's go to -- just to set
10 this up here, I understood you to say that you have on
11 occasion personally been involved in reviewing a
12 proposed patent that's going to be issued by DNR.

13 A That's correct. More often would be the case where
14 I have had reason to inspect a patent after it has been
15 issued.

16 Q Is it your understanding based on the period of
17 time that you've been at DOT that DNR routinely requests
18 review of the Department of Transportation or its
19 predecessor of proposed patents?

20 A I would say, yes, it is routine to review DNR
21 transactions. Sometimes I wonder by virtue of the fact
22 that I haven't seen many patents in recent years whether
23 we are getting an opportunity to review on all the
24 patents, but we do review a number of different types of
25 DNR land management transactions.

1 Q Are you aware of any memoranda of understanding
2 between the two departments concerning that issue?

3 A Regarding the review of proposed State patents?
4 No, I'm not aware of any.

5 Q Do you have any reason to believe that the
6 experience you have in the Northern Region is different
7 in either the Central Region or the Southeast Region?

8 A Well, I can't say that I know that it would be
9 significantly different, but I can tell you that we will
10 occasionally see differences in the operations of both
11 DOT and DNR, you know, in how they carry out their
12 transactions. But I'd say I wouldn't see any
13 significant differences.

14 Q Do you in the Northern Region deal with a different
15 unit of Department of Natural Resources than, say, would
16 the Central Region?

17 A I'm not sure whether Central Region crosses into
18 the Northern Region of DNR area. DOT Northern Region
19 definitely crosses into the DNR South Central Region.
20 So we deal with both the Anchorage group and the
21 Northern Region Fairbanks group.

22 Q So you do have some experience with the practice
23 of --

24 A Yes.

25 Q -- the Central Region of DNR and their requests for

1 reviews of proposed State patents?

2 A Yes.

3 Q And when I asked you the earlier question about
4 what was their practice, that statement pertains as well
5 to the Central Region of DNR?

6 A Yes.

7 Q You state in the sentence that I read a little
8 while ago that you regard the DNR's practice of
9 reserving omnibus highways when issuing patents as,
10 "contrary to an application in the merger doctrine." My
11 question is: Why is that?

12 A Well, it would be contrary because if DNR
13 considered merger of title to be taking place, they
14 would be creating a new right-of-way in the patent
15 document, not making reference to an old preexisting
16 right-of-way.

17 Q Any other bases for that statement?

18 A Other than I'd say conversations I've had with DNR
19 management in the past recognize that it would be
20 impractical, unreasonable to take any other approach.

21 You can imagine how many lands, how much
22 acreage, has been conveyed to the Department of Natural
23 Resources since statehood that are traversed by the
24 Omnibus Act rights-of-way. To suggest that upon patent
25 to the State of Alaska that all those have disappeared

1 would be chaotic.

2 Q How about the ability of the department to identify
3 them by expressed reference in a subsequently issued
4 patent?

5 A Are you saying could they do so?

6 Q Correct.

7 A Could they reserve them if they felt that it was
8 appropriate?

9 Q Correct.

10 A Well, I'm not going to say what DNR could or
11 couldn't do. DOT --

12 Q Do you have any knowledge of what --

13 MR. BURKE: Objection. Interruption.

14 You were saying something -- I think the
15 question was -- the answer was you didn't know what DNR
16 could and couldn't do and then you were interrupted.

17 I would like to let the witness finish that.

18 THE WITNESS: Yes, my statement is I can't
19 speak to what DNR could or couldn't do, but they have in
20 my mind clearly agreed to the concept that merger of
21 title is not operating between these two State agencies.

22 BY MR. BAIRD:

23 Q My question was directed at their ability to
24 expressly reserve Omnibus Act highways in patents that
25 they issue. Do you have any knowledge of their ability

1 to do that?

2 A Expressly reserve as opposed to making reference
3 to, subject to? Is that what you're saying?

4 Q A specific reference as opposed to a general
5 reference to all highways and so forth.

6 A Well, they are specific references. I mean, they
7 will in a patent -- if a portion of the Glenn Highway
8 passes through the subject patent, they will make
9 reference to the Glenn Highway, possibly even citing the
10 route number and make reference to the omnibus quitclaim
11 deed. And in recording information, they record it and
12 such.

