



## United States Department of the Interior

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F-12950, Par. A

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OFFICE OF THE  
ATTORNEY GENERAL

FEB 22 2011

4<sup>th</sup> JUDICIAL DISTRICT  
STATE OF ALASKA

R. Poke Haffner  
Assistant Attorney General  
Transportation Section  
Alaska Department of Law  
Key Bank Building  
100 Cushman Building, Suite 400  
Fairbanks, Alaska 99701-4626

Re: Stephan Northway Native Allotment

Dear Mr. Haffner:

Thank you for your January 6, 2011 reply to my letter of December 14, 2010. Your letter is very clear that at this time the State of Alaska does not want to consider possible settlement of conflicting claims to the portion of the Alaska Highway that crosses Parcel A of the Native allotment of Stephan Northway. Instead, the state insists on application of the *Aguilar* stipulated procedures for determination of which claim to the highway easement interest in Parcel A is the superior right. Accordingly, I will tell the Bureau of Land Management (BLM) to begin the *Aguilar* title recovery process. However, I want to clarify the BLM position on one legal point and to ask for further explanation on the sufficiency of Stephan Northway's use and occupancy and at what point the state might consider settlement.

Your response seems to rely in part on the view that Parcel A of the Northway allotment could not have been legislatively approved due to the conveyance of a highway easement for the Alaska Highway by quit claim deed from the United States Department of Commerce in 1959. The 1959 conveyance was well before legislative approval was authorized in 1980 by section 905 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C.A. § 1634. However, the applicable provision of ANILCA is 43 U.S.C.A. § 1634(a)(5)(B), which required the State of Alaska to file a protest where land is needed for access, and not § 1634(a)(4), which deals with availability of the "land."<sup>1</sup> While the highway easement conveyed to the state is an interest in land it does not make the servient estate and adjoining land unavailable for an allotment. Legal precedent in the Department recognizes that, subject to the prior conveyance of a highway easement, such land is available for conveyance under the Native Allotment Act. See, *State of Alaska Department of Transportation and Public Facilities*, 127 IBLA 137 (1993);

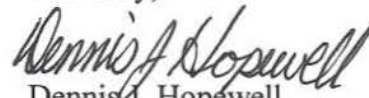
<sup>1</sup> The BLM case file for the Stephan Northway allotment application, F-12950, shows that the State of Alaska did file a protest to the allotment but withdrew that protest a few months later.

*Frank Sanford*, 119 IBLA 147 (1991). Moreover, it has long been the view of this Office that title recovery of less than full fee interests, such as a state highway easement, is appropriate where the facts establish that the allotment applicant has the superior right. When the interest is something like a highway easement, it makes much more sense to negotiate a right-of-way than to actually recover title. Since we do not need to resolve our differences of view on this issue in order to proceed, we can agree to disagree and move forward with the *Aguilar* procedures.

I understand the state has a general policy of using the *Aguilar* procedures for title recovery but I think the facts in the Stephan Northway case are sufficient to warrant an exception. In your reply letter, you do not mention anything about the evidence of use and occupancy. So, I am wondering if your position is that no matter how strong the evidence may be the state will still insist on use of the *Aguilar* procedures. In addition, I am not sure if the statement in your letter that "any dispute regarding title must be adjudicated under the *Aguilar* stipulated procedures" means that the state would require the U.S. to go through the entire *Aguilar* process and bring suit in federal court. Or is it your position that the state will simply not voluntarily recognize and resolve a claim for a state highway? I would appreciate a response on the sufficiency of the facts in the Stephan Northway case and the questions raised in this paragraph.

Thank you for your consideration of the conflicting claims to the portion of the Alaska Highway that passes through Parcel A of the Stephan Northway Native allotment.

Sincerely,



Dennis J. Hopewell  
Senior Attorney  
ABA No. 7605034

cc(w/encl): Letter dated Jan. 6, 2011 from Assistant Attorney General Haffner, Alaska Dept. of Law, to Senior Attorney Hopewell, Office of the Regional Solicitor, Alaska  
Kathy Wilson, Superintendent, BIA, Fairbanks Agency  
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