

**From:** John Bennett  
**To:** "[Eric P Fuglestad \(eric.fuglestad@alaska.gov\)](mailto:eric.fuglestad@alaska.gov)"  
**Subject:** RE: Dike ROW  
**Date:** Thursday, May 26, 2016 9:04:00 AM

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Eric, here is another reference supporting appropriation of federal land by construction even when no 44 LD 513 notation has been made. JohnB

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**From:** John Bennett  
**Sent:** Thursday, May 26, 2016 8:53 AM  
**To:** 'Eric P Fuglestad (eric.fuglestad@alaska.gov)'  
**Subject:** Dike ROW

Eric, it appears that my materials on this subject are a bit thinner than I recalled. My experience with this issue was for the Tok Cutoff MP 30 East ROW plans. I mentioned that we found a large dike crossing the road at the Chistochina River for which we could find no ROW document. I have attached a subsequent email in which I am explaining this to Karen back in 2000 when she also worked for DOT. The references sent to me by Ross Kopperud of the AGO were likely pre-scanner days and may still be sitting in the project files. But my email paraphrased what he relayed to me. Also, the dike had apparently been identified many years prior and DOT filed an affidavit providing the history of the dike to support our continued claim to a ROW.

The roots of Kopperud's discussion may well have come out of 44 LD 513. In scouting around for more info I found the Bureau of Reclamation's Manual that included a section on 44 LD 513. In their view, if the 44 LD 513 notation was never made on the land records after construction of a public facility over public lands, that really didn't make a difference. The construction itself appropriated the land and subsequent conveyances would be subject to that appropriation. Also see pdf page 5 of 062 IBLA 187. It references appropriation of federal lands by physical construction. IT cites for support the 1839 US Supreme Court decision Wilcox v. Jackson. The Wilcox case was most recently cited in a 2005 Home on the Range Case both of which I have included.

The next time I'm over at DOT I'll try to remember to look at the Tok Cutoff MP 30 file to see if I can find the reference that Kopperud had sent me. Otherwise, that's all I've got! JohnB

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

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