13 Q And so at least in those instances they do do it,
14 make specific reference?

15 A They make reference to the preexisting
16 rights-of-way, yes.

17 Q Do you have any reason to believe that there was a
18 different practice in 1980 before you came to the
19 department?

20 A I --

21 MR. BURKE: Foundation objection. Speculation
22 based on his limited knowledge of what goes on in the
23 present.

24 BY MR. BAIRD:

25 Q Do you have any knowledge of what DNR's practice in

1 respect of expressly reserving omnibus highway
2 rights-of-way prior to your coming to work with the
3 department in 1986?

4 A I don't have any specific knowledge of it other
5 than my occasional review of title documents of that
6 date.

7 Q Based on that limited experience, do you have any
8 reason to believe the practice was different in 1980?

9 A I think that would be difficult to give an absolute
10 yes or no response to it. There may have been
11 differences in how they phrase the references, but I
12 commonly remember seeing references to the preexisting
13 rights-of-way in virtually all patents that I have seen.

14 Q On the next page of your report, page nine, there
15 is a discussion of a set of right-of-way plans for
16 project S-0490.

17 A Yes.

18 MR. BAIRD: Off record for just a second.

19 (Off the record.)

20 BY MR. BAIRD:

21 Q Directing your attention to a document I'm
22 presenting to you. It's got a Bates number on it,
23 SOA DOT&PF 00314 and 00315. Have you seen those before?

24 A Yes, I have.

25 Q And if you could briefly -- I'll represent to you

1 that this is what I got from the State. Do you have any
2 reason to think that there's something -- that you
3 looked at something different than what I've got here?

4 A No. They look like a standard set of right-of-way
5 plans for a project of that vintage.

6 Q At the end of the first full paragraph on page nine
7 of your report, there's two sentences which I'll just
8 read for the record.

9 "The Department of Highway map shows an existing
10 100-foot-wide right-of-way for the old alignment of
11 Nikishka Beach Road up to the end of the DNR
12 right-of-way permit, however, no existing right-of-way
13 is shown beyond that point. Based on the documents
14 available, I believe that to be an erroneous depiction
15 of the PLO right-of-way for Nikishka Beach Road as the
16 PLO right-of-way should be shown extending to the
17 beach."

18 My question is: What is the basis for your
19 conclusion that -- well, first of all, that's a
20 reference to -- you're discussing there the page 00315?

21 A That's correct. Yes.

22 Q And what is the basis for your conclusion that
23 00315 is erroneous?

24 A Well, my basis for that conclusion is that this
25 particular exhibit terminates the right-of-way short of

1 Nikishka Beach. And we have prior documents -- say, for
2 example, the Alaska Road Commission 1957 vicinity map --
3 that graphically shows the road going to the beach. We
4 have the description in the omnibus quitclaim deed
5 speaking to the terminus of the right-of-way or the
6 right-of-way or the road going to the beach. So this
7 doesn't appear to be reflecting that information.

8 Q Any other basis for your conclusion that it's
9 erroneous?

10 A Well, there's another reason that it could be shown
11 this way that I would find, and that's just in my
12 experience of project-based development of right-of-way
13 plans.

14 We're given a scope of project. Say, for
15 example, the scope of the project is between Mile 100
16 and Mile 110 of the Richardson Highway. I develop a set
17 of right-of-way plans based on a proposed alignment
18 given to me by the engineering section. For example, if
19 I were to say, yes, but I have this missing link from
20 Mile 110 to Mile 115 that I really would like to get
21 surveys now so long as we have this pile of funds, let
22 me go do that. And they'll say, no, the scope of your
23 project is from 100 to 110. We cannot carry our work
24 beyond the scope of the project.

25 So it's very possible that the scope of this

1 particular project said take it to this limit and stop
2 and that's exactly where the right-of-way plans stopped.
3 So it may not have been an error on the part of the
4 developer of these right-of-way plans. It may have been
5 a limitation of the scope that they were given.

6 Q And what is your basis for concluding that that may
7 have been the circumstance in 1966?

8 A My basis for concluding that is because I would
9 expect that the scope constraints that I have been under
10 for the last couple of decades would be similar
11 constraints that they would have been under in doing
12 their project development.

