

Bennett, John F (DOT)

From: Bennett, John F (DOT)
Sent: Friday, February 12, 2010 8:25 AM
To: Morton, Kenneth M (DOT)
Subject: RE: Project # 54985 - Willow to Kashwitna - Parks Hwy - Native Allotment owned by Helena (Larsen) Mark

Ken, I just skimmed through the attachments and think I see the problem. First, the general rule is that we assert our authority to permit and place utilities in highway easements based on the Fisher v. Golden Valley case. But this only applies to lands subject to state law. Federal law does not consider placement of utilities to be within the scope of a highway easement which is why we tell utilities that they must get a permit from the underlying federal agency and in the case of allotment trust lands, BIA. But what happened here is a tract of land was patented to the state, and at a later date an allottee claimed their land within that patent. There is a process named after the Aguilar IBLA case that provides that BLM can petition the state to reconvey these lands to BLM so they can then convey them to the allottee. Typically the state has the opportunity to protect its interests by citing existing easements and even creating some. But I suspect because no one in that process understood the distinction between how federal and state law treat utilities within a highway easement, the result is the PLO highway easement is now subject to state law and any utilities would need to obtain an easement from BIA. I think had it been caught, the state could have reserved an easement for utilities within the PLO that crosses the allotment and this might not have been a problem. Oh well. (Note this is the 30 second response and I might have it completely wrong). JohnB

John F. Bennett, PLS, SRWA | Chief, Right of Way | Alaska Department of Transportation, Northern Region
2301 Peger Road; Fairbanks, AK 99709-5399 | 📞: 907.451.5423 | 📠: 907.451.5411 | ✉: johnf.bennett@alaska.gov

From: Morton, Kenneth M (DOT)
Sent: Thursday, February 11, 2010 7:35 AM
To: Bennett, John F (DOT)
Subject: FW: Project # 54985 - Willow to Kashwitna - Parks Hwy - Native Allotment owned by Helena (Larsen) Mark

When problems come to mind (make that ROW challenges) your name comes to mind.

From: Redick, Rory R (DOT)
Sent: Wednesday, February 10, 2010 4:08 PM
To: Morton, Kenneth M (DOT)
Cc: Harvey, Patrick R (DOT)
Subject: FW: Project # 54985 - Willow to Kashwitna - Parks Hwy - Native Allotment owned by Helena (Larsen) Mark

FYI

From: Reese, Jill (DOT)
Sent: Wednesday, February 10, 2010 3:51 PM
To: james.cantor@alaska.gov
Cc: Hartig, Alan R (DOT); Hancock, Dawn R S (DOT); Cowdery, Pamela A (DOT); Hartman, James M (DOT); Smith, Todd E (DOT); Ryan, Stephen M (DOT); Redick, Rory R (DOT)
Subject: Project # 54985 - Willow to Kashwitna - Parks Hwy - Native Allotment owned by Helena (Larsen) Mark

Hello Jim:

I wonder if I can get your help.

I have attached email correspondence forwarded from attorney, Carol Yeatman, who is representing a property owner affected by the subject reconstruction project. Part of this project is a buried line installation by MTA along the MEA existing pole line. The owner and Ms. Yeatman contest the State's right to put utilities in a PLO Right of Way (ROW) at all. Ms. Yeatman also contests the jurisdiction of the State's court cases in deciding the matter, as her client's interest was gained through a native allotment. I know there has been this type of challenge to the State's rights to allow utility placement in the ROW before. Can you advise me as to the State's position in this matter?

Attached also is an easement granted to MEA in 1962 (well before the native allotment occupancy) that is located approximately at the eastern border of the ROW, where MEA's utilities are now located. Is there perhaps provision or mechanism for MEA to grant use to MTA or other utilities within their easement? If so, I believe the matter could be easily solved, at least in this area.

Thanks for your assistance.

Jill Reese

ROW Agent - Property Management
Department of Transportation & Public Facilities
4111 Aviation Avenue
P.O. Box 196900
Anchorage, AK 99519-6900
Direct Line: 907.269.0699
Toll Free: 1.800.770.5263
FAX Line: 907.269.0828