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December 22, 1981

Jack McGee
Ass't Attorney General
Juneau

BLM Position on State Highway
Ownership

Larry D. Wood
Ass't Attorney General
Fairbanks

Shortly before she left our office, Meg Greena copied me with her November 23, 1981, memo relating to State highway ownership. As she explained in her memo, the BLM is taking the position that the Department of Commerce did not have any rights or interests in State highways to convey under the quitclaim deed issued by the Secretary of Commerce under authority granted by Sec. 21 of the Alaska Omnibus Act. She stated:

It is BLM's position that this quitclaim deed transferred only an easement in the highway right-of-way and not fee since the Department of Commerce only had a limited interest in lands.*** I have been told, although I have not verified the information, that the Department of Interior is issuing patent and I.C. to Native corporations to the centerline of the highways.

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In your recent memorandum you pointed out that the majority of State highways were vested in public ownership by virtue of several public land orders and RS 2477. Were you implicitly indicating that Commerce was only attempting to transfer, at least in the great majority of cases, only that which already existed in public ownership by virtue of these land orders and dedication? If so, obviously we have an argument that our highways won't be affected by Interior's centerline transfers—but what of the fee ownership issue? In cases where PLO's and RS 2477 are not at all involved, we may still have an argument that Native corporations have taken federal lands subject to such highways even in the absence of such language as "subject to all valid, existing rights," depending, of course, upon the nature and origin of our right-of-way. Interior cannot obviously convey more than what it has. In some circumstances, however, we may be faced with potential problems and, most certainly in nearly all of them, an argument that the State does hold the underlying fee. Do we want to push this issue now?

It seems that we should be directing these concerns not so much to each other in the Department of Law, but to appropriate DNR and DOT personnel that should be made familiar with them. Does anyone have any ideas as to the identity of such persons? DOT right-of-way Agents? Those monitoring the issuing

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of patents to Native corporations within the departments?

Thank you.

EDW:ksb

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