13 Q And that would have been 20 years prior to your
14 first employment with the department?

15 A Yes. Uh-huh.

16 MR. BURKE: Objection. Misstates his
17 testimony about his seasonal employment for the
18 department.

19 BY MR. BAIRD:

20 Q With that correction?

21 A Yes.

22 Q Do you have any reason to believe that there are
23 survey errors in 00314 and 00315?

24 A With respect to survey errors I really can't reach
25 a conclusion. I didn't mathematically run through the

1 geometry that's presented on these two drawings nor have
2 I been associated with any in-the-field surveys to
3 determine whether these drawings are correct, what's
4 physically in the field. So I really can't speak to
5 that.

6 Q Do you know where -- well, does the drawing
7 indicate to you where any field monumentation might have
8 been placed?

9 A Well, in this time frame, typically what would
10 occur is the monuments would be set at the time of
11 construction and so it would have actually been a bid
12 item and noted on the construction as-builts.

13 Occasionally they will be noted as they are here
14 with the symbol of a crossed circle at every break point
15 and sometimes every thousand feet if we have a long
16 enough road. And these would indicate that that's where
17 monumentation would be placed along the right-of-way.
18 But it's really the construction as-builts that would be
19 the primary evidence as to where those monuments took
20 place at that time and those locations.

21 Q Directing your attention to what's been produced to
22 me labeled DOT 00090 and following. I'd ask you to take
23 a look at that and tell me whether you have ever seen
24 that before.

25 A There may have been a page or two out of this that

1 was part of the documents that had been forwarded to me,
2 but I don't believe I have seen a full set of as-builts.

3 Q I need to go around.

4 MR. YOUNG: Just stay where you are.

5 BY MR. BAIRD:

6 Q Directing your attention to pages 107 and 108, have
7 you seen those before?

8 A I don't recall if I have seen these as-built sheets
9 or not. If they're not listed on the letters -- I'll
10 say that I have this picture in my mind because they
11 closely represent what's shown on the right-of-way
12 plans, but I can't absolutely state that I've seen this
13 sheet of the as-built plans.

14 Q I'd ask you to take a minute then to familiarize
15 yourself with those two pages with the purpose of being
16 able to answer whether they indicate whether any
17 monumentation has been set.

18 A Well, they use the symbology that is commonly used
19 to denote monumentation, but there should also -- if
20 monumentation was set, there should also be a bid item.
21 We have bid items 613(1) right-of-way monuments and that
22 goes by sheet number. Let me get back to the sheets
23 here. This will be sheet -- it looks like sheet 18 and
24 sheet 19. Sheet 18 is shown with 13 monuments and sheet
25 19 is shown with seven monuments having been set. So

1 we'd have to count them to make sure everything works
2 out, but that's --

3 Q We don't need to do that.

4 A -- what's shown.

5 Q So at least without going through the exercise of
6 counting them all, it looks like at least some monuments
7 were set according -- the as-built drawing indicates
8 that some monuments were set as part of the project?

9 A That's correct. Yes.

10 Q So it's your understanding, then, that the PLO
11 right-of-way for Nikishka Beach Road extends beyond
12 where it's shown on both -- well, it's shown on those
13 right-of-way plans that we just reviewed?

14 A That's correct. Yes.

15 Q Where is that right-of-way?

16 A Physically where is it located? Well, that's
17 always a challenge when it comes to locating the
18 historic PLO rights-of-way.

19 A lot of people don't realize that, you know, in
20 this 5400 miles of rights-of-way that were conveyed to
21 the State of Alaska at statehood, that these PLOs that
22 created the rights-of-way were center-line based. That
23 is, they were either 50, 100, or 150 feet each side of
24 center line. And by doing that, they had a system by
25 which the physical road was the monument. You didn't

1 need any monument. You'd go find the road, then you've
2 found the right-of-way.

3 So at statehood, the federal government did
4 really not convey -- did not provide us with mapping for
5 very much of our rights-of-way. And so we still have --
6 I'll speak to the Northern Region. Parts of our primary
7 highway system -- say, for example, the Richardson
8 Highway, we don't have any mapping on it at all.

