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ROBERT M. GOLDBERG

July 3, 1978

Mr. Jim Sandburg
Right of Way Division
Department of Transportation
State of Alaska
4111 Aviation Avenue
Anchorage, Alaska

Dear Mr. Sandburg:

Attached is a memorandum of our research concerning the question of the applicability of Public Land Order 601 to a homestead property described as follows: N 1/2 SE 1/4, SE 1/4 NE 1/4 sec. 6, NW 1/4 SW 1/4 sec. 5, T. 12 N, R 3 W, S.M. 160 acres. The entryman is Tron G. Anderson. Patent number is 1131411 and was dated March 23, 1951.

We are interested in obtaining from your office an opinion as to whether you would continue to assert a one hundred foot easement under Public Land Order 601 given the facts and arguments outlined in the memorandum attached hereto. We are under time pressure as a result of the fact that the property is subject to sale on July 12, and an opinion from your office as to what right of way rights are being claimed prior to July 13 would be of great assistance to us. A copy of this letter and memorandum has also been forwarded to Abigail Dodge of the Attorney General's office.

Thank you for your attention to our problem.

Sincerely,

Kneeland Taylor
Kneeland Taylor

KT:jk

Enclosure

C O P Y	Central Region	DATE RCVD:
	RIGHT OF WAY	JUL 5 1978
	"Hwys" - "Aviation"	
<input checked="" type="checkbox"/>	WILD, PAUL	
<input checked="" type="checkbox"/>	RICHARDS, TED	
<input checked="" type="checkbox"/>	SCRATTON, DAN	
	DAVIS, SHIRL	
	APPRAISALS	
	NEGOTIATIONS	
<input checked="" type="checkbox"/>	ENGR/PLANS	
	"Hwys"	

July 3, 1978

MEMORANDUM

RE: Applicability of Public Land Order 601
to Tron G. Anderson Tract

I. Statement of Facts

1. June 10, 1946-Tron G. Anderson filed an application and hot spring affidavit.
2. June 11, 1946-a receipt was issued for filing fees and commissions.
3. July 17, 1946-entry was allowed and Notice of Allowance was mailed.
4. September 18, 1947-letter from the entryman stating he is establishing residence on the homestead as of June 16, 1947.
5. August 10, 1949-Public Land Order 601 was issued.
6. August 16, 1950-Public Land Order 601 was published in Federal Register.
7. December 18, 1950-entryman pays final purchase price.
8. April 12-1951, patent #1131411 dated March 23, 1951 is mailed.

II. Legislative History of Public Land Order 601

Public Land Order 601 was issued pursuant to Executive Order 9337 which essentially provides that the Secretary of Interior can withdraw lands to the same extent as the President. The statutory authority cited for Executive Order 9337 is the Pickett Act of June 25, 1910, 43 U.S.C.A. 141. The Pickett Act thus becomes the statutory basis of P.L.O. 601. Subsequent Land Orders have revoked and revised P.L.O. 601 but they are not germane to the legal issues raised by the aforementioned statement of facts.

III. Other Relevant Legislation

The only other statute of significance relevant to this situation is the Homestead Act, R.S. 2289, 43 U.S.C.A. 161, under which Tron G. Anderson received his patent.

IV. Issue:

Had sufficient title vested in the entryman, Tron G. Anderson, vis a vis the federal government prior to the date of the issuance of Public Land Order 601 so as to segregate the land from the public domain and thus prevent the government from otherwise disposing of the land?

V. Discussion

The state's position regarding the issue as to when sufficient rights vest in the entryman as against the Federal Government is that rights vest when all requirements for acquisition of title are complied with, and that among those requirements is full payment of the final purchase price. Thus the position of the state in this case must be that the entryman, Tron G. Anderson, did not acquire sufficient rights as against the Federal Government since final payment was not made until December 18, 1950 and P.L.O. 601 was issued prior to that date.

The state's position is founded upon two U.S. Supreme Court cases--Frisbee v. Whitney, 9 Wall 187, 19 L.E.d 668 (1870) and Hutchins v. Low, 82 U.S. 82, 21 L.Ed. 82 (1873). The Court stated in these cases that under the preemption laws the federal government's right to regulate and dispose of land ceased only when all preliminary acts prescribed by those laws for the acquisition of title, including the payment of the purchase price of the land, have been performed.

The factual situations raised in the aforementioned cases and the statutory authority upon which the Court made its ruling can be so distinguished from the case presented here as to render them inapplicable. Sufficiency of entry is governed by the statute upon which entry is made. In both the Frisbee case and in Hutchins entry was made under the pre-emption laws. In our case the homestead laws are controlling.

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Furthermore, the Pickett Act clearly lays down the requirements as to when a homesteader is excepted from withdrawal under this Act. 43 U.S.C.A. states in part:

"That there shall be excepted from the force and effect of any withdrawal made under the provision of this and the preceding section all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of the proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made."

This section, I believe, makes patently clear that title need not be perfected in order for the land to be excepted from any withdrawal order based on Section 141. Any lawful homestead entry that is being maintained and perfected pursuant to the law is excepted from any withdrawal. We have found no cases indicating the contrary.

There is no question that our entryman, Tron G. Anderson, made a valid entry onto this tract and was maintaining and perfecting it pursuant to law at the time of the issuance of Public Land Order 601. It is a generally accepted principle that under the homestead laws valid entry exists upon formal application, affidavit and payment of required entry fees. Hastings & D. R. Co. v. Whitney, 10 S.Ct. 112, 132 U.S. 357, 33 L.Ed 363. The facts concerning our entryman conform perfectly to the statutory language of the Pickett Act which excepts withdrawals such as Public Land Order 601 from lands validly entered and lawfully maintained.

VI. Conclusion

In conclusion, it appears to us that the state's position is severely weakened by two essential factors:

1. the authority which the state cites are governed by the laws of pre-emption rather than the

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homestead laws and pre-date the Pickett

2. Public Land Order 601 is authorized by the Pickett Act which expressly exempts from the effect of any withdrawal any valid homestead entry being maintained pursuant to law.

We thus conclude that Public Land Order 601 should not apply to the Tron G. Anderson tract.