

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

#008

Em/24

TO: Esther C. Wunnicke
Commissioner

DATE: June 18, 1984

Robert D. Arnold
Deputy Commissioner
James K. Barnett

FILE NO: 875
7216G

TELEPHONE NO: 786-2291

FROM: Deputy Commissioner

SUBJECT: Decision Memo #75 -
PLO 1613 and Omnibus Lands

James R. Anderson, Director
Division of Technical Services

Statement of Issue

This decision memo is to determine the policy and action this Department will take concerning PLO 1613/Omnibus Lands. Within the next two weeks, BLM will take actions that will affect the land title to PLO 1613/Omnibus lands.

Background

From the passage of the Act of January 27, 1905, resulting in the creation of the Alaska Road Commission which was organized on May 15, 1905 with a board made up of the officers of the United States Army stationed in the District of Alaska to the issuance of the Omnibus QCD dated June 30, 1959 pursuant to the Alaska Omnibus Act of June 25, 1959, conveying all rights, title and interests of the Department of Commerce to the State of Alaska, in and to all of the real properties which were owned, held, administered or used in connection with the activities of the Bureau of Public Roads in Alaska, the transportation systems of Alaska have been controlled by federal agencies. First it was the Secretary of the Army, then the Secretary of the Interior, and finally the Secretary of Commerce. As the reality of statehood approached, the status of the lands for our transportation system became extremely confused. Two congressional acts were passed in 1956 within one month of each other. Upon one, PLO 1613 depends on its validity; on the second, portions of the interests conveyed under the Omnibus deed could be affected.

Under the Act of June 29, 1956, the Secretary of the Interior was directed to turn over to the Secretary of Commerce all equipment, materials, supplies, papers, maps and documents or other property real or personal and including office equipment and records used or held in connection with such functions, duties and authority.

Thus, the Omnibus deed and the State's contention to fee title acquired by the QCD is linked to the June 29, 1956 act.

On August 1, 1956, an Act "To provide for the disposal of public lands within highway, telephone and pipeline withdrawals in Alaska subject to appropriate easements was passed."

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PLO 1613 dated April 7, 1958, is based on the August 1, 1956 Act which revokes the withdrawal of public lands for highways in Alaska and created an easement 300 feet in width for the Alaska, Richardson, Glenn, Haines, Seward-Anchorage, Anchorage-Lake Spenard, and Fairbanks-College Highways. Additionally, it permitted adjacent land owners to apply for and acquire fee title to the formerly withdrawn lands to the centerline of the highway subject to an easement for the highway. Thus, it is BLM's contention that the State received an easement from the Omnibus QCD.

For the past 25 years, little conclusive action has been taken by either BLM or the State. BLM has consistently taken the position that the State received an easement from the Omnibus QCD; the BLM records have not been noted as to any of the Omnibus Act or QCD lands; until several years ago BLM was not even acknowledging the QCD; and BLM had only conveyed 8 patents for the PLO 1613 lots to adjacent land owner with 94 applications pending adjudication at a very low priority. The two State departments concerned, DNR and DOT/PF have never established a strong formal position as to the title acquired by the QCD; whether we received an easement or fee title, nor have they evidenced any concern about the conveyance of PLO 1613 highway lots to adjacent land owners. There have been several skirmishes and generally, DOT/PF has claimed that the State received fee title. DNR has been involved primarily in other land actions with BLM and has tried to insure that at least an easement is identified to protect the State, planning on asserting fee title if appropriate at a later date.

