

From: [Sansone, Jerri E \(DNR\)](mailto:Sansone, Jerri E (DNR))
To: John Bennett
Subject: RE: Seward Highway DOT/ARRC/DNR Parks Land Exchange
Date: Wednesday, June 18, 2014 4:06:35 PM

MOA attached; actually it was TCC not BIA so much that created the stir the breadth and width of Alaska....

From: John Bennett [mailto:JBennett@rmconsult.com]
Sent: Wednesday, June 18, 2014 3:50 PM
To: Sansone, Jerri E (DNR)
Subject: RE: Seward Highway DOT/ARRC/DNR Parks Land Exchange

Thanks for looking at this Jerri. Yes, Simon the Glenn Highway pig farmer! That was a fun one. If it hadn't gone our way it would suggest that our PLO highway rights of way were only two dimensional. Not a helpful concept as we live in a three dimensional world. I think I have a lot of the material on the Tok allotment as that was one I was involved in. You did send me some stuff on Aguilar. I believe I have the Aguilar decision, the 1983 court issued stipulated procedures for implementation order and another untitled 24 page that I'm not sure where it came from. I'll attach it in case you know what it is. I don't think I have seen the MOU regarding denied reconveyances so if you have a copy handy please pass it along. I suspect that is what BIA is unhappy with and resulted in the proposed legislation this last session to force the State to reconvey allotments without conditions. JohnB

From: Sansone, Jerri E (DNR) [mailto:jerri.sansone@alaska.gov]
Sent: Wednesday, June 18, 2014 3:40 PM
To: John Bennett
Subject: RE: Seward Highway DOT/ARRC/DNR Parks Land Exchange

I've just looked at Simon v. State March 3, 2000, interesting case.

Reconveyances: As far as allotments are concerned, DMLW reconveys under Aguilar as such it is not appealable and it is at the state's discretion to reconvey. That said we don't and won't reconvey lands that we received title to for airports or highways. BLM is aware of this and though they are required to request reconveyance we do deny requests that impact those transportation areas; BLM has not questioned this decision nor have we ever received any push back on those decisions.

U&O vs. ROW grant: there is a native allotment by Tok that has a lot or two that infringes over the highway. BLM has requested we reconvey saying the allottee predated the ROW grant, however we have denied reconveyance.

U&O: BLM looks at an allottees use and occupancy date in determining if the deed should be made subject to a prior existing claim / right. For the state to reconvey we look at their U&O to predate our selection but also whether it's in the state's best interest to reconvey or whether we still have the land to reconvey, which could be an issue.

BLM, BIA and the State worked up an MOU, believe I had sent that to you prior to your departure

from DOTPF. This MOU is for relocation of denied allotment reconveyances onto lands that are selected by the state. I am not hearing that BLM has actually started using this MOU though it was signed by all parties. This has helped to alleviate some issues resulting from denials.

Would like to see what you pull together.

Jerri

From: John Bennett [<mailto:JBennett@rmconsult.com>]
Sent: Tuesday, June 17, 2014 11:20 AM
To: Sansone, Jerri E (DNR)
Subject: RE: Seward Highway DOT/ARRC/DNR Parks Land Exchange

Thanks Jerri, we haven't yet received our NTP to start work on this so I'm not sure what form the agreement you mentioned is taking. I am aware of the utilities issue and I'm sure we can figure out a way to make that work. On another note, we have been discussing in our office our perceptions of when the use and occupancy date must be considered when evaluating a native allotment against a right of way and I'm going to try to write something up as far as the way I see things. The big items are Omnibus Act ROW and Title 23 Highway grants of ROW. My understanding of Omnibus Act ROW is that DOI recognizes that without regard to whether the use and occupancy date preceded the PLO that might have created the ROW conveyed by the QCD, they would still need an Aguilar recovery to remove the conflict of the highway easement. This is true I'm not sure to what extent the state can resist such a request to reconvey a highway easement that DOI believes was inappropriately conveyed to the state. We resist and do not reconvey, however, they have requested. The Title 23 issue relates to the work product of one of our long since retired AAG's John Athens who argued that the Title 23 Highway ROW Grant authority could be impressed upon an allotment claim even if the use and occupancy came before the grant. I need to read his materials some more. At some point if I get this stuff together, I would like to send it to you to see where I got it wrong. In the meantime if you have any words of wisdom on that subject feel free to send them my way. Thanks, JohnB

John F. Bennett, PLS, SR/WA Senior Land Surveyor – Right of Way Services

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