

Boundary Lodge – USS 3001

The record indicates that the Kings occupied the site as far back as 1938 but did not file an application to purchase a Homestead until February 9, 1950. The Act of April 29, 1950 changed the filing requirements such that an entryman was required to file an application at the land office within 90 days of occupation. As King's application preceded this statute he was not required to file within 90 days. But for King's interest to constitute a "valid existing right" he would have had to prove use and occupancy as well as filing either a Notice of Location or the Application to purchase with the Land Office.

From Highway Rights-of-Way in Alaska 2013:

"Another evaluation of a federal Homestead at the Boundary Lodge on the Top of the World Highway found occupation language in the regulations preceding the changes in the filing procedures brought about by the Act of April 29, 1950. The occupation of the homestead commenced with the construction of the roadhouse in 1938 and the application for patent filed on February 9, 1950. This was about 6 months after the effective date of PLO 601. As the application date preceded the Act of April 29, 1950 by slightly less than three months, we determined that the entryman's rights vested under the 1949 regulations (Part 64 – Homesteads or Headquarters) by occupation rather than the 1950 regulations. The entryman's claim then related back to the date of occupancy which preceded PLO 601. As with the Meier's lake property, we only claimed a "ditch to ditch" right-of-way for the road crossing the survey."

Note: While we gave the benefit of the doubt to the Boundary Lodge owner it really wouldn't have changed much because of the highway relocation in front of the lodge. Upon my most recent in depth evaluation of Entry v. Occupation, I reached the conclusion that occupancy alone would not have vested a "valid existing right" that PLO 601 would have been subject to. It would require the combination of occupancy along with the filing of an application, either a Notice of Location of Settlement or Occupation or an Application to Purchase. Until the settler files an application with the Land Office, he is considered no more than a "squatter" in the eyes of the government. PLO 601 that would have established a 100-foot wide "Local" road withdrawal was subject to "valid existing rights" but as of August 10, 1949, when PLO 601 became effective, King had not established that "Valid Existing Right" and so his entry should have been subject to the PLO highway right-of-way.

John F. Bennett / 9.12.16