Last winter DTS was approached by Representative John Liska from Eagle River and realtor Sig Strandberg to discuss PLO 1613 highway lots. An Eagle River woman was in court concerning a PLO 1613 lot litigation and Mr. Liska wanted to enlist DNR's help for the woman and to insure that the same situation would not occur again. One of the few BLM patents for a PLO 1613 lot was conveyed to the original adjacent land owner. The adjacent land had been sold several times. The subject land is along the Old Glenn Highway and DOT/PF had relinquished a portion of the right-of-way without realizing any ramifications. The original owner patentee, Mr. Setters, now held a highway lot patent encumbered only partially with the highway easement. The current adjacent land owner, Mrs. Pavek, was approached by the PLO 1613 patentee to purchase the highway lot for \$30,000 to gain access from her lot, across the highway lot owned by a Mr. Setters to the highway. Mr. Setters had paid \$25 for the PLO 1613 lot. The court case has not yet been resolved (see attached news article dated 5/5/84).

We have been informed that BLM received adverse congressional/political pressure for not taking action on the PLO 1613 applications pending for 18-20 years and thus BLM made the commitment to convey these lands by the end of FFY 84 (if this is true it appears that a congressional staff might not be fully aware of the impacts caused by the 18-20 year delay as illustrated

above). This would also remove BLM from the picture if they no longer had jurisdiction over the lands if other litigations were filed.

Meanwhile, DTS staff who had identified this as a problem area for years began research for an in-depth Attorney General's opinion looking at questions such as; did the State receive fee or an easement; did the Secretary of the Interior comply with the intent of Congress; is the conveyance provision of PLO 1613 legal, etc.? Because of other priorities, the opinion request has not been finalized. Preliminary research of the old territorial appropriation records indicates that certain parcels were purchased in fee for highway purposes but we do not know if these coincide with any PLO 1613 parcels.

It should also be noted with the introduction of HB 718 this session concerning Omnibus rights-of-way, that Robin Renner, attorney for the House Judiciary Committee reporting to Charlie Bussell has become very interested in the PLO 1613 and Omnibus issue. Mr. Renner is investigating the possibility of a task force approach with DNR and DOT/PF to resolve this issue.

Current Situation

Within the next two weeks, BLM will issue rejection decisions to all conflicting applications. Primarily, this will be to the State of Alaska since this office topfiled all of the general purpose selections under the blanket provisions of ANILCA. However, regional and village corporations may be involved as well as conflicting applicants. They plan to adjudicate 80 of the pending 94 applications at this time. If no appeals are filed, 40 days after the decisions are issued, patents will be issued. The remaining 14 applications will be adjudicated as soon as possible. BLM will publish a notice in the newspaper of those patents issued.

BLM's current position on processing PLO 1613 applications is listed in informal procedures dated June 6, 1984 as follows:

"Once an adjoining land owner's preference right under PLO 1613 has vested, 'equitable title' to the land applied for passes to the applicant and the Secretary is obligated to proceed to issuance of patent regardless of subsequent events. . . .

. . . the Bureau should not record any unclaimed patents, but that we should make certain that our status plats reflect all patents issued whether or not they have been claimed.

Present-day adjoining landowners will be able to initiate quiet title actions or start the clock running on adverse possession as soon as patent issues."

Some of the ramifications if BLM proceeds in its planned actions is that if the State, either DNR or DOT/PF does decide to assert fee title that our case would be limited if we do not come forward at this time. We could also be open to charges of being derelict in our duty to protect State interests. Additionally, it forces adjacent land owners if they are not the PLO 1613 applicants to initiate quiet title action.

Alternatives

Notify DOT/PF of the issue and pending rejections but take no formal action.

2. Notify DOT/PF and jointly appeal the State selection applications to IBLA on the premise that the State already owns the land by virtue of the Omnibus QCD. This would take a great deal of time and committed manpower to research the information necessary to write briefs. The positive aspects of this action is that DNR and DOT/PF would jointly work on this task and would assert title to the State's transportation system of roads, trails, maintenance camps, recreation sites and airstrips thus potentially saving the State millions of dollars in acquisitions and obtaining grants. The negative aspects could be continuing litigation with PLO 1613 applicants, title companies and the problem of reacting to a situation without having an opportunity to review statewide impacts on other land owners that may arise.
3. Notify DOT/PF of the pending issue and then contact our Washington office to negotiate with the Secretary of the Interior's office to freeze action on the PLO 1613 applications. It appears that working with the BLM-Alaska office would be fruitless because of their OMB commitments. Once the action is frozen, follow up with a joint task force of DOT/PF, DNR and the Attorney General to develop the State's position to PLO 1613, the Omnibus QCD, conveyance of land by the Omnibus Act and its possible impact. Legislative interest appears favorable at this time for this alternative.

