



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

October 10, 1950

Executive Order 601, August 10, 1949

Executive Order 601 of August 10, 1949, established rights of way along highways in the Territory of Alaska by means of withdrawing from all forms of entry strips a specified width on each side of each road.

The width of the right of way along the Alaska Highway is 600 feet. On all other through roads in Alaska it is 300 feet, on feeder roads 200 feet, and on local roads 100 feet.

Although Region VII, Bureau of Land Management, had attempted to have easements created rather than withdrawals, before the actual withdrawal order was issued, we had not even then begun to comprehend to what extent the Executive Order would complicate the functions of the Bureau of Land Management. The Bureau of Land Management gradually had begun to pick up momentum in the processing of various types of applications following the delegation of authority to the field. Depending upon our not being completely hamstrung by lack of funds, we could foresee the time when we could become reasonably current. And then it happened. Executive Order 601 was promulgated.

First, let me point out to you, there are no withdrawals along the railroad track of the Alaska Railroad. That is to say that the right of way itself is an easement rather than a strip of withdrawn land. Patents are issued to homesteaders which do not interfere with the operations of the Alaska Railroad but yet include the land upon which the tracts are built. If, in the future, a portion of the track is abandoned or the Railroad decides to adopt another course, the land upon which the track was first located automatically becomes the property of the individual in whose patent or deed it was described. There are no complications about a strip of land running up through the country owned by nobody.

Because of the existence of the withdrawal along roads, it has been ruled that no entry filed or initiated after August 10, 1949, may go across the road, unless it is in the category of a local road with a right of way 100 feet wide. It has not been possible for the Alaska Road Commission to officially survey all of their roads and tie them in exactly with the existing corners of the rectangular net of surveys. Until these roads are surveyed, it will not be possible in some cases to determine whether or not the road crosses a given homestead entry.

24/1/226

Before any patent or final certificate can be issued to homesteaders who are restricted to only one side of the road, it will be necessary to survey many roads and all of the homesteads affected by roads running through surveyed land. This adds a tremendous job and workload to our Division of Engineering. In addition, it adds a tremendous expense to the taxpayers.

There is accumulating in the Land Offices files of applications by veterans who have complied with the regulations and who now want to obtain patent. These veterans are required to live on the land seven months and are not required to cultivate. Therefore, they may make application to obtain patent or, technically, to make final proof at the end of their seven months residence period. But these papers cannot be processed because withdrawal strips run through the land. The veteran must await a survey, which may be forthcoming this field season and may be forthcoming next field season.

After the survey has been made on the ground, it is necessary for the field notes to be processed, the plats to be produced from the drafting boards, the completed plat to be sent to Washington, the plat to be approved in the Washington office, and then returned to the proper Land Office for official filing. It is optimistic to assume that the plat will be finally filed in the proper Land Office within one year of the survey on the ground. During all of this time, the veteran has been unable to publish his final proof because his land cannot be adequately described in the notice of publication.

The Sterling Highway, going down through the Kenai Peninsula gives us a specific project to discuss. The exact location of that road was not known to the Anchorage Land Office and therefore many entries were allowed which subsequently proved to straddle the road. In the meantime the entrymen have cultivated land on one side of the road, and have built their improvements on the other side of the road. Under the present rules and regulations, each entryman must elect which side of the road he is to take, and must relinquish or give up the land on the other side of the road. We have specific cases in which the road has cut across, leaving 5, 6 or 10 acres on one side of the road, and it is here that the entryman has built his house. He has cultivated and placed his fields on the other side of the road. As the saying goes, he is between the devil and the deep blue sea, and we can be of no assistance.

Then assuming that the entryman selects the portion of his entry which includes only ten acres or less. Under the provisions of an act of 1947, the Alaska Road Commission still has the right to build a road through any homestead entry and therefore, technically, the Commission could put a road through the small acreage that has been left to the entryman.

Here are some specific cases:

Anchorage OLA800, Richard Teller. There are 54 acres in the whole application, which comprises two lots, one north of the other. The Sterling Highway goes through the two lots, from north to south, but not through the middle, rather toward the eastern edge, about two-thirds of the way across. Teller has built a small road and has planned to build his house on the side of the road which would force him to choose the narrow strip. Originally his entry extended to Cook Inlet, and therefore he had water frontage. Under the new regulations he must relinquish either the area where he planned to build his house, and construct a small road, and give up the portion fronting the water, or he must select the portion fronting the water and give up the area where he planned to build his house and which evidently has the best house site.

There is nothing in the regulations which require us to investigate every homestead. We have an example of a case where the homesteader had appeared to be complying with the regulations in good order. He was a veteran, and therefore was not required to cultivate. His name is Clarence E. Herman, Anchorage OLA574. There is nothing in the records to indicate we should make an investigation of his homestead, therefore we went through the procedure which is called "clear listing." That is, the Division of Land Planning indicated to the Land Office that a final certificate could be issued without further investigation or negotiating of any type. However, during a recent trip to that vicinity, a field examiner was making routine investigations of other homesteads, and was incidentally checking the location of the road as he went along. He discovered that the road goes through the homestead entry of Clarence E. Herman, therefore, we must backtrack in about everything that we have done. The Notice of Allowance of Herman must be vacated. Then we will have to have the road surveyed, and then await preparation of a supplemental plat. When the supplemental plat has been processed and finally filed in the Land Office, we must require this homesteader to publish again, as he already has published at the time he submitted his final proof. This homesteader had also bumped up against the regulation which affected Department of Interior employees as he was an employee of the Alaska Road Commission, but happily that restriction has now been removed through action of the Secretary of the Interior.

