

December 20, 2013

Karen Tilton
R&M
3504 Industrial Ave #102
Fairbanks, AK 99701

Hi Karen,

I really don't know my status in this easement v fee affair -- guess I'm a volunteer? Anyhow I'm involved at this point. If I'm to continue there are a couple of things I need and maybe you can help.

1. A complete copy of the Omnibus Act. I was unable to find it on the internet.
2. Since you have a researcher in Washington I would like to see if Interior got approval from Commerce prior to the issuance of PLO 1613. Approval is required in EO 10355. The search dates would be between August 1956 and April 1958 at the outside. If an approval exists it would most likely show up closest to the April 1958 date.
3. Copies of the transfer documents executed for Airports, Fish and Game, and other groups that might be mentioned in the portion of the Omnibus Act that I do not have.


Points to ponder:

1. Only Congress can dispose of Public Lands per Art. IV of the Constitution. Congress delegated that authority to the Sec. of Commerce (not the Department or the President). Was the Sec. an agent of Congress acting for it or acting as head of an Executive Department.
2. The Omnibus Act gave the Sec. authority to transfer by an "appropriate conveyance" **A "conveyance" has a distinct meaning in Property Law. Quit Claim is really not an appropriate conveyance in my opinion. How about a "grant"?**
3. If PLO 1613 is a valid document than the easements listed in it are to be used only for highway and specific pipeline and telephone purposes. **Under whose authority were easements issued for all the miles of fibre-optic cables that have been installed in the easement areas -- State or BLM.**
4. The language in the Quit Claim is ambiguous when the term **"land or interest in land"** is used. A plain reading indicates that Congress gave a simple option to the Sec. allowing him to apply one or the other to specific items at his pleasure. He was not bound by any land orders or what the BPR interest was. The selection of a Quit Claim Deed was purely at the option of the Sec. Ownership by the Bureau of Public Roads is not required to transfer land. Use or occupancy also qualify.

5. The Quit Claim lists all roads as real property. Property Law defines "real property" as land. Land is defined as soil of any type. The item being transferred is the Alaska Highway System which is primarily earth and part of the underlying "land". If the State owns the system consisting primarily of soil at what depth does State ownership end and Federal ownership begin. If the Feds own all the land which includes the highway structures and foundations what does the State own? The simple answer is that the highway system is an integral part of the underlying land and they can not be separated in any rational manor. Fee ownership by either the Feds or the State is the only answer that makes sense.

6. All PLOs deal only in withdrawals and easements. Neither transfer land only the right to occupy land. If Commerce had only easements, as listed in the PLOs, to transfer how was the real property transferred?

7. The purpose of the Statehood Act was to make Alaska an independent State and remove it from Federal domination. If the Federal Government still owns the land that Alaska's Highway System is located on they can issue all sorts of land regulations and other orders that would effect the States independent use of the highway easement area.


Bruce Campbell
Dec. 20, 2013

Executive Order 10355--Delegating to the Secretary of the Interior the authority of the President to withdraw or reserve lands of the United States for public purposes

Source: The provisions of Executive Order 10355 of May 26, 1952, appear at 17 FR 4831, 3 CFR, 1949-1953 Comp., p. 873, unless otherwise noted.

By virtue of the authority vested in me by section 301 of title 3 of the United States Code (section 10 of Public Law 248, 82d Congress), and as President of the United States, it is ordered as follows:

Section 1. (a) Subject to the provisions of subsections (b), (c), and (d) of this section, I hereby delegate to the Secretary of the Interior the authority vested in the President by section 1 of the act of June 25, 1910, ch. 421, 36 Stat. 847 (43 U.S.C. 141), and the authority otherwise vested in him to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States in the continental United States or Alaska for public purposes, including the authority to modify or revoke withdrawals and reservations of such lands heretofore or hereafter made.

(b) All orders issued by the Secretary of the Interior under the authority of this order shall be designated as public land orders and shall be submitted to the Division of the Federal Register,¹ General Services Administration, for filing and for publication in the **Federal Register**.

(c) No order affecting land under the administrative jurisdiction of any executive department or agency of the Government other than the Department of the Interior shall be issued by the Secretary of the Interior under the authority of this order without the prior approval or concurrence, so far as the order affects such land, of the head of the department or agency concerned, or of such officer of the department or agency concerned as the head thereof may designate for such purpose: *Provided*, that such officer is required to be appointed by the President by and with the advice and consent of the Senate.

(d) Any disagreement between two or more executive departments or agencies with respect to any proposed withdrawal or reservation shall be referred to the Director of the Office of Management and Budget for consideration and adjustment. The Director may, in his discretion, submit the matter to the President for his determination.