Recommendation

Alternative #3 is recommended. If the Secretary of the Interior's office will not stop action on the PLO 1613 applications, Alternative #2 is then recommended.

JRA:CS:ds

Enclosure: PLO 1613
Newspaper Article, 5/5/84
Internal BLM procedures for processing PLO 1613 applications

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CONCURRENCE

Tom Hawkins, Director
Division of Land and Water Management

Date

Comments: _____

Pedro Denton, Director
Division of Mining and Energy Management

Date

Comments: _____

Neil Johannsen, Director
Division of Parks

Date

Comments: _____

Kay Brown, Director
Division of Oil and Gas

Date

Comments: _____

John Sturgeon, Director
Division of Forestry

Date

Comments: _____

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Commissioner's Office:

James K. Barnett
Deputy Commissioner

Date

Comments: _____

Robert D. Arnold
Deputy Commissioner

Date

Comments: _____

Approved:

Esther C. Wunnicke
Commissioner

Date

Analysis of PLO 1613 Case File
Processing

1. Or. Pending Case Files

- a In light of the August 8, 1933, Regional Solicitor's Memorandum, it appears we have approximately 33 applications that are ready to adjudicate through to patent. The memo stated that equitable title passes when the purchase price is tendered by an adjoining landowner regardless of the applicants subsequent conveyance of the interest to his adjoining land to some third party. The 33 files have all had the purchase price paid, there are no discrepancies, and the lands are surveyed. Therefore, there appears to be no reasons why we can't go forward with processing these files and patenting the land.

Because of the lag-time since these files were last worked (18-20 years) we probably should make an attempt to contact the applicant prior to mailing the patent document as there is a good chance the person's address has changed. One approach would be to issue a notice in which we would inform the applicant that patent issuance is imminent and afford them a time period to verify their address is still the same or submit a change of address.

It was stated in the letter dated August 17, 1933, from the Acting Regional Solicitor to Representative Liska, that the need for improved public notice has become very apparent. Therefore, the Bureau would be reviewing the problems and establishing procedures to provide adequate notice to the present day adjoining land owner (PDALO) prior to issuance of a PLO 1613

patent to an applicant who had gained equitable title but no longer adjoined the applied for land. This will be accomplished by publishing a courtesy notice in the nearest newspaper and Post Office prior to issuing the patent.

- b) There are approximately 26 case files which have been identified as having several deficiencies on the application. A notice should be issued requiring the respective discrepancy to be rectified. If no response is received we can then close the file of record.
- c) There are approximately 26 applications that did not have a cursory review conducted to determine what status they are in. We will need to adjudicate these files to decipher what category they lie in.

2. Amendment to PLO 1613

- a) On August 3, 1983, we forwarded a draft amendment of PLO 1613 to the office of the Regional Solicitor for its review. With only a minor change, that office found the draft legally sufficient. However, in the memorandum from the Solicitor's Office dated September 12, 1980, (which also concerned the proposed amendmant to PLO 1613) it was suggested that prior to issuance of the proposed PLC, BLM should determine whether the pipeline and telephone easements established in paragraphs 2 and 4 of PLO 1613 are still necessary and/or appropriate. "It is our understanding that beccause the pipeline has been removed, the necessity for the pipeline easement established by PLO 1613 is questionable. It is also our understanding that the telephone easement established by the order has been conveyed (Pursuant to the Alaska Communications Disposal Act) by the Air Force to RCA Alaska Communications, Inc. by an easement dated January 10, 1971 (see case file F-13508). The easement is therefore no longer in federal ownership."

