

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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March 31, 2011

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

DOT&PF-ROW

APR - 4 2011

RECEIVED

RE: Stephen Northway Native Allotment; your letter of February 18, 2011
Notations: BLMAK 4295; F-12950 Par. A

Dear Mr. Hopewell:

Thank you for your letter of February 18, 2011.

I appreciate your explanation of the BLM's position concerning the applicability of 43 U.S.C.A. § 1634(a)(5)(B) to this situation as opposed to § 1634(a)(4), and I agree that it isn't necessary to resolve this difference now in order to pursue the various parties' interests in this matter.

I agree with your analysis that a pre-existing easement, while it would not necessarily render land completely unavailable for an allotment, would require that any land conveyed to an allottee be made subject to the easement; that is, that only the servient estate could be conveyed to an allottee. This was the situation concerning the Alaska Highway corridor bisecting the area of Mr. Northway's application, a situation he recognized in his December 1970 application when he applied for "20 acres at north side and 20 acres at south side" [of the highway] (Attachment 4 to your December 14, 2010 letter).

Because an allottee's use of the land claimed must have preceded any withdrawal of the land, and because the land comprising the Alaska Highway corridor was withdrawn by then-President Roosevelt on July 30, 1942, in E.O. 9145 (PLO no. 12), Mr. Northway would have been required to prove that his exclusive use of the land comprising the highway corridor predated that withdrawal. The state reserves any arguments it may wish to present to a court concerning the duration of use prior to withdrawal that would be required to perfect a claim. The information you have provided to date does not directly address that time frame. Therefore it is not possible at this time to comment on the strength of the evidence concerning whether Mr. Northway's claim to the land in question is superior to the state's easement.

Mr. Dennis Hopewell, Solicitor
United States Department of the Interior
Re: Stephen Northway Native Allotment

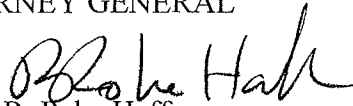
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I have neither of the two versions of the Highway Commission map you refer to – not the updated-in-1945 version that you believe the Land Law Examiner was referring to in your Attachment 11, nor the 1923 version that you refer to in the body of your letter of December 14, 2010. Would you be willing to send me legible copies of those maps? If it is better to send them in PDF format, my email address at poke.haffner@alaska.gov is available.

In any event, you are correct in your understanding that the state would require the U.S. to go through the entire *Aguilar* process and ultimately bring an action in federal court in this case. The state would welcome the occasion to present its arguments to the court, and to date, it has been denied this opportunity.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL

By: 
R. Poke Haffner
Assistant Attorney General
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RPH/cb

cc: John F. Bennett, ROW Chief, Northern Region DOTPF
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