[Sec. 1(d) amended by EO 12608 of Sept. 9, 1987, 52 FR 34617, 3 CFR, 1987 Comp., p. 245]

Sec. 2. The Secretary of the Interior is authorized to issue such rules and regulations, and to prescribe such procedures, as he may from time to time deem necessary or desirable for the exercise of the authority delegated to him by this order.

Sec. 3. The Secretary of the Interior is authorized to redelegate the authority delegated to him by this order to one or more of the following-designated officers: the Under Secretary of the Interior and the Assistant Secretaries of the Interior.

Sec. 4. This order supersedes Executive Order No. 9337 of April 24, 1943, entitled "Authorizing the Secretary of the Interior To Withdraw and Reserve Lands of the Public Domain and Other Lands Owned or Controlled by the United States".

¹ **Editorial note:** Renamed the Office of the Federal Register by order of the General Services Administrator, Feb. 6, 1959. The National Archives and Records Service, the parent agency of the Office of the Federal Register, was a part of the General Services Administration until it was reestablished as an independent agency, the National Archives and Records Administration, by Pub. L. 98-497 (98 Stat. 2280, 44 U.S.C. 101 nt.), effective Apr. 1, 1985.


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The U.S. National Archives and Records Administration

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What is **LAND**,?

in the most general sense, comprehends any ground, soil, or earth whatsoever; as meadows, pastures, woods, moors, waters, marshes, furzes, and heath. Co. Litt 4a. The word "land" includes not only the soil, but everything attached to it, whether attached by the course of nature, as trees, herbage, and water, or by the hand of man, as buildings and fences. *Mott v. Palmer*, 1 N. Y. 572; *Nessler v. Neher*, 18 Neb. 649, 26 N. W. 471; *Higgins Fuel Co. v. Snow*, 113 Fed. 433, 51 C. C. A. 267; *Lightl'oot v. Grove*, 5 Heisk. (Tenn.) 477; *Johnson v. Richardson*, 33 Miss. 464; *Mitchell v. Warner*, 5 Conn. 517; *Myers v. League*, 62 Fed. 659, 10 C. C. A. 571. 2 Bl. Comm. 16, 17. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance. Civ. Code Cal.

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Legal Definition of Real Property

Authored by [Ken LaMance](#), LegalMatch Law Library Managing Editor and Attorney at Law

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What's the Legal Definition of "Real Property"?

The legal definition of real property is land, and anything growing on, affixed to, or built upon land. This also includes man-made buildings as well as crops. Real property is best characterized as property that doesn't move, or that is attached to the land. This is in contrast to personal property, which can be moved or transferred physically.

The terms "real estate" and "real property" can be used interchangeably. Also, real property may include not just the land, but anything that is permanently located within or under the land. This may include oil, gases, and minerals found under the land. Another term used for real property is "premises".

How is Real Property Transferred?

Both personal and real property can be transferred. Most states have a statute of frauds law that requires all sales involving real property to be reduced to writing. This will help create a record of the transfer.

Since real property can't be physically "moved" from one owner to the next, a transfer needs to be done symbolically in order for it to be legally recognizable. This is usually accomplished through the exchange of a deed of title to the land. The transfer of the written deed should be recorded with the county recorder's office, so that there is a record of the change of ownership.

Real property can be transferred in a number of ways, including:

- By sale and purchase
- As a gift from one person to another
- Through a devise (i.e., transfer through a will document)

August 27, 2019

2010

271-5080
14104 Hancock Drive
Anchorage, Alaska 99515

(907) 345-3129

Ms. Julia Dougan
Acting Director
BLM
222 W 7th Ave #13
Anchorage, Alaska 99513

Dear Ms. Dougan

I have been researching some Highway right of way issues in regard to the Denali Highway and found a letter dated December 31, 1985 from Jules Tileston to Rick Davidge of the RS 2744 Task Force. (copy attached)

This letter references a Regional Solicitors Opinion dated Feb 19, 1063⁹ which was not attached to my copy of Tileston's letter. Would you please provide me a copy?

I have reviewed the Quit Claim Deed which conveyed certain Highway real property from the Department of Commerce to the State of Alaska dated June 30, 1959, and PLO 601, 757, and 1613. Secretarial Order 2665 with amendments # 1 and 2 has also been reviewed.

The results are as follows:

PLO 601 was issued on August 10, 1949 in response to the Secretary's Order as quoted in Roscoe Bell's memo dated Dec. 6, 1948. (copy attached). The Secretary apparently directed that withdrawals be issued of specified widths for all of the roads in Alaska under the jurisdiction of the Interior Department. PLO 601 appears to have fulfilled the Secretary's decision.