It was further suggested that BLM examine and determine the continued necessity for the pipeline easement and whether the telephone easement remains in Federal ownership. If it is determined that the pipeline easement is no longer necessary and the telephone easement is no longer in Federal ownership, we should revoke PLC 1613 in its entirety rather than

merely amend it. Should it be determined, however, that either the continuation of the pipeline easement or the Federal telephone easement is necessary, then a complete revocation of PLO 1613 would not be appropriate. Rather, only paragraphs 7 through 10 should be revoked.

In either case, revocation of the preference rights invoked by PLO 1613 will require extensive advertising serving notice to the public going beyond that of publication in the Federal Register. Publication in all the major newspapers throughout Alaska may be required in order to reach the public at large. Paragraph 2 of the draft PLO states that "holders of all other preference rights created under Public Land Order 1613 must exercise them within one year of the publication of this order, or within 60 days of receipt by them of notice served by certified mail, whichever is sooner, regardless of whether or not the land is to be offered for sale". It appears then that another option available to serve public notice would be to locate the PDALO and serve notice through the mail. If this approach is taken it would require a title search.

In order to mitigate circumstances as much as possible I strongly suggest that the draft PLO be held in abeyance until all pending PLO 1613 cases that are ready to process to patent are adjudicated. The reasoning here is that a PLO terminating PLO 1613 (along with the associated advertising) would trigger a multitude of overlapping applications on lands that already have vested interest by virtue of the original applicant having gained equitable title. This is mainly due to the fact that many applicants holding equitable title are no longer PDALOS.

3 The Eklutna Issue

The issue here revolves around a possible problem concerning the conveyance to Eklutna, Inc. of land that may have had a preference right under PLO 1613 which was not asserted. We refer to it as the "Eklutna issue" but it relates to any land that has been tentatively approved, interim conveyed, or otherwise patented, in which an individual might have had a prior preference right to purchase.

Public Land Order 1613 involves two types of preference rights that were effectuated as of April 7, 1958 (the date PLO 1613 was issued): the first was afforded adjoining property owners, at their option, to purchase the land adjoining their property up to the centerline of the respective highway; the second was extended to individuals with adjoining valid unperfected entries in which they could amend their applications to include the land up to the centerline of the respective highway. The language in PLO 1613 is silent as to a preferred right to individuals filing valid applications on adjoining land after April 7, 1958, and thereby gaining subsequent title.

After researching the records it was found that the specific land (the property adjoining lands available for PLO 1613 selection) in the Eklutna issue was not applied for on April 7, 1958. However, the land was subsequently patented prior to Eklutna gaining conveyance to the adjoining tract. The main question is, does the Bureau today have an obligation to make contact with individuals that may have a preference right (because they either own or have a valid claim to adjoining lands available for PLO 1613 selection) which they have not asserted prior to making a non-sale conveyance to the available land? This question is also applicable in instances where individuals did have a valid claim or patented land as of the effective date of PLO 1613 (unlike the Eklutna issue) and they were either not contacted, did not assert their preferred right, or the lands were subsequently deeded to another party that may not be aware of the PLO 1613 preference right. At any rate, the question is convoluted enough that it will have to be formulated into a request for solicitor's opinion. Their determination will address such legal issues as the appropriate statute of limitations and whether the PLO 1613 preference right was triggered by a non-sale conveyance of title.

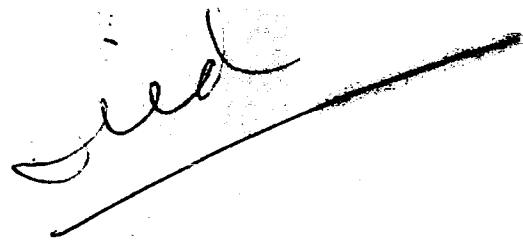
4. New PLO 1613 Applications

Since January, 1983, we have received approximately 15 new applications and we can anticipate a large case work load upon publication of a PLO terminating PLO 1613.

