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THE GENERAL LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
WASHINGTON

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Surname:

1877260 "F"

APR 10 1942

Transmitting Copy of Map
with Instructions.

<i>Barber</i>
<i>Nichols</i>
<i>Howard</i>
<i>Smell</i>

MEMORANDUM for the Register,

Anchorage, Alaska.

There is transmitted herewith a copy of a map showing the survey and location of the right-of-way for the Glenn Highway under construction by the Alaska Road Commission from Mile No. 5, a point in the SE $\frac{1}{4}$, sec. 9, T. 18 N., R. 2 E., to Mile No. 31, a point in the NE $\frac{1}{4}$, sec. 36, T. 20 N., R. 5 E., S. M., at or near the town of Chickaloon, Alaska.

In our memorandum of February 13, 1942, addressed to the Division of Territories and Island Possessions, it was stated:

It is the opinion of this office that where roads and highways have been constructed or when definitely located and construction has been properly authorized and will be immediately undertaken by the Alaska Road Commission, over public lands to which no prior valid existing right has attached under the public land laws, a reservation of the right-of-way for such road or highway may be inserted in any final certificate or patent which may be subsequently issued. The construction of roads and highways by the road commission is authorized by special act of Congress (Secs. 321 to 337, incl., Title 48, U.S.C.).

Under departmental instructions of January 13, 1916 (44 L.D. 513) a reservation may be made of rights-of-way for the protection of roads and trails constructed by the Forest Service over public land in connection with the administration of National Forests. By our memorandum of June 26, 1940 (1825669 "F") approved by the Department, it was held that the instructions of January 13, 1916 were equally applicable to rights-of-way for roads constructed by the Indian Service over public lands in connection with the administration of Indian lands. The instructions are,

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cc: Division of Territories and Island Possessions.

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(2) Reservation or withdrawal of right-of-way for the Palmer-Richardson highway.

In our memorandum of July 12, 1941, the Alaska Road Commission was advised that in the absence of a map showing the location of the highway or such other data as would serve to identify the lands to be reserved, it was not seen how such a withdrawal could serve any useful purpose. I do not find that the Commission has yet filed a map of definite location or of general route for that portion of the proposed highway from Chickaloon to the point of connection with the Richardson highway. I would, therefore, suggest that a map be furnished showing the definite location of the road where it has been constructed and the location of the general route where not yet constructed. A withdrawal may then be made for the right-of-way for the constructed portion of the highway and also for the unconstructed portion; the withdrawal for the latter to be so made as to take effect upon actual survey of definite location or construction, as I believe it was suggested in the conference. Such map or maps should show or specify the width of the right-of-way desired to be reserved.

(3) Matanuska-Chickaloon branch of Alaska Railroad.

Originally consideration was given only to the matter of right-of-way for the Palmer-Richardson Highway from its point of connection with the Richardson Highway at "Mile 115.8", to a point of junction with the Matanuska-Chickaloon branch of the Alaska railroad at "Mile post 134", at or near Chickaloon. It was, however, brought out at the conference that the highway is now or will be extended on or along the abandoned railroad right-of-way from Chickaloon to or near the junction of the Eka Spur line.

June 4, 1919, the Department transmitted to this office a map filed by the Alaska Engineering Commission (850410-3-291-69), showing the location of the Matanuska-Chickaloon and Eka Spur line, constructed under the act of March 12, 1914 (38 Stat. 305), bearing the affidavit of the Chief Engineer, Alaska Engineering Commission, dated March 14, 1919. The right-of-way was properly noted on the records of this office and appears to be still intact. The records of this office do not show any abandonment of the right-of-way for railroad purposes. Under date of January 24, 1942, the Acting Director, Division of Territories and Island Possessions, transmitted a copy of a map showing the definite location of this section of the proposed highway, beginning from a point in the SW $\frac{1}{4}$ sec. 9, T. 18 N., R. 2 E., and extending northeasterly over surveyed lands to a point in the NE $\frac{1}{4}$ sec. 36, T. 20 N., R. 5 E., S.M., at or near the town of Chickaloon, Alaska, a distance of approximately

25 miles. Immediate consideration will be given to the matter of the reservation of the right-of-way for this section of the highway and to the notation thereof on the records of this office and those of the district land office.

(4) Mineral claims.

With respect to mining location or claim, it was held by the Supreme Court of the United States, in *Wilbur v. Krushnic* (280 U.S. 306), that such a location or claim perfected under the law has the effect of a grant by the United States of the right of present and exclusive possession and such claim is property in the fullest sense of that term. It is alienable, inheritable and taxable. For a further discussion of the subject see 48 L.D. 5; 53 L.D. 195 and 295 U.S. 639.

As to the effect of failure to complete annual assessment work upon a valid mining claim in Alaska, reference is made to the case of *Witcher v. Brown* (190 Fed. 708). See also the acts of May 4, 1934 (48 Stat. 663), and March 26, 1934 (48 Stat. 463), relating to mining claims in Alaska.

Invalid mining claims may be declared null and void by the Department (38 L.D. 59; 252 U.S. 450).

(5) Rights-of-way of the Copper River and Northwestern Railroad Company.

I believe that we have all agreed on securing from the Company a conveyance under the act of July 15, 1941, the rights-of-way, station and terminal grounds lying between Grea Inlet (Cordova) and Kennecott, acquired under grants made by Congress. The road having been abandoned, we should accept nothing less than what the Government would obtain by cancellation of the grants on voluntary relinquishment or by forfeiture proceedings, that is, a conveyance covering all the rights-of-way and grounds granted and evidenced by the approved maps, of which there are a number, excepting however, such portions of the right-of-way as may have been legally conveyed to the town of Cordova, for street purposes (Act of May 25, 1920, 41 Stat. 621; Circ. 1237a) or may otherwise be legally acquired under existing law as hereinafter referred to. In case of such a conveyance, those persons who are occupying the rights-of-way or grounds under authority of the Company or otherwise, will have to be taken care of by additional legislation, since the special act of 1941, does not provide for the disposal by the Secretary of the lands so conveyed. Congress would undoubtedly have to restore the lands so acquired to the public domain before they would be subject to acquisition under the general public land laws.