PLO 757 was issued on October 16, 1951 and revised the 6th paragraph of PLO 601 and listed specific roads and withdrawal widths for 7 through roads. Feeder and local roads were deleted from PLO 601.

Secretarial Order 2665 was also issued on October 16, 1951 and in effect changed the right of ways on feeder and local roads to an easement in lieu of withdrawals. The through roads listed in PLO 601 and PLO 757 retained their listed withdrawal status. Amendment #1 reduced the right of way width on the Lake Otis Road. Amendment #2 dated September 15, 1956 added 10 roads, including the Denali Highway, changed the name of one Highway, and deleted one Highway all in the through category.

On December 16, 1953 the Secretary revised the description of the Denali Highway to include the entire road from Paxson through McKinley Park to the North Park Boundary near Kantishna. (copy attached). Amendment #2 to SO 2665 issued on September 16, 1956 hence establishes a 300 foot withdrawal for the entire Denali Highway.

PLO 1613 was issued on April 7, 1958 and provided that certain reservations of public lands for highways be revoked. This revocation applied to only certain listed highways. They were the Alaska Highway, Glenn Highway, Richardson Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway, and the Fairbanks-College Road Highway. The Denali Highway was not included and its withdrawal remained intact. Certain pipeline and telephone withdrawals were also revoked. A 300 foot easement was established for the listed Highways and an ingress and egress easement was established for the affected pipelines and telephone lines in concert with the Highway rights of way - in effect joint rights to occupy the same easement areas.

PLO 1613 was issued on April 7, 1958 well after all of Alaska Highways were transferred from the Department of Interior to the Department of Commerce as required by the Federal Aid Highway Act of 1956. That being the case Executive Order 10355 under which PLO 1613 was issued in section 1(c) requires prior approval by the head of the Department affected other than the Interior Department before an order can be issued. It further requires that such approval be from an officer appointed by the President with the advice and consent of the Senate. Our search has not been successful in finding such an approval for the issuance of PLO 1613 and it would be void if no such approval was obtained prior to issue. If an approval exists we would appreciate receiving a copy.

It appears from our review that a 300 foot withdrawal applies to the full length of the Denali Highway between Paxson and the North Park Boundary near Kantishna. Please confirm our findings or explain way our analysis is in error.

Sincerely,


Bruce A. Campbell



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Alaska State Office
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7504
<http://www.blm.gov/ak>

In Reply Refer to:
2800 (963)

SEP 28 2010

Mr. Bruce A. Campbell
14104 Hancock Drive
Anchorage, AK 99515

Dear Mr. Campbell:

Thank you for your letter dated August 27, 2010, concerning the Denali Highway right-of-way issues. Enclosed is the Regional Solicitor's Opinion dated February 19, 1963, that you requested.

NOT
INCLUDED
NEVER
RECEIVED

We have reviewed your interpretation of Secretarial Order (SO) 2665 and Amendment 2, and Public Land Order (PLO) 1613. **You stated that the Denali Highway is currently under a 300-foot withdrawal and that the issuance of PLO 1613 by the Secretary of the Interior is invalid because the Secretary did not obtain the proper prior approval or concurrence as required by Executive Order 10355.**

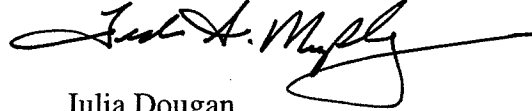
The following is a clarification of your interpretation: The Denali Highway is a 300-foot right-of-way or easement. Amendment 2 of SO 2665 added the Denali Highway, among others, to the list of through roads as a right-of-way. The effect of Amendment 2 was simply to increase the width of the Denali Highway right-of-way from 200 feet to 300 feet (150 feet on each side of the center line) and did not act as a withdrawal.

Please note that our analysis addresses only that portion of the Denali Highway outside of Denali National Park and Preserve. Questions regarding the Denali Highway within the Park and Preserve should be directed to:

Regional Director
National Park Service
Attn: Chuck Gilbert
240 West Fifth Avenue
Anchorage, Alaska 99501

Thank you for your interest in BLM-managed public lands. If you would like to discuss these issues further, please contact Mark Fullmer, acting Chief, Lands and Realty, at 271-5699.

Sincerely,



Julia Dougan
Acting State Director

Enclosure

SHE IGNORED MY REQUEST FOR APPROVAL OF 1613 BY COMMERCE

12/20/13