9 And so to the extent we do have mapping or have
10 basically locked in time the location of the
11 right-of-way, then we have preserved that location of
12 the right-of-way. To the extent that we don't have
13 mapping on it, basically what we end up doing is going
14 to do an as-built survey of the physical road.

15 Now, generally, you only have one road. I mean,
16 it's there and so you can do a survey to define the
17 tangents, the straight stretches, and the curves. Where
18 you have a potential for a couple options, it gets more
19 difficult.

20 But I think the issue here is that we know that
21 there is a public right-of-way to the beach.
22 Specifically determining which is that route -- is it to
23 the left, is it to the right -- you know, may be a
24 question of negotiation or further, you know, discovery
25 evidence, maps or whatever might be out there that might

1 help us determine what it is.

2 But, yeah, the location with the evidence I have
3 right now would be difficult.

4 Q The PLOs, again taken as a group, do not describe
5 the length of any rights-of-way? They're focused on
6 widths; correct?

7 A That's correct.

8 Q And the inquiry, as I understand it, for locating
9 what you contend to be the extended right-of-way here
10 would be on what existed at what point in time?

11 A Generally, we're going to say what existed at
12 statehood. There have been some exceptions in my
13 experience to the extent that the land was still federal
14 land after statehood and the new State Department of
15 Highways managed the road crossing it.

16 There are cases where the road has been
17 relocated without any further documentation and so the
18 presumption is that it was like a floating easement.
19 The road right-of-way moved with the physical road.
20 That does happen on occasion.

21 Q And it's your understanding that the effect of the
22 PLOs can result in an easement which in your words is
23 floating?

24 A It has. We have discussion in our historical files
25 of -- between BLM and Department of Highways regarding

1 the concept of floating easements, yes.

2 Q Have you ever received any legal memoranda from the
3 attorney general's office concerning that issue?

4 MR. BURKE: I object on the grounds of
5 attorney-client privilege. You've just asked for the
6 subject matter of communications with counsel.

7 And based on that, I'd ask you not to answer
8 that question. I don't mind you explaining what your
9 practices are, but communications with counsel,
10 including written legal memoranda, I'd ask you not to
11 answer questions regarding.

12 BY MR. BAIRD:

13 Q And just so we're clear, I'm not interested in any
14 communications that Mr. Burke or anyone at the AG's
15 office may have made to you about that issue in this
16 particular case. But my question is: Are you aware of
17 any memorandum at any time from the attorney general's
18 office addressing that question?

19 MR. BURKE: Same objection. Except with
20 respect to published, if there are any -- and I don't
21 know whether there are any published attorney general
22 opinions that follow.

23 MR. BAIRD: That's going to be my next
24 question.

25

1 BY MR. BAIRD:

2 Q Are you aware of any attorney general opinions that
3 may have been provided to the public or persons outside
4 State employment addressing that issue?

5 A No. I really can't say that I'm aware of published
6 opinions regarding that.

7 Q Directing your attention back to Exhibit 6 from the
8 Swinford deposition -- I'm sorry, correction. Exhibits
9 8 and -- 7 and 8. And I want you to focus on the legal
10 description of the property in 7 and 8. And on 7, if
11 you would continue to the last page of that exhibit.

12 A Okay.

13 Q Do you see a reference there to subject to a
14 60-foot right-of-way for existing roads to the beach?

15 A Yes.

16 Q Where is that right-of-way, if you know?

17 MR. BURKE: Foundation. DNR right-of-way.
18 Foundation.

19 THE WITNESS: I honestly don't know where that
20 right-of-way is without seeing a specific map that
21 locates that.

22 BY MR. BAIRD:

23 Q Then I assume that you would not be able to tell me
24 what the relationship is between the center line of that
25 right-of-way and the extended PLO that you stated you

1 believe exists?

2 A No. I mean, I think when they say subject to a
3 60-foot-wide right-of-way for existing roads, they're --
4 it sounds pretty much all-inclusive.

5 To the extent that there's any physical evidence
6 of a road crossing through this lease area, they're
7 saying that it's subject to 60 feet. However, I'd have
8 to say that it's subject to at least 60 feet because
9 it's also subject to prior existing rights. And we'd
10 argue that -- DOT would argue that Nikishka Beach Road
11 had a wider right-of-way.