You will recall that the homestead regulations state that each qualified individual may obtain land under the homestead laws up to a total of 160 acres. He may take that in one entry or several entries. If he homesteads in one part of Alaska and goes to another part of Alaska, he may homestead again, so long as he has not taken up an area exceeding 160 acres. If a homesteader has less than 160 acres, and some available land becomes public domain adjacent to his original holdings, under the regulations he can acquire this additional land if it does not run his total over 160 acres. He is not required to live on the additional land if it is contiguous to his original entry.

carries

As a withdrawal along a highway, a piece of land on one side of the road to be not contiguous to a piece of land on the other side of the road, an entryman who had 40 acres would have to make proof and complete his requirements on one side of the road, then go across the road and build a house on that side, or move his house across in order to take land only 200 feet away from his original entry. As the regulations do not prevent a person from taking lands on both sides of the road under two entries, it merely complicates the matter by providing additional filings that must be placed on record by an entryman in order to get across the road if the land is still available.

The regulations provide that an entryman may obtain 160 acres, so if the land is available, the entryman may stretch his entry far along on one side of the road until he has obtained 160 acres. There is a serious question as to whether it is more undesirable to have one entry straddle the road than it is to have one entry string along one side of the road for a mile and a half or two miles

Then another complication enters into a different phase of the work. It appears that the withdrawals are in effect through the Natanuska Valley as they are elsewhere. We have on file several applications to purchase land. Two of them, Anchorage 016216 and 016304, filed by Gerald Brunner and Floyd Rock respectively cover only five acres each. We are assuming that in this case the proposed sale may go on both sides of the road, but in order to know exactly how many acres are in the tract after the right of way has been deducted, it is necessary to survey the road to know just where it enters and leaves each tract, and then compute the acreage. In the meantime the sales are not consummated.

We have many thousands of acres of unsurveyed lands through which roads are now built or will be built. There are claims which were staked out and are legally filed in the U. S. Commissioners' offices before August 10, 1949, the date upon which 601 was promulgated. These settlement claims, therefore, have precedence over the order. However, our surveying crews are not investigators, and as they survey down through the country, they are not aware of which claims antedate Executive Order 601 and which do not. Therefore, to be on the safe side, they must prepare their plats with two rights of way, that which was in effect before Executive Order 601, and that which was in effect after Executive Order 601 was promulgated. It may be that there was a legal claim on the land before August 10, 1949, but the claimant decides to go back to the states and give it up. The next person who settles there must stay on one side or the other of the road, and the wider right of way becomes effective. Let us assume that the claimant who was there before August 10, 1949, decides voluntarily that he wants to be on only one side of the road, and extend his claim further back to obtain other desirable lands. In effect, therefore, he gives up his claim to the other side of the road, and immediately the wide right of way becomes effective on that side, but the narrow right of way stays in effect on the side which the claimant retains. In no one

given spot will anybody be able to determine what width the right of way is without referring to official plats in the Land Offices.

Let us assume another situation. A claimant was situated within 50 feet of the center line of a through road before Executive Order 601 was promulgated. For some reason he built his house within 50 feet of the road. Then he decides that he will have to go back to the states, and sells his house and gives up his claim to another individual. This sale, we will assume, was made after August 10, 1949. Immediately the house is in trespass, as it is located within the right of way, and the second claimant must move it back in order to get it on his homestead claim, which starts 100 feet from the center line of the road, if the road is a feeder road, and 150 feet from the center line of the road if it is a through highway. If this situation should develop along the Alaska Highway, of course, the man would have to move the house back 300 feet from the center line of the road.

Of course the Road Commission will straighten out many of the kinks in its highway system. Whenever it does that, it leaves strips of no man's land, which are withdrawn from entry. If these strips are restored to entry, the adjoining land owner does not have preference, but veterans of World War II have preference to obtain these strips of land. We have been advised that the withdrawal becomes effective when the Road Commission sets its survey stakes through the public domain. In some cases I would imagine that the Alaska Road Commission officials change their minds and locate the road elsewhere than where it was first surveyed. Then we may have a very real difference of opinion as to where withdrawals actually do exist.

Previously in this memorandum I mentioned that additional expense results from the requirement that we survey the roads. Each season it would be necessary to hire two draftsmen to keep up with the work of a field crew and to do a little extra work otherwise. It would take this one survey crew working indefinitely as we do not know how many roads are located within the rectangular surveys at present, or do we know how many roads are to be built by the Alaska Road Commission in the future. We are unable to estimate how many survey crews it actually would take to keep current with this work, but it is conservatively estimated that it would cost at least \$31,000 per crew, each season.

If the road rights of way were easements instead of withdrawals, it would not be necessary for us to delay processing of the applications for final proof by veterans or others. It would not again cause us to build up a backlog which will extend for 2, 3, and sometimes 5 years before the surveys are all completed. The Alaska Road Commission could change their rights of way under the act of July 1947, without there being any question as to the ownership of the land. The entryman would still own the land, and the Alaska Road Commission would have an easement across it. There would not be additional expense to the taxpayers of hiring additional survey crews, and there would not be the delay in the survey program that will result in our putting experienced men on the road survey work instead of on other work that requires attention.

The situation is very grave. The results of the promulgation of executive Order 601 were not foreseen, but now that we are operating with it in effect, we can see its failings, and we should act accordingly.