

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

*Sean Parnell, Governor*

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January 6, 2011

Dennis Hopewell, Solicitor  
United States Department of the Interior  
Alaska Region  
4230 University Drive, Suite 300  
Anchorage, AK 99508-4626

RE: Stephen Northway Native Allotment; your letter of December 14, 2010  
Notations: BLMAK 4295; F-12950 Par. A

Dear Mr. Hopewell:

I am responding to your letter of December 14, 2010, regarding the Native allotment of Stephen Northway and his heirs' claims regarding the easement for the Alaska Highway running through Parcel A of that allotment.

You have inquired whether the State of Alaska would be interested in paying the heirs for the right-of-way that was reserved to the state in the decision legislatively approving the allotment issued on November 3, 2005 (your attachment 9), and erroneously omitted from the supplemental Certificate of Allotment issued on December 27, 2005 (your attachment 10). You have included in your documentation a memo, your attachment 11, from the BLM dated March 24, 2009, stating the Land Law Examiner's conclusion that the allotment is subject to the State's right-of-way regardless of the BLM's failure to include the appropriate language in the 2005 supplemental certificate.

Since the highway and its right-of-way were in existence and had been conveyed to the State long before ANILCA became effective in 1971, any allotment that includes ownership of the right-of-way cannot be legislatively approved under 43 U.S.C.A. § 1634(a)(1)(A)(4) and any dispute regarding title must be adjudicated under the *Aguilar* stipulated procedures.

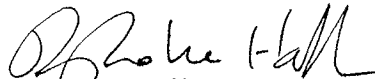
While the State understands that Interior may wish to avoid the *Aguilar* procedures, it would not be in the State's interest to either reconvey the right-of-way to the Northway heirs or to pay the heirs for the right-of-way. Therefore the State would not be prepared to resolve this matter along the lines you have suggested at this time.

I am willing to consider any additional information about this matter that you might have.

Sincerely,

JOHN J. BURNS  
ATTORNEY GENERAL

By:



R. Poke Haffner  
Assistant Attorney General  
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RPH/cb

cc: John F. Bennett, DOTPF  
Jerri E. Sansone, Natural Resource Manager III DNR Anchorage  
John Baker, LAW (Anchorage)