The complexities and convolutions caused by a languishing on processing of PLO 1613 cases leads us to one definite conclusion. In order to extinguish all pending applications, process the terminating PLO (and the ramifications thereof), address the Ekjutna issue, adjudicate all new applications, and coordinate the activities inter and intra the Division, we must be compelled to extend a cohesive and concerted effort. We can no longer afford to offer a piece-meal or short term approach to this dilemma. The procedures for processing all pending applications are attached.

955:PO Ferrall:vm:1/20/84
0019c

Introduced: 4/26/84
Referred: Judiciary



1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

HOUSE BILL NO. 718

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act releasing claims of the state to land within
7 certain rights-of-way; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. LEGISLATIVE PURPOSE AND FINDING. (a) The purpose of
11 sec. 2 of this Act is to release and relinquish certain rights-of-way
12 claimed by the Alaska Department of Transportation and Public Facilities.

13 (b) The legislature finds that sec. 2 of this Act is needed to alle-
14 viate economic hardship and physical and mental distress caused by the
15 taking of land by the state without just compensation.

16 * Sec. 2. AS 19.25 is amended by adding a new section to read:

17 Sec. 19.25.260. RELINQUISHMENT OF RIGHT-OF-WAY. (a) The right-
18 of-way for a road, roadway, highway, tramway, trail, bridge, or appur-
19 tenant structure created, withdrawn, or reserved under the Act of
20 January 27, 1905, 33 Stat. 616, the Act of June 30, 1932, 47 Stat.
21 446, the Act of July 24, 1947, 61 Stat. 418, Public Land Orders 601,
22 757, and 1613, and Department of the Interior Order 2665, as amended,
23 that is not on the effective date of this Act physically occupied by
24 the roadway, shoulder, or ditching of a road, roadway, highway, tram-
25 way, trail, bridge, or appurtenant structure is vacated and relin-
26 quished and the vacated and relinquished right-of-way may not be
27 taken, claimed, asserted, or used by the state without the payment of
28 just compensation.

29 (b) The provisions of (a) of this section relinquish and release

1 to the adjoining property owners on the effective date of this Act
2 that portion of the right-of-way claimed, asserted, or used by
3 state that is not physically occupied by the roadway, shoulder, or
4 ditching of the roadway before the effective date of this Act.

5 (c) The provisions of (a) of this section do not divest the
6 state of title to land or require compensation by the state for land
7 physically occupied on the effective date of this Act by the roadway,
8 shoulder, or ditching of a road, roadway, highway, tramway, trail,
9 bridge, or appurtenant structure then constructed within the right-
10 of-way created, withdrawn, or reserved under the Acts of Congress
11 the orders described in (a) of this section.

12 (d) Any expansion beyond the existing roadway, shoulders, or
13 ditching of a road, roadway, highway, tramway, trail, bridge, or
14 appurtenant structure requires the payment of just compensation to the
15 owner of the land and no other acts or actions by the state constitute
16 a physical occupation by a roadway, shoulder, or ditching within the
17 meaning of this section. The state has the burden of proof to show by
18 clear and convincing evidence that the physical occupation by a road
19 way, shoulders, or ditching occurred before the effective date of this
20 Act

21 (e) As used in this section, "physically occupied by the road-
22 way, shoulder, or ditching" means the construction of the actual
23 roadway, shoulders, or ditching before the effective date of this Act.

24 (f) This section does not relieve a person from an act for which
25 the person may be responsible regarding a past transfer of a right-of-
26 way or an interest in a right-of-way.

27 Sec. 3. This Act takes effect immediately in accordance with AS 01.-
28 10.070(c).