12 Q The department order 2665 established a requirement
13 for a right-of-way to attach to a road constructed
14 thereafter, that the right-of-way be staked and posted.
15 Is that your understanding of what they were required?

16 A Well, it's my understanding that that's what is
17 stated in the order.

18 Q And what is your understanding of whether that is
19 necessary to establish the right-of-way?

20 A I think that it's not an absolute statement; that
21 is, there must be staking, there must be posting, or no
22 right-of-way is created.

23 And the reason I say that -- and to start with,
24 I'll just go back on my experience with the department
25 so far -- it logically would follow that since

1 departmental order 2665 in '51 -- between 1951 and 1959,
2 that there were many roads that were new construction
3 and, therefore, would fall under this provision. In my
4 experience, I have only found one example of a document
5 that constituted the posting of a particular road.

6 Now, I don't know what -- how this road was
7 physically posted. I don't know if it was on a stick
8 every 500 feet or 1,000 feet or if it ever got past the
9 person who created the document that purported to be the
10 posting statement. But it's the only evidence I have
11 ever found of one and so I'm not so sure that that was a
12 constant requirement.

13 Q Is it your understanding of the order that posting
14 was optional?

15 A My interpretation of it is that public notice was
16 the issue. Public notice was what was being required.
17 Prior to 2665, it was clear that the public was put on
18 notice by virtue of actual construction, particularly in
19 the local roads where they said that, you know, the
20 local roads would constitute any roads that were
21 constructed or maintained by the Alaska Road Commission.

22 So after 2665, to maintain this public notice,
23 you know, you would have this option of posting or the
24 actual construction staking would also put the public on
25 notice that there was a public road being appropriated

1 across the unreserved federal land. I suspect even
2 physical construction alone.

3 Although, we seem to find in the records that
4 after post 2665 -- that is, after 1951 or probably
5 before that -- that these roads were engineered, that
6 there were designs, that there was construction staking
7 that was used to build the roads.

8 So, you know, we can still find an awful lot of
9 field books. And I've used field books from the '50s
10 and earlier in prior cases to document the fact that,
11 yes, in fact we have staked this right-of-way.

12 Q What materials are you aware of that would suggest
13 that Nikishka Beach Road was staked?

14 A Well, I have the one four-weekly report that I
15 located in my office and forwarded to Mr. Burke. It was
16 basically a reporting of construction and maintenance
17 and preliminary engineering activities taking place in
18 the district. And so it spoke to, at that one period of
19 time, that construction staking, slope stakes, were
20 actually being set out for Nikishka Beach Number 2 Road.

21 Q The staking would be of what type?

22 A Typically, slope staking is going to be a lath, if
23 you will, that's marked up with the distance to center
24 line, the slope up to the shoulder basically allowing
25 the contractor to come in and place fill and shape the

1 prism to the appropriate dimensions. There will be a
2 second set of stakes further back that we refer to as
3 our reference point. They might be 10 feet back. A
4 2-by-2 wood hub would be set so that you could control
5 your elevation. And then another lath would be set,
6 basically acknowledging that the slope stake being at
7 the total fill is probably going to end up being
8 destroyed by the contractor so the reference point could
9 always bring that back in.

10 These, of course, because we're trying to
11 protect these -- you know, we don't want to stake this
12 road any more than one time -- are going to be flagged
13 up and/or painted. So they're going to be pretty
14 obvious to anyone who's in the vicinity that these are
15 construction stakes for road construction.

16 Q Other than the document you referenced, are you
17 aware of the recovery by anyone of any of the stakes to
18 which you've referred with respect to Nikishka Beach
19 Road?

20 A Recovery? I'm not sure at what point in time
21 you're talking about recovery.

22 Q At any point in time.

23 A I'm assuming that the road was constructed
24 according to those plans, therefore -- you know, the
25 plans relate to 1966 construction. The staking relates

1 to -- I can't remember what year it is. I'd have to
2 look on the summary sheet here. But an earlier
3 construction. But the report itself speaks to the
4 placement of the stakes. So I don't have any evidence
5 of the contrary that that report was erroneous or never
6 took place.

7 Q Right. My question was directed at whether anyone
8 subsequent to that report actually recovered or
9 identified one of those stakes as existing in the field?

