

From: Jennings, Gerald D (DNR)
To: [Hooyer, Patricia \(DOT\)](#); [Sansone, Jerri E. \(DNR\)](#); [Bennett, John F. \(DOT\)](#)
Subject: RE: Section Line Easements
Date: Tuesday, April 5, 2011 1:19:20 PM

I spoke with Tom Knox and he is having difficulty finding the legal opinion. He is still looking and he will be contacting the lawyer that wrote it in case he has a copy. I told Tom that unless the opinion convinces us, we will assert existence of SLE's.

By the way, Tom is retiring at the end of April.

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From: Hooyer, Patricia (DOT)
Sent: Friday, April 01, 2011 10:46 AM
To: Jennings, Gerald D (DNR)
Subject: FW: Section Line Easements

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From: Bennett, John F (DOT)
Sent: Friday, April 01, 2011 9:23 AM
To: Hooyer, Patricia (DOT)
Subject: RE: Section Line Easements

Louise, I have not heard of any SLE AG opinions regarding application to ANCSA lands. I find the comment that unimproved SLEs on ANCSA lands were extinguished to be pretty amazing and I am aware of no basis for it. I think the reality is that SLE's on ANCSA lands would be rare. Prior to ANCSA in 1971 there were several PLO's withdrawing federal land in anticipation of ANCSA. The big one was PLO 4582 at the end of 1968 sometimes referred to as "the land freeze". DNR has considered this the practical ending point for the establishment of RS2477 including SLE's although RS2477 wasn't actually repealed until FLPMA in 1976. But that doesn't mean that there could be no SLE's on ANCSA selections. They could select townships and sections that had approved surveys long before the mass land reservations. We have always held that during the period that the RS2477 offer and acceptance was active, that as soon as a rectangular survey was approved, and the subject lands were not otherwise reserved, the SLE would attach. But most of ANCSA selections were subject to two mile exterior boundary monumentation and even the old 1968 AGO opinion on SLE's held that the SLE's had to be surveyed before they would be available to the public. I don't believe an ANCSA corp has any obligation

to subdivide a township they have received under the PLSS rules. And the only reason I bring this up is because of the suggestion in the 1968 AGO opinion that SLE's could attach to protracted Section lines once they were surveyed.

So, in summary, I do not believe that the fact that the lands were conveyed under ANCSA prevents the application of SLE's if they meet the criteria of unreserved land status, approved survey, and offer/acceptance in effect. But the nature of the ANCSA process, the land freeze, the Tract A townships, and the repeal of RS2477 would make SLE application the exception rather than the rule. Your project noted below seems to be the exception in that the lands were surveyed prior to statehood and there was likely an offer/acceptance in place at some point when the lands were unreserved. I believe the corporations took these lands subject to valid existing rights including section line easements. JohnB

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From: Hooyer, Patricia (DOT)
Sent: Friday, April 01, 2011 8:25 AM
To: Bennett, John F (DOT)
Subject: FW: Section Line Easements

John:

I am wondering what your opinion is on section line easements on Native Corp. lands? Are you aware of any case law or AG opinions on the matter?

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From: Hooyer, Patricia (DOT)
Sent: Thursday, March 31, 2011 2:44 PM
To: Jennings, Gerald D (DNR)
Cc: Fuglestad, Eric P (DOT)
Subject: Section Line Easements

Gerald:

I am looking for an opinion/understanding about section line easements on Native Corporation Lands. We currently are in the process of trying to get a ROW Acquisition Plat thru the muni. We have shown section line easements on Eklutna Inc. lands. Tom Knox's position is that section line easements do not exist on Native Corp. lands. Tom has a Muni's AG opinion, which I have not seen, so to paraphrase Tom, His AG states that section line easements on Native Corp. lands were extinguished when they received title to them if there were no improvements/use of existing at the time of patent. I assume this is coming from the RS2477's that were being asserted at the time of ANCSA and if they were not in use they do not exist.

When we read Section 14(g) of Public Law 92-203 (ANCSA) and it states that "All conveyances made pursuant to the Act shall be subject to valid existing rights."

Our take is that the Native lands traversed by the Glenn Highway were filed upon by the Corporations on Dec. 17, 1971. These lands had been surveyed prior to Statehood, therefore the section line easements shown (33' each side) were valid existing rights, therefore, per Section 14(g) and per the patents, the valid existing right (section line easements) exist.

At this time I am not sure if I want to erase all of the sl easements we have shown to make Tom happy or leave them on the drawing and have another discussion with him. I am looking for some backup to if they really exist or not. I have attached a copy of our ROW Acq Plat for your use. See pages 5-12, that show a section line easement thru Eklutna's lands.

I look forward to hearing DNR's take on this. Thanks for your help.

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