10 A I have no knowledge of that.

11 Q Using the term "posting" in a sense narrower than
12 publication of any notice or notice that might be
13 derived from just seeing the highway there, are you
14 aware of any evidence that Nikishka Beach Road was ever
15 posted within the meaning of DO 2665?

16 A Well, the only thing I can relate this to is the
17 document I mentioned of the one posting document I have
18 ever seen in my career. And to the extent that any kind
19 of similar posting was prepared and placed in the field
20 for Nikishka Beach Road, I do not know that.

21 Q Are you aware of a memorandum in the project file
22 in which there's a discussion of an attempt to document
23 the posting of the road without success?

24 MR. BURKE: Same objection in terms of -- you
25 need to let the witness review, to refresh his memory,

1 these letters. Because if you just ask him the
2 question, he's going say I don't know and then we're
3 going to have to refresh his recollection.

4 MR. BAIRD: So what's the objection?

5 MR. BURKE: The objection is that you need to
6 let the witness review the letters.

7 MR. BAIRD: I'm entitled to ask for his
8 recollection.

9 MR. BURKE: You can ask and then he's going to
10 say I don't know and then we're going to look at the
11 letters.

12 MR. BAIRD: I'd like to examine the witness.

13 BY MR. BAIRD:

14 Q Do you have any knowledge of any memoranda
15 generated or that's in the project file of an effort
16 without success to determine whether the Nikishka Beach
17 Road had been posted?

18 MR. BURKE: Objection. Best evidence and lack
19 of foundation.

20 MR. BAIRD: You can answer, unless your
21 attorney --

22 MR. BURKE: No, I didn't tell him not to -- I
23 said, objection. Lack of foundation and best evidence.

24 THE WITNESS: I can tell you I have a vague
25 recollection of seeing a memo that spoke to looking for

1 posting. But beyond that without seeing that memo right
2 now, I'm not going to be able to answer any questions.

3 MR. BAIRD: Off record for just a second.

4 (Off the record.)

5 BY MR. BAIRD:

6 Q In your responsibility -- in either your prior
7 responsibility or your current responsibility with the
8 department, are you involved in the issuance of permits
9 for construction activities occurring within State
10 rights-of-way?

11 A Yes, with respect to the fact the utilities section
12 is within the right-of-way. And so any utility that
13 requests a permit and they're constructed within the
14 right-of-way, we issue those under my general direction.
15 We also have occasion to issue encroachment permits for
16 various specific types of activities that may include
17 construction within the highway rights-of-way, yes.

18 Q What is the practice of the department with respect
19 to issuing such permits?

20 A The practice? Well, with respect to utilities --
21 say, for example, fiberoptic power. Any kind of
22 communications, pretty much any type of utility, our
23 practice is to accommodate them. We do have an
24 accommodation policy. We will accommodate them in the
25 right-of-way.

1 We want them as far from the physical road as
2 possible because under the statutes, we're obligated to
3 pay for relocation. So we want to minimize the
4 potential impacts, so we're going to require that they
5 be placed in the outer five or ten feet of the
6 right-of-way. We're going to monitor the construction
7 to ensure compliance with, you know, environmental rules
8 and just to make sure that we're minimizing impact to
9 the highways. So that covers utilities.

10 With respect to encroachment permits, say, for
11 example, a large area of development down in Nenana
12 Canyon, what we refer to as Glitter Gulch, the entrance
13 of the Denali National Park. Some of the excess
14 right-of-way has been leased or leased under an
15 encroachment permit to some of the hotels to provide for
16 private parking, if you will, of their buses and
17 employee parking within the right-of-way.

18 We'll review their construction documents and,
19 you know, either approve them as-is or request
20 modifications to them before we approve that kind of a
21 permit.

22 Q The decision to allow an encroachment or a utility
23 facility is reflected in a written instrument?

24 A The decision -- yes. It's in the permit itself.
25 You bet.

1 Q In all cases?

2 A Well, I can't speak to every case of every permit
3 issued by the department, but I would like to think that
4 we have stated the authority by which we are issuing the
5 permit and analyze the potential impact to the highway
6 that led us to a decision to either issue a permit or to
7 deny a permit.

8 Q How about with respect to -- in your experience,
9 has it ever occurred that you've become aware of an
10 encroachment that does not have a permit previously
11 issued?

12 A That's actually a fairly significant portion of our
13 property management responsibilities.

14 Q What is the practice of your unit with respect to
15 those kind of discoveries?

16 A When we identify an encroachment in the
17 right-of-way, depending on the nature of it -- you know,
18 it may be something like some advertising signs that can
19 be just tossed in the back of a pickup truck. And if
20 it's in a right-of-way, we'll just pick them up and
21 remove them.

22 If it's something larger -- it could be a shed,
23 abandoned vehicles, it could be an unpermitted
24 driveway -- we will contact the owner or whoever placed
25 that encroachment there and ask them to either remove it

1 or get it under permit.

2 Q Have you reviewed any of the permitting that might
3 have occurred with respect to Nikishka Beach Road and
4 the OSK dock area for encroachments in State
5 right-of-ways?

6 A You're saying permitting from DOT?

7 Q Correct.

8 A No, I don't believe so. I don't think I have seen
9 any of that.

10 Q If someone was proposing to pave the State
11 right-of-way, would you expect that a permit would be
12 required for that?

13 MR. BURKE: Objection. Vague and overbroad.
14 Answer to the best you can.

15 THE WITNESS: We have had scenarios where we
16 have rights-of-way that continue to be valid but are
17 effectively no longer on the State system; that is, we
18 don't maintain them. An example would be up in the Nome
19 area, a road called Council to Ophir. It used to be
20 well traveled because of the mining activity, you know,
21 back pre-statehood and maybe even after statehood. Now
22 it's just turned into a pot-holed goat trail.

23 Well, we had recently had a mining company
24 saying that they would like to go up and do some
25 exploration but they needed our permission to actually

1 go in and grade the road, you know, make it passable.

2 And we did allow them to do so under a -- we refer to it
3 as a special use permit. And we'll outline what they
4 are allowed to do and what they are not allowed to do
5 and grant them permission to do so in that manner.

6 Q Again, your permission for that activity would be
7 reflected in a written document? You refer to it as a
8 special permit?

9 A Special use permit, yes. As opposed to just
10 granting verbal permission. Yes, it would a documented
11 action.

12 Q Are you aware of what construction activities, if
13 any, have been undertaken by OSK on its properties near
14 its dock at Nikiski?

15 A I haven't looked at that closely. I understand
16 that they have -- their facility is related to the dock.
17 I really haven't looked at that.

18 Q Have you been directed to undertake any further
19 investigations in anticipation of trial?

20 A Not at this time.

21 Q Any further document reviews in anticipation of
22 trial?

23 A Not at this time. And until I am actually
24 forwarded something to review, I have no more work to
25 do.

1 Q Exhibit 21 indicates that it was transmitting the
2 expert report of M. Scott McLane?

3 A Yes.

4 Q And you did review that --

5 A Yes.

6 Q -- report?

7 A Uh-huh.

8 Q With what instruction?

9 A Just to get my impression.

10 Q And what were your impressions?

11 A Well, most of Scott's report related to surveys he
12 had done and a review of historical photographs, aerial
13 photography and such. And as I had not been involved in
14 any of these surveys, all I could say was okay.

15 Q Do you know Mr. McLane?

16 A Yes.

17 Q Professionally?

18 A Yes.

19 Q Do you have an opinion regarding his competence?

20 A Yes. I believe he's a competent surveyor. He has
21 a good reputation.

22 Q Do you have an opinion concerning his professional
23 integrity?

24 A I haven't seen Scott for a long time. I don't
25 often work with him directly. But by all accounts, I

1 believe he is a respected and competent surveyor.

2 Q Were you -- have you made any inquiry concerning
3 the applicability of -- let me back up. Does the term
4 "RS 2477" have meaning for you?

5 A Yes, it does.

6 Q What is that?

7 A That's the Revised Statute 2477 relating to the
8 1866 mining law that provided for a right-of-way across
9 unappropriated federal lands.

10 Q Have you made any inquiry concerning whether there
11 is an RS 2477 right-of-way for any portion of what you
12 consider to be Nikishka Beach Road?

13 A If you're asking whether I've made an evaluation of
14 the RS 2477 application, the answer is no. I looked at
15 the information that had been provided in the initial
16 complaint and I didn't see anything to add to it.

17 Q Do you have any understanding of whether an RS 2477
18 right-of-way could attach to lands reserved for school
19 purposes?

20 A RS 2477 is similar to the PLOs in the sense that
21 they are subject to prior existing rights. So in many
22 respects, the analysis is similar. I would look to --
23 you know, an RS 2477 that was created by public user, I
24 would fix the date of the public use and I would look in
25 the chain of title to see if there were prior existing

1 entries to homesteads, location of mining claims, and
2 such that would prevent its application. So, you know,
3 it's similar in that sense. If there were prior
4 existing rights, it may not apply.

5 Q Did you make any determine -- you said you looked
6 at the master title plat from BLM?

7 A Yes.

8 Q And based on that review, did you make a
9 determination of when Section 36 at issue here was
10 surveyed?

11 A Yes. I believe that's in my report. I think I
12 stated here June 12th, 1923, rectangular survey for
13 Township 8 North, Range 12 West, Seward Meridian
14 including Section 36 approved.

15 Q And you would go by the date of approval of the
16 survey --

17 A Yes.

18 Q -- not the date that the survey was actually done?

19 A That's correct. Yes.

20 Q And why is that?

21 A Until then -- I mean, I'm sure there's documented
22 authorities for this, but I've run across many, many
23 surveys that you can find by virtue of monumentation in
24 the field. I'm talking federal rectangular surveys that
25 for a variety of reasons were never approved. And so

1 they really have no effect on the subdivision of the
2 land. They're just merely extraneous pieces of steel
3 and brass lying out across the country. Until that
4 survey is approved, it really has no legal effect.

5 Q Have you made any inquiry -- well, what is your
6 understanding of the term "prescriptive rights"?

7 A Prescriptive rights would be essentially a claim of
8 adverse possession. That is, adverse possession allows
9 a party to claim title to another person's land by
10 virtue of their continuous use. Prescription generally
11 refers to that adverse use but relates more to an
12 easement interest that would accrue because it was a
13 transportation corridor or a road access or something
14 like that.

15 So if you've met the prescribed period of time
16 where no action has been taken to eject you from the
17 property -- and I believe it's seven years with color of
18 title, 10 years without color of title -- you would have
19 the basis of a claim to go for a quiet title action and
20 conceivably either obtain a judgment that would allow
21 you a permanent access easement. That would allow you
22 for a permanent access easement or not.

23 Q Have you made any inquiry concerning whether this
24 date has any prescriptive rights in the vicinity of
25 Nikishka Beach Road?

1 A No.

2 Q Have you testified as an expert either at trial or
3 by deposition in any other matter in the last five
4 years?

5 A I'm thinking real hard. I think it's been rather
6 slow this last five years with respect to litigation,
7 which is always good. But I -- maybe an affidavit here
8 or there, but, no, our stuff doesn't often get to trial.

9 Q I think you did indicate that you had been
10 previously deposed. Your belief, then, is that those
11 depositions were longer ago than five years?

12 A Yeah, I believe they were.

13 MR. BAIRD: If we could go off record.

14 (Off the record.)

15 MR. BAIRD: Back on record. No further
16 questions.

17 MR. YOUNG: I don't have any questions.

18 MR. BURKE: Nor do I.

19 (Proceedings adjourned at 12:07 p.m.)

20 (Signature requested.)

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1 C E R T I F I C A T E

2 I hereby certify that I have read the foregoing
3 transcript and accept it as true and correct, with the
4 following exceptions:

5 =====

6	PAGE	LINE	CORRECTION
7	_____	_____	_____
8	_____	_____	_____
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19 _____

20 Date JOHN BENNETT

21 (Use additional paper to note corrections as

22 needed, signing and dating each page.) (VM)

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REPORTER'S CERTIFICATE

I, Valerie Martinez, Notary Public in and for the State of Alaska do hereby certify:

That the witness in the foregoing proceedings was duly sworn; that the proceedings were then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed under my direction by computer transcription; that the foregoing is a true record of the testimony and proceedings taken at that time; that I am not a party to nor have I any interest in the outcome of the action herein contained; and that signature has been requested.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal this _____ day of _____, 2009.

Valerie Martinez
Notary Public for Alaska

My Commission Expires: June